

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUANA DOE I, JUAN DOE I, *et al.*,

Plaintiffs,

v.

INTERNATIONAL FINANCE CORP., *et al.*,

Defendants.

Civil Action No. 1:17-cv-00363-CRC

NOTICE AND REQUEST TO DISMISS

COMES NOW the International Finance Corporation and IFC Asset Management Company, LLC, through undersigned counsel, to appear specially and to request respectfully that the Court dismiss this case with prejudice for lack of subject matter jurisdiction, pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure and D.D.C. Rule 7. Per D.D.C. Rule 7(m), there is no duty to confer on dispositive motions.

As explained in the attached Statement of Points and Authorities in Support of Notice and Request to Dismiss, the Defendants are immune from the instant suit pursuant to 22 U.S.C. § 288a(b) and related authorities, including recently re-affirmed, governing precedent. *See, e.g., Jam v. Int'l Fin. Corp.*, 860 F.3d 703 (D.C. Cir. 2017).

A proposed order is attached for the Court's convenience.

Dated: September 6, 2017

SIDLEY AUSTIN LLP

By: /s/ Jeffrey T. Green

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**UNITED STATES DISTRICT COURT
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Civil Action No. 1:17-cv-00363-CRC

**STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF
NOTICE AND REQUEST TO DISMISS**

As a recognized public international organization, International Finance Corporation (“IFC”), and its wholly-owned subsidiary, IFC Asset Management Company, LLC (“IFC AMC”), are immune from this action under the International Organizations Immunities Act of 1945 (“IOIA”), 22 U.S.C. § 288a(b), IFC’s Articles of Agreement and this Circuit’s well-established precedent. In a recent, analogous suit against the International Finance Corporation, the D.C. Circuit considered and rejected the immunity-related legal arguments that Plaintiffs assert here. *Jam v. Int’l Fin. Corp.*, 860 F.3d 703 (D.C. Cir. 2017) (*hereinafter* “*Jam*”). Just as the D.C. Circuit found in *Jam*, plaintiffs here “are swimming upriver; both of their [immunities] arguments run counter to [the D.C. Circuit’s] long-held precedent concerning the scope of international organization immunity and charter-document immunity waivers.” *Id.* at 704.¹

In support of their request, Defendants state as follows:

¹ Counsel for the plaintiffs here were also counsel for the plaintiffs in *Jam*.

I. The International Finance Corporation's Status

1. The International Finance Corporation is a public international organization whose purpose is to “further economic development by encouraging the growth of productive private enterprise in member countries.” Articles of Agreement of the International Finance Corporation, art. I, Dec. 5, 1955, 7 U.S.T. 2197, 264 U.N.T.S. 117 (*hereinafter* “Articles”). One of the five closely associated but distinct members of the World Bank Group, IFC provides loans, equity and advisory services to stimulate private sector investment in developing economies. Decl. of K. Suratgar ¶ 5, Ex. 2 (IFC Annual Report) at 22.² IFC invests in projects that “cannot command private capital,” and invested \$1 billion in fragile and conflict-affected areas in 2016. *Jam*, 860 F.3d at 704; Decl. of K. Suratgar, Ex. 2 (IFC Annual Report) at 19. To carry out its objectives, IFC operates in over 100 countries, with over 3,400 employees worldwide.

2. IFC is governed by its Articles of Agreement, an international treaty which confers on IFC an international and intergovernmental status independent of its 184 individual member countries. IFC's Articles provide it with privileges and immunities that enable IFC to “fulfill the functions with which it is entrusted” around the world. *See* Articles, art. VI, at § 1. In order to protect IFC from undue influence or interference by any member nation or the sovereign courts, IFC's Articles provide, *inter alia*, that IFC's “property and assets . . . [are] immune from all forms of seizure, attachment or execution before the delivery of final judgment,” *id.* at § 3; that its “[p]roperty and assets . . . [are] immune from search, requisition, confiscation, expropriation or any other form of seizure by executive or legislative action,” *id.* at § 4; that its archives are inviolable, *id.* at § 5; that “all property and assets of the Corporation shall be free from

² In addition to the International Finance Corporation, the World Bank Group also includes the following: (i) the International Bank for Reconstruction and Development, (ii) the International Development Association, (iii) the Multilateral Investment Guarantee Agency, and (iv) the International Centre for Settlement of Investment Disputes.

restrictions, regulations, controls and moratoria of any nature,” *id.* at § 6; that its official communications must be treated as official communications of a sovereign country, *id.* at § 7; and that its officers and employees are immune from legal process for acts performed in their official capacity, *id.* at § 8, unless IFC waives such immunities. *Id.* at § 11. IFC’s immunities under its Articles have been incorporated into the United States Code. *See* 22 U.S.C. § 282g (“article VI, sections 2 to 9, both inclusive, of the Articles of Agreement of the Corporation, shall have full force and effect in the United States”); 22 U.S.C. § 282 (accepting U.S. membership in IFC).

3. IFC has been designated a public international organization by Executive Order. Exec. Order No. 10680, 21 Fed. Reg. 7647 (Oct. 5, 1956). Accordingly, IFC is entitled to the privileges, immunities and exemptions of the International Organizations Immunities Act of 1945 (“IOIA”), 22 U.S.C. § 288a, *et seq.* The IOIA provides IFC with “dual protections” alongside its Articles. *Nyambal v. Int’l Monetary Fund*, 772 F.3d 277, 281 (D.C. Cir. 2014), *cert. denied*, 135 S. Ct. 2857 (2015).

A. IFC Asset Management Company

4. IFC AMC is a wholly-owned subsidiary of IFC. Decl. of G. Springsteen ¶ 4, Ex. 1 (IFC AMC Annual Review) at 11. The “business and purposes” of IFC AMC are to “engage in activities that are consistent with and in furtherance of the purpose and mission of IFC (including the formation of, mobilization of third party capital for, and management of funds).” *Id.* ¶ 4. IFC AMC promotes the goals and mission of IFC by “rais[ing] money from institutional investors to invest alongside IFC in productive private enterprise in developing countries.” *Id.* ¶ 8, Ex. 1 (IFC AMC Annual Review) at 11. Along with investments from IFC, IFC AMC manages investments from institutional investors, such as development financial institutions, sovereign wealth funds, and pension funds.

5. IFC AMC “may only engage in activities in which IFC c[an] itself engage in and is not authorized to engage in any other activities.” *Id.* ¶ 6. Accordingly, IFC AMC is bound by the investment conditions embodied in IFC’s Articles of Agreement. *See, e.g.*, Articles, art. III, at § 3(i) and (ii) (limiting investments to those where sufficient private capital cannot be obtained on reasonable terms and where member states do not object to financing). Furthermore, “[a]ll investments made by IFC AMC-managed funds are processed, executed and managed jointly by IFC and IFC AMC investment teams and in accordance with all IFC operational policies and standards, including IFC’s Sustainability Framework.” Decl. of G. Springsteen, ¶ 13 Ex. 3 (IFC Environmental and Social Review Procedures Manual) at 15.³ To achieve that goal, and to attract outside investors to IFC AMC funds, IFC provides services to IFC AMC relating to the sourcing, processing, and supervision of IFC AMC fund investments on IFC AMC’s behalf, including services related to the following: (i) sourcing investment opportunities; (ii) performing due diligence on investments; (iii) structuring and negotiating investments; (iv) ensuring compliance with IFC’s policy standards; (v) monitoring the performance of investments; and (vi) recommending dispositions. Decl. of G. Springsteen, ¶ 12. As of 2016, IFC AMC managed over \$2 billion in assets from IFC. *Id.* ¶ 11, Ex. 2 (IFC Annual Report) at 113.

B. IFC’s Compliance Advisory Ombudsman

6. IFC and IFC AMC performance is subject to review by IFC’s Compliance Advisory Ombudsman (“CAO”). CAO’s mandate is to “[a]ddress complaints from people affected by IFC . . . projects in a manner that is fair, objective, and equitable; and [e]nhance the environmental

³ The Sustainability Framework consists, *inter alia*, of IFC’s Policy on Environmental and Social Sustainability, “which defines IFC’s commitments to environmental and social sustainability”, and IFC’s Performance Standards, which define IFC and IFC AMC “clients’ responsibilities for managing their environmental and social risks”. IFC Sustainability Framework, <http://www.ifc.org/sustainabilityframework> (last visited Sept. 5, 2017).

and social outcomes of IFC . . . projects.” Decl. of K. Suratgar ¶ 9, Ex. 6 (Operational Guidelines) at 4. To achieve its mandate, CAO plays three roles: 1) attempting to resolve disputes between communities and clients; 2) undertaking compliance audits and 3) advising the World Bank President and senior advisors on policies, guidelines and procedures. *Id.* ¶ 10, Ex. 6 (Operational Guidelines) at 4.

7. The purpose of CAO’s compliance function is to improve environmental and social policy-related performance. CAO’s compliance function is focused on *IFC’s* environmental and social performance, not on the performance of IFC’s clients. Decl. of K. Suratgar, Ex. 6 (Operational Guidelines) at 22. “[T]he CAO is not a court, has ‘no authority with respect to judicial processes,’ and creates no ‘legal enforcement mechanism.’” *Jam v. Int’l Fin. Corp.*, 172 F. Supp. 3d 104, 107 (D.D.C 2016) (citation omitted). CAO’s findings and conclusions are not meant to create legal causes of action for complainants against IFC, or waive IFC’s immunity. Decl. of K. Suratgar ¶ 14.

8. As described in more detail below, *infra* § (IV)(B), Plaintiffs attempt to use the results of two of IFC’s CAO compliance assessments to argue that IFC has waived its immunity from this suit. First, in 2012, CAO opened a compliance audit into IFC’s loan to Corporación Dinant S.A. de C.V. (“Dinant”), a palm oil and food company in Honduras, after the President of the World Bank received a complaint in 2009. Decl. of K. Suratgar ¶¶ 56-57. CAO conducted an audit of IFC’s due diligence and supervision of environmental and social aspects of its Dinant investment, as well as whether IFC’s policies and procedures provided adequate guidance to IFC staff on managing risks in conflict or conflict prone regions. *Id.* ¶ 58, Ex. 7 (Dinant Audit) at 5-9.

9. Second, in 2013, CAO opened a compliance audit into IFC’s and IFC AMC’s investments in Banco Financiera Comercial Hondureña S.A. (“Ficohsa” or “Banco Ficohsa”), the

largest bank in Honduras. Decl. of K. Suratgar ¶ 62. Ficohsa provides financing to small and medium-sized businesses in Honduras, and itself had separately provided loans to Dinant. The audit considered whether the investments in Ficohsa were “appraised, structured and supervised in accordance with applicable IFC policies, procedures and standards,” in light of Ficohsa’s investments in Dinant. Decl. of K. Suratgar ¶ 63, Ex. 10 (Ficohsa Audit) at 8.

10. The CAO reports found that IFC did not adequately adhere to its internal policies while vetting and supervising the investments. Decl. of K. Suratgar, Ex. 7 (Dinant Audit) at 5-10 and Ex. 10 (Ficohsa Audit) at 1-3. In part in response to the CAO reports, IFC has improved its due diligence procedures to assess environmental and social risks in fragile and conflict-affected nations, including improving the way it evaluates risks that sub-clients pose to IFC clients that are financial institutions. *See, e.g.*, Decl. of K. Suratgar, Ex. 11 (IFC Response to Ficohsa Audit); Improving IFC’s Approach to Environmental and Social Risk Management, <https://www.ifc.org/wps/wcm/connect/77c11449-261e-484b-a885-f9d77b087386/Improving-IFCs-+Approach-to-ES-Risk-Management-Updated-April-2017.pdf?MOD=AJPERES>. At the time Defendants’ filed this motion, CAO’s compliance oversight of the Dinant and Ficohsa investments were ongoing.⁴ Decl. of K. Suratgar ¶¶ 60-61, 65-66, Ex. 9 (CAO Dinant Audit Monitoring Report) at 6; Ex. 12 (CAO Ficohsa Audit Monitoring Report) at 5.

II. Plaintiffs’ Allegations

11. Plaintiffs are 17 unidentified individuals in Honduras (Juana Does 1-7 and Juan Does 8-17), and two potential classes of individuals who reside in the Bajo Aguán, a valley in northern

⁴ In July 2014, the Movimiento Campesino Refundación Gregorio Chávez (MCRGC) and the Movimiento Unificado Campesino del Aguán (MUCA) filed two separate complaints with the CAO on behalf of their members in the Aguán Valley. The CAO has determined that their complaints substantially overlap with the 2014 Dinant CAO Audit, and decided to consider the issues as part of the CAO’s monitoring of Dinant (which remains ongoing as of the date of this filing).

Honduras. Compl. ¶¶ 412-429; 430 (Mar. 9, 2017). Collectively, they bring claims of wrongful death, battery, assault, intentional infliction of emotional distress, false imprisonment, negligent infliction of emotion distress, negligence, trespass and unjust enrichment against IFC and IFC AMC, based on the “financial and moral support” that IFC and IFC AMC provided to Dinant and to Banco Ficohsa, respectively. Compl. ¶¶ 430; 482-560. They seek compensatory damages, punitive damages, and injunctive relief.

III. Standard of Review

12. A motion to dismiss under Rule 12(b)(1) challenges the jurisdiction of the court to adjudicate a claim. “A court has an ‘affirmative obligation to ensure that it is acting within the scope of its jurisdictional authority,’” *Hudes v. Aetna Life Ins. Co.*, 806 F. Supp. 2d 180, 186 (D.D.C. 2011) (quoting *Grand Lodge of Fraternal Order of Police v. Ashcroft*, 185 F. Supp. 2d 9, 13 (D.D.C. 2001)), *aff’d*, 493 F. App’x 107 (D.C. Cir. 2012), and must dismiss a claim pursuant to Rule 12(b)(1) when it lacks subject matter jurisdiction, *Laukus v. United States*, 691 F. Supp. 2d 119, 125 (D.D.C. 2010), *aff’d*, 442 F. App’x 570 (D.C. Cir. 2011). In a motion to dismiss for lack of subject matter jurisdiction pursuant to Rule 12(b)(1), the “[p]laintiff bears the burden of proving that the Court has subject matter jurisdiction.” *Hudes*, 806 F. Supp. 2d at 186. While the court “must accept as true all of the factual allegations set forth in the complaint,” “those allegations ‘will bear closer scrutiny in resolving a 12(b)(1) motion than in resolving a 12(b)(6) motion for failure to state a claim.’” *Jam*, 172 F. Supp. 3d at 108 (citation omitted). In deciding 12(b)(1) motions, courts are “not limited to the allegations contained in the complaint,” and “may consider materials outside the pleadings.” *Delaney v. District of Columbia*, 612 F. Supp. 2d 38, 42 (D.D.C. 2009) (citations omitted).

IV. Reasons For Dismissal

A. IFC and IFC AMC are Immune from this Suit

13. IFC and IFC AMC are immune from this suit based on the IOIA, IFC's Articles of Agreement, and long-standing, recently reaffirmed precedent in the D.C. Circuit.⁵ IFC benefits from the "absolute immunity" that foreign nations enjoyed when the IOIA was enacted in 1945, not the "restrictive immunity" that now applies to foreign nations under the Foreign Sovereign Immunities Act of 1976. *Atkinson v. Inter-Am. Dev. Bank*, 156 F.3d 1335, 1340-42 (D.C. Cir. 1998); *Jam*, 860 F. 3d at 705-06; *Nyambal*, 772 F.3d at 281 ("*Atkinson* remains vigorous as Circuit law"); *Inversora Murten, S.A. v. Energoprojekt-Niskogradnja Co.*, 264 F. App'x 13, 15 (D.C. Cir. 2008). D.C. Circuit "precedent stands as an impassable barrier" to Plaintiffs' argument that IFC enjoys the same immunity as foreign sovereigns do today. *Jam*, 860 F.3d at 706; Compl. ¶ 461.

1. IFC AMC is Immune Under the Plain Terms of the IOIA

14. As a wholly-owned subsidiary of IFC, IFC AMC is immune from this suit under the IOIA to the same extent as IFC. 22 U.S.C. § 288a(b) (extending immunity of international organizations to "their property and their assets"); see *Victor Hotel Corp. v. FCA Mortg. Corp.*, 928 F.2d 1077, 1083 (11th Cir. 1991) (wholly-owned subsidiary is an asset of a financial institution); *Lamie v. U.S. Trustee*, 540 U.S. 526, 534 (2004) ("[i]t is well established that 'when the statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms.'" (citation omitted);

⁵ The IOIA, 22 U.S.C. § 288a *et seq.*, provides: "[i]nternational organizations, their property and their assets, wherever located, and by whomsoever held, shall enjoy the same immunity from suit and every form of judicial process as is enjoyed by foreign governments, except to the extent that such organizations may expressly waive their immunity for the purpose of any proceedings or by the terms of any contract." 22 U.S.C. § 288a(b).

Decl. of G. Springsteen, ¶¶ 4, 7, Ex. 1 (IFC AMC Annual Review) at 11; Decl. of K. Suratgar, ¶ 6, Ex. 3 (IFC’s 2017 Consolidated Financial Statements) (“IFC AMC’s annual financial statements are consolidated with IFC’s own annual audited financial statements.”).

2. IFC’s Immunity Extends to Its Subsidiaries

15. IFC’s immunity also extends to IFC AMC because of their common purpose and common limitations. IFC AMC helps “further[] . . . the purpose and mission” of IFC by mobilizing additional investors to IFC projects. Decl. of G. Springsteen ¶¶ 4, 8-10, Ex. 1 (IFC AMC Annual Review) at 11. It also manages \$ 2 billion of IFC’s assets. *Id.* ¶ 11, Ex. 2 (IFC Annual Report) at 113. Meanwhile, IFC performs significant investment services on IFC AMC’s behalf, including due diligence, structuring, negotiating, and monitoring investments. *Id.* ¶ 12, Ex. 1 (IFC AMC Annual Review) at 35. It also ensures that all IFC AMC investments meet IFC’s standards. *Id.* ¶ 13. IFC’s CEO is the chairman of IFC AMC’s board, and IFC approves all of IFC AMC’s board members. *Id.* ¶ 7. IFC also houses IFC AMC’s principal offices at its headquarters in Washington, D.C.. *Id.* ¶ 16. Their joint mission requires the protections of the IOIA. *See, e.g., Bisson v. United Nations*, 2007 WL 2154181, at *5, *7 (S.D.N.Y. July 27, 2007) (emphasis omitted) (United Nations’ immunity extended to the World Food Program, “an autonomous joint subsidiary programme of the United Nations and FAO” (Food and Agriculture Organization of the United Nations)); *Lempert v. Rice*, 956 F. Supp. 2d 17, 24 (D.D.C. 2013), *cert denied*, 136 S. Ct. 1465 (U.S. Mar. 21, 2016) (United Nations Development Program “as a subsidiary program of the UN that reports directly to the General Assembly” enjoyed immunity under the Convention on Privileges and Immunities of the United Nations); *Shamsee v. Shamsee*, 428 N.Y.S.2d, 33, 36 (N.Y. App. Div. 1980) (United Nations Pension Fund immune from suit where its assets were the property of the United Nations, “the Fund’s offices [were] located at the United Nations Headquarters . . . the United Nations deposit[ed] moneys into the Fund and . .

. the Fund’s operation [was] regulated by the General Assembly . . . underscore[ing] the intimate connection between the Fund and its parent organization.”).

16. IFC AMC is not a separate international organization, and, given its subsidiary status, does not need to be designated as such by the President of the United States to enjoy IFC’s immunities. *See, e.g., Bisson*, 2007 WL 2154181, at *7 (World Food Program enjoyed immunity despite not being designated as an international organization by executive order).

3. Asserting Jurisdiction over IFC AMC Would Impermissibly Undermine IFC’s Internal Decision-Making

17. Asserting jurisdiction over IFC AMC would undermine IFC’s immunities by interfering with its ability to determine how to “fulfill the functions with which it is entrusted” around the world. Articles, art. VI, at § 1. IFC formed IFC AMC because it determined that IFC AMC would help IFC achieve its purpose of “encouraging the growth of productive private enterprise in member countries.” *Id.* at art. I; Decl. of K. Suratgar ¶ 6, Ex. 2 (IFC Annual Report) at 80. Just as the Articles set out, IFC AMC helps IFC mobilize investors, such as the Japan Bank for International Cooperation, which invested in Ficohsa through an IFC AMC-managed fund, to “financ[e] the establishment, improvement and expansion of productive private enterprise[.]” *Id.* at art. I(i); Decl. of G. Springsteen, Ex. 1 (IFC AMC Annual Review) at 11. IFC AMC helps IFC “bring together investment opportunities” that IFC identifies with “domestic and foreign private capital,” that IFC AMC raises, and IFC AMC’s experienced financial advisors manage. Articles, art. I(ii); *see, e.g.,* Press Release, IFC, *IFC Capitalization Fund Invests \$70 Million in Ficohsa to Support SMEs in Honduras* (Sept. 30, 2011). Denying IFC AMC’s immunity would impermissibly limit IFC’s ability to exercise its own internal discretion in fulfilling its mission. *See Jam*, 860 F.3d at 708 (“claims that implicate internal operations of an international organization are especially suspect because claims arising out of core operations, not ancillary

business transactions, would threaten the policy discretion of the organization.”); *cf Watters v. Wachovia Bank, N.A.*, 550 U.S. 1, 18 (2007) (the “determination whether to conduct business through operating subsidiaries or subdivisions is ‘essentially one of internal organization.’”) (citation omitted). And it would subject both entities to extended litigation, such as the current action, over policy-based claims that are tenuous at best, and that undermine the overall developmental mission agreed upon by IFC’s member states.

4. Asserting Jurisdiction over IFC AMC Would Be Akin to Asserting Jurisdiction over IFC

18. Finally, given IFC’s interest in and the functions of IFC AMC, asserting jurisdiction over IFC AMC would be tantamount to piercing IFC’s immunity. *See Bisson*, 2007 WL 2154181, at * 7 (quoting *Askir v. Brown & Root Servs. Corp.*, 1997 WL 598587, at * 6 (S.D.N.Y. Sept. 23, 1997) (“It would . . . undermine the United Nations’ immunity and make little sense to hold defendant . . . the United Nations’ contractor, liable for performing the same sovereign acts for which the United Nations itself is immune”); *cf Watters*, 550 U.S. at 18-19 (“[s]ecurity against significant interference by state regulators . . . adhere[ed] whether the business [was] conducted by the bank itself or [was] assigned to a[sic] [wholly-owned] operating subsidiary . . . whose authority to carry on the business coincide[d] completely with that of the bank.”).

19. Exposing IFC AMC to jurisdiction and potential liability in the United States for its investment activities around the world would similarly expose IFC to loss, which consolidates IFC AMC’s financial statements with its own financial statements. Decl. of K. Suratgar ¶ 7, Ex. 3 (IFC’s 2017 Consolidated Financial Statements), at 72; *see United States v. Hall*, 613 F.3d 249, 252 (D.C. Cir. 2010) (finding that a loss to a wholly-owned subsidiary of a federally insured bank constituted a loss to the parent company); *United States v. Moore*, 75 F. Supp. 3d 568, 573 (D.D.C. 2014) (citation omitted) (“[t]his Circuit has found that it is natural to attribute a

subsidiary's assets to the parent, such that a loss to the wholly-owned subsidiary would constitute a loss to the parent.”⁶ It would also undermine IFC's ability to function independently from its member states. *See Mendaro v. World Bank*, 717 F.2d 610, 615 (D.C. Cir. 1983) (“the purpose of immunity . . . is rooted in the need to protect international organizations from unilateral control by a member nation over the activities of the international organization within its territory.”).

B. IFC and IFC AMC have not Waived their Immunity

20. IFC and IFC AMC have not waived their immunity to Plaintiffs' suit, nor has the President limited that immunity in any way. *Id.* at 613 (the immunity conferred by the IOIA is subject to only two limitations: “[f]irst, the organization itself may expressly waive its immunity. Second, the President may specifically limit the organization's immunities when he selects the organization as one entitled to enjoy the Act's privileges and immunities”).

21. This Court has held that waivers of immunity only occur in the narrow class of lawsuits where an insistence on immunity would act to prevent or hinder a public international organization from conducting its activities. *Id.* at 617. Assessing whether a waiver has occurred (“the *Mendaro* test”) turns on whether the suit is “the *type of suit* by the *type of plaintiff* that ‘would benefit the organization over the long term,’” *Jam*, 860 F.3d at 706 (citing *Osseiran v. Int'l Fin. Corp.*, 552 F.3d 836, 840 (D.C. Cir. 2009)) (emphasis in original). In conducting this analysis, a court should distinguish between internal operations and decision-making, and external relations with debtors, creditors and bondholders, where IFC or IFC AMC may have

⁶ In making their findings, these authorities are interpreting 18 U.S.C. § 1344, which criminalizes “defraud[ing] a financial institution” or “obtain[ing] any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations or promises.”

waived immunity in seeking participation by investors. *Mendaro*, 717 F.2d at 618; *Jam*, 860 F.3d at 707 (“The *Mendaro* test . . . focuse[s] on identifying those transactions where the other party would not enter into negotiations or contract with the organization absent waiver.”) (citation omitted). Courts have only found that public international organizations have waived their immunities to “claims [that] have . . . grown out of business relations with outside companies (or an outside individual engaged directly in negotiations with the organization),” such as claims of promissory estoppel and unjust enrichment. *Id.*, referring to *Osseiran*, 552 F.3d at 840-41 and *Vila v. Inter-Am. Inv. Corp.*, 570 F.2d 274, 278-80 (D.C. Cir. 2009).

22. Plaintiffs are farmers who reside in the Aguán Valley of Honduras and bring a class-action, tort suit against IFC and IFC AMC; neither IFC nor IFC AMC have waived their immunity to this suit. *See Jam*, 860 F. 3d at 707-08 (IFC did not waive immunity to tort suit brought by third-party fishermen with no commercial relationship with IFC); *Garcia v. Sebelius*, 867 F. Supp. 2d 125, 143-44 (D.D.C. 2012), *vacated in part on other grounds by Garcia v. Sebelius*, 919 F. Supp. 2d 43 (D.D.C. 2013) (head of the Pan-American Health Organization (“PAHO”) did not waive immunity to class action tort suit alleging that PAHO conducted non-consensual human medical experimentation on individuals in Guatemala); *Banco de Seguros del Estado v. Int’l Fin. Corp.*, 2007 WL 2746808, at *5-6 (S.D.N.Y. Sept. 20, 2007) (IFC did not waive immunity to third-party, negligent supervision claim).

23. Plaintiffs nonetheless assert that IFC will somehow benefit from this litigation because courts in the United States can ensure that IFC’s internal processes are enforced. Compl. ¶¶ 70; 470; 478. The D.C. Circuit has squarely rejected Plaintiffs’ approach. *Jam*, 860 F.3d at 707-08. Just as the plaintiffs in *Jam* sought to do, the Plaintiffs here “attempt to define ‘benefit’ more broadly” than the *Mendaro* test intends. *Id.*

“They argue that holding the IFC to the very environmental and social conditions it put [forth] . . . conditions which the IFC itself formulated, would benefit the IFC’s goals. Even though [plaintiffs] ha[ve] no commercial relationship with the IFC (other than, allegedly, as third party beneficiaries of the loan agreements’ requirements), they contend that the IFC will benefit from their lawsuit because they are attempting to hold the IFC to its stated mission and to its own compliance processes. They argue that obtaining “community support” is a required part of any IFC project, and suggest that communities will be unlikely to support IFC projects if the IFC is not amenable to suit.”

Id. Exactly as the Appellants in the *Jam* litigation, Plaintiffs claims here “implicate internal operations of an international organization”—IFC’s loan decisions and oversight and responses to CAO reports. *Id.* As such, their claims “are especially suspect because claims arising out of core operations, not ancillary business transactions, would threaten the policy discretion of the organization.” *Id.*

24. Rather than furthering the long-term goals of IFC, if “IFC’s internal compliance report[s] were to be used to buttress a claim against the IFC,” as Plaintiffs’ advocate, it “would create a strong disincentive to international organizations using an internal review process,” and IFC’s clients would be far less willing to work with CAO and IFC in a cooperative manner. *Id.*; Decl. of K. Suratgar ¶ 53. This would have “a severe chilling effect on CAO’s and IFC’s effectiveness without providing any corresponding benefit to IFC.” *Id.* ¶ 54. Indeed, under Plaintiffs’ warped theory of IFC’s immunity, IFC would be immune from this suit if it had no internal procedures governing the social impact of its loans, or if it lacked an independent compliance body, or if CAO did not publish its reports—all processes and procedures designed to help IFC promote sustainable investments.

25. Moreover, if Plaintiffs’ suit were permitted, “every loan the IFC makes to fund projects in developing countries could be the subject of a suit in Washington.” *Jam*, 860 F.3d at 708. A waiver to class-action, tort litigation from third parties would open up a “floodgate” of litigation from allegedly aggrieved complainants around the world that would hamper IFC’s ability to

function. *Id; Jam*, 172 F. Supp. 3d at 111. “Litigation of this kind, in other words, would open [IFC] to disruptive interference with its lending policies.” *Id.* (quoting *Vila*, 570 F.3d at 281).

V. Conclusion

Even in the face of clear and controlling law demonstrating that IFC is immune from this suit, Plaintiffs persist with arguments that the Circuit has rejected time and time again. IFC and IFC AMC are absolutely immune from this lawsuit and have not waived their immunity. For the foregoing reasons, IFC and IFC AMC respectfully request that the Court dismiss Plaintiffs’ claims with prejudice for lack of subject-matter jurisdiction.

Dated: September 6, 2017

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th of September, 2017, a copy of Defendants' International Finance Corporation's and IFC Asset Management Company, LLCs' Notice and Request to Dismiss was filed electronically with the Clerk of the Court using CM/ECF.

Respectfully submitted,

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