



World Bank Administrative Tribunal

2018

Decision No. 595

**EQ,
Applicant**

v.

**International Finance Corporation,
Respondent**

(Merits)

**World Bank Administrative Tribunal
Office of the Executive Secretary**

**EQ,
Applicant**

v.

**International Finance Corporation,
Respondent**

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Mónica Pinto (President), Andrew Burgess (Vice-President), Mahnoush H. Arsanjani (Vice-President), Abdul G. Koroma, Marielle Cohen-Branche, and Janice Bellace.

2. The Application was received on 15 November 2017. The Applicant was represented by Stephen C. Schott of Schott Johnson, LLP. The International Finance Corporation (IFC) was represented by Ingo Burghardt, Chief Counsel (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 4 May 2018.

3. The Applicant challenges the reassignment of two IFC clients and their removal from her work program for Fiscal Year 2016 (FY16); her FY16 Performance Evaluation; her performance cycle for Fiscal Year 2017 (FY17); and the alleged mismanagement of her career by the IFC.

FACTUAL BACKGROUND

4. The Applicant joined the IFC on 2 September 1997 as an Investment Officer. She was promoted to Senior Investment Officer on 1 July 2001, and to Principal Investment Officer on 1 July 2010. Throughout her employment, the Applicant has worked in many sectors including Manufacturing, Agribusiness and Services (MAS); Infrastructure; and Financial Services.

THE REASSIGNMENT OF CLIENT A AND CLIENT B AND THEIR REMOVAL FROM THE APPLICANT'S
FY16 WORK PROGRAM

Applicant's role within MAS

5. From 2013 to 2015, the Applicant was the Sector Lead for Aquaculture and Fisheries in the Global Agribusiness Team. In this capacity, the Applicant began working with two IFC clients, Client A and Client B, in order to develop business initiatives in the aquaculture sector.

6. In February 2015, the MAS Directors reorganized the department's work into global sector teams, thus redeploying the staff in the unit to the mainstream business of IFC. The redeployment of staff resulted in a change of work programs for some Investment Officers. Ms. X was appointed Global Agribusiness Sector Head and became the Applicant's Manager.

7. By email dated 6 February 2015, the Applicant's Manager wrote to the Applicant regarding the Applicant's "work program for the rest of the year and next" and offered the Applicant the opportunity to be the business development lead for Francophone Africa. The Applicant's Manager explained that "the volume of business coming out of aquaculture is insufficient to justify a principal IO [Investment Officer] being dedicated to it," and told the Applicant that she should spend "no more than 50% of your time on it, and focus [the] rest of your time on business development in selected two countries in Africa, where we have clear business needs and your language skills and experience can be helpful."

8. On 18 February 2015, the Applicant declined her Manager's offer stating that she was not convinced the proposal was a "win-win proposition." She noted that:

Unfortunately, the existing incentive system at IFC does not adequately reward personal and professional risk-taking. I got burned few times. I have spent the past 8 consecutive years working in or on Africa and accepted to take on responsibilities in challenging environments that nobody wanted to take at the time, together with the risk of ending up with a weaker deal sheet (a big deal for an IO). These choice[s] have been professionally and personally costly: performance ratings, weaker deal sheet compared to peers, resulting perception

issues, talent rating and career progression, compensation implications, and other foregone opportunities [...]. (Emphasis in original.)

9. In March 2015, the Applicant's Manager had several conversations with the Applicant about the need to complement her portfolio with other mainstream IFC work. This was documented in the Applicant's Fiscal Year 2015 (FY15) Mid-Year Conversation, in which the Applicant's Manager stated that management was

reassessing [the Applicant's] work program [...], seeking to add other business that would support the productivity expected from a principal IO. [The Applicant] is asking to continue focusing on aquaculture [un]til the end of the fiscal [year] and we agreed on a target to deliver 2-3 signed mandates by then, as she feels her past [year's] efforts are about to pay off. We will re-assess the situation based on outcome in July 2015, after the end of the fiscal year at the annual review.

10. On 9 September 2015, at the end of FY15, the Applicant's Manager commented in the Applicant's FY15 Performance Evaluation that:

As discussed, we will need to adjust the time spent for IFC on aquaculture going forward, as despite [the Applicant]'s best efforts, the business is too difficult and too small to sustain a full time Principal IO. There are ongoing discussions on this with [the Applicant], to agree on other productive activities for at least half her time going forward.

Client A

11. In the beginning of FY16, the Applicant was responsible for managing Client A's relationship and business development. She was also the team lead for Client A's project in Latin America.

12. By email dated 3 September 2015 to the Portfolio Manager and MAS Directors, the Applicant announced the planned acquisition of Client A by another Group. She stated that the acquisition might be "bad for us" for the following reasons:

We have not reached an agreement on the simplification of the Parent Guarantee terms, which [...] the Chairman of the Board specifically came to discuss with us in Washington DC in March. They are not happy about this [...].

I strongly recommend that we revisit our client engagement in order to not only keep and strengthen the institutional relationship, but also to leverage the very strong partnerships that [Client A] is developing [...].

I need IFC/MAS management help to together convince [Client A's] board [...] that IFC is still a partner of choice for the now extended Group's growth in emerging markets. With the pending discussions on the [Latin American] project sponsor support structure, it is just too hard to get their trust that IFC can offer competitive and speedy funding support and other value-adding services for their new projects.

13. On the same date, the Portfolio Manager responded to the Applicant's email, stating that he was "[a] bit surprised you feel we have not been responsive." He noted that the Portfolio Team "ha[s] been awaiting [Client A's] response to two proposals to address the shortcomings of the current structure and adapt our agreements to the new structure emerging after the client's transition period."

14. In early September 2015, the Portfolio Manager informed the Applicant's Manager that the situation with the project in Latin America was very tense. Client A had requested amendments to the IFC agreements (waivers) which would have relaxed the IFC's financial covenants. The Portfolio Manager also informed the Applicant's Manager that the Applicant had advocated for the waivers on behalf of Client A. The Portfolio Team and MAS management did not believe that the waivers were in the IFC's best interests.

15. By email dated 6 October 2015 to the Portfolio Manager and MAS Chief Investment Officer, the Applicant's Manager asked them if they would agree on reassigning the Applicant's role as Client A's relationship manager to another MAS Principal Investment Officer. In the same email, the Applicant's Manager stated that "I feel we need to make a team change if we want a chance to make it work." On the same date, the MAS Chief Investment Officer replied to the Manager that she agreed with the proposal, and added that "there is also friction with the portfolio team, which would be addressed if we changed to [the MAS Principal Investment Officer]." The Portfolio Manager replied later that day stating, "I agree and will be glad to join you in this difficult meeting with [the Applicant]."

16. In a meeting of the same day, the Applicant's Manager and the Portfolio Manager informed the Applicant that they had decided to reassign her client relationship management responsibilities and business development role to the MAS Principal Investment Officer. The Applicant claims that her Manager told her that this decision was made because the Applicant "was 'too close' to the client to defend IFC's interests, and [she] was 'undermining' management and the team." Days later, the Applicant's Manager revisited her decision and allowed the Applicant to maintain her business development responsibilities.

17. On 13 October 2015, the Applicant's Manager sent an email to Client A's Chairman informing him that, going forward, the Applicant's client responsibilities would be managed by the MAS Principal Investment Officer.

18. By email dated 14 October 2015 to her Manager, the Applicant stated her disagreement with the reassignment of her management responsibilities. She stressed that:

It is hard to accept that my attempts to gather wider support to seize very interesting business opportunities for IFC with the growing [Client A's] Group result in sacking – and done the way it was done – and your reason for removing me from my role, if I heard you and [the Portfolio Manager] right, is the presumption that the quality of the relationship that I have painstakingly built with this client over the past three years is "too good" to allow me to reconcile client service and IFC's interest.

[...]

I would appreciate an open discussion to allow us to at least understand the facts or assumptions that have driven us to this highly frustrating situation [...].

19. Later that day, the Applicant's Manager responded to the Applicant's email noting that:

We reschedule a follow up discussion about your objectives. [The Portfolio Manager] and I had a detailed conversation with you last week about asking [the MAS Principal Investment Officer] to step in and have in depth conversation with [Client A's Chairman] and the [client] management team to try and agree on a financial vision for the group. This is not new.

[...] I know this decision [...] was disappointing to you, but [the Portfolio Manager] and I communicated a decision to you last week, with as much rationale

as we could. This was not something we were open to reconsider, nor a matter for negotiation.

20. On 18 October 2015, the Applicant wrote to her Manager reiterating her disagreement with her decision. She noted in this regard that “it is not fair that when long efforts [...] seem to have the potential of bearing fruit, I am pushed out of the job but others are volunteered to harvest them.”

21. A few months later, the Applicant’s Manager reassigned the Applicant’s business development roles for Client A to the MAS Principal Investment Officer, arguing that it was an “impractical” solution to have two Principal Investment Officers working with one client.

22. On 11 March 2016, the Applicant’s Manager wrote to the Applicant regarding her 2016 mid-year review and informed her that she should not include Client A in her FY16 performance objectives.

23. By email dated 4 May 2016 to her Manager and MAS Directors, the Applicant informed them that she had recently learned that the IFC was evaluating an equity transaction to participate in the acquisition of Client A by another Group. She noted that she would not be able to support the transaction in any capacity due to a potential conflict of interest. She also informed them that she would seek guidance from an IFC Compliance Officer and the Office of Ethics and Business Conduct (EBC) on this matter. Later that day, the Applicant’s Manager advised the Applicant “not [to] engage with these companies,” noting that the Applicant was no longer leading their business relationships.

24. On 5 May 2016, the Applicant met with the IFC Compliance Officer, who advised her to “recuse [herself] from participation in the new transaction [...]” On the same date, the Applicant claims that she contacted the EBC Helpdesk.

Client B

25. The Applicant was engaged in business development efforts with Client B from 2013 to 2015.
26. On 19 May 2015, the Applicant wrote to the Africa Agribusiness Manager, expressing her desire to “formally hand over the leadership of managing this client relationship” to an IFC trade team which had shown interest in engaging with Client B.
27. By email dated 4 November 2015, the Applicant asked a Senior Investment Officer in her unit “to take the lead on a potential transaction on the condition that I stay on board and support him till we obtain a client mandate.”
28. On 20 November 2015, the Applicant informed her Manager and the Africa Agribusiness Manager of her decision to hand over her business relationship responsibilities to the Senior Investment Officer.
29. On 3 December 2015, the Senior Investment Officer presented a project concept before the Concept Review Meeting (CRM) for approval. The Applicant claims that after this presentation the Senior Investment Officer “started cutting me off from [the] team and client interactions whereas our agreement was that I disengage only after we sign a mandate letter.”
30. By email dated 12 February 2016, the Applicant asked her Manager whether they could meet up to discuss Client B given that she and the Senior Investment officer were “having a teamwork issue.” On the same date, the Applicant’s Manager responded that she “was planning to discuss this with you next week when we have our midyear conversation. [The Senior Investment Officer] is handling. There is no need for you to double up with him at this stage.”
31. By email dated 16 February 2016 to her Manager and MAS Directors, the Applicant updated them on her “recent success in converting over 2 years of client relationship building and business development efforts into 2 CRM approvals and mandate in Africa: 1. [The

Applicant's project in Africa (Project C)] and 2. [Client B]." She also noted that the Senior Investment Officer was leading Client B and "leveraging his experience."

32. By email dated 18 February 2016, the Applicant's Manager informed the Applicant that going forward the Senior Investment Officer would handle Client B.

33. On 11 March 2016, the Applicant's Manager wrote to the Applicant regarding her 2016 mid-year review and informed her that she should not include Client B in her FY16 performance objectives.

34. Between March and June 2016, the Applicant held a part-time Development Assignment (DAIS) with the World Bank's Environment and Natural Resources Global Practice, aquaculture and fisheries team.

THE APPLICANT'S FY16 PERFORMANCE EVALUATION

35. On 20 February 2016, the Applicant and her Manager met to discuss the FY16 mid-year review.

36. On 1 March 2016, the Applicant's Manager wrote to the Applicant asking her to "please go in eperformance, and click on the box to document that we had a mid-year review[.]"

37. On 11 March 2016, the Applicant wrote to her Manager noting that she "remain[ed] reluctant to sign off on the mid-year review" and its "incomplete objectives." She also noted that her Manager had "removed my relationship management and business development responsibilities for Client A, which I have not agreed to and as you know, is a very contentious issue."

38. On the same date, the Applicant's Manager responded, "I know we disagree on relationships you would like to be involved with, but that is a fact at this point, and we should move on from this."

39. On 15 March 2016, the Applicant and her Manager met to finalize the mid-year review. After the meeting, the Applicant's Manager sent an email to the Applicant noting that:

On [Client B], I will discuss with [the Africa Agribusiness Manager] your proposal to work on it with [the Senior Investment Officer] [un]til mandate.

On [Client A], you are welcome to put in your objectives that you worked on it until [the MAS Principal Investment Officer] took over, to recognize the first part of the year.

40. On 17 March 2016, the Applicant entered her Mid-Year Conversation Staff Comments into the Bank's performance system noting that:

I fundamentally disagree with my manager's decision to reassign [the] client relationship management and business development responsibilities for [Client A] to [the Principal Investment Officer] and with the reasons and motives underlying this decision [...]. I also do not understand why [my Manager] insisted firmly that I remove [Client B], from the list of clients that I have developed and nurtured over two years and with which we aim to get a mandate. Although I decided by my own initiative to hand over the lead structuring role to [the Senior Investment Officer], my intention was to continue working together to secure the mandate.

41. On 18 March 2016, the Applicant's Manager entered her comments into the Bank's performance system and completed the Applicant's FY16 mid-year review. The Applicant's Manager stated that:

[Project C] just appraised as team leader, a mandate sourced by [the Applicant] from her [...] relationship. This project should be her priority for delivery for the rest of the FY [...].

[Client A] was reassigned to another senior staff in October at the request of the portfolio manager. We discussed the underlying reasons.

[The Applicant] had been in touch with [Client B] and hand[ed] over [the] contact to [the Senior Investment Officer] who is structuring a potential transaction. No further work is needed for [the Applicant] at this point on [Client B] as confirmed with the transaction manager.

42. By email dated 28 March 2016, the Africa Agribusiness Manager reminded the Applicant that, as Project C's Team Leader, "I expect you to provide needed guidance to the team to

deliver a quality IRM [Investment Review Meeting] and do let me know if you are still not clear about your role.”

43. On 31 March 2016, the Applicant’s Manager requested mediation, which ended without success on 31 May 2016.

44. On 29 April 2016, the Applicant presented materials at the IRM regarding Project C, which she later acknowledged not to have “had the time to all review and cross-validate to full satisfaction.”

45. On 11 July 2016, the Applicant declined her Manager’s offer to extend her DAIS with the Bank, arguing that a DAIS “does not bring tangible business benefits to MAS (in your view) – otherwise it will not be valued by MAS.”

46. For the FY16 Performance Evaluation, the Applicant nominated ten feedback providers. Her Manager subsequently replaced three of the providers nominated by the Applicant with three members of Client A’s Portfolio Team, chosen by the Manager. On 29 July 2016, following the Applicant’s objection, the Applicant’s Manager reinserted the three feedback providers nominated by the Applicant, which made a total of 13 feedback providers.

47. By email dated 17 August 2016, the Applicant’s Manager explained that her decision to request feedback from three members of Client A’s Portfolio Team was justified by the fact that the Applicant had worked with this client until October 2015.

48. On 6 September 2016, the Applicant’s FY16 Performance Evaluation conversation took place. On 9 September 2016, the Applicant and her Manager exchanged emails on the content of that meeting.

49. By emails dated 15 and 21 September 2016, the Applicant’s Manager informed the Applicant that her performance rating would be a 3, noting that “[h]owever, [the Africa

Agribusiness Manager] and I did not find your project work performance [...] to be satisfactory.” She further stated that “the multi-rater is a tool, not an evaluation in and of itself.”

50. On 2 October 2016, the Applicant was notified of the approval of her FY16 Performance Evaluation.

51. The Overall Supervisor Comments of the FY16 Performance Evaluation noted that:

After several years of work to develop aquaculture business, [the Applicant] is now in a transition back to mainstream investment work. While her performance during her 4 months development assignment was satisfactory, her performance on IFC projects was not. She needs to sharpen her core investment officer skills, such as structuring and team work, moving away from ‘advisor’ on aquaculture and sector knowledge, to owning the projects as team lead or transaction lead, and taking charge for the quality of the work product.

52. The Applicant’s Manager’s assessment of the Applicant’s performance was that the Applicant “contributed significant sector knowledge to the team, however her overall performance as team lead was disappointing.” The Applicant’s Manager noted that the IRM documents presented by the Applicant in connection with Project C “[lacked] significant structuring” and that “[t]hese structuring issues should have been addressed by [the Applicant] as team lead, particularly because this project was explicitly her #1 priority for IFC since her mid-year review. Several feedback providers also point to the need to strengthen her structuring skills.” The Applicant’s Manager also stated that Client A had been moved to another team leader in October 2015 “following negative feedback.” The Manager added that:

In her drive to serve the client, [the Applicant] pushed the team to process a waiver request that the portfolio team was not ready to recommend. The teamwork became increasingly difficult as the client continued to put pressure. This feedback was discussed in numerous occasions throughout the year, including with the portfolio manager and the acting portfolio manager. It is also reflected in the area of development outlined in the multirater feedback for this year, pointing to insufficient structuring skills and difficult relationship with the team, sometimes ‘siding with the client’ instead of protecting [the] Corporation’s interest[s].

53. Regarding the Applicant's strengths for FY16, her Manager noted that the Applicant was "generous with her knowledge both of how IFC makes decisions and more broadly of the perspectives of private sector and private capital on all things fish-related." She noted the Applicant's commitment "to finding ways to leverage WB public investment to subsidize risk that would attract private capital," and her "[g]enuine interest for development and understanding of the aquaculture and fisheries sector [...]." In the Applicant's areas of improvement, her Manager commented that the Applicant "need[ed] to revert to her core/fungible investment skills if she is interested to stay within IFC's investment work." She added that "several team members working with [the Applicant] have expressed frustration that their views were not welcome if they voiced issues or disagreements with [the Applicant's] proposed approach (on [Client A], on [Project C])." She finally stated that the Applicant was working from home without her prior approval.

54. On 9 February 2017, the Applicant requested EBC to investigate allegations of intimidation and retaliation by her Manager in relation to the FY16 Performance Evaluation.

55. On 13 March 2017, EBC opened an investigation into the Applicant's allegations.

56. On 16 August 2017, EBC notified the Applicant that it had closed her case due to "insufficient evidence to substantiate your allegations against [your Manager]."

PEER REVIEW SERVICES, ADMINISTRATIVE REVIEW, AND PERFORMANCE MANAGEMENT REVIEW

57. On 27 July 2016, the Applicant filed a Request for Review before Peer Review Services (PRS) contesting the decision to remove Client A and Client B from her FY16 business objectives and alleging that management's reasons were arbitrary, lacked a reasonable basis, and did not follow due process.

58. On 28 November 2016, the Applicant challenged her FY16 Performance Evaluation and requested an Administrative Review (AR).

59. On 30 January 2017, the Administrative Reviewer found that the Applicant's Manager conducted a fair evaluation of the Applicant's FY16 performance. Regarding the comment in the Applicant's FY16 Performance Evaluation that "her performance on the IFC projects was not satisfactory," the Administrative Reviewer acknowledged that the Applicant did not receive clear feedback regarding her areas for development and therefore recommended that "the manager revise this specific comment on the evaluation report while maintaining the main messages about the performance deficiencies." He also recommended that the Applicant's Director revisit the reporting line between the Applicant and her Manager. The recommendations were accepted by the Applicant's Director on 11 February 2017.

60. On 13 February 2017, the Applicant challenged her Director's decision and requested a Performance Management Review (PMR).

61. On 22 February 2017, the PRS Panel issued its Report in Request for Review No. 356 and found that "management acted consistently with [the Applicant]'s contract of employment and terms of appointment in making the decision to remove her from her role on [Client A] and [...] her responsibilities related to [Client B]." The PRS Panel therefore recommended that the Applicant's requests for relief be denied.

62. On 28 February 2017, the Vice President, New Business, IFC, accepted the PRS Panel's recommendation and notified the Applicant of his decision on 10 March 2017.

63. On 9 May 2017, the Vice President transmitted to the Applicant the findings and recommendations of the Performance Management Reviewer, who concluded that "management acted within its discretion and that due process was followed. I recommend no further changes to [the Applicant]'s FY16 Annual Review beyond those already agreed by management as recommended by the Administrative Review."

64. On 15 November 2017, the Applicant filed this Application, after receiving several extensions of time. The Applicant challenges the reassignment of two IFC clients and their

removal from her work program for FY16; her FY16 Performance Evaluation; her performance cycle for FY17; and the alleged mismanagement of her career by the IFC.

65. The Applicant seeks (i) the “revocation” of the “negative” FY16 Performance Evaluation; (ii) written apologies from the Applicant’s Manager and the Director for the harm done to the Applicant’s professional reputation within the IFC; (iii) correction of any “unfair conclusions” relating to the Applicant’s talent reviews for FY15, FY16, and FY17; (iv) agreement on a work program that “best utilizes the Applicant’s skills and strengths as a Principal Investment Officer in the context of IFC’s new strategy”; (v) agreement on “career and profile enhancing assignments”; (vi) “absolute transparency” in decisions affecting the Applicant’s career; (vii) compensation in the amount of one year’s salary; and (viii) legal fees and costs for the jurisdictional and merits phases of the proceedings in the amount of \$32,362.50.

66. On 5 January 2018, the IFC filed a preliminary objection to the admissibility of the Application.

67. In *EQ (Preliminary Objection)*, Decision No. 584 [2018], the Tribunal upheld the IFC’s preliminary objection on the Applicant’s claims relating to her FY17 performance cycle and allegations of career mismanagement.

68. The Tribunal further held that it has jurisdiction over the Applicant’s claims regarding the reassignment of her FY16 work program and the FY16 Performance Evaluation. This judgment addresses the merits of these claims.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The Applicant's Contention No. 1

The IFC's decision to reassign Client A and Client B and remove them from the Applicant's FY16 work program was arbitrary, unfair, and improperly motivated

69. The Applicant disputes the IFC's reasons to reassign Client A. The Applicant contests the IFC's contention that tensions arose in the Portfolio Team due to her interactions with the client. She contends that the IFC misunderstood her interactions with Client A and explains that the IFC's new client service coverage model, which was not well-defined or understood at the time, "might have influenced the perception about or reaction to my interactions with [Client A]." She also contends that her Manager did not raise this issue when they both met to discuss the Applicant's FY15 Performance Evaluation.

70. The Applicant also contests the reasons provided by her Manager, that there was a need for "fresh eyes" in the management of Client A. The Applicant asserts that the real motivation for the reassignment of Client A was that (i) her Manager wanted all the credit for any business opportunity with [Client A]; and (ii) her Manager had personal motives to reassign the Applicant's "most meaningful and promising client at the time" and set her up for poor performance.

71. The Applicant further objects to her Manager's reason for reassigning her business development role with Client A, that it was "impractical" to have two Principal Investment Officers managing the same client at a time where the aquaculture sector was no longer a priority for MAS. She claims that this assertion is unfounded because (i) "roles and counterparts were separated and [she] had put all new business discussions on hold"; and (ii) there are several instances in which two or more senior officers deal with the same client. She also claims that, contrary to the IFC's assertion, the IFC has continued developing projects in the aquaculture and fisheries sectors in Latin America in 2016, 2017, and 2018.

72. The Applicant submits that retaliatory motives supported the decision to reassign and remove Client A from her FY16 work program. She explains that she was retaliated against for having reported a potential conflict of interest to the IFC Compliance Officer in relation to the IFC's potential transaction to participate in the acquisition of Client A by another Group.

73. The Applicant states that the team lead of the new transaction was also the Reviewing Official for her FY16 Performance Evaluation. The Applicant claims that the team lead "reproached" her, in a meeting of 5 May 2016, with the fact that the Applicant had raised the potential conflict of interests with the IFC Compliance Officer.

74. Regarding the IFC's decision to reassign Client B, the Applicant claims that her Manager demonstrated "strong bias" in giving little weight to the quality of the Applicant's initial work with Client B, while her Manager accorded "disproportionately strong credit" to the Senior Investment Officer's work, ignoring the fact that, without the Applicant's efforts, the project concept submitted by the Senior Investment Officer would not have concretized.

75. The Applicant contends that the praise given to the Senior Investment Officer was intended to "give [him] visibility" for a potential promotion within the Africa Management Team. The Applicant explains that her initiative to partner with the Senior Investment Officer "was partly driven by my supervisor's and [the Africa Agribusiness Manager's] failure to provide managerial guidance as to how to take the lead forward." She argues that, prior to handing over the client to the Senior Investment Officer, her Manager had persistently showed a lack of interest on any project proposal the Applicant suggested, while her Manager had instead supported every proposal submitted by the Senior Investment Officer.

76. The Applicant disputes the IFC's assertion that a staff member is not entitled to dictate his or her work program, arguing that senior officers like her "prepare their work program in alignment with their role and their Vice-President Unit's objectives and clear it with their managers." She further disputes the assertion that she has refused to accept management's decisions regarding her work program, stating that this statement is contrary to the "spirit of dialogue" between senior officers and managers.

The IFC's Response

The IFC's reassignment of Client A and Client B and the decision to remove them from the Applicant's FY16 work program were within managerial discretion; they were not unfair or based on improper motives

77. The IFC submits that there was a reasonable and observable business rationale for the reassignment of Client A. According to the IFC, it was in the best interest of the IFC to remove this client from the Applicant's work program given the tensions between the Applicant and the Portfolio Team. The IFC states that tensions had arisen due to the fact that the Applicant was putting pressure on her colleagues to accommodate Client A's request for waivers. The IFC contends that it became clear to the Applicant's Manager that the Applicant was taking the client's side in negotiations, to the detriment of the IFC's interests. The IFC denies any improper motives behind its decision to reassign Client A, and asserts that the Portfolio Team's "diverging views" about the Applicant's stand on the request for waivers occurred before the reassignment was officially announced on 6 October 2015.

78. The IFC asserts that it is within managerial discretion to determine the business goals of a unit and to organize the unit's work in pursuit of corporate business objectives. The IFC maintains that the Applicant had continuously refused to adapt to the changes implemented by MAS and notes that technical staff like the Applicant, even at GH level, are required to follow instructions and are in no position to second guess their supervisor's decisions regarding the organization of the IFC's business. To the IFC, the fact that the Applicant's Manager was not open to renegotiating the reassignment decision "is not *prima facie* evidence of being unreasonable" but it is justified by the fact that "work assignments are a matter for the employer."

79. The IFC contends that the reassignment of the Applicant's business development responsibilities with Client A was also based on business reasons. The IFC explains that the Applicant's Manager did not find it "practical" to keep two Principal Investment Officers engaged with one client, especially when Client A's business development was no longer a priority for MAS. The IFC states that developing a project note for a potential equity transaction

with the company that intended to acquire Client A does not contradict this assertion. The IFC disputes the Applicant's claim of retaliation and asserts that the decision to reassign her business development responsibilities was made in March 2016, prior to the Applicant's reporting of the potential conflict of interest to the IFC Compliance Officer.

80. Regarding the decision to reassign Client B, the IFC claims that the Applicant's allegations are a "red herring" because the Applicant expressly agreed to reassigning this client to the Senior Investment Officer. The IFC maintains that the Applicant's Manager's decision to reassign Client B to the Senior Investment Officer was grounded in a "clear, objective, business rationale," namely that the Applicant "had shown no results in her business development efforts with [Client B] over two years." The IFC submits that the Applicant's claim to be credited for Client B's client relationship shows a complete misunderstanding of the IFC's measurement of staff performance, which only considers success "through concrete engagement with a company." The IFC explains, in this regard, that the Applicant "could not be awarded credit for having 'developed a client relationship' that has not resulted in any transactions at the point of handover to another staff member."

81. The IFC avers that the Applicant has failed to provide "clear evidence" to substantiate her allegation that the reassignment and adjustment of her work program were motivated by "someone's 'hidden agenda' or an attempt to collude with the entire team to force [her] out of her client relationships."

82. The IFC denies the Applicant's contention that the reassignment of Client A and Client B was "discriminatory" and had the ill-motivation "to set her up for failure" and asserts that the IFC acted fairly with the Applicant, by informing her of the reasons for the reassignment, by considering the Applicant's interests, and by giving her every opportunity to obtain a full work program. In this regard, the IFC maintains that the Applicant refused her Manager's offer for a work program in Africa and a DAIS extension with the Bank, which, according to the IFC, demonstrates that the Applicant was "inflexible to adapt to operational needs despite [her Manager's] repeated attempts to find mutually acceptable solutions."

The Applicant's Contention No. 2

The IFC's decision to reassign Client A and Client B and remove them from the Applicant's FY16 work program did not follow due process

83. The Applicant contends that she was not given “any concrete guidance” on what she could do differently with Client A, nor was she given “the opportunity to correct any mistake or improve where needed” before the decision to reassign Client A was made. She claims that the email of 13 October 2015, sent by her Manager to Client A’s Chairman, announcing the reassignment was “rushed, inappropriate in form and bluntly demeaning and humiliating to [her] in its tone.”

84. The Applicant also contends that the changes to her FY16 business objectives, regarding Client B, were “inappropriate and deliberately aimed to bully [her] and harm [her] reputation.” She explains that her Manager inappropriately emphasized the role of the Senior Investment Officer in structuring a transaction with Client B, with the aim of “boosting him and giving the multi-rater feedback providers [...] negative information on me.”

The IFC's Response

The Applicant's Manager observed a fair procedure for adjusting the Applicant's FY16 work program

85. The IFC asserts that the Applicant’s Manager was “consistently transparent and open” with the Applicant in their meetings and email exchanges during FY16, showing that the Applicant’s Manager made every effort to consult with the Applicant about the changes of her business objectives and work program. The IFC states that there were also other instances in which the Applicant’s Manager responded to the Applicant’s requests regarding her work program and her options for finding an appropriate work program. The IFC denies the Applicant’s allegations that her Manager tried to “trick her” into accepting a different work program.

86. The IFC contends that the Applicant's Manager observed due process in deciding to reassign Client A. The IFC submits that the Applicant was aware of the significant tensions in the Portfolio Team in relation to Client A's request for waivers. Finally, the IFC states that the Applicant has known of MAS changes of business priorities and the need to adjust her work program since her FY15 performance cycle.

The Applicant's Contention No. 3

The FY16 Performance Evaluation was unfair, "questionable," and procedurally flawed; it was neither impartial nor balanced; and the negative feedback was improperly motivated

87. The Applicant claims that the FY16 Performance Evaluation failed to meet the requisite standards of fairness, was improperly motivated, and constitutes an abuse of discretion. The Applicant asserts that the FY16 Performance Evaluation (i) lacked clarity on the "deliverables," (ii) made an arbitrary assessment of the Applicant's work accomplishments, (iii) failed to provide balanced feedback of her work on Project C, (iv) "exaggerated" the criticisms made on the Applicant's teamwork and structuring skills, (v) stayed silent on the Applicant's efforts to originate mandates with Client A and Client B, and (vi) underrated a significant part of the work and milestones she delivered for the IFC during the first half of FY16.

88. The Applicant claims that inconsistencies in the way the IFC measures performance for client relationship management and business development subjected her to an abuse of managerial discretion. She states that, because of the IFC's metrics of investment officers' performance for FY16 being the delivery of concrete client mandates, her business development efforts were not given any credit in FY16. She also claims that the IFC's metrics are "subject to manipulation in favor of friends, ethnic colleagues, and other close 'associates [...]' [and it] is inherently a difficult environment for a sub-Saharan [...] woman to make a career."

89. The Applicant submits that the areas of improvement identified in her FY16 Performance Evaluation are not supported by "valid evidence and appears to be driven by an agenda to discredit [her] core professional competency as an investment officer and a core behavioral competency for senior staff leading teams." The Applicant argues that her Manager's comments

that she needs to “relearn” basic structuring skills are very “puzzling” and unsupported by evidence. The Applicant states that, as a Principal Investment Officer, she has worn “multiple hats” including those of business developer, team leader on transactions, substitute for industry specialists, and client relationship manager.

90. The Applicant further argues that her Manager’s comments on her teamwork competencies show “bad faith” given that there is no evidence that she had “issues or disagreements” with her team members. Instead, the feedback shows that the Applicant was “easy to work with.”

91. The Applicant disputes the IFC’s assertion that the composition of the feedback providers is a fair representation of her work “deliverables.” She asserts that her Manager violated her due process rights by replacing, without previously consulting her, three of the feedback providers she nominated with those of the Manager’s preference, to provide feedback on the Applicant’s performance on Client A. The Applicant claims that there was no reasonable basis for this decision because the Applicant only had a “marginal” role with the client for the first quarter of FY16.

92. The Applicant states that her Manager’s decision to add three feedback providers led to an unfair assessment of her FY16 performance because more weight was given to her role with Client A and Project C, while her work on the DAIS with the Bank was not equally weighed. The Applicant alleges that the composition of the feedback providers was “manipulated” by her Manager to ensure that a group of managers provided negative feedback on the Applicant’s performance “to support a case for questioning [her] aptitude for teamwork and basic Investment Officer transaction structuring skills.” The Applicant also claims that the three providers nominated by her Manager colluded to unfairly “provide consistent criticism” of the Applicant’s structuring skills while other team members were “pressured” by her Manager to provide negative feedback of her work on Project C.

93. The Applicant submits that the negative assessment of her performance for FY16 was made in retaliation against her for having recourse to PRS and for reporting a potential conflict

of interest to the EBC and the IFC Compliance Officer. She states that the Reviewing Official for the FY16 Performance Evaluation and her supervisors knew of her complaints. She also claims that the adverse decisions were made after her filing of a Request for Review before PRS.

94. The Applicant further claims that the IFC's failure to revise the FY16 Performance Evaluation in a timely manner and remove negative comments regarding her performance has caused her the following harm: (i) it has prevented her from being shortlisted in job applications within the IFC to which she was qualified; and (ii) it has damaged her professional reputation and "credibility" within and outside MAS. She also contends that the revised FY16 Performance Evaluation "still fails to address very significant misrepresentation[s] of facts and contains unfounded criticisms and conclusions that are unfair" and "heavily biased" regarding her professional development objectives.

The IFC's Response

The Applicant's FY16 Performance Evaluation has a reasonable and observable basis; it is supported by objective feedback and was not improperly motivated

95. The IFC claims that the Applicant's criticisms of the FY16 Performance Evaluation are without merit. It asserts that the FY16 Performance Evaluation has a reasonable and observable basis that meets the standards established by the Tribunal. The IFC also asserts that the feedback provided therein, which is "based both on her supervisor's assessment [and] also informed by the multi-rater feedback," contains praise for the Applicant's performance but equally criticizes her performance and areas of improvements. The IFC submits that the Applicant's FY16 Performance Evaluation also refers to the Applicant's good performance during her DAIS, and praises her interest in, and knowledge of, the aquaculture and fisheries sector. The IFC states that the FY16 Performance Evaluation also documents the Applicant's areas of improvement in a constructive manner and provides positive suggestions to the Applicant to return "to her core investment officer skills."

96. The IFC avers that it was reasonable for the Applicant's Manager to request feedback on the Applicant's performance on Client A given that she had worked with this client until October

2015. Furthermore, the IFC asserts that the Applicant has not disputed the fact that there were deficiencies in the documentation presented at the IRM on Project C. In this regard, the IFC states that the Applicant's Manager's comments concerning this project were based on her own assessment of the Applicant's IRM presentation and the fact that she had repeatedly informed the Applicant that this project would be her priority for the remainder of FY16. The IFC maintains that the criticism against the Applicant's home-based work was equally reasonable because the Applicant took home-based work without prior approval.

97. The IFC disputes the Applicant's allegations of improper motivations. The IFC states that the Applicant has not produced evidence to support this claim and has therefore failed to discharge her burden of proof.

98. The IFC also disputes the Applicant's allegations of manipulation of, or collusion among, feedback providers. The IFC contends that it was within the Applicant's Manager's discretion to decide on the composition of the feedback providers, to remove them, and to subsequently reinsert them in the Bank's performance system. The IFC also takes issue with the Applicant's allegation of retaliation and asserts that the Applicant has not met her *prima facie* burden of proof, to present facts that suggest wrongful conduct on the IFC's part. In this regard, the IFC relies on the conclusion reached by the EBC that there was insufficient evidence to substantiate the Applicant's allegations of retaliation by her Manager.

99. Regarding the Applicant's allegations of lack of due process, the IFC asserts that the Applicant was aware of the reasons for the criticisms stated in the FY16 Performance Evaluation, had plenty of opportunities to defend herself, and made her views heard on numerous occasions. To the IFC, the Applicant (i) has known of the need to improve her "teamwork capacity" since FY15, (ii) knew of her team's concerns with Client A, and (iii) was informed by the Africa Agribusiness Manager that her IRM presentation "lacked the required quality" and that "she needed to step up her role as team lead" of Project C.

100. The IFC also states that the FY16 feedback discussion between the Applicant and her Manager, held on 6 September 2016, took two hours. The feedback discussion was followed by

several emails from the Applicant in which she acknowledged the feedback conversations she held with her Manager.

101. The IFC maintains that the Applicant has not substantiated any compensable harm. The IFC asserts that the Applicant has failed to demonstrate that the FY16 Performance Evaluation damaged her professional reputation within MAS. The IFC notes in this regard that the annual evaluation is completed after the management performance meeting takes place and is not shared among managers. The IFC further asserts that there is no general rule that performance evaluation documents are consulted during recruitment processes and, if at all, such review happens in the final stages of the recruitment process. The IFC submits that the revision made to the FY16 Performance Evaluation in December 2017 has softened the language to the Applicant's advantage and remedied the failures identified by the AR and PMR.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

REASSIGNMENT OF CLIENT A AND CLIENT B AND THEIR REMOVAL FROM THE APPLICANT'S FY16 WORK PROGRAM

Scope of the Tribunal's review of decisions regarding work programs

102. The Tribunal's general approach to decisions that involve the exercise of managerial discretion is that "it will not interfere or substitute its own judgment unless the decision constitutes an abuse of discretion." *Nunberg*, Decision No. 245 [2001], para. 40. *See also Mousavi*, Decision No. 360 [2007], para. 17; *Mpoy-Kamulayi (No. 5)*, Decision No. 463 [2012], para. 35; and *Denis*, Decision No. 458 [2011], para. 31.

103. The Tribunal "will not overturn a discretionary managerial decision, unless it is demonstrated that the exercise of discretion was 'arbitrary, discriminatory, improperly motivated, carried out in violation of a fair and reasonable procedure, or lack[ed] a reasonable and observable basis, constitute[ed] an abuse of discretion, and therefore a violation of a staff member's contract of employment or terms of appointment.'" *See DO*, Decision No. 546 [2016],

para. 33, citing *AK*, Decision No. 408 [2009], para. 41; *de Raet*, Decision No. 85 [1989], para. 67; *Marshall*, Decision No. 226 [2000], para. 21; and *Desthuis-Francis*, Decision No. 315 [2004], para. 19.

104. The Tribunal has also held that “it is within the discretion of the Bank to decide upon a staff member’s work program.” *Barnes*, Decision No. 176 [1997], para. 20. Furthermore, in *Sweeney*, Decision No. 239 [2001], para. 74, the Tribunal found that:

Absent discrimination or other abuse of discretion, the Bank is entitled to reassign staff members in accordance with its needs. A staff member is in no position to declare that his or her “career was cut short” by such a reassignment; nor are staff members in a position to enter into detailed critiques of work programs as though they have a power of veto.

105. The Applicant is contesting her Manager’s decisions to reassign Client A and Client B to other colleagues, and to remove them from her FY16 work program. Her claim is that the reassignment does not have an observable and reasonable basis, was unfair, was based on improper motives, and was reached without fair procedure. The Tribunal will therefore examine these decisions in this light.

Whether the decision to reassign Client A and Client B and remove them from the Applicant’s FY16 work program was based on a reasonable and observable basis

Client A

106. The Applicant claims that the decision to reassign Client A and remove it from her FY16 work program was arbitrary, unfair, and improperly motivated. The Applicant contests the reasons provided by her Manager, that there was a need for “fresh eyes” in the management of Client A and that it was “impractical” for the Applicant to continue managing the client’s business development. The Applicant also contests the IFC’s assertion that business development in the aquaculture sector was no longer a priority for MAS management, arguing that recent Latin American projects in the aquaculture and fisheries sector contradict this assertion.

107. The IFC asserts that it was in the best interest of the IFC's business strategy to remove Client A from the Applicant's FY16 work program, given that tensions between the Applicant and the Portfolio Team had arisen due to the Applicant's strong support of the client's interests. The IFC explains that there is sufficient evidence on record that shows that the Applicant "pressed to accommodate the client's requests" for waivers, against the IFC's interests, and "pushed" other Portfolio Team members to accept it.

108. Management has discretion in deciding which skillsets adapt best to changing needs. In *DM*, Decision No. 542 [2016], para. 49, the Tribunal held that:

Identifying the skills that are suitable for these changing needs and who is the most suitable staff to perform these tasks are discretionary decisions of the IFC (*see Jassal*, Decision No. 100 [1991] para. 37). The IFC concluded that Mr. D, the new supervisor of the Applicant, was in the best position to carry on managing the P7 portfolio and also concluded that the Applicant's skills with a GH level position were no longer in need.

109. The record indicates that, in February 2015, MAS went into a reorganization of its work into global sector teams, thus redeploying the staff in the unit to the mainstream business of the IFC. The redeployment of staff resulted in a change of work programs for some Investment Officers, including the Applicant. During the FY15 mid-year review, the Applicant was informed by her Manager that her work program on the aquaculture sector would be reassessed at the end of the year, given that this sector had proven to be a difficult one. In the Applicant's FY15 Performance Evaluation, the Applicant's Manager reiterated that the aquaculture sector was "too difficult and too small to sustain a full-time principal IO [Investment Officer]." The record further indicates that the Applicant's Manager informed the Applicant that they would continue their discussions "about other activities to make more than half of [the Applicant's] time going forward."

110. The Tribunal observes that the MAS reorganization affected not only the Applicant's work program but also that of many other Investment Officers in her department. Although the Applicant strongly disagreed with her Manager's decision to reassign two of her clients, the

Tribunal finds that, in line with *Sweeney*, para. 74, the Applicant could not “enter into detailed critiques of [her] work program as though [she has] a power of veto.”

111. In addition to MAS reorganization, the Tribunal observes that there were other business reasons that justified the decision of the Applicant’s Manager to reassign Client A and remove it from the Applicant’s FY16 work program. By the end of September 2015, it had become clear to the Applicant’s Manager and the Portfolio Team members that the Applicant was taking the side of Client A in the negotiation of its request for waivers, to the detriment of the IFC’s interests.

112. The Tribunal further observes that the Applicant’s strong support for the client is evident in an email of 3 September 2015, which she wrote to the Portfolio Managers and MAS Directors, to bring to their attention that Client A’s Chairman was not happy that their request for waivers had not been approved by the Portfolio Team, urging them to accept the waivers as a sign that the “IFC is still a partner of choice for the now extended Group’s growth in emerging markets.” The record shows that the Portfolio Manager perceived the Applicant’s email as a criticism of the responsiveness of the Portfolio Team. He also saw the email as an indication that the Applicant was not aligned with the Portfolio Team in making proposals to the client that could be beneficial to the IFC.

113. For the Tribunal, it was reasonable for the Applicant’s Manager and the Portfolio Manager to conclude that the Applicant’s strong support for Client A’s request for waivers was undermining her objectivity and jeopardizing the IFC’s interests in obtaining business opportunities that were best for the institution. Furthermore, the Applicant’s Manager and the Portfolio Manager considered that, despite the Applicant’s good work, there was another Principal Investment Officer with extensive experience in financial structuring and projects in the region who would manage the client’s relationship with the objectivity and determination required to reach an agreement with Client A in the IFC’s best interests.

114. Furthermore, by then, Client A’s project in Latin America had slowed down due to the unresolved tensions in the Portfolio Team and the pending approval of the client’s request for waivers. The record attests to the Portfolio Manager’s frustration that the Applicant’s stand was

“impeding the ability to get the project on track.” The Applicant’s Manager also expressed her concerns that a team change was needed “if we want a chance to make it work.” As convincingly shown by the IFC, MAS management was of the view that the team change suggested by the Applicant’s Manager would not only resolve the “friction” in the Portfolio Team but also “have the merit of sending a clear signal to the client.” Given all these facts, the Tribunal is satisfied that management had a proper basis to conclude that it was necessary to bring a new lead into Client A’s project, and to remove the Applicant from her role as Team Lead and client relationship manager.

115. Regarding the reassignment of the Applicant’s business development role in March 2016, the IFC contends that it proved “impractical” and “difficult” to have two Principal Investment Officers deal with the same client. The IFC claims that MAS reorganization also changed the unit’s business priority on the aquaculture sector, which became less significant. The Applicant contests this argument and claims that the unit had been developing businesses in the aquaculture sector in Latin America for the past two years.

116. The evidence on record does not lend support to the Applicant’s allegations but rather supports the conclusion that it was reasonable for the Applicant’s Manager to engage only one Principal Investment Officer with Client A to develop business in a sector in which the unit was not actively pursuing more opportunities. The Tribunal is therefore satisfied that the IFC’s decision to reassign the Applicant’s business development role was justified by valid reasons.

117. In light of the above, the Tribunal finds that the IFC’s decision to reassign Client A and adjust the Applicant’s FY16 business objectives had an observable and reasonable basis.

Client B

118. The Tribunal will likewise review whether the decision to reassign Client B and remove it from the Applicant’s FY16 business objectives was made on a reasonable and observable basis.

119. The Applicant claims that the IFC's decision to reassign Client B and remove it from her FY16 work program was arbitrary, was improperly motivated, and displayed favoritism. The IFC claims that the Applicant's allegations are a "red herring" because the Applicant expressly agreed to reassigning this client to the Senior Investment Officer. The IFC asserts that the reassignment was grounded in a "clear, objective, business rationale," namely that the Applicant "had shown no results in her business development efforts with [Client B] over two years."

120. The background of the Applicant's relationship with Client B dates back to 2013. The Applicant's work in this regard consisted of business development. As the Applicant states, in developing business with Client B, she held meetings with the client's managers, dedicated time on assessing potential projects, and finally brought them to her Manager's attention. The Applicant also states that, as none of those efforts translated into any concrete project mandate for the IFC, her work with the client was not acknowledged in her performance evaluations.

121. The record contains sufficient evidence showing that the Applicant considered as early as May 2015 that the possibility of obtaining a potential mandate with Client B had "lost momentum." The Applicant was ready to "formally hand over the leadership of managing this client relationship" to another team. The record further shows that the Applicant, on her own initiative, asked the Senior Investment Officer to take over Client B and subsequently, on 20 November 2015, informed her Manager and the Africa Agribusiness Manager of her decision.

122. The evidence on record lends support to the business reasons invoked by the IFC in support of its reassignment decision. The Applicant agreed to such reassignment and recognized in an email, on 16 February 2016, that the Senior Investment Officer was the right person to lead the team.

123. The Tribunal also finds convincing the IFC's contention that it was inefficient to have two senior officers working on one client's business relationship. It is evident from the record that, prior to the decision of 11 March 2016 to remove Client B from the Applicant's FY16 business objectives, the Senior Investment Officer had already showed quick results in his lead of the client and had also presented a project concept for approval. The record further indicates

that the Applicant's Manager made it clear, on 12 February 2016, that as the Senior Investment Officer was "handling" the client's business relationship, there was "no need for [the Applicant] to double up with him at this stage." The Applicant's Manager reiterated her decision on 18 February 2016, in which she informed the Applicant that going forward the Senior Investment Officer would manage Client B.

124. The Applicant has also complained that the decision to remove Client B from her FY16 business objectives denied her the acknowledgment she deserved for her two years of work with the client. The IFC responds that, in measuring staff performance, it only considers success "through concrete engagement with a company." The IFC explains that the Applicant "could not be awarded credit for having 'developed a client relationship' that has not resulted in any transactions at the point of handover to another staff member."

125. The Tribunal observes that the Applicant's claim that she be credited for her work in managing Client B's business development is in fact challenging the way the IFC measures its staff performance per Fiscal Year. The Tribunal finds that it is not its role to micromanage the IFC's metrics in this regard or to substitute its own judgment for that of the IFC absent an abuse of discretion. *See Polak*, Decision No. 17 [1984], para. 43.

126. The Tribunal finds that the IFC has convincingly explained that it only measures the success of its staff performance through concrete transactions with a company. In other words, what is measurable at the end of the Fiscal Year is "the number of projects the staff member has delivered." The record indicates that the Applicant's Manager was willing to acknowledge the Applicant's efforts in managing the client's business relationship on the condition that a project mandate concretized. As the Applicant's work did not result in any concrete business transaction for the IFC, the Tribunal is persuaded that the IFC was justified in not acknowledging the Applicant's management of the client's business relationship prior to the reassignment.

127. In light of the foregoing, the Tribunal finds that the IFC has convincingly shown that there was a reasonable and observable basis for its decision to reassign Client B and remove it from the Applicant's FY16 business objectives.

Whether the decision to reassign Client A and Client B and remove them from the Applicant's FY16 work program was improperly motivated

128. In *Eindhoven*, Decision No. 23 [1985], para. 47, the Tribunal held that “[t]he failure to reassign a staff member to a fully satisfying post cannot by virtue of that fact alone be interpreted as a covert form of censure or reprisal.” Furthermore, the Tribunal held in *Lysy*, Decision No. 211 [1999], para. 71, that “[a] finding of improper motivation cannot be made without clear evidence.”

129. In the present case, the Applicant claims improper motives for the reassignment of Client A and Client B. She alleges that her Manager had “hidden agendas” to reassign the Applicant’s “most meaningful and promising client at the time” and set her up for poor performance. She also alleges that she was retaliated against for flagging in an email of 3 September 2015 the IFC’s lack of responsiveness regarding Client A. The Applicant also contends that her Manager’s decision to reassign Client B and remove it from her FY16 work program was improperly motivated by “favoritism” toward the Senior Investment Officer.

130. The IFC avers that the Applicant has failed to provide “clear evidence” to substantiate her allegation that the reassignment and adjustment of her work program were motivated by “someone’s ‘hidden agenda’ or an attempt to collude with the entire team to force [her] out of her client relationships.” The IFC denies that the reassignment was done “to set [the Applicant] up for failure” and asserts that the IFC treated the Applicant fairly throughout the reassignment processes. Finally, the IFC claims that the fact that the Applicant’s Manager was not open to renegotiating the reassignment decision “is not *prima facie* evidence of being unreasonable” but is justified by the fact that “work assignments are a matter for the employer.”

131. The evidence on record indicates that tensions arose in the Portfolio Team because of the Applicant’s support for Client A’s requests for waivers. As evidenced in the email of 3 September 2015, the Applicant was concerned that an agreement on the requests had not been reached by MAS management and urged them to “help to together convince [Client A’s] board [...] that IFC is still a partner of choice for the now extended Group’s growth in emerging

markets.” She also stressed that the client was unhappy about MAS’s lack of responsiveness on its request. The Portfolio Manager stated before PRS that he did not appreciate the way in which the Applicant raised her concerns and thought that the email could have been written with more tact.

132. The record further indicates that the Portfolio Manager was of the view that the Applicant was not having productive interactions with the client but was compromising the IFC’s position in obtaining good business opportunities under the IFC’s original covenants. In addition, the Portfolio Team did not agree with the structure of Client A’s project in Latin America and did not see any substantial progress under the Applicant’s lead. The Portfolio Manager and the Applicant’s Manager therefore considered that bringing in a “fresh look” would not only facilitate the discussion with the client regarding their request for waivers but would also “get the project on track.”

133. The Tribunal observes that the Applicant has not proved that improper motives were the basis for the IFC’s decisions to reassign Client A and Client B and remove them from the Applicant’s FY16 work program. The IFC, in contrast, has provided evidence to show that business reasons existed in support of its decisions, and it has also demonstrated that it treated the Applicant with transparency and fairness during the decision-making process, by informing her of the reasons for the reassignment and by giving her every opportunity to obtain a full work program. Likewise, the fact that the IFC did not revisit its decisions is not *per se* tantamount to unfairness nor does it demonstrate improper motives on the part of the IFC. While the Applicant was unhappy with her Manager’s decisions, the IFC has convincingly supported its reasons for making them. The Tribunal further observes that in her claims the Applicant failed to show that her Manager displayed “favoritism” and “strong bias” toward the Senior Investment Officer for having acknowledged his work and the presentation of a project concept a few weeks after the reassignment of Client B.

134. In light of the above, the Tribunal finds that the Applicant has failed to meet the required burden of proof in support of her allegations of improper motives.

Whether the decision to reassign Client A and Client B and remove them from the Applicant's FY16 work program followed due process

135. The Tribunal held in *BY*, Decision No. 471 [2013], para. 42, citing *Samuel-Thambiah*, Decision No. 133 [1993], para. 32, that “a staff member must be given ‘adequate warning about criticism of his performance or any deficiencies in his work that might result in an adverse decision being ultimately reached.’ This is essential to ensure that the staff member’s due process right to defend himself is respected.”

136. Similarly, the Tribunal stated in *CS*, Decision No. 513 [2015], para. 100, citing *Garcia-Mujica*, Decision No. 192 [1998], para. 19, that “a basic guarantee of due process requires that the staff member affected be adequately informed with all possible anticipation of any problems concerning his career prospects, skills or other relevant aspects of his work.”

137. Staff Rule 5.03, paragraph 2.01(c), provides that, when establishing the staff member’s work program for a given Fiscal Year, “[t]he Manager or Designated Supervisor, in consultation with the staff member, shall establish in writing the development priorities for and the results to be achieved by the staff member during the upcoming review period.”

138. The Tribunal is of the view that the obligation to consult with staff members set forth in Staff Rule 5.03, paragraph 2.01(c), also extends to any subsequent change to the performance objectives of staff members. While adjustments to work programs are discretionary in nature and staff members have no power of veto over those decisions, staff members must nonetheless be informed of any change to their performance objectives and be given the opportunity to identify an appropriate work program. This is even more imperative considering that staff performance is evaluated on the basis of the achievements of the established objectives.

139. The record supports the IFC’s contention that the Applicant was duly informed of the IFC’s reasons for reassigning and removing Client A from her FY16 work program. The need to adjust the Applicant’s work program was not new to the Applicant and constituted the subject matter of several conversations the Applicant and her Manager had held since FY15. In an email

of 6 February 2015, the Applicant's Manager expressly informed the Applicant that, despite the Applicant's best efforts with Client A, "the volume of business coming out of aquaculture is insufficient to justify a principal IO being dedicated to it." She therefore suggested that the Applicant reduce her aquaculture business development activities to half of her time and offered her the opportunity to lead projects in Francophone Africa, which the Applicant declined. The Applicant's FY15 mid-year review and the FY15 Performance Evaluation further made clear that the aquaculture projects on which the Applicant had been working were seen by management as "too small" and they had to be adjusted.

140. Furthermore, the record shows that the Portfolio Manager believed that the Applicant's stand on Client A's request for waivers was not facilitating the negotiations between the IFC and the client and had contributed to tensions in the Portfolio Team. Although these tensions were not communicated with clarity to the Applicant, the Applicant was aware that the Portfolio Team did not agree with her strong support for the client's request. The Tribunal therefore finds that the IFC has demonstrated that MAS management followed a proper process in reassigning Client A.

141. Furthermore, the Tribunal also finds that management followed a proper process in reassigning Client B and removing it from the Applicant's FY16 work program. The Tribunal observes in this regard that it was the Applicant's initiative to hand over the client to the Senior Investment Officer. The record shows that, a few months after the reassignment, the Applicant's Manager informed the Applicant on two separate occasions that going forward the Senior Investment Officer would manage Client B alone. Finally, on 11 March 2016, the Applicant's Manager duly notified the Applicant that she should not include this client in her FY16 performance objectives.

142. The Applicant also claims that her Manager tried to "trick her" into accepting a different work program during the FY16 mid-year review. As shown by the record, however, the Applicant knew in advance that the adjustment of her work program regarding the aquaculture sector was necessary and had been part of her discussions with her Manager since February 2015. Following that date, several meetings were held regarding the Applicant's adjustment of

her work program until the process was finalized during the FY16 mid-year review. The Tribunal finds that, prior to the removal of Client A and Client B from the Applicant's FY16 work program, the Applicant was timely informed of the reasons for such decisions.

143. The Applicant contends that, following the IFC's removal decisions, the IFC did not provide her with a suitable work program for the remainder of FY16. The Applicant argues that the offer made to her to lead business development in Francophone Africa took place in FY15 and not in replacement of Client A and Client B. The Tribunal observes in this regard that after March 2016 the Applicant was assigned on a DAIS with the Bank for an initial period of four months, to which she dedicated half her time. The other half of the Applicant's time was dedicated to the IFC's projects, namely Project C and a few projects in Fragile and Conflict-Affected Situations [FCS] in Africa. As stated in the Applicant's FY16 mid-year review, she "was leading the FCS fisheries initiative" and had recently been "appraised as team leader" for Project C, which "should be her priority for delivery for the rest of the FY." On the basis of the record, the Tribunal finds that the Applicant had a suitable work program for the remainder of FY16.

THE APPLICANT'S FY16 PERFORMANCE EVALUATION

Scope of the Tribunal's review of performance evaluations

144. The Tribunal has consistently held that it will examine challenges to performance management decisions *de novo*. In *EO*, Decision No. 580 [2018], para. 98, the Tribunal stated that:

The AR/PMR process is an administrative recourse mechanism and the reviewers make recommendations to the management, which makes the final decision. Neither the Administrative Reviewer nor the Performance Management Reviewer is a judicial body. The Tribunal remains the only judicial body to which an aggrieved staff member can file an application, and, under Article II, paragraph 1, of the Statute of the Tribunal, the Tribunal's role is to review decisions taken by the World Bank Group alleged to violate a staff member's contract of employment or terms of appointment, including performance management decisions.

145. In reviewing performance evaluations, the Tribunal held in *Malekpour*, Decision No. 322 [2004], para. 15, that:

The evaluation of staff performance is an essentially discretionary act entailing the exercise of judgment by management, which is presumed to possess the requisite familiarity with the work of all departmental staff members and to have made many comparative quality judgments [...]. The task of the Tribunal is not to “substitute its own judgment for that of the management” (*Polak*, Decision No. 17 [1984], para. 43) [...]. The proper task of the Tribunal is, rather, to determine whether or not management’s acts and decisions in connection therewith constituted or were attended by, an abuse of discretion.

146. The Tribunal in *Desthuis-Francis*, para. 23, held that:

[The Respondent must be] able to adduce [...] a reasonable and objective basis for [...] adverse judgment on a staff member’s performance [...]. The Tribunal considers that failure on the part of the Respondent to submit a reasonable basis for adverse evaluation and performance ratings is evidence of arbitrariness in the making of such an evaluation and rating. Lack of a demonstrable basis commonly means that the discretionary act was done capriciously and arbitrarily.

147. In *Mpoy-Kamulayi (No. 8)*, Decision No. 480 [2013], para. 21, the Tribunal stated that:

There is no basis for considering a “Fully Successful” rating as adverse or negative. The Bank’s guidelines state that it is expected “that most staff members on many items would be rated fully successful or fully accomplished” and “that a few staff members on a few items would be rated superior.”

148. Moreover, the Tribunal stated in para. 22 that:

“It is not the Tribunal’s role to undertake a microscopic review of the Applicant’s performance, and to substitute its own judgment about the Applicant’s performance for the Bank’s.” Rendering judgment on the appropriateness of a Fully Successful versus a Superior rating comes close to a microscopic review. Ordinarily, to allow petitions to the Tribunal regarding disagreements as to the correctness of “Fully Successful” versus “Superior” ratings would involve unwarranted intrusion on managerial discretion.

149. In *Lysy*, para. 68, the Tribunal held that:

A performance evaluation should deal with all relevant and significant facts, and should balance positive and negative factors in a manner which is fair to the person concerned. Positive aspects need to be given weight, and the weight given to factors must not be arbitrary or manifestly unreasonable.

150. The Tribunal observes that the Applicant's overall performance for FY16 was given a performance rating of 3, which is considered a satisfactory performance. The Applicant is not challenging her performance rating but claims that her Manager's assessment of her yearly performance is unfair, imbalanced, and improperly motivated because it places too much weight on the negative feedback of three feedback providers, fails to recognize her overall achievements, and discredits the Applicant's competence. She also claims that the FY16 Performance Evaluation is procedurally flawed. The IFC denies the Applicant's claims and asserts that her FY16 Performance Evaluation has a reasonable and observable basis; it is supported by objective feedback and was not improperly motivated. The Tribunal will review these contentions accordingly.

Whether the Applicant's FY16 Performance Evaluation had an observable and reasonable basis

151. The Applicant contends that her Manager's comments in her FY16 Performance Evaluation underrated a significant part of the work and milestones she delivered for the IFC during FY16, and instead placed a "disproportionately large weight" on criticisms of the Applicant's performance on Project C and Client A. According to the IFC, in assessing the Applicant's performance, the Applicant's Manager not only took into account her own assessment but also considered the multirater feedback.

152. The Tribunal observes that the comments made by the Applicant's Manager in the Individual Business Objectives of the FY16 Performance Evaluation contain a mix of praise and criticism of the Applicant's performance. The Applicant was praised for her "good job providing input to the teams across regions working on aquaculture of fisheries transactions." The Applicant was, however, criticized for her performance on Project C and Client A.

153. The Tribunal also observes that the Applicant initially nominated ten feedback providers for her FY16 Performance Evaluation, but her Manager replaced three of them with three members of Client A's Portfolio Team. On 29 July 2016, following the Applicant's objection, the Applicant's Manager reinserted the three feedback providers nominated by the Applicant but maintained the providers she had added, claiming that "it was important to have [Client A] team's feedback" as the Applicant had worked on it until October 2015.

154. The Tribunal has examined the multirater feedback of the Applicant's FY16 performance and observes that the providers identified several strengths and areas of improvement. The majority of the providers noted that the Applicant possesses a strong knowledge of the fisheries and aquaculture sector, and experience in forming good business relationships with clients. They also noted that the Applicant was pleasant to work with. In the areas of improvement, however, while five of the providers stated that the Applicant needed to improve her leadership skills and her communication style with her team, three of the providers suggested the Applicant improve her structuring skills. The Tribunal observes that the feedback given by the providers does not appear biased against the Applicant, but it instead contains a balanced assessment of the Applicant's performance.

155. The Applicant also claims that, in assessing her performance at the end of the year, her Manager placed a "disproportionately large weight" on criticisms of the Applicant's performance on Project C and Client A. The IFC states that the Applicant's Manager's comments concerning Project C were based on her own assessment of the Applicant's IRM presentation, and the fact that she had repeatedly informed the Applicant that this project would be her focus for the remainder of FY16.

156. Regarding the requirement of a fair balancing of negative with positive aspects, the Tribunal noted in *CX*, Decision No. 517 [2015], para. 58, that a performance evaluation should deal

with all relevant and significant facts and should balance positive and negative factors in a manner which is fair to the person concerned. Positive aspects need to

be given weight, and the weight given to factors must not be arbitrary or manifestly unreasonable.

157. The record does not support the Applicant's contention that her Manager placed a "disproportionately large weight" on the criticisms of the Applicant's performance on Project C. As noted by the Africa Agribusiness Manager in an email of 28 March 2016, the Applicant was expected, as Project C's Team Leader, to "provide needed guidance to the team to deliver a quality IRM."

158. It later transpired that the team was disappointed with the Applicant's IRM presentation. The evidence shows that the Applicant herself acknowledged deficiencies in the IRM presentation when, in an email of 29 April 2016, she noted that she had not "had the time to all review and cross-validate to full satisfaction." She tried, however, to justify it by alleging that she was given little time to properly prepare it and that it was not her responsibility to "structure" IRM documents.

159. The Tribunal finds that the Applicant's Manager's comment in the FY16 Performance Evaluation, that the Applicant "needed to strengthen her structuring skills," is consistent with the feedback received regarding Project C. The Tribunal further finds that the criticism given by the Applicant's Manager in this regard was also justified by the fact that this project constituted the Applicant's main business objective for the second half of FY16.

160. Regarding Client A, the Tribunal observes that the Applicant's Manager acknowledged the Applicant's role as relationship manager, until the reassignment in October 2015. Furthermore, the Manager's comments on the Applicant's "insufficient structuring skills and difficult relationship with the team, sometimes 'siding with the client' instead of protecting Corporation's interest" are not only consistent with the views expressed by the feedback providers but also supported by the email exchanges of 6 October 2015. The Tribunal is therefore satisfied that the Manager's comments regarding the Applicant's performance on Client A are consistent with the received feedback.

161. The Tribunal further finds that the comments made by the Applicant's Manager in the Strengths and Areas of Improvement sections of the FY16 Performance Evaluation are also consistent with the positive and negative feedback received from the designated providers.

162. As the record shows, the Applicant's strengths for FY16 were that she was "generous with her knowledge both of how IFC makes decisions and more broadly of the perspectives of private sector and private capital on all things fish-related." She noted the Applicant's commitment "to finding ways to leverage WB public investment to subsidize risk that would attract private capital," and her "[g]enuine interest for development and understanding of the aquaculture and fisheries sector [...]."

163. In the Applicant's Areas of Improvement section, her Manager commented that the Applicant "need[ed] to revert to her core/fungible investment skills if she is interested to stay within IFC's investment work." She added that "several team members working with [the Applicant] have expressed frustration that their views were not welcome if they voiced issues or disagreements with [the Applicant's] proposed approach (on [Client A], [and Project C])."

164. The Tribunal concludes that the Applicant's Manager balanced positive and negative factors in assessing the Applicant's performance during FY16. The Manager not only praised the Applicant's good work on certain IFC projects and her performance during her DAIS, but also documented the Applicant's areas of improvement in a constructive manner.

165. The Tribunal will now address the Overall Supervisor Comments of the FY16 Performance Evaluation, in which the Applicant's Manager noted that, "[w]hile her performance during her 4 months development assignment was satisfactory, her performance on IFC projects was not. She needs to sharpen her core investment officer skills, such as structuring and team work, moving away from 'advisor' on aquaculture and sector knowledge, to owning the projects as team lead or transaction lead, and taking charge for the quality of the work product." The Tribunal finds that the Applicant's Manager's statement, that the Applicant needed to "sharpen her core investment officer skills such as structuring and team work," is supported by the record.

166. Nonetheless, the Tribunal observes that the Applicant's Manager's Overall Comments – that the Applicant's performance on IFC projects was not satisfactory – contradicts not only the performance rating of 3 but also the assessment of the Applicant's performance as documented in the FY16 Performance Evaluation. The Tribunal notes in this regard that, further to the recommendation of the AR, the FY16 Performance Evaluation was revised in December 2017 and the comment in question was therefore removed.

Whether the Applicant's FY16 Performance Evaluation was based on improper motives

167. The Applicant contends that the three providers nominated by her Manager colluded to unfairly “provide consistent criticism” of the Applicant's structuring skills. The Applicant also alleges that certain members of her unit were “pressured” by her Manager to provide negative feedback on her work on Project C.

168. The Applicant submits that the areas of improvement identified in the FY16 Performance Evaluation “appear to be driven by an agenda to discredit [her] core professional competency as an investment officer and a core behavioral competency for senior staff leading teams.” Finally, the Applicant argues that her Manager's comments on her teamwork competencies show “bad faith.”

169. The IFC asserts that the Applicant has failed to substantiate her allegations of manipulation of, or collusion among, feedback providers. The IFC contends that it was within the Applicant's Manager's discretion to decide on the composition of the feedback providers, and to remove and subsequently reinsert them in the Bank's performance system. The IFC disputes the Applicant's allegation that her Manager “had issues with [her] on many other projects” and “set her up for failure,” stating that the Applicant has not produced evidence to support this claim and has therefore failed to discharge her burden of proof. Furthermore, the IFC takes issue with the Applicant's allegation of retaliation and asserts that the Applicant has not met her *prima facie* burden of proof to present facts that suggest wrongful conduct on the IFC's part.

170. The Tribunal observed in *BJ*, Decision No. 443 [2010], para. 50, citing *Lysy*, para. 71, that

“[a] finding of improper motivation cannot be made without clear evidence.” The Applicant has not proven that such improper motivation existed. The Respondent, on the other hand, has provided evidence to show that objective reasons existed for IFC’s actions and inactions. The Applicant has not adduced any reasons for not addressing these problems earlier himself. Therefore, his claim of retaliation on the part of IFC with regard to interference with his e-mail and voice messages lacks evidentiary support and is unsustainable.

171. In *O*, Decision No. 337 [2005], para. 47, the Tribunal held that any applicant alleging retaliation must discharge his or her burden of proof by:

[E]stablish[ing] facts which bring his or her claim within the definition of retaliation under the Staff Rules. An applicant bears the onus of establishing some factual basis to establish a direct link in motive between an alleged staff disclosure and an adverse action. A staff member’s subjective feelings of unfair treatment must be matched with sufficient relevant facts to substantiate a claim of retaliation, which in essence is that the allegation of poor performance is a pretext to mask the improper motive.

172. The Tribunal finds that the Applicant has failed to provide clear evidence to substantiate her allegations of improper motives. As shown above, the Manager’s assessment of the Applicant’s performance on Project C and Client A balanced all the positive and negative aspects of the Applicant’s work. The record also lacks support for the Applicant’s contentions of bad faith and collusion, and the argument that her Manager had a “hidden agenda” to discredit the Applicant’s professional competency.

173. Regarding the Applicant’s claims of retaliation, the Tribunal first notes the conclusion reached by the EBC, that there was insufficient evidence to substantiate the Applicant’s allegations of retaliation by her Manager. The Tribunal also notes that there is no support on the record for the Applicant’s allegations that the FY16 Performance Evaluation was motivated by her Manager’s desire to retaliate against her. The Tribunal concludes therefore that the Applicant has failed to meet the required burden of proof in support of her allegations of retaliation.

Whether the Applicant's FY16 Performance Evaluation followed due process

174. The Tribunal has consistently stressed the importance of respecting the requirements of due process in relation to performance evaluations. In *K. Singh*, Decision No. 188 [1998], para. 21, the Tribunal held that:

Two basic guarantees are essential to the observance of due process in this connection. First, the staff member must be given adequate warning about criticism of his performance or any deficiencies in his work that might result in an adverse decision being ultimately reached. Second the staff member must be given adequate opportunities to defend himself.

175. Furthermore, the Tribunal held in *Prasad*, Decision No. 338 [2005], paras. 25 and 30 that:

[D]iscussion of performance does not replace the need for ongoing feedback throughout the year in question, which should be provided so that the staff member “should be able to anticipate the nature of this year-end discussion and resultant ratings on the OPE [Overall Performance Evaluation].”

[T]he obligation [is on] the Respondent to fully respect due process rights and conduct a fair and reasonable process of performance evaluation and accordingly to provide an opportunity to correct the mistakes that any staff member has made.

176. The Tribunal also found in *DG*, Decision No. 528 [2016], para. 114, that “informal feedback sessions should serve to enable a staff member to anticipate the nature of the year-end formal discussion and resultant ratings on the OPE.”

177. The Applicant asserts that her Manager violated her due process rights by replacing, without previously consulting her, three of her designated feedback providers. The Applicant further asserts that her Manager added three providers of her preference to provide feedback on the Applicant's performance on Client A even though the Applicant had only had a “marginal” role with the client for the first quarter of FY16. On its part, the IFC asserts that the Applicant was aware of the reasons for criticisms against her performance, had plenty of opportunities to defend herself, and made her views heard on numerous occasions.

178. In the present case, the record shows that the Applicant had known before her FY16 Performance Evaluation was finalized that her performance would also be assessed on the basis of her work on Client A and Project C. The record further shows that the Applicant had known since FY15 of the need to improve her “teamwork capacity.” She also knew of her team’s concerns regarding Client A, was informed by the Africa Agribusiness Manager that her IRM presentation “lacked the required quality,” and knew that “she needed to step up her role as team lead” of Project C.

179. The record also shows that, on 6 September 2016, the Applicant, her Manager, and the Africa Agribusiness Manager met to have the FY16 final performance discussion. From the email of 9 September 2016, sent by the Applicant to her Manager and the Africa Agribusiness Manager after this meeting, it is evident that the Applicant’s Manager informed the Applicant of the content of the multirater feedback regarding Project C and her DAIS with the Bank. The Applicant’s Manager stated later that day that the Applicant’s FY16 Performance Evaluation would also consider the Applicant’s work on Client A and the fisheries initiative in Africa.

180. The Tribunal finds that the record supports the conclusion that the Applicant knew of the reasons for the criticisms made against her in the FY16 Performance Evaluation, had plenty of opportunities to defend herself, and made her views heard on numerous occasions.

181. The Tribunal concludes that the Applicant’s FY16 Performance Evaluation had a reasonable and observable basis, was not based on improper motives, and followed due process.

182. During the jurisdictional phase, the Applicant filed before the Tribunal an Application for Costs in the amount of \$5,080.50. As the Tribunal did not consider the Application for Costs at the time, it will now address this matter.

DECISION

- (1) The Application is dismissed; and
- (2) The IFC shall contribute to the Applicant's legal fees and costs for the jurisdictional phase of the proceedings in the amount of \$3,000.00.

/S/ Mónica Pinto

Mónica Pinto

President

/S/ Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., 18 October 2018