

ALLEN & OVERY

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Milieu Due Diligence

bij internationaal ondernemen: Implementatie



Outline of presentation

- Which standards are most often used to create a framework for assessment and management of environmental and social risks of projects?



- How is appropriate and continued due diligence regarding environmental and social risks of projects secured?
 - Financial institutions (*'tucht van de banken'*)
 - Contract language

Most often used standards

- UN Guiding Principles on Business and Human Rights (June 2011)
 - Business enterprises should carry out human rights due diligence
- OECD Common Approaches for Environment and Export Credits (June 2012)
 - OECD Members should undertake appropriate environmental and social reviews and assessments for projects and existing operations respectively, as part of their due diligence relating to applications for officially supported export credits
- Equator Principles (version III, June 2013)
- International Finance Corporation Performance Standards (January 2012)

Equator Principles

- Voluntary principles that were first adopted in 2003 by 9 commercial banks (leaders being ABN Amro, Barclays, Citi and West LB) and now adopted by 79 institutions globally: the Equator Principles Financial Institutions (EPFIs)
- Provide a baseline framework for banks to assess and manage environmental and social risks of projects to which they are providing finance
- EPFIs
“will not provide Project Finance or Project-Related Corporate Loans to Projects where the client will not, or is unable to, comply with the Equator Principles”

EP 2: Environmental and Social Assessment

– [...] the EPFI will require the client to conduct an assessment process to address, to the EPFI's satisfaction, the relevant environmental and social risks and impacts of the proposed Project. The Assessment Documentation should propose measures to minimise, mitigate, and offset adverse impacts in a manner relevant and appropriate to the nature and scale of the proposed Project.

The Assessment Documentation will be an adequate, accurate and objective evaluation and presentation of the environmental and social risks and impacts, whether prepared by the client, consultants or external experts. For Category A, and as appropriate, Category B Projects, the Assessment Documentation includes an Environmental and Social Impact Assessment (ESIA).

[...]

IFC Performance Standards

- The International Finance Corporation
“will only finance investment activities that are expected to meet the requirements of the Performance Standards [PS] within a reasonable period of time. Persistent delays in meeting these requirements can lead to loss of financial support from IFC”
- PS are globally recognized as a benchmark for environmental and social risk management in the private sector

IFC Performance Standards (II)

- PS 1: Assessment and Management of Environmental and Social Risks and Impacts
 - The client, in coordination with other responsible government agencies and third parties as appropriate, will conduct a process of environmental and social assessment, and establish and maintain an Environmental and Social Management System (ESMS) appropriate to the nature and scale of the project and commensurate with the level of its environmental and social risks and impacts
- PS 3: Resource Efficiency and Pollution Prevention
 - During the project life-cycle, the client will consider ambient conditions and apply technically and financially feasible resource efficiency and pollution prevention principles [....]

Impact on loan documentation: Conditions Precedent

- Delivery of required assessment documentation, including Environmental and Social Impact Assessment (ESIA), Environmental and Social Management Plan (ESMP), and Equator Principles Action Plan that have been subject to independent review
- Demonstrate effective stakeholder engagement that has been subject to independent review
- Informed consultation and participation of affected communities
- Disclosure of assessment documentation during stakeholder engagement
- Establishment of grievance mechanism

Impact on loan documentation: Warranties & Covenants

- Warranties to include:
 - To comply with applicable environmental and social laws, regulations and permits in all material respects
 - To comply with ESMP and EP Action Plan during construction and operation of Project
- Covenants to include:
 - Provide periodic verified reports to Lenders
 - Documenting compliance with the ESMP and EP Action Plan
 - Representation of compliance with relevant environmental and social laws
 - Decommission project in accordance with agreed decommissioning plan (where applicable and appropriate)
 - Project disclosure obligations, including summary of ESIA to be made available online

For more information:

- www.equator-principles.com

- List of signatories and EPFI reporting information
- Details of the EPs along with guidance notes (to be updated for EP-III specific changes) and other implementation advice.

- www.ifc.org

- Information about the IFC Performance Standards
- Details of IFC project assessments, complaints made, dd manuals

- www.oecd.org

- Information about the OECD Common Approaches for Environment and Export Credit
- Reports from ECAs on implementation and requirements

Questions?

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