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Environmental & Social Standards in Project Finance: Overview, Current State of Play

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Overview

Global development banks and other financial institutions have been imposing environmental and social (E&S) requirements on borrowers in project finance matters since the 1990s. Cultural considerations, reputation, stakeholder pressure and, in the case of development banks, a desire to protect and support the communities and natural resources in their relevant geographic areas, all drive these requirements, but the ultimate goal is sustainable development.

This memorandum provides an overview and summary of seven existing E&S frameworks: (i) Asian Development Bank (ADB) Safeguard Policy Statement; (ii) European Bank for Reconstruction and Development (EBRD) Environmental and Social Policy; (iii) the Equator Principles (EP); (iv) Inter-American Development Bank (IDB) Environment and Safeguards Compliance Policy; (v) International Finance Corporation (IFC) Sustainability Framework; (vi) OECD Environmental and Social Due Diligence; and (vii) World Bank Environmental and Social Framework.[1]

It is important for both borrowers and these financial institutions to be familiar and have a facility with the varying E&S standards. For borrowers, integrating the different but overlapping E&S standards at the outset is critical to success: the standards impose complex and comprehensive requirements, the compliance with which can affect the timing and viability of the loan, and success of the project overall. These same considerations apply for the financial institutions, which should also try to understand what may be considered best practices. Although there is clear overlap in the E&S standards of the ADB, EBRD, EP, IFC, OECD and World Bank, as well as acknowledged collaboration among many of them, these standards are not coextensive and different institutions can apply them in ways that result in different requirements and outcomes. Elements of these E&S standards are seen in the non-project finance context as well, with mandatory and voluntary disclosure of E&S matters becoming increasingly important to shareholders, investors, asset managers and other stakeholders. Understanding these E&S standards in project finance could, therefore, help predict what these stakeholders might want or need more generally in the future.

I. Asian Development Bank Safeguard Policy Statement

Overview

The Asian Development Bank was established in 1966 and is composed of 67 member countries[2], 19 of which are non-regional members. ADB provides loans, technical assistance and grants with an aim to help member countries reduce poverty. ADB's operations are focused predominantly on infrastructure, environment, regional cooperation and integration, finance sector development, and education. Its current

[1] The purpose of this memorandum is to provide a snapshot of E&S frameworks in some development banks and financial institutions. It is not meant to be a comprehensive overview of all such frameworks.

[2] Member countries include Australia, China, France, Germany, India, Indonesia, Republic of Korea, the United Kingdom and the United States. A full list of countries is available here.

Safeguard Policy Statement, approved in 2009, aims to mitigate any adverse environmental and social impacts of ADB's projects. The Safeguard Policy Statement builds on three ADB policies: Involuntary Resettlement Policy (1995), the Policy on Indigenous Peoples (1998), and the Environment Policy (2002).

Environmental and Social Standards

Scope: Applies to all ADB financed or administered projects, regardless of the source of financing. Applies to ADB supported projects reviewed by ADB after January 20, 2010.

Approach: The ADB Safeguard Policy Statement covers four areas: (i) Environment; (ii) Involuntary Resettlement; (iii) Indigenous Peoples; and (iv) Special Requirements for Different Financing Modalities.[3]

- Environment: requires projects to conduct an environmental assessment, establish an environmental and planning management plan, carry out meaningful consultation with stakeholders and affected people, establish a grievance mechanism, and monitor compliance. In substance, it requires biodiversity conservation, pollution prevention, ensuring health and safety, and avoid damaging physical cultural resources.
- Involuntary Resettlement: requires compensation and assistance of displaced persons, a social impact assessment, resettlement planning, information disclosure, consultations, grievance mechanisms, and monitoring and reporting.
- Indigenous People: requires consultation, a social impact assessment, indigenous peoples planning[4], information disclosure, a grievance mechanism, and monitoring and reporting. Special requirements may be necessary if indigenous people have special ties to affected land. Moreover, consent must be obtained if the project will entail commercial development or physical displacement from traditional lands.
- Special Requirements for Different Finance Modalities: outlines additional requirements for program lending, sector lending, multi-tranche financing facilities, emergency assistance loans, existing facilities, financial intermediaries[5] (FI), and general corporate finance. Specifically, safeguard frameworks (including the three frameworks above) need to be in place prior to project approval; FIs involved in the project will be required to have an environmental and social management system in place unless the FI's investments have minimal adverse environmental or social risks. ADB will also work with Developing Member Countries to strengthen their safeguard systems and with co-financiers to unify standards applied.

ADB also categorizes projects based on their impact on the safeguard categories described above. The categorization is very similar to that of the Equator Principles.[6]

Enforcement Mechanism

- ADB has an "Accountability Mechanism" which allows persons or groups adversely affected by an ADB project to file a complaint. Adversely affected persons have two options: initiate a "problem

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[3] For more information, see: https://www.adb.org/documents/safeguard-policy-statement?ref=site/safeguards/publications.

[4] The borrower must establish measures to ensure that affected Indigenous Peoples receive social and economic benefits, and adverse impacts are mitigated.

[5] The OECD defines financial intermediaries as "units which incur liabilities on their own account on financial markets by borrowing funds which they lend on different terms and conditions to other institutional units." OECD, *Glossary of Statistical Terms* (2004), *available at* https://stats.oecd.org/glossary/detail.asp?ID=970.

[6] The Equator Principles are described in Section III.

solving process" with a special project facilitator or initiate a "compliance review" with a Compliance Review Panel (CRP).

- The problem solving process entails a constructive dialogue between affected persons and the borrower (often through mediation) and finding a solution jointly. Solutions and remedial actions are then implemented for a period generally not longer than two years. In 2016, three complaints were received and one was found eligible for the problem solving process.
- Once the CRP determines the complaint is eligible for review under the compliance review function, the CRP will conduct an investigation into policy and procedural compliance, consult with everyone involved in the project and issue a final report on its findings to ADB's Board of Directors. If parties do not comply with report, remedial actions may be taken and will be monitored by the CRP for up to three years.
- The Safeguard Policy Statement itself also requires the borrowers to establish a grievance mechanism.

Use

- The ADB has entered into strategic partnerships with several development banks and financial institutions. These include: World Bank, EBRD, IDB, OECD, IFC, African Development Bank (AfDB) and InterAmerican Investment Corporation (IIC).[7] Twenty-five financial institutions (including EBRD, IFC and OECD) agreed to harmonize data collection in private sector operations (by adopting common indicators, definitions, etc.)

II. EBRD Environmental and Social Policy

Overview

The European Bank for Reconstruction and Development (EBRD) was established in 1991, is owned by the European Union, the European Investment Bank and 66 countries across five continents. EBRD provides financing for projects in over 30 countries. An investment in any private sector project generally is of approximately $25 million, but may range between $5 million to $230 million in loans or equity. EBRD's current Environmental and Social Policy was adopted in 2014 and applies to any projects initiated after that date. EBRD's first Environmental Policy was adopted in 1991.

Environmental and Social Standards

Scope: Applies to EBRD projects initiated after November 7, 2014.

Approach: The EBRD outlines ten performance requirements (PR). Direct investment projects must meet PRs 1-8 and 10, financial intermediary projects[8] must meet PRs 2, 9 and the occupational health and safety requirements of PR 4.[9]

The ten EBRD PRs are: (i) Assessment and Management of Environmental and Social Impacts and Issues, (ii) Labor and Working Conditions, (iii) Resource Efficiency and Pollution Prevention and Control, (iv) Health and Safety, (v) Land Acquisition, Involuntary Resettlement and Economic Displacement, (vi)

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[7] A full list of partners can be found **here**.

[8] Defined as where the client is a financial service provider, investment fund or other similiar entity. The FI is therefore responsible for sub-project appraisal and monitoring.

[9] For more information, see: http://www.ebrd.com/what-we-do/strategies-and-policies/approval-of-new-governance-policies.html

Biodiversity Conservation and Sustainable Management of Living Natural Resources, (vii) Indigenous Peoples, (viii) Cultural Heritage, (ix) Financial Intermediaries, and (x) Information Disclosure and Stakeholder Engagement.

The EBRD will also categorize projects depending on the nature of potential adverse environmental and social impacts. This information is then used to determine the necessary level of environmental and social investigations, disclosure requirements and stakeholder engagement. Direct investment projects are categorized as follows:

> Category A: Potentially significant adverse environmental and social impacts. Category A projects will require a formal environmental and social impact assessment process.
>
> Category B: Potential environmental and social impacts are site specific and/or may be addressed through mitigation measures. Whether or not this will require an impact assessment will be determined on a case-by-case basis.
>
> Category C: Minimal or no potential adverse environmental and social impacts. Can be remedied though limited environmental and social appraisal.

Enforcement Mechanism

- The EBRD monitors compliance with its Environmental and Social Policy on an ongoing basis and publishes an annual report further detailing implementation of its Environmental and Social Policy.
- The EBRD has also established a Project Complaint Mechanism (PCM) which allows individuals or groups to file a complaint if they believe the bank has not followed its Environmental and Social Policy.

III. Equator Principles

Overview

Established in 2003, the Equator Principles (EP) are a financial industry benchmark for determining, assessing and managing environmental and social risks in projects. Adopted by the Equator Principles Financial Institutions (EPFIs), these standards aim to ensure that projects financed are socially and environmentally responsible. EP III is the most recent version of the principles and entered into force in June 2014.[10]

Environmental and Social Standards

Scope: EP III applies to four financial products: Project Finance Advisory Services; Project Finance; Project-Related Corporate Loans; and Bridge Loans. For Project-Related Corporate Loans, EPIII applies where the total aggregate loan is at least $100 million and the EPFI’s individual commitment is at least $50 million. Dollar thresholds for other products are above $10 million.

Approach: EP III outlines ten principles that need to be met before an EPFI will provide Project Finance and Project-Related Corporate Loans.[11]

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[10] For more information, see: http://www.equator-principles.com/index.php/about-ep

[11] For more information, see: http://www.equator-principles.com/resources/equator_principles_iii.pdf.

- Principle 1: EPFI will categorize the Project using the International Finance Corporation's (IFC) E&S categorization process.[12]

  Category A: Projects with potential significant adverse E&S risks/impacts that are diverse, irreversible or unprecedented.

  Category B: Projects with potential limited adverse E&S risks/impacts that are few in number, generally site specific, largely reversible and readily addressed through mitigation measures.

  Category C: Projects with minimal or no adverse E&S risks/impacts.

- Principle 2: For Category A and B Projects, a borrower must conduct an Environmental and Social Assessment. This will include preparing Assessment Documentation that should propose measures to minimize, mitigate and offset adverse impacts. Assessment Documentation will differ based on the level of risk of the Project.
- Principle 3: The Assessment must address compliance with host country E&S laws, regulations and permits.
- Principle 4: Category A and B projects require borrowers to develop or maintain an Environmental and Social Management System (ESMS).[13]
- Principle 5: The borrower must demonstrate effective Stakeholder Engagement. This may include conducting an Informed Consultation and Participation process, making Assessment Documentation available to Affected Communities/other stakeholders. Projects affecting indigenous peoples must also comply with indigenous protections under national and international law and when applicable, comply with IFC Performance Standard 7 (indigenous people have given their free and informed consent).[14]
- Principle 6: As part of the ESMS, the borrower must establish a grievance mechanism. This should be transparent, cost-free to users, and not impede access to judicial or administrative remedies. The mechanism will be communicated to Affected Communities during the Stakeholder Engagement process.
- Principle 7: Independent Review is required. In the case of Category A and, when appropriate, Category B projects, an Independent Environmental and Social Consultant is required to perform an independent review of the Assessment Documentation.
- Principle 8: Financing documentation must include EP compliance and other covenants, including material compliance with all relevant host country social and environmental laws, regulations and permits.
- Principle 9: Post-closing independent monitoring is required. Category A and "as appropriate" Category B projects require either an appointment of an Independent Environmental and Social Consultant or require retention of qualified and experienced external experts to verify monitoring information. Monitoring will continue over the life of the loan.

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[12] IFC is described in Section V.

[13] The ESMS is designed to monitor and manage environmental and social risks and impacts of the particular project.

[14] IFC's E&S Standards are described in Section V.

- Principle 10: The borrower and EPFI have reporting requirements to prove EP compliance.[15]

Enforcement Mechanisms

Although borrowers and EPFIs have reporting requirements, the Equator Principles are effectively a voluntary code of conduct and lack fundamental implementation efforts and enforcement. This has drawn criticism from some, most notably by the United Nations Environment Program (UNEP), which in a 2016 working paper, "*The Equator Principles—Do They Make Banks More Sustainable*", concluded that enforcement mechanisms are necessary to guarantee compliance.[16]

Use

- Currently, 91 financial institutions across 37 countries have adopted the Equator Principles.[17]
- Several development banks such as the European Bank for Reconstruction & Development (EBRD)[18] and the OECD are taking very similar approaches as those detailed in EP III.[19]
- In 2016, 8 out of 10 of the largest mandated arrangers globally had adopted EP III.[20]

IV. Inter-American Development Bank (IDB) Environment and Safeguards Compliance Policy

Overview

Established in 1959, the Inter-American Development Bank (IDB) is the leading source of development financing for Latin America and the Caribbean. The IDB currently has approximately 260 projects[21] and $28.30 billion in IDB financing. Their particular emphasis on ensuring sustainable and climate-friendly development is highlighted by their five goals: (i) reduce poverty and social inequalities; (ii) address the needs of small and vulnerable countries; (iii) foster development through the private sector; (iv) address climate change, renewable energy, and environmental sustainability; and (v) promote regional cooperation and integration. In order to promote these goals, IDB has adopted policies and guidelines that tackle environmental and social issues. These are described below.

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[15] Different EPFIs report at different times throughout the year, based on the institution's reporting period. The Equator Principles Association does not verify the EPFI reporting data.

[16] For more information, see: http://unepinquiry.org/publication/the-equator-principles/

[17] Leading international banks, including Bank of America, Credit Suisse, Goldman Sachs, JPMorgan Chase, Morgan Stanley, and UBS are EPFIs. A complete list of EPFIs is available **here**.

[18] ERBD is described in Section II.

[19] For more information, see: http://www.equator-principles.com/index.php/about-ep

[20] These were: BNP Paribas SA, Credit Agricole CIB, ING, Mitsubishi UFJ Financial Group, Mizuho Financial Group, Natixis, Societe Generale and Sumitomo Mitsui Financial Group Inc. For more information, see: http://dmi.thomsonreuters.com/Content/Files/4Q2016_Global_Project_Finance_Review.pdf

[21] Ninety-seven of which are non-sovereign guaranteed operations. These projects facilitate private sector investment in sustainable and climate-friendly developments. See more at: http://www.iadb.org/en/topics/development-effectiveness/non-sovereign-guaranteed-operations,1255.html

Environmental Standards

Environment and Safeguards Policy

In 2006, the IDB adopted the Environment and Safeguards Compliance Policy which aims to address and support sustainable economic growth and poverty goals in the region.[22] The IDB Policy is supplemented by 2007 guidelines. The IDB Policy is divided into two categories: (i) environmental mainstreaming; and (ii) environmental safeguards.

In order to mainstream environmental considerations into new business opportunities, IDB establishes several policy directives. These include: mainstreaming environmental issues in country programming strategies, supporting environmental and natural resources management operations, supporting regional initiatives and international agreements relating, but not limited to, environmental and natural resources management initiatives, tracking sustainability indicators, assessing environmental risks and opportunities and promoting corporate environmental responsibility.[23]

Additionally, the IDB applies safeguards to help manage environmental impacts and risks. More specifically, the IDB will finance only operations that comply with the directives of the IDB Policy, are consistent with other IDB policies, and are in compliance with environmental laws and regulation of the country where the project is being implemented.

Environmental safeguards include:

- Screening and Classification: IDB-financed operations will be classified depending on their potential environmental impacts. Similar to the classification under EP III and IFC.

  Category A operations are ones that are "likely to cause significant negative environmental and associated social impacts." A borrower may need to establish an expert panel to provide guidance on the execution of the operation.

  Category B operations are "likely mostly local and short-term negative environmental and associated social impacts."

  Category C operations are "likely to cause minimal or no negative environmental and associated social impacts."

  Consultations with interested and affected parties will have to take place if a project is classified as Category A or B.

- Environmental Assessment (EA) Requirement: Screening of projects, supported by economic analysis of project alternatives, analysis of legal compliance requirements and an evaluation of the potential environmental, social, health and safety impacts of the project. All Category A and most Category B operations have an EA requirement.
- Supervision and Compliance: IDB will monitor compliance with safeguard commitments. Category A operations will be reviewed annually.
- Transboundary Impacts.
- Natural Habitats and Cultural Sites conservation.
- Minimal use of hazardous materials.

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[22] For more information, see: http://www.iadb.org/document.cfm?id=665902

[23] For a more detailed list, see: http://www.iadb.org/document.cfm?id=665902

- Pollution prevention and abatement.
- Other risk factors, including the governance capacity of executing agencies/borrower and of third parties, sector-related risks, risks associated with highly sensitive environmental and social concerns, and vulnerability to disasters.

Disaster Risk Management Policy[24]

Adopted in 2007, this IDB policy addresses prevention and mitigation of disasters and post disaster response by reinforcing infrastructure and developing policies that reduce vulnerability.

Social standards

Gender Policy[25]

In 2010, the IDB adopted the Operation Policy on Gender Equality in Development, which identifies two focus areas: (i) proactive action; and (ii) preventive action. The policy is supplemented by the IDB's "Implementation Guidelines", adopted in 2013.

Proactive action includes: direct investment in gender equality by identifying projects to address gender issues, giving priority to investments that support gender equality, and mainstreaming of gender equality.

Preventive action includes: assessment and mitigation of adverse impacts on gender, consultation and participation of women and men in project-related consultations, and enforcing nation and applicable international agreement.

In addition to the Operation Policy on Gender Equality in Development, the IDB provides Guidelines and the Gender Action Plan (GAP) which reinforce the objectives of the Gender Policy and facilitate the policy implementation. The 2014–2016 GAP outlined four specific objectives:

- Foster strategic partnerships and contribute to setting a public policy agenda to advance gender-responsive policy making and development programing in the region.
- Contribute to the body of knowledge on key gender gaps in the Latin America and the Caribbean regions.
- Share knowledge and build the capacity of IDB staff and partners to analyze development issues from the perspectives of the women and men likely to benefit or be affected, and to implement evidence-based approaches that address these issues.
- Improve IDB's performance on gender mainstreaming, direct investment and gender safeguards through the use of corporate tools and incentives.

Involuntary Resettlement Policy[26]

This policy aims to minimize displacement and, if such displacement is necessary, ensure fair treatment. The objectives of the policy include: minimizing population displacement, ensuring community participation, defining criteria for compensation, compensation for the loss of customary rights, providing economic opportunities for the displaced populations, providing an acceptable level of housing and services, addressing security issues, considering host populations in Resettlement Plans, including

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[24] For more information: see: http://www.iadb.org/document.cfm?id=35004515

[25] The IDB Gender Policy is available at: http://www.iadb.org/document.cfm?id=35428399

[26] For more information, see: http://www.iadb.org/en/about-us/involuntary-resettlement,6660.html

resettlement costs in overall project costs, and establishing independent monitoring and arbitration procedures.

Indigenous Peoples Policy[27]

Adopted in 2006, this policy aims to further IDB's commitment to indigenous peoples by creating safeguards to minimize a project's adverse impact on indigenous people and protecting their cultural legacies.

Enforcement Mechanisms

- The IDB has several mechanisms by which it ensures accountability of its projects. Broadly, this is done through: (i) the Office of Evaluation and Oversight (focusing on project evaluations and monitoring portfolio performance); (ii) Internal Audits; (iii) External Audits; (iv) the Independent Consultation and Investigation Mechanism (focuses on concerns by individuals and communities adversely affected by IDP projects; (v) the Oversight of the Procurement Process; and (vi) the Office of Institutional Integrity (independent office that investigates wrongdoing and may recommend sanctions).

V. IFC Sustainability Framework

Overview

The International Finance Corporation (IFC), established in 1956 under the auspices of the World Bank, is the largest global development institution with an exclusive focus on private sector financing in developing countries. The IFC is owned by 184 countries and has a presence in over 100 countries with more than 2000 client firms. The IFC Sustainability Framework was established to help promote sustainable business.[28] Established in 2006 and updated in 2012, the IFC Performance Standards outline client environmental and social risk management responsibilities. Prior to 2006, the IFC had adopted an Environmental and Social Review Procedure (1998).

Environmental and Social Standards

Scope: The IFC Performance Standards apply to all projects after January 1, 2012 that went through the IFC's initial credit review process.

Approach

A party that is implementing and operating a financed project will need to meet eight "performance standards":

- Assessment and Management of Environmental and Social Risks and Impacts: Requires borrowers to incorporate an environmental and social management system (ESMS) to identify environmental and social risks in a project; establish an overarching environmental and social policy, management programs, emergency preparedness and response and organizational capacity and competency; enable stakeholder engagement; and coordinate monitoring and review.

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[27] The IDB Indigenous Peoples Policy is available at: http://www.iadb.org/document.cfm?id=2032081

[28] For more information see: http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/sustainability+framework

- Labor and Working Conditions: Aims to promote fair treatment of workers, improve worker-management relationships and promote compliance with national employment laws. The specific standard will depend on the nature of the relationship.
- Resource Efficiency and Pollution Prevention: Requires borrowers to refer to the World Bank Environmental Health and Safety (EHS) Guidelines[29] or other internationally recognized sources, when adopting resource efficiency and pollution prevention techniques.
- Community Health, Safety, and Security: Requires borrowers to evaluate health and safety risks including infrastructure and equipment design and safety, hazardous materials management and safety, ecosystem services, community exposure to disease, and emergency preparedness and response.
- Land Acquisition and Involuntary Resettlement: Includes community engagement, compensation and benefits for displaced persons, project design considerations to minimize displacement, grievance mechanisms, and resettlement and livelihood restoration planning.
- Biodiversity Conservation and Sustainable Management of Living Natural Resources.
- Indigenous Peoples: Requires parties to avoid adverse impacts on communities of indigenous peoples and to engage with affected communities to ensure they have given their Free Prior and Informed Consent.
- Cultural Heritage: Aims to protect cultural heritage through consultation procedures, community access and removal of replicable cultural heritage.

Enforcement Mechanisms

The IFC has developed a sophisticated monitoring system, the Development Outcome Tracking System (DOTS), which enables continuous reporting on projects. More specifically, DOTS allows the IFC to track financial performance, economic performance, environmental and social performance, and private sector development impacts throughout the project life cycle. Information is obtained through regular client reports, supervision site visits and other sources of information.[30] Whether the project obtains a high or a low DOTS rating may affect future downstream disbursement and dealings with parties. Consequently, borrowers are likely incentivized to achieve a high DOTS rating.

Use

- IFC Performance standards have been incorporated into the environmental and social standards of several other financial institutions and organizations, including the OECD and EP III.

VI. OECD Environmental and Social Due Diligence

Overview

The Organisation for Economic Co-operation and Development (OECD) was established in 1961 with the mission to promote policies that improve economic and social well-being globally. It currently has 35 member countries and a EUR 374 million budget. The OECD has published a series of recommendations, starting in the 1990s, that have addressed the environmental and social impacts of

[29] The World Bank EHS Guidelines provide industry or sector specific recommendations and examples of Good International Industry Practice (GIIP) relating to environmental, health and safety issues. See Section VII for a summary.

[30] For more information, see: http://www.ifc.org/wps/wcm/connect/5fd0a7004a57bb0bb346bf8969adcc27/DOTS+Handout+2011.pdf?MOD=AJPERES.

projects for which the OECD might provide export credit support.[31] In 2016, the OECD revised the *Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence* (Recommendation) which had been first adopted in 2012.

Environmental and Social Standards

Scope: The Recommendation applies to all officially supported export credits, with a repayment term of two or more years and for exports of capital goods and/or services. It does not apply to exports of military equipment or agricultural commodities. The Recommendation applies to OECD Members[32] and their export credit agencies, which are private and semi-governmental institutions that provide export financing.

Approach

There are clear similarities between the approach taken by the OECD and EP III.

- Screening and Classification: All applications for officially supported export credits have to be classified and reviewed. Screening should be conducted in order to determine: if the export is going to an existing operation; if the export is going to or near a sensitive area; whether or not there may be a high likelihood of severe project-related human rights impacts; and if the OECD Member's share is above SDR[33] 10 million. Applications are then classified into three categories:

  Category A: Potential significant adverse environmental and social impacts that are diverse, irreversible and/or unprecedented, and may affect an area broader than the site. Require an Environmental and Social Impact Assessment (ESIA).[34]

  Category B: Potential environmental and social impacts are less adverse than Category A. Impacts are few in number, site-specific, reversible and have readily available mitigation measures. Do not automatically require an ESIA if members can obtain the same information through other means (e.g. project-related reports, technical documents, and information collected during discussions with applicants).

  Category C: Minimal or no potentially adverse environmental and social impacts.

- Environmental and Social Review: Project finance projects should be benchmarked against the IFC Performance Standards.[35] Non-project finance projects should be benchmarked against the World Bank Safeguard Policies of the IFC Performance Standards. All projects should be reviewed against the World Bank Group EHS Guidelines.[36] Absent any applicable EHS Guidelines, projects should be reviewed against relevant internationally recognized sector specific standards. Projects should also comply with host country standards.

- Evaluation, Decision and Monitoring: If official support is going to be provided, members should decide whether conditions precedent should be established before commitment of official support.

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[31] The OECD defines an export credit as: "Government financial support, direct financing, guarantees, insurance or interest rate support provided to foreign buyers to assist in the financing of the purchase of goods from national exporters". For more information, see: https://stats.oecd.org/glossary/detail.asp?ID=909.

[32] OECD Members include nearly all first-world countries. A complete list is available **here**.

[33] Special Drawing Right, an IMF foreign exchange reserve asset.

[34] An ESIA will generally address the issues set out in the standards applied to the project (i.e., the IFC Performance Standards, the EHS Guidelines or, in non-project finance projects, the World Bank Safeguard Policies.)

[35] IFC Standards are described in Section V.

[36] World Bank standards are described in Section VII.

These may include: mitigation measures, corrective actions, and monitoring activities. In limited or non-recourse Category A projects, members should require regular reports to ensure all relevant environmental and social impacts are addressed.

- Exchange and Disclosure Information: members should share information with each other and other involved financial institutions to promote common review of projects. Members involved in Category A projects should publicly disclose project information and details of relevant information (e.g., a summary of the ESIA).
- Reporting and Monitoring of the Recommendation: Members should ensure through appropriate means and mechanisms compliance with the Recommendation.

Enforcement Mechanisms

Although the Recommendation states that members should ensure compliance with the Recommendation, an OECD Recommendation is legally non-binding. However, members agreed to respond to a survey on their implementation of the Recommendation.[37] Adopting a Recommendation may also entail important political commitments for member governments.

VII. World Bank Environmental and Social Framework

Overview

Established in 1944 as the International Bank for Reconstruction and Development, the World Bank is now made up of 189 member countries and has a mission to end extreme poverty and promote shared prosperity. The World Bank's environmental and social standards were established over 20 years ago and have been updated on a regular basis. The current framework is outlined in the World Bank's Environmental and Social Safeguards Policies. However, in 2016 the World Bank's Executive Directors approved a new "Environmental and Social Framework" which will be in effect starting in 2018. The current safeguards will run parallel to the new framework to govern projects approved before the effectiveness dates of the new framework. Both standards are described below.

Environmental and Social Standards

I. Environmental and Social Safeguards Policies (currently in effect)

Approach: There are currently 11 safeguard policies: Environmental Assessment;[38] Environmental Action Plans; Natural Habitats; Pest Management; Forestry, Safety of Dams; Physical Cultural Resources; Involuntary Resettlement; Indigenous Peoples; projects in disputed areas; and projects on international waterways.

II. Environmental and Social Framework (starting 2018)

Scope: This framework outlines the requirements all borrowers will have to meet when engaging in projects that are supported by the World Bank through investment project financing.

Approach: The framework established 10 environmental and social standards that a borrower should meet through the project lifecycle:

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[37] This is available at: http://www.oecd.org/tad/xcred/environment-surveys-and-responses.htm

[38] This process, similar to that of EPIII, categorizes projects into Category A (being the project that is likely to have significant adverse environmental impacts), B and C projects and Financial Intermediary (FI) projects. FI projects involve projects where World Bank funds are used through a financial intermediary. For more information, see: http://www.worldbank.org/en/programs/environmental-and-social-policies-for-projects/brief/environmental-and-social-safeguards-policies

- Assessment and Management of Environmental and Social Risks and Impacts: Requires borrowers to evaluate, manage and monitor environmental and social risks of a project, use nationals institutions and laws to develop projects.
- Labor and Working Conditions: Requires borrowers to implement written labor management procedures, protecting the workforce, establishing a grievance mechanism, and enforcing occupational health and safety guidelines.
- Resource Efficiency and Pollution Prevention Management: Requires borrowers to implement measures to ensure efficient energy use and raw material use and to manage air pollution, hazardous and nonhazardous waste and pesticides.
- Community Health and Safety: Requires borrowers to ensure infrastructure and equipment safety, road traffic safety, safety of services, avoid community exposure to health issues, avoid impact on ecosystems, avoid or minimize community exposure to hazardous materials, ensure emergency preparedness, and ensure the safety of dams.
- Land Acquisition, Restrictions on Land Use and Involuntary Resettlement: Requires borrowers to consider alternative project designs, offer compensation and benefits for affected persons, engage with the community, establish a grievance mechanism, collaborate with responsible national agencies, mitigate negative impacts of displacement, and establish a resettlement plan and framework.
- Biodiversity Conservation and Sustainable Management of Living Natural Resources.
- Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities: Requires borrowers to proactively engage with local communities; avoid adverse impacts; in circumstances of particular vulnerability, adopt a process requiring free, prior and informed consent of affected communities; and implement a grievance mechanism.
- Cultural Heritage: Requires stakeholder consultation and identification of cultural heritage and compliance with local, national, regional and international cultural heritage legislation.
- Financial Intermediaries: Requires that any financial intermediaries that receive financial support from the World Bank to maintain an ESMS system, establish an environmental and social policy and implement procedures that reflect this policy. The financial intermediary will also have to ensure organizational capacity for implementing the ESMS. They must also monitor environmental and social performance and report to the World Bank when appropriate.
- Stakeholder Engagement and Information Disclosure: Requires engagement with stakeholders during project preparation (establishing a stakeholder engagement plan, information disclosure and, meaningful consultation) and project implementation, and establishing a grievance mechanism.

Enforcement Mechanisms

- Although the new Environmental and Social Framework does not describe any specific penalties for violations of the standards described, the Framework does require that a borrower establish an Environment and Social Management Plan (ESMP) which requires monitoring and enforcement provisions in relation to any adverse environmental and social impacts which may occur throughout the project life cycle.

Use

- The revised Environmental and Social Framework has drawn some criticism for its lack of specific policies addressing human rights. In particular, Human Rights Watch, a non-governmental organization focusing on human rights research and advocacy, criticized the World Bank for refusing to acknowledge its human rights obligations.[39]

[39] For more information, see: https://www.hrw.org/news/2016/07/21/world-bank-human-rights-all-absent-new-policy

Appendix A

E&S Standards – Summary Comparison Table

		ADB	EBRD	EP III	IDB	IFC	OECD	World Bank[41]
Environmental and Social Standards/Safeguards[40]	Date Standards first Established	**Mid 1990s - early 2000s**	**1991**	**2003**	**2006**	**1998**	**1990s**	**1990s**
	Effective Date of Current Standard	2009	2014	2014	2006/2007	2012	2016	2016 (new one effective 2018)
	Assessment of Environmental and Social Risks	✓	✓	✓	✓	✓	✓	✓
	Biodiversity and natural habitats		✓	✓	✓	✓	✓	✓
	Community Health		✓	✓		✓	✓	✓
	Cultural Heritage		✓	✓		✓	✓	✓
	Disaster Management			✓	✓			
	Gender				✓			
	Indigenous People	✓	✓	✓	✓	✓	✓	✓
	Labor and Working Conditions		✓	✓		✓	✓	✓
	Pollution		✓	✓	✓	✓	✓	✓
	Resettlement	✓	✓	✓	✓	✓	✓	✓
Other Requirements	Categorization of Projects	✓	✓	✓	✓	✓	✓	✓
	Complaint mechanism	✓	✓		✓	✓		
	Penalties for violations/Disincentives					✓	✓	✓
	Financial Intermediaries Standards	✓	✓					✓
	Incorporate World Bank EHS Standards			✓		✓	✓	✓ (by definition)
	Incorporate IFC Performance Standards		Not explicitly	✓ Explicitly	✓		✓	✓
	Monitor Compliance	✓	✓	✓	✓	✓	✓	✓
	Requires Covenants Terms in Loan Documentation			✓	No information found	✓	No information found	No information found

[40] For the purpose of this table, to be considered as a safeguard the item must be the heading of an individual policy or safeguard.

[41] For Environmental and Social Framework (starting 2018).

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your regular Davis Polk contact.[42]

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[42] The authors gratefully acknowledge the assistance of summer associate Cristina Harshman in preparing this memorandum.