



European Bank
for Reconstruction and Development

ENVIRONMENTAL AND SOCIAL PROCEDURES

APRIL 2010

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ABBREVIATIONS

AESR	Annual Environmental and Social Report
CRM	Concept Review Memorandum
EBRD (the Bank)	European Bank for Reconstruction and Development
EIA	Environmental Impact Assessment
EMD	Environmental Management Database
ESAG	Environmental and Social Advisory Group
ESAP	Environmental and Social Action Plan
ESD	Environment and Sustainability Department
ESDMT	Environment and Sustainability Department Management Team
ESIA	Environmental and Social Impact Assessment
ESMP	Environmental and Social Monitoring Plan
ESP	Environmental and Social Policy
ESS	Environmental and Social Summary
EU	European Union
EvD	Evaluation Department
ExCom	Executive Committee
FI	Financial Intermediary
FRM	Final Review Memorandum
IESE	Initial Environmental and Social Examination
NGO	Non-Governmental Organisation
OAU	Operations Administration Unit
OGC	Office of the General Counsel
OL	Operation Leader
OPER	Operation Performance Evaluation Report
OpsCom	Operations Committee
PMM	Project Monitoring Module
PR	Performance Requirement
PSD	Project Summary Document
RO	Resident Office
SIA	Social Impact Assessment
TC	Technical Cooperation
XMR	Expanded Monitoring Report

1. INTRODUCTION

The EBRD's Board of Directors approved the Bank's revised Environmental and Social Policy (ESP) on 12 May 2008. The Policy establishes the broad framework which governs how projects are appraised and monitored by the Bank. In addition, ten Performance Requirements (PRs) have been developed which set out the requirements and standards the EBRD requires of its clients and projects. Along with the EBRD's Public Information Policy (2008) and Independent Recourse Mechanism, the ESP is a key reflection of the Bank's commitment to the principles of environmentally sound and sustainable development and good corporate citizenship.

The Environmental and Social Procedures (herein referred to as the "Procedures") outline the process by which Bank staff process and monitor projects in accordance with the overall ESP framework. The Procedures apply to the full range of the Bank's activities, including direct investment operations, Financial Intermediary (FI) operations, Technical Cooperation (TC) projects, and projects financed through Special Funds.

All potential projects proceeding to the initial stage of approval (currently termed Concept Review for investment operations and TC Review Committee review for technical assistance projects) after 12 November 2008 will be governed by the ESP and these Procedures. All earlier projects under consideration and approved projects will continue to be governed by the EBRD's 1996 or 2003 Environmental Policy and Procedures, as applicable at the time of project approval by the Board of Directors (or the TC Review Committee as the case may be).

The Procedures present a consistent, risk-based approach to appraising environmental and social risks and opportunities in proportion to their significance. The Procedures require a diligent documentation of decision-making at key stages and include quality control and oversight functions.

The Procedures need to be employed in conjunction with the ESP and its PRs, as well as other relevant and appropriate documents referred to therein such as, *inter alia*, EC Directives, international conventions, national law, and other documents such as sectoral guidelines, tools and handbooks. The Bank is committed to the principles of stakeholder engagement and accountability, and staff will identify information disclosure and consultation requirements as appropriate, in accordance with PR 10.

These Procedures are to be followed by Bank staff, and outline the different roles and responsibilities of the EBRD's Banking Vice-Presidency, Office of the General Counsel (OGC), the Bank's Environment and Sustainability Department (ESD), and other departments involved in the environmental and social appraisal and monitoring process. Designated staff will work with prospective clients to help them structure their projects so as to meet the requirements and outcomes expected by the Bank in a reasonable timeframe. This will involve reviewing existing environmental and social information, identifying information gaps and advising on any additional studies needed to address them. The actions and commitments the clients need to ensure that their respective projects accord with the ESP and PRs will be captured in an action or management plan and in legal documentation as appropriate. Further guidance on specific roles and responsibilities at different stages of the project approval cycle and during implementation is provided later in this document.

The Procedures outline a duly diligent approach consistent with sound banking and the ESP and PRs. The range of projects that the EBRD finances requires an approach that is tailored, adaptable and client-oriented. For example, due diligence for small, over-the-counter investments in listed banks may be limited to a review of publicly available information,

whereas complex infrastructure and industrial projects would require comprehensive environmental and social impact assessments and auditing. ESD staff should therefore exercise their professional judgement to help clients and their projects meet the ESP and PRs in a reasonable timeframe.

The nature of, and rationale for, any deviations from the Procedures need to be documented and approval sought from the ESD Management Team (ESDMT). Project-specific circumstances that may necessitate requesting the Board to approve a derogation from the ESP need to be identified and reported to the Operations Committee (OpsCom) in an appropriate and timely manner, through the ESDMT.

The EBRD may update these procedures from time to time to take account of experience gained and lessons learned during implementation. Updated versions of the Procedures will be released on the Bank's website.

2. ENVIRONMENTAL AND SOCIAL PROCEDURES

2.1 Overview

Although the processes of due diligence, project approval and implementation are continuous in nature, a number of discrete milestones and stages can be recognised (see ESD Process Flow Chart overleaf):

- preliminary appraisal
- project categorisation (at Concept Review)
- determining due diligence requirements (at Concept Review)
- project appraisal (due diligence)¹
- characterisation of risks and opportunities (at Final Review)
- risk management (at Final Review)
- Board approval
- final negotiations and signing
- effectiveness, implementation and monitoring
- project completion/closure.

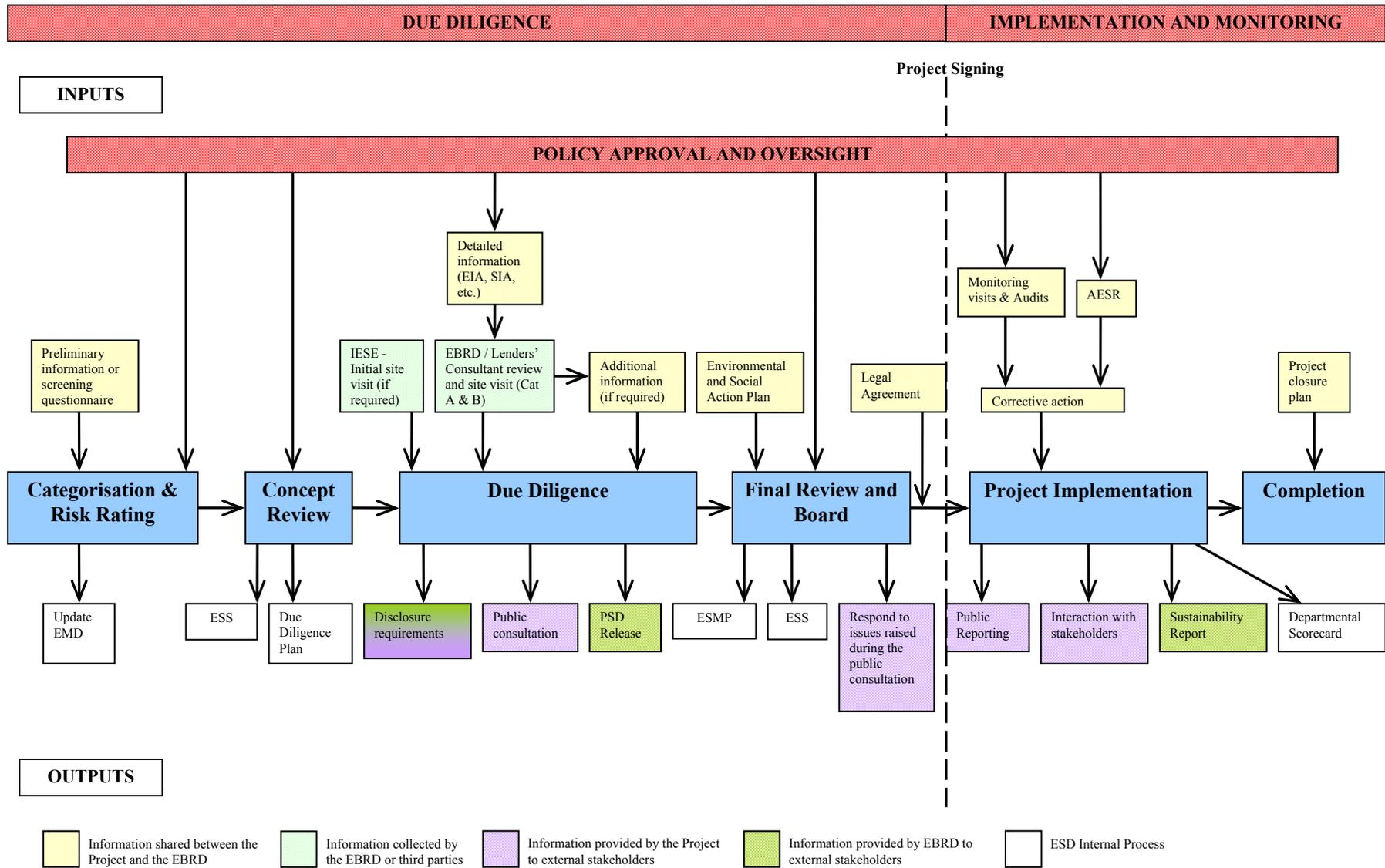
The following types of project can be recognized amongst the EBRD's portfolio:

- **Direct financing**
 - The categorisation and further appraisal of direct operations is considered in Section 3.
- **Intermediated financing**
 - In accordance with section 24 of the ESP, projects which involve intermediated financing through banks or other financial institutions are categorised as "FI". Refer to section 4 for the appraisal and implementation requirements relating to FI projects.
- **Financing frameworks**
 - Some Bank operations involve seeking Board approval for a financing framework for future financing of a number of projects, subject to specific criteria and conditions. The environmental and social appraisal of such frameworks is outlined in section 5.

¹ The Banking process may require a Structure Review to be undertaken for some projects between Concept and Final Review.

- ***Technical Cooperation funds***
 - TC projects must comply with the ESP. Please refer to section 6 regarding the appraisal of TC projects. Projects financed by these funds must comply with the ESP, although there may be additional donor requirements related to environmental and social matters. The approval regime governing such funds will be dealt with on a case-by-case basis.
- ***Special Funds***
 - The EBRD administers a number of Special Funds. Investment projects co-financed with Special Funds resources must comply with the ESP and will be subject to the same ESP procedures as the investment project which is being co-financed or, in the case of technical assistance projects, will be subject to the procedures set out in section 6.

ESD PROCESS FLOW CHART



A summary of key institutional responsibilities during project appraisal

Client

The client's responsibility is to provide the information needed by the Bank to carry out its due diligence and project approval process, and to facilitate any stakeholder engagement activities required (such as disclosure of defined project information in accordance with PRs 1 and 10). The client is also responsible for structuring projects to meet the Bank's requirements. The client may be required to commission appropriate environmental and social studies and conduct meaningful public consultation satisfactory to the Bank. The client must also allow ESD specialists or designated persons, such as independent consultants, access to project facilities and records, during both project appraisal and implementation. The client is expected to cover the costs of project appraisal and monitoring activities.

Operation Team

The Operation Team, led by an Operation Leader (OL), has the overall responsibility, on behalf of the Bank, for a project, including the environmental and social aspects of the project. This includes:

- establishing communication channels between the client and ESD;
- relaying the Bank's environmental and social requirements to the client;
- obtaining adequate environmental and social information in sufficient time for the material to be reviewed by ESD prior to key meetings (e.g. OpsCom, Board of Directors);
- incorporating the findings of the environmental and social investigations into the project's financial and economic analysis where appropriate, prior to each stage of the Bank's decision-making process.

The OL, supported by ESD, has responsibility for structuring Bank-financed projects to meet the PRs. It is the responsibility of the OL to agree with ESD the wording of any environmental and social sections in documentation submitted to OpsCom or the Board of Directors, in Project Summary Documents (PSDs) or in monitoring memoranda. It is also the responsibility of the OL, together with OGC, to ensure that ESD agreement is obtained for project specific environmental and social requirements in legal agreements, and to assist ESD in monitoring their implementation during the lifetime of the project.

Environment and Sustainability Department

The key responsibilities of ESD are:

- the appraisal of each potential project (both investment and TC projects) including identifying the environmental and social due diligence required for each project and the relevant PRs;
- assisting Banking teams and clients in the structuring of environmental and social due diligence including, for example, the preparation of Terms of Reference for Environmental and Social Impact Assessments (ESIAs), audits and stakeholder engagement programmes;
- drafting Environmental and Social Summaries (ESSs);
- agreeing Environmental and Social Action Plans (ESAPs) with clients;
- evaluating environmental and social due diligence information provided to the Bank and discussing necessary actions with the Operation (project) Team and the client;
- agreeing with the Office of the General Counsel and the OL the environmental and social provisions to be included in the legal documentation;
- agreeing with the OL on the environmental and social sections of the Board document;
- providing environmental and social input to the Project Summary Document (PSD) and updates, as appropriate;
- monitoring the environmental and social performance on the project during implementation.

Operations Committee

OpsCom determines through Concept, Structure and Final Reviews whether an individual project is financially sound and fits the Bank's mandate, policies and strategies, and sets conditions to its approval as necessary. This role includes determining whether or not the relevant environmental and social issues associated with a project are clearly understood and properly dealt with within the project structure.

Office of the General Counsel

OGC ensures that the Bank's environmental and social requirements, which have been agreed with the client, have been incorporated into the project's legal documentation in agreement with ESD. To the

extent necessary, OGC also advises on the interpretation of the applicable regulatory framework for the project in the jurisdiction where the project is located. (In these procedures, wherever there is a reference to the OGC lawyer or counsel, such reference will be read to refer to the external legal counsel in the case of projects that are in OGC Work Mode D.)

Executive Committee

Controversial or complex projects with material Bank policy issues associated with them may be discussed by ExCom. Upon referral by OpsCom, ExCom also considers derogations to the ESP. In addition, Excom receives notification of material accidents or incidents associated with proposed or approved projects. Any proposed material changes to these Procedures will be submitted to the Executive Committee (ExCom) for discussion and approval.

Board of Directors

A summary of the results of environmental and social due diligence on proposed projects, applicable project requirements and the results of stakeholder engagement are integrated into the Board document and the Board of Directors will take this information into account when considering a project. The Board also approves revisions to the Bank's Environmental and Social Policy. A summary of material changes to the Procedures will be reported to the Board.

3. APPRAISAL OF DIRECT OPERATIONS

3.1 Introduction

The EBRD finances projects. The term 'project' is defined in the ESP as "the business activity for which EBRD financing is sought by the client regardless of the type of EBRD operation". All projects undergo environmental and social appraisal which must be duly diligent and proportionate to the potential likelihood and significance of risks and issues. The ESP establishes three key elements to be considered:

- the environmental and social impacts and issues associated with the project and its area of influence;
- the capacity and commitment of the client to address these satisfactorily in line with EBRD requirements;
- the role of third parties in achieving compliance with the ESP.

Careful planning of due diligence, and 'scoping' of potential issues, impacts and opportunities are important pre-requisites to helping clients progress their projects and receive the investment they seek in a timely and efficient manner. Thorough scoping of issues and impacts early on helps prevent problems later in the due diligence process which may cause costly delays or frustration to various stakeholders.

3.2 Preliminary appraisal prior to Concept Review

Prior to the Bank formally accepting a project for consideration, it will have exploratory discussions with potential clients.

- ⇒ *During those discussions, bankers should check the project against the Bank's exclusion list, in discussion with ESD specialists if necessary.*
- ⇒ *A member of the ESDMT should be informed of any initial contact between ESD specialists, bankers and clients so that provisional assignment to an appropriate environmental and/or social specialist can take place.*
- ⇒ *Prior to Concept Review the Operation Team will inform the client of the Bank's environmental, social and stakeholder engagement requirements pursuant to the*

PRs. They will also make every effort to collect, to the extent possible, preliminary environmental and social information such as the following:

- *the location of the project and proximity to potential protected and designated areas and/or critical habitats;*
- *historical and current land uses associated with the site;*
- *a description of any construction activities or physical modifications involved in the project, whether ongoing or planned;*
- *whether land acquisition, resettlement and/or economic displacement is likely to take place;*
- *the characteristics of the local population and if there are likely to be vulnerable groups;*
- *whether there are significant environmental and/or social issues of concern;*
- *who the main project stakeholders are (particularly project affected parties);*
- *any corporate policy statements or procedures related to environmental and/or social performance or sustainable development;*
- *environmental and social reputation or 'track record' of the client;*
- *for existing clients seeking additional finance, a review of the performance of existing projects.*

The aim is to enable the Bank, at Concept Review (see next section), to define the nature, scope, expected timeframe and cost of the environmental and social due diligence for the project, as well as any major environmental or social issues which could delay and/or prevent the project from proceeding further. Bankers are strongly advised to seek the advice of ESD specialists during these early discussions with the client, involve ESD specialists in discussions where appropriate, and agree with them the environmental and social text to be included in the project Concept Review Memorandum (CRM).

The client may also offer the opportunity to visit the project at this early stage. The OL and ESD will need to consider whether this is an appropriate time to visit, taking into account the financial² and opportunity costs.

3.3 Concept Review

Concept Review is an early review of a proposed project by EBRD management, before significant time is spent on it. The main purpose of Concept Review is to confirm that the proposed project broadly fits the Bank's strategies/policies, to determine whether an operation appears viable enough to invest Bank staff time and resources in, to determine and authorise initial resource requirements, and to discuss options for enhancing the operation's contribution to Bank objectives.

Environmental and social appraisal for Concept Review involves the following tasks:

- assignment of ESD staff;
- categorisation of the project (A/B/C/FI);
- identifying relevant PRs, applicable environmental and social standards and other appropriate requirements;
- defining the Bank's environmental and social information requirements in order to identify and characterise potential environmental and social issues, impacts and opportunities associated with the project, and a proposed Environmental and Social Due Diligence Plan (ESDDP) for the project;

² Agreement must be obtained that the client/Banking Team will fund ESD travel prior to a Mandate Letter being signed.

- defining the Bank’s requirements for stakeholder engagement (information disclosure and public consultation);
- a site visit may also be required at this stage.

This information is documented for each project within an Environmental and Social Summary (ESS) which is subject to review and revision throughout the life of the project. The ESS summarises all key issues and actions at each stage of the project approval process and documents the rationale for decisions (e.g. project categorisation, etc.).

Each project submitted to Concept Review requires an ESS. The ESS is prepared by ESD specialists and submitted directly to the OpsCom Secretariat.

3.3.1 ESD resource allocation

To provide input for the Concept Review, the ESD team assigned to projects will be determined by the ESDMT, reflecting the nature of the project and the significance or sensitivity of associated environmental and social issues and risks.

- The ***lead specialist*** has primary responsibility for (i) drafting, managing and storing all relevant environmental and social information (including the ESS) in the *Environmental Management Database* (EMD) and *ProjectLink*; (ii) documenting the rationale for all key decisions taken in EMD and (iii) managing the relationship with the Banking Team, the client and any other relevant parties such as co-financiers.
- The ***alternate specialist*** will support the lead specialist and act in the absence of the lead specialist.
- ***Reviewers*** are specialists who, through their specific experience and sector expertise, have the competency to review project documentation and assure that it complies with the Bank’s requirements.
- A ***social specialist*** will be assigned to the ESD team for each Project. The social specialist will assess whether material social issues are likely to be associated with the project. Depending on the nature of the social issues, the social specialist could act as lead specialist, alternate specialist, additional specialist, or in a review function.
- For particularly complex projects with high associated environmental and/or social risks, the ESDMT may also assign an internal ESD ***Project Peer Group***, consisting of a wider group of experienced ESD specialists, to advise the specialists in appraisal or for oversight and approval purposes.
- The ***ESDMT*** will review all ESS and OpsCom briefings prior to submission, either ‘off-line’ or during a pre-OpsCom meeting, and a member of the ESDMT will ‘sign off’ the final OpsCom briefing note.

3.3.2 Project categorisation

In accordance with sections 19 to 24 and Appendix 1 of the ESP, the ESD specialist(s) will categorise the project as A, B, C or FI. The rationale for this will be documented in the ESS.

ESD specialists must consider a number of issues so as to assign the appropriate categorisation for a project. These could include, for example:

- What is the nature of the project, i.e. the business activity in respect of which EBRD financing is sought? Is the project defined to include other sources of funds (e.g. the client’s contribution of project costs) or is it limited to the use of Bank funds? The description/scope of the project as described in the Concept Review Memorandum shall guide the categorisation of the project.

- Does the project being considered involve the construction of new facilities, a modification to existing production processes or a significant expansion of production capacity?
- Will the project therefore result in future environmental/social impacts?
- Are those impacts potentially significant and/or adverse and can they be readily identified and assessed?
- Does the project meet any of the indicative criteria listed in Appendix 1 of the ESP?
- Is the Bank providing funds to an existing industrial facility with current or past production activities?
- Is the Bank exposed to potentially significant financial and/or reputational risks and liabilities by lending to, or investing in, those facilities?
- Does the security package the Bank is considering include assets with associated environmental and social risks?

3.3.3 Initial environmental and social examination

There may be projects where, at the time of Concept Review, the scope of the project is not well enough defined or there is insufficient information to allow for categorisation. In such cases ESD will require that an Initial Environmental and Social Examination (IESE) be undertaken promptly after Concept Review, and temporarily categorise the project as “IESE”. An IESE may involve a site visit by ESD specialist(s) to see the project site and the surrounding areas, together with a review of existing environmental and social information in order to gain a better understanding of the environmental and social issues associated with a project and therefore decide on the most appropriate categorisation. Following the completion of the IESE, the ESD specialist will amend the ESS accordingly, categorise the project as A, B or C and circulate to the OL and OpsCom.

3.3.4 Defining the scope of due diligence and the Environmental and Social Due Diligence Plan

For each new project, environmental and social due diligence needs to be planned, documented and communicated to bankers, the client and any other appropriate parties. To this end, ESD will prepare an Environmental and Social Due Diligence Plan (ESDDP). This plan should include milestones and timing requirements. Issues to consider include:

- Which PRs are relevant for this project?
- How will compliance with them be assessed?
- Is the definition/scope of the project accurately described? (e.g. how many sites/facilities are included in the project?)
- Is a corporate audit required (see section 11 of PR 1)?
- What is the project’s area of influence?
- Are there transboundary, third party or supply chain issues?
- What due diligence investigations are required (e.g. Environmental Impact Assessment (EIA), Social Impact Assessment (SIA), audit, etc.)?
- What kind of stakeholder engagement (identification of stakeholders, disclosure of information and consultation) is likely to be required?
- How satisfactory are the client’s policies and capabilities with respect to environmental and social issues and compliance with the PRs?
- What is the timeframe for the Bank’s due diligence? Is it consistent with the client’s view of when they would need the Bank’s investment?
- Is a site visit by an environmental or social specialist needed (for due diligence, and/or to observe stakeholder engagement meetings)?

- How much ESD staff time is likely to be required in due diligence or to assist the client?
- Will consultants or other third party services be required?
- What will be the likely cost of the environmental and social due diligence?

- ⇒ *If no site visits or client meetings are planned at this stage, ESD specialists should send an environmental and social due diligence questionnaire (where appropriate) to the client to facilitate collection of due diligence information.*
- ⇒ *ESD specialists should refer to the “Environmental and Social Due Diligence Plan” template to assist them in scoping out a draft ESDDP.*
- ⇒ *ESD specialists should arrange a conference call or meeting to report and explain these issues to the Banking Team and confirm by e-mail the agreed outcome of this.*

3.3.5 Stakeholder engagement

- ⇒ *The ESD specialist(s) should review the results of the client’s (preliminary) stakeholder identification exercise and engagement plan, if any, and advise on its adequacy.*

3.3.6 Completing the Environmental and Social Summary

The ESD specialist will document the above information for each project in the ESS. The ESS is the key document summarising ESD’s analysis of a project. It must include information on the key potential risks, issues and opportunities, applicable PRs, the nature of due diligence required and estimated timeframe for completing due diligence. Detailed guidance for ESD specialists on preparing ESS documents will be provided by the ESDMT on an on-going basis.

3.3.7 Environmental and social briefing for the Operations Committee

ESD is required to highlight to OpsCom material issues associated with projects through a briefing note submitted prior to OpsCom meetings.

- ⇒ *The ESD specialists should agree on a succinct summary paragraph on the environmental and social due diligence status of the project as at the date of the of the Concept Review by OpsCom and highlight any specific issues or risks which OpsCom should consider and/or be made aware of.*

The briefing note should state the categorisation of the project (or advise that an IESE is required), the nature of the environmental and social due diligence required, key issues, risks and opportunities apparent at this stage of the project. It should state whether ESD staff wish to attend the OpsCom meeting and raise an issue.

- ⇒ *The lead specialist should e-mail a draft of the project briefing to the Banking Team and, if time permits, discuss its content with them prior to submission.*

3.3.8 Storage of information

The lead specialist is primarily responsible for completing project entries and storing environmental and social information within the appropriate Bank information systems such as *ProjectLink* and ESD's *Environmental Management Database*.

3.4 The due diligence phase

3.4.1 Environmental and Social Due Diligence Plan

On passing Concept Review, the Operation Team will need to inform the client of the Bank's requirements for specific information, stakeholder engagement, and due diligence and the applicable PRs for the project in writing. If the project has not yet been categorised, the IESE will be undertaken as soon as possible. The draft ESDDP will need to be discussed, finalised and agreed with the client to ensure a smooth and efficient due diligence phase. The timeframe for completion of due diligence must be compatible with that of the proposed date (agreed between the Bank and the client) for when the Board will consider the project, and compatible with the principles of good due diligence (e.g. timeframes should be realistic).

- ⇒ *ESD's Project Information Officer will diarise appropriate milestones from the due diligence plan in EMD.*
- ⇒ *Lead specialists will ensure that the Operation Team is aware of all deadlines and milestones leading to Final Review and Board consideration (e.g. disclosure of information vis à vis 60/120 day minimum consultation period, notification to transboundary states, etc.).*
- ⇒ *The OL will ensure that all relevant parties (project team members, OGC lawyer and other support units, client and consultants) are aware of these deadlines and milestones.*

3.4.2 Mandate Letter

The Mandate Letter is a key document which establishes an agreed framework for a potential project between the Bank and a client. Bankers will include provisions in the Mandate Letter for the client to comply with the ESP and PRs and to reimburse project appraisal costs.

3.4.3 Reviewing existing information

The Operation Team and/or ESD specialists should determine what information currently exists and request from the client in writing all materially relevant environmental and social information related to the project. This might include, *inter alia*, EIAs, SIAs, risk assessments, engineering reports and designs, soil investigations, information on air and water quality modelling, monitoring, resettlement plans, etc. All clients will need to provide information on stakeholder identification and the proposed stakeholder engagement plan for the project.

In countries that have ratified the Aarhus convention and where a local EIA, for example, is required (even if the project is a category B project), ESD specialists will also need to verify that any siting or land use decision for projects have had public consultation prior to the final location decision having been made (i.e. in accordance with the Aarhus Convention).

- ⇒ *In accordance with the relevant PRs, the adequacy of this information should be assessed and any inadequacies (from an ESP or PR perspective) in terms of: (i) quality and scope of baseline data; (ii) methodologies of impact assessment;*

(iii) documentation of the scope of assessment with regard to Area of Influence;
(iv) consultations on siting decisions, where relevant.

- ⇒ *When the data were collected, over what period and when the assessment was carried out are also essential factors in considering how ‘contemporary’ and relevant the studies are.*
- ⇒ *Where an extensive body of information exists, ESD may require additional resources (such as a consultant) to undertake a more formalised gap analysis to help define the need for, and scope of, further studies.*

3.4.4 Site visits

Depending on the nature of the project and the information received from the client, ESD specialists may require a site visit to the project at this stage. This may be in addition to an earlier visit made in the pre-concept phase (see above). Specific objectives should be defined for such visits and communicated to the client so that the necessary preparations and arrangements can be made. The Banking Team may also participate in such visits.

3.4.5 Commissioning further studies

The client should be informed in writing of the need and scope for additional due diligence investigations to be conducted. The client is responsible for ensuring that the due diligence complies with the PRs, in particular PRs 1 and 10, and is satisfactory to the EBRD. ESD’s role is to assist the client with this task, and to clearly communicate the Bank’s expectations in order to avoid misunderstandings and delays. However, it is important that the client maintains a sense of ownership and responsibility for the due diligence process. How this is to be achieved should be considered on a case-by-case basis and in accordance with the due diligence plan for the project.

- ⇒ *ESD specialists should either draft appropriate Terms of Reference for the client’s review or review and comment upon existing ones and, together with the Banking Team, discuss and agree with the client how and when the required work will be undertaken and confirm the necessary financial resources are available.*
- ⇒ *ESD templates exist for environmental impact assessment, social impact assessment, environmental and social auditing, as well as for corporate auditing. These should be tailored to suit individual project circumstances.*

In some cases the project or company may have in-house specialist staff or retained consultants who can conduct the necessary work. In other cases external assistance may be required.

In limited cases where a client (typically in the public sector) lacks adequate financial resources, TC funds could be sought to finance the necessary environmental and social appraisal studies, depending on availability of sources of funding and eligibility criteria in place at the time. If a larger TC package is planned for the project, this should include sufficient funds for environmental and social due diligence.

During due diligence, ESD will also identify and discuss with the client any opportunities to enhance environmental and/or social benefits associated with the project, including the possibility for any TC initiatives to realise such opportunities. If this is the case, the ESD specialist should liaise with ESD’s dedicated Sustainability Initiatives team and Gender Team who can provide technical advice and help with developing TC or other associated projects. In addition to ESD’s due diligence, projects are also screened by the Bank’s Energy Efficiency and Climate Change team for potential energy efficiency opportunities. If the Energy Efficiency and Climate Change team identifies a high potential for such opportunities,

they will work with the client and the OL to arrange for an energy audit to identify priority energy efficiency investments. The Bank's Gender Team can advise on a range of options to support clients wishing to achieve and promote best practices in gender equality in the way they operate

3.4.6 Shaping the deliverables

Ideally, ESD's due diligence and the progression of further studies undertaken by the client or its consultants need to be inter-related such that ESD specialists can, upon review of draft documentation, advise the client/consultants on whether studies are proceeding in the right direction to yield the information that the Bank requires. It should be an iterative process with on-going dialogue between all parties. With regard to ESIA's, the aim is to have a document which adequately addresses all applicable issues in the relevant PRs and the ESDDP and is fit for the purpose of disclosure, forming the basis for meaningful and informed consultation (see 'Stakeholder engagement' below).

3.4.7 Action plans

Environmental and Social Action Plans, Environment and Social Management Systems or other similar terminology define agreed programmes, standards and actions to be carried out or met by the client as a condition of the investment in order to achieve and maintain compliance with the PRs (see sections 14-16 of PR 1). For the large majority of projects, the ESAP is the key tool to address and mitigate any environmental or social issues that have been identified during due diligence, and to ensure that projects meet the PRs. Components of such plans or programmes may include a Biodiversity Action Plan, Emergency Response Plan, Resettlement Action Plan, Livelihood Restoration Framework, Indigenous Peoples' Development Plan and/or other specific plans. Alternatively, these may be stand-alone documents.

If no environmental and social issues or actions are identified, a project will not have an ESAP. In some cases, specific actions will be included as stand-alone covenants in legal documents.

- ⇒ *The ESD specialists should ensure a sufficient level of detail is incorporated into action plans (who does what, when, how and how much and what are the required outcomes/effects) so that they are auditable/verifiable and legally enforceable. OGC or retained lawyers should be consulted in this respect.*
- ⇒ *For Category A projects ESAPs are to be disclosed to affected parties in their entirety. For other projects a summary is disclosed (see PR 10, paragraph 14).*

3.4.8 Legal documentation: Term Sheet

EBRD investments are negotiated between the Operation Team and the client. The main instrument for negotiating non-sovereign projects is the Term Sheet. This is an outline of the proposed project and the principal terms and conditions of the Bank's potential investment. Negotiations of sovereign projects are focused on the draft loan agreement.

Environmental and social requirements should be incorporated early into the draft Term Sheet to avoid delays in financing. If, at the time of negotiations, details of the outcome of the environmental and social appraisal process are still outstanding, generic environmental and social covenants will be incorporated in the Term Sheet. These will alert the client that more specific environmental and social provisions may be required later, depending on the results of the environmental and social due diligence. Compliance with the PRs and with the project's ESAP (if any) will always be required. The Term Sheet will also include standard

monitoring covenants, such as periodic reporting, addressing unforeseen environmental and social issues, reporting on incidents and accidents, or the need for third party monitoring by consultants or other parties. The right of access to the site by Bank staff and the allocation of monitoring costs to clients should also be included in these requirements.

Projects involving significant construction activities may require different clauses for both the construction and operation phases. Phased projects may also require clauses that limit certain future activities or address material changes to the project, which in turn may require additional impact assessments, for example.

It is the responsibility of the OL, working with the ESD specialists to ensure that the Term Sheet and all other legal documents related to projects adequately reflect the requirements resulting from the environmental and social appraisal process, in particular those issues raised in the ESS. Thus an ESD 'sign off' is required on all draft project legal documents.

- ⇒ *Bankers will circulate the draft Term Sheet to ESD staff for review and incorporate ESD comments.*
- ⇒ *The lead specialist will check that the Term Sheet contains the applicable standard environmental and social requirements, e.g.:*
 - *compliance with the PRs;*
 - *implementation of the ESAP;*
 - *annual environmental and social reporting;*
 - *the EBRD's right to carry out environmental and social monitoring site visits;*
 - *allocation of monitoring costs;*
 - *notification by the client of any serious accident/incident.*
- ⇒ *The lead specialist will check that the Term Sheet adequately reflects any additional requirements resulting from the environmental and social appraisal process.*

3.4.9 Disclosure of information

For Category A projects, the ESIA submitted by the client must be reviewed by ESD specialists to determine whether it covers the appropriate range of issues in a sufficient level of detail so as to facilitate meaningful and informed comment(s) from external stakeholders. At least two people in ESD must agree that the documents are ready to begin the consultation process, and in the case of a Social Impact Assessment or where a Resettlement Action Plan or Indigenous Peoples' Development Plan is required, one of the people clearing the documents for release must be the social expert assigned to the project. If the documents are missing information on critical issues, or lack the necessary information for meaningful comments to be made by the public, then the documents will not be accepted by the EBRD and this may affect the validity of the associated consultation process. If material deficiencies in the ESIA package are identified following disclosure, a determination by ESD management will be made on whether the deficiencies require the public disclosure period to be restarted (number of days the document must be in the public domain prior to Board consideration), or if an addendum is required to be released, but the schedule remains the same. An English language translation of the ESIA's Executive Summary will also be reviewed by ESD, to ensure that the summary is comprehensive and contains all major issues relevant to the project, mitigation measures, and other critical information.

- ⇒ *The lead specialist should ensure that the client and the Bank have publicly disclosed the ESIA for the required length of time in accordance with PR10 and the Bank's Public Information Policy.*

3.4.10 Stakeholder engagement

It is the client's responsibility to carry out disclosure of information to stakeholders and undertake meaningful consultation (if required) in accordance with the Stakeholder Engagement Plan agreed for the project in accordance with the ESP and PR 10.

ESD specialists can provide advice, if required, although the client will need to demonstrate that it has sufficient capacity in this respect for, *inter alia*, Category A and potentially controversial projects. In addition, ESD specialists will need to determine whether the Bank needs to conduct its own consultation activities related to the Bank's financing decision.

3.4.11 Structure Review

In the event that a project is required to undergo a formal Structure Review at OpsCom, the ESD lead specialist should review the progress of project environmental and social due diligence and determine whether an updated version of the ESS is required. Structure Review provides an appropriate juncture to evaluate the progress of due diligence against project milestones.

As part of the Structure Review the ESS will be updated if additional environmental information has been reviewed by ESD, or if new issues need to be brought to the attention of OpsCom since Concept Review. Changes in the project which will necessitate changes to the ESS include:

- a change in the project structure or the receipt of information which indicates that the extent or nature of environmental and social due diligence needs to be changed;
- the receipt of information which indicates that the Bank should no longer continue with a project because of material additional risks;
- the receipt of additional environmental and social due diligence information which would need to be reflected in a revised ESS.

3.5 Final Review

At Final Review projects have developed to the extent that they could soon be considered for approval by the Board. OpsCom decides if the project may be submitted to the Board and specifies any outstanding issues that need to be addressed prior to Board submission. Environmental and social due diligence investigations should have been completed well before Final Review, to allow sufficient time for the Bank and the client to consider the results and to formulate and agree any required actions by the time the project is submitted for approval by OpsCom. Any requirements that have not been met by the time of Final Review should be reported to OpsCom. The ESDMT should advise OpsCom as to whether such deficiencies would constitute a derogation to the ESP and/or these Procedures.

3.5.1 Social and environmental inputs to the Project Summary Document

ESD specialists will draft and agree with the Banking Team and client environmental and social inputs to the Bank's Project Summary Document in accordance with the ESD guidance note on PSDs. In particular, all major issues, risks, mitigation measures, derogations or alternative approaches to the ESP requirements must be mentioned in the PSD. The PSD text is not to be written in future tense but is to reflect the current status of the project.

3.5.2 Preparing for Final Review

In preparing for Final Review, ESD's role includes the following:

- Reviewing the environmental and social due diligence information available to the Bank, including studies, information taken from site visits by ESD staff, and the results of any public consultation. ESD staff must be satisfied that all material environmental and social issues associated with the project have been identified and that the status of the project with regard to compliance with the PRs is understood.
- Verifying that proposed mitigation measures and safeguards to address issues arising from the environmental and social due diligence have been structured to ensure compliance with the Bank's PRs. Typically, the client will be required to provide an ESAP satisfactory to the Bank, and commit to its implementation.
- Highlighting opportunities for additional environmental and/or social benefits.
- Identifying environmental monitoring and supervision requirements to be incorporated into the legal documentation.
- Advising OpsCom on whether the project, as structured, complies with the Bank's ESP, PRs and Procedures (identifying any gaps or deficiencies which could require a derogation from the ESP).

3.5.3 Managing risks and opportunities: finalising action plans, legal requirements and monitoring requirements

Some ESAPs may have substantial costs associated with them, and it is important that these costs are taken into account when assessing the overall structure and viability of the project. Therefore, as best practice, the OL should only submit projects to Final Review when an action plan satisfactory to ESD specialists has been agreed between the Bank and the client, and the Bank is satisfied that the client has the necessary resources and commitment to implement such plans. If the action plan(s) have not been finalised or agreed with the client, this should be reported to OpsCom.

3.5.4 Stakeholder engagement

The lead specialist should:

- ⇒ *review results of stakeholder identification, and engagement plan;*
- ⇒ *establish whether the project has met PR 10 and the EBRD's Public Information Policy requirements;*
- ⇒ *assess the adequacy of the Project Grievance Mechanisms (as per relevant PRs);*
- ⇒ *assess the adequacy of planned stakeholder engagement during project implementation.*

3.5.5 Environmental and social monitoring requirements

Due diligence will include an evaluation of the risks to implementation and consider how these can be successfully monitored and managed. Based on this, ESD will agree an appropriate monitoring plan with the client.

- ⇒ *Prior to the Final Review the lead specialist and the client will agree an Environmental and Social Monitoring Plan (ESMP) that is appropriate to the risk and impacts of the project.*

The ESMP can be a stand-alone document or can be incorporated in an ESAP. Whatever the format, actions, responsibilities, resources and schedules must be clearly defined. A monitoring plan will typically include:

- the key performance indicators or baseline parameters which will be monitored to gauge the project's environmental and social impact and performance³;
- annual environmental and social reporting including contents, format, performance indicators, and aspects of the ESAP that require progress reports;
- notification procedures for material incidents, events and accidents;
- an outline schedule for the frequency of ESD monitoring visits and agreement on how they will be funded;
- requirements for monitoring of particularly sensitive issues such as payment of compensation to vulnerable groups, or impacts on endangered species;
- whether there is a need for third party monitoring or auditing (paid for by the client/project) and if so, what the process is for appointing consultants and agreeing Terms of Reference, how often the monitoring/auditing should take place and its scope;
- for some projects, the role of local communities, Non-Governmental Organisations (NGOs) and other stakeholders in monitoring;
- a mechanism for remedying material non-compliances;
- for very large, complex or high profile projects, procedures for an Environmental and Social Advisory Group (ESAG), or appropriate mechanism to achieve independent, external and transparent oversight of project implementation.

The detailed monitoring programme will flow from the issues and impacts identified during due diligence, either in the Environmental and Social Impact Assessment for new projects, or in the audits of existing operations. It will also reflect any significant local community concerns identified during public consultation.

For projects with particularly sensitive social issues, specific monitoring arrangements should be tailored to the particular situation in question and most likely involving external advisors. The details of social monitoring requirements should be derived from any associated studies and plans, such as a Resettlement Action Plan or an Indigenous Peoples' Development Plan.

- ⇒ *The lead specialist should consult an ESD social specialist on monitoring plans for all projects involving significant social issues.*
- ⇒ *The lead specialist should discuss and agree the ESMP with the Reviewer and the ESD monitoring specialist.*
- ⇒ *Key actions from the ESMP must be logged in the EMD project diary.*

3.5.6 Legal requirements

In the light of the due diligence and the ESAP preparation, the environmental and social covenants as initially drafted at the Term Sheet stage will need to be tailored and updated. Monitoring covenants will reflect the monitoring programme agreed with the client (see next section).

- ⇒ *OGC lawyers (or external counsel on Work Mode D operations) will circulate draft legal agreements to ESD for review by the relevant specialist, and incorporate ESD comments.*

³ This may not be wholly possible with respect to multi-site facilities where corporate lending is involved, or where access to information by investors is limited (such as in an International Public Offering).

⇒ *ESD specialists will check that all legal documents related to projects adequately reflect the requirements resulting from the environmental and social appraisal process and e-mail comments and/or approval to the OGC lawyer and OL.*

3.5.7 Inputs to the Final Review Memorandum (FRM)

ESD specialists will agree text for the environmental and social sections of the FRM and the environmental and social section of the PSD with the OL.

3.5.8 Updating the Environmental and Social Summary at Final Review

The ESS is then updated to include the results of due diligence, public consultation and the main features of the ESAP as well as highlighting, for the benefit of the OL and OpsCom, any environmental or social issues that need to be considered during discussions at Final Review. Where possible the ESS should be drafted with a view to using the same text as the basis for the PSD and Board document. If ESD has concluded that alternative approaches to those outlined in the PRs are required due to the particular circumstances of a project (see section 30 of the ESP), the ESS must include a description of the approach and why it is proposed in these circumstances.

3.5.9 Environmental and social briefing for the Operations Committee

ESD is required to highlight to OpsCom material issues associated with projects through a briefing note submitted prior to OpsCom meetings.

⇒ *The ESD specialists should agree on a succinct summary paragraph on the due diligence status of the project for OpsCom.*

This should, *inter alia*, state the categorisation of the project, key issues, residual risks and opportunities, adequacy of the action plan and results of stakeholder engagement, and highlight any areas of procedural deficiency or policy non-compliance, as well as any changes in the project description or structure which may result in changes to environmental/social impacts. Any derogations from the ESP/PRs must be flagged and explained. It should state whether ESD staff wish to attend the OpsCom meeting and raise an issue.

It is good practice to share a draft of the project briefing with the Banking Team if time permits, and discuss its content with them.

3.5.10 Policy compliance and oversight

Member(s) of the ESDMT will review the key outputs from project appraisal and risk management at Final Review from a policy and procedural perspective. These may include, *inter alia*, the Environmental and Social Summary, Environmental and Social Action Plan(s), the Monitoring Plan, FRM environmental and social text, OpsCom briefing, PSD environmental and social sections.

4. APPRAISAL OF FINANCIAL INTERMEDIARY PROJECTS

Intermediated financing projects generally follow the same project approval process as directly financed projects. However, the nature of environmental and social investigations is different, as outlined below.

4.1 Pre-Concept Review

Prior to submitting the CRM to OpsCom the OL should consider whether the FI project involves any obviously environmentally and socially sensitive aspects which will require special consideration, for example where an equity investment is contemplated and the FI has a portfolio which includes significant exposure to environmentally and socially sensitive industries. In such case, the OL should discuss these potential issues associated with the FI project with ESD.

⇒ *The OL should inform the FI, as early as possible in the development of the project, of the Bank's key environmental and social requirements, which are outlined in PR 9, and refer the client to the relevant procedures in the Environmental Risk Management Manual (e-manual).*

4.2 Concept Review

On receipt of the Concept Review Memorandum, ESD will prepare an ESS. The ESS will outline the Bank's due diligence requirements and the requirements that will apply to the FI.

When evaluating the environmental and social risks associated with an FI project the Bank considers, *inter alia*, a number of factors:

- What is the nature of the FI's business (e.g. SME lending, corporate finance, equity provision, insurance, trade finance)?
- What is the nature of the proposed project, for example a credit line, an equity investment or a trade finance line?
- In the event of credit lines, what are the typical subproject amounts and tenors?
- Does the FI have a sectoral/regional focus or any particular exposures that present increased environmental and social risks?
- What are the current environmental and social policies and procedures of the FI and track record?
- Has the Bank current or past projects with the FI?
- What are the FI's current human resource management policies and practices?
- What other international financial institutions/multilateral development banks/donors/Equator Principles financial institutions is the FI engaged with?

The above considerations help in deciding what due diligence is required for an FI project.

ESD will send the OL the Environmental and Social Due Diligence Questionnaire, which must be sent to the client and submitted to the Bank for review prior to Final Review stage.

4.3 Final Review

On receipt of the Final Review Memorandum, ESD will update the ESS as required. The ESS will outline the results of any due diligence and the Bank's implementation, monitoring and other requirements and the requirements that will apply to the FI.

Based on the information obtained during due diligence ESD specialists will decide:

- if there is a need for additional requirements for sub-projects other than those stated in PR 9;
- if there is a need for training to strengthen the environmental and social and/or human resources management capacity of the FI;
- the nature of reporting and monitoring requirements.

Similarly, as with directly financed projects, the OL needs to ensure that the required environmental and social due diligence information is obtained and the environmental and social requirements agreed with the client, prior to Final Review.

For repeat business with existing clients, an ESS is not required if the repeat operation is the same type as the initial one (e.g. capital increase of an equity position; expansion of an existing credit line). In such cases, ESD may submit only a briefing paragraph to OpsCom outlining how the FI has been implementing the EBRD's requirements to date, any areas for improvement, if the FI has provided regular annual reporting to the Bank, whether training is required and how ESD will monitor the FI's performance.

5. APPRAISAL OF FINANCING FRAMEWORKS

Some EBRD operations involve a financing framework ("Framework") for the future financing of a number of projects, subject to specific criteria and conditions. These projects are typically not yet identified at the stage of submitting the Framework for Board approval. Frameworks may be agreed with one client or involve several clients. Frameworks may involve a streamlined project appraisal process for projects under the Framework, and/or delegation of certain project due diligence tasks to the client. The environmental and social appraisal of Frameworks will need to be modified as outlined below.

5.1 Due diligence phase

Like any EBRD client, Framework clients are required to assess and manage each project to be financed under the Framework in accordance with PRs 1 and 10, and structure projects so that they meet the requirements included in PRs 2-8; PRs 2 and 9 will apply to projects involving financial intermediaries.

For all Frameworks ESD will assess, to the extent possible, the likely environmental and social issues associated with the types of clients and projects to be financed under the Framework. Frameworks where the client is already known typically require a corporate audit of the client's environmental and social policies, management systems and past and current performance, including the client's capacity to assess and manage environmental and social issues associated with future projects under the Framework.

Based on a review of the information received from the corporate audit, if applicable, and/or other sources, ESD will, for each Framework, design environmental and social procedures ("Procedures") which will allow the Bank to satisfy itself that all projects to be financed under the Framework will be structured to meet the Bank's PRs within a timeframe satisfactory to the EBRD. The Procedures will incorporate the requirements of the PRs, define the nature, format and timing of due diligence information and monitoring reports to be submitted by the client(s), and allow for the categorisation by ESD of each project in accordance with the ESP.⁴ If the client has limited capacity to assess and manage projects in accordance with the PRs, ESD may include in the Procedures a more hands-on approach for ESD specialists in project appraisal, and/or identify appropriate capacity building initiatives to support clients.

⇒ *ESD specialists should use the Environmental and Social Procedures template for Frameworks and tailor it to the nature of the specific Framework and the client's environmental and social management capacity.*

⁴ In accordance with the ESP, each project under the Framework will be categorised, but not the Framework itself.

5.2 Preparing for Final Review

- ⇒ *ESD specialists will need to ensure that the environmental and social procedures to be used for the Framework in question have been agreed with the Operation Team and, if a client is already known, with the client. In addition, the Operation Team will agree with ESD the Bank-internal processes for information flow, ESD sign-off and reporting on projects under the Framework.*
- ⇒ *ESD specialists will verify that the legal covenants for the Framework includes, at a minimum, the following requirements:*
 - *compliance by clients with the agreed procedures;*
 - *compliance by projects with the applicable PRs, subject to any ESAP agreed with the EBRD;*
 - *monitoring of and reporting on projects;*
 - *any other Framework-specific environmental /social conditions.*

6. APPRAISAL OF TECHNICAL COOPERATION FUND PROJECTS

In addition to making loans and equity investments, the Bank also operates a TC Funds Programme. All TC projects that are submitted to the TC Review Committee are desk reviewed by ESD to identify any environmental and social issues that should be addressed in the Terms of Reference and, if necessary, build in any environmental or social requirements. For TC projects (such as those financed under the Nuclear Safety Accounts, Decommissioning Funds, NDEP (Nuclear Window)) that are not subject to review by the TC Review Committee, Ols will need to involve ESD early in the grant approval process in a similar way to ensure that the project is structured to meet the requirements of the ESP. Many TC projects are undertaken as part of the preparation of subsequent investment projects. The environmental and social review of these kinds of TC projects can result in their expansion or modification to include an environmental and social investigation as an integral part of the study. Other TC projects are related to sector studies, advisory services (e.g. privatisation, restructuring, financial and legal advice) and training. In these cases environmental and social review can result in the inclusion of an environmental and social component or perspective. Technical Cooperation funds can also be used for stand-alone environmental and social activities, such as the provision of environmental and social training courses and studies related to environmental and social standards.

- ⇒ *OLs should liaise with ESD specialists early in the process of developing a TC project to ensure that the appropriate environmental and social requirements and terminology are incorporated into the project and are adequately budgeted for, irrespective of whether the TC project will be submitted to the TC Review Committee.*

7. CONSIDERATION OF PROJECTS BY THE BOARD OF DIRECTORS

Projects considered for financing by the Bank are normally submitted to the Board of Directors following Final Review, unless it is a delegated authority under a Framework. The Board assesses the proposal to ensure it complies with Bank policy and to give the final authorisation for financing of the proposed operation.

7.1 Environmental and social section of Board documents

The responsibility for the Board documentation rests with the OL, although sign-off on the content of the environmental and social section by ESD is required before it is included in the documentation and distributed to the Board. For certain projects with complex or extensive environmental and social issues, the Board documentation may include an environmental and social annex.

The environmental and social section of the Board document should contain information on:

- the categorisation of the project;
- the nature of due diligence studies undertaken;
- a summary characterisation of key significant impacts, relevant PRs, mitigation and monitoring measures and timeframe from achieving compliance with the relevant PRs as per the ESAP;
- the nature and significance of residual impacts;
- a statement on conformity with the Bank's Environmental and Social Policy and, in particular, compliance with standards established under relevant EU environmental legislation, and if applicable, the nature, rationale for and significance of any policy derogation requested of the Board.

⇒ *ESD specialists should review the Board document to check that there are no material changes in the nature of the project as appraised by ESD during due diligence and against the PSD to ensure compatibility.*

8. FROM BOARD APPROVAL TO IMPLEMENTATION

8.1 Concluding legal agreements and action plans

Draft legal documents are circulated by the OGC lawyer (or by the external lawyer for Work Mode D operations) to ESD for review. The OGC lawyer (or the external lawyer for Work Mode D operations) and the OL must ensure that the environmental and social provisions included in the legal documentation (e.g. conditions, covenants, monitoring and reporting requirements) have been reviewed and agreed by ESD prior to completion of negotiations. Any material changes to the environmental and social provisions in the legal documentation also need prior approval by ESD.

Occasionally there are environmental and social conditions to be met prior to signing the legal documentation. The OL is responsible for contacting ESD to identify what is needed and for liaising with the client.

8.2 Delays following Board approval

All project approvals given by the Board have a termination date, normally 12 months after the date of original Board approval. If the project remains unsigned after twelve months, the project is brought back to the Board to be re-approved on a 'no objection basis'. In such cases ESD specialists may request an update from the client on the environmental and social status of the project and progress in implementing any action plans such as an ESAP prior to the OL finalising the Board documentation so that the Board is aware of any changes in the environmental and social status of the project. Depending on the outcome of this (for example if new impacts have arisen or mitigation measures are not proving effective), the ESAP may require amendment.

8.3 Material changes to projects

Changes may occur in the nature and scope of Bank projects following Board approval and signing and legal documents must contain covenants with regard to management of change. Such changes may have significant environmental and social implications associated with them. The conversion from a loan to equity, for example, may involve the Bank becoming associated with projects, sites or facilities which were not previously appraised and which might have significant environmental and social liabilities or compliance problems.

⇒ *The OL must inform the ESD specialists of any material changes so that they can determine if any environmental or social re-appraisal is needed for the modified/restructured project and whether additional studies are required.*

A re-appraisal will be required if a change in the physical components (e.g. sites, facilities, processes, collateral) associated with the project may potentially involve environmental and social issues which were not subject to the initial appraisal. ESD will determine which additional investigations and stakeholder engagement activities, if any, are needed, and agree with the OL on the time schedule for carrying them out. If the project is re-submitted to OpsCom, a revised ESS will be required. Based on the outcome of the environmental and social investigations, ESD will determine if any additional environmental and social covenants and/or conditions need to be included in the amended legal agreements. If materially new or different environmental or social changes are predicted or experienced from those made known to OpsCom prior to Board, ESD may request an update be submitted to OpsCom, who will consider whether the Board needs to be informed. In cases of material change, it is likely that the PSD will need to be updated to reflect the changes.

9. PROJECT IMPLEMENTATION AND MONITORING

9.1 Introduction

Monitoring of the environmental and social impacts of EBRD-supported projects is necessary if the Bank is to be confident that the ESP is being properly implemented and that the sustainable development aspects of its mandate are being taken forward. Monitoring also benefits the Bank's clients by building environmental and social management capacity, identifying opportunities for improved operational efficiency and assisting with regulatory compliance. The information provided by monitoring activities helps the EBRD to meet its transparency and accountability obligations, and to continuously improve the way it operates.

ESD will monitor all active EBRD transactions through a combination of client reporting, monitoring visits and third-party audits.

There are two dimensions to environmental and social monitoring:

- monitoring activities undertaken by the client, consultants and/or other stakeholders in accordance with the ESMP;
- monitoring undertaken by Bank staff through review of reports received, site visits by ESD staff and internal Bank driven project monitoring and evaluation activities.

In accordance with the ESMP, monitoring will be risk driven, with higher risk projects subject to more intensive monitoring. The risk rating is subject to ongoing review and amendment according to the projects' environmental and social performance during implementation.

Within the Bank, OLs retain overall responsibility for managing relations with clients and monitoring the performance of all aspects of a transaction, including environment and social

aspects. In practice, the ESD specialists assigned to the project pre-Board will lead in the monitoring of a client's environmental and social performance.

- ⇒ *The ESDMT will assign a lead specialist to monitor each project. Typically, this will be the specialist who managed the due diligence on that project. When appropriate, a social specialist will be assigned to assist in monitoring social aspects of a project.*
- ⇒ *ESD specialists are responsible for tracking the implementation of ESAPs and ESMPs for all projects assigned to them.*

The quality assurance/quality control roles of the Reviewer and/or Approver will continue during project implementation. All material reports and events requiring ESD review or sign-off will be initially processed by the lead specialist and then verified by the Reviewer/Approver.

9.2 Project inception meeting

Following signing of the investment agreements, an inception ('kick-off') meeting should be held between the Banking Team, representatives of OAU and the relevant ESD specialists. The purpose of this meeting is to review the Project Monitoring Plan for internal housekeeping purposes and to diarise key project events and deliverables. The meeting should cover issues such as who the client should submit reports to, official lines of communication with the client, what resources are required for monitoring and how they will be provided, the timing of visits by ESD specialists, and whether any assistance is required by the client.

- ⇒ *The results of the project inception meeting should be documented in EMD.*
- ⇒ *OAU and the Banking Team to note and diarise events and deliverables.*

Whilst it may not be possible for inception meetings to be held for all projects, it is essential that they are held for all medium-high and high risk projects and category A projects.

A summary of key roles and responsibilities during project implementation

Client

Following signing of the legal documentation for an operation it is the responsibility of the client to comply with the agreed environmental and social requirements to the satisfaction of the Bank, and to monitor the project's performance against these requirements as part of the client's environmental and social management system. The client will typically be required to provide periodic environmental and social reports to the Bank as well as certain other information, e.g. prompt reporting of material incidents or accidents. The client will also facilitate monitoring visits or audits by ESD specialists or consultants.

Operation (Project) Team

The Operation Team is responsible for monitoring the operation's performance against the Bank's expectations and legal requirements. The OL maintains contact with the client and undertakes periodic visits, including physical inspection of premises and facilities in accordance with the ESMP, reviewing all financial and management reports provided by the client and verifying compliance with all covenants with the assistance of OAU and with ESD in respect of compliance with environmental and social covenants.

Environment and Sustainability Department

ESD reviews environmental and social monitoring reports and, as necessary, makes field visits to ensure project conformity with agreed environmental and social requirements. ESD is involved in the compliance monitoring process with respect to environmental and social covenants by advising OLs and OAU on any environmental and social issues that may arise, and by signing off on the client's compliance with the environmental and social requirements. ESD also has to approve waivers requested on environmental and social requirements, e.g. in the case of unforeseen delays in meeting a reporting requirement.

Resident Office Role

The role of the RO in the monitoring stage of operations is defined for each project and may change over time. Some projects are monitored from the RO and for others monitoring is based in London. It is possible that the RO representative will make site visits to operations and assist the HQ-based OL in implementing and monitoring the project. There may be environmental questions that the RO representative could ask on site visits and information that could be forwarded to the London office. RO representatives may also be available to accompany ESD staff to sites or to facilitate a site visit by liaising with the company or giving advice on travelling.

Operations Committee

Material changes to any operation and any material environmental and social incidents or accidents must be brought to the attention of OpsCom.

Executive Committee

Material incidents or accidents must be brought to the attention of ExCom in accordance with the Bank's Incident Notification Procedures.

Board of Directors

Material changes on some operations are also subject to Board approval.

Operation Administration Unit

The Operation Administration Unit tracks and monitors the specific covenants for an operation. OAU forwards environmental and social reports or information relating to environmental and social covenants to ESD for review and maintains compliance records. Where compliance with an environmental and social provision (e.g. disbursement condition, affirmative or reporting covenant) is an issue, OAU will obtain ESD sign-off as evidence that the client has met the relevant environmental and social requirements. Specifically, as each environmental and social monitoring report is received, OAU will forward the report to ESD and require ESD sign-off that the report is satisfactory to the Bank. Where a waiver, consent or amendment concerning environmental and social matters is required, OAU will take responsibility for producing the internal waiver, consent or amendment.

Credit Department

The Credit Portfolio Review Unit performs an independent review of the credit quality of Bank operations, including a review of monitoring reports written by OLs, allocation of project risk ratings and a review of exception reports to monitor trends in covenant compliance. Monitoring reports prepared by OLs should include information on environmental and social issues typically utilising annual reports, updates on ESAPs, and back-to-office reports from site visits as a source. ESD can attend Credit Portfolio Review meetings to raise any environmental or social issues of concern, particularly where clients have failed to comply with covenants.

Corporate Recovery

Corporate Recovery is the work-out team for impaired Banking assets and is responsible for maximising recoveries from impaired projects. When taking over a project Corporate Recovery should contact ESD to understand the key environmental and social issues associated with a project and to ensure that, as far as possible, the client continues to honour the environmental and social obligations as defined in any agreements with the Bank and environmental and social impacts of the work-out are minimised.

Office of the General Counsel

OGC counsel (or external counsel on Work Mode D operations) is involved throughout the monitoring process in supporting the OLs and management with advice on legal matters. It must be involved in approving any waivers, including waivers on environmental and social covenants, or changes to the environmental and social sections of legal documentation.

Evaluation Department

The Evaluation Department evaluates projects against the Board approved project objectives and draws lessons learned for future projects.

9.3 Review of project reports

The nature of client reporting obligations will have been determined in the latter part of due diligence and agreed formally with the client, and they will vary in terms of nature, scope and frequency. The majority of projects will be required to submit Annual Environmental and Social Reports (AESRs) to the Bank, although in some cases this may not be appropriate or possible (where the Bank holds small equity stakes or has underwritten a rights issue, for example). At a minimum, an AESR should be consistent with the ESAP and the ESMP and include:

- an assessment of the project's performance against the action plan, or other relevant EBRD requirements;
- an assessment of the project's compliance with regulatory requirements;
- details of any significant incidents or material non-compliances;
- client-generated monitoring data for key performance indicators agreed in the ESMP;
- future plans and opportunities for continuous environmental and social performance improvement.

Clients should be provided with the EBRD's standard template for AESRs. This can be adapted to the specific requirements of each project, if necessary. ESD can also rely on existing client reporting systems as long as they provide sufficient information.

- ⇒ *AESRs and other reports should be logged by the ESD Project Information Officer upon receipt by ESD. Where reports are received directly by a specialist, a copy should be forwarded to the Project Information Officer.*
- ⇒ *The relevant ESD specialists will review the reports and discuss their findings with the Reviewer. The lead specialist will then inform the Banking Team and client (if appropriate) on whether the reports meet the necessary requirements. Where there are deficiencies in terms of report content or the extent to which*

obligations are being met, the OL should be informed and will request an improved report or outline the nature of remedial action required.

- ⇒ *ESD specialists should in any case provide feedback to clients, via the OL, on their AESRs highlighting good performance or pointing out areas that could be improved (either directly or through the OL as appropriate).*

A project's environmental and social reporting can be a good indicator of the client's environmental and social management capacity. Comprehensive reports and high quality data collection suggest that a management system is in place and functioning well. The quality and contents of the reports provided by clients should be used to determine the on-going monitoring of each project. Where reporting is poor, or indicates significant environmental or social issues, ESD will monitor a project more closely, including undertaking more frequent monitoring visits. Conversely, where reporting is good, monitoring visits may be required less frequently.

9.4 Monitoring visits

On-site monitoring visits are an essential tool for ensuring that projects are being implemented and operated in line with the requirements and standards agreed between the client and the Bank at the due diligence stage. The number and/or frequency of site visits should be set out in the ESMP agreed at Final Review, based upon the needs, risks and circumstances of each project. The need for flexibility, reflecting changing project circumstances, needs to be maintained, however.

- ⇒ *ESD specialists will plan a schedule of visits at the start of each year, taking account of ESMPs and other business needs. This planning will be coordinated by the ESDMT and the monitoring specialist. Plans will be reviewed and revised regularly throughout the year.*

Monitoring visits will focus on reviewing progress against any commitments in the ESAP to undertake specific actions within an agreed timeframe. The EBRD's *Environmental and Social Audit Protocol* should be used as a checklist for identifying issues that need to be addressed during a site visit.

9.5 Third party monitoring

9.5.1 Third party audits

Third party audits are a more systematic and detailed assessment of the state of compliance of an operation. They are normally carried out by an independent consultant, funded by the client and approved by the Bank, working to a Terms of Reference agreed between the client and the Bank. Audits are longer and more in-depth than normal site visits and include, for example, detailed reviews of documentation and permits, emissions data, etc. For large operations, such as major oil and gas projects, the audit might focus on a particular aspect, for example a production facility or the implementation of resettlement requirements. ESD specialists may choose to join an audit visit, particularly for higher risk operations, both to verify and support the work of the auditor, and to improve their own understanding of the project.

For higher risk projects it may be appropriate to require the client to appoint independent monitoring consultants to report regularly to the Bank (or lenders collectively). For the most sensitive projects, this may involve full time, on-the-ground monitoring. More commonly, monitoring consultants will visit projects quarterly or six-monthly during construction and annually during project operation.

The main output from an audit or monitoring consultant's visit is a detailed report, which should cover all relevant aspects of the project's performance and list clear recommendations for improvements. This report will be provided to both the Bank and to the client. Audit reports should first be reviewed critically for completeness and reliability. If the report is considered thorough and complete it should then be reviewed again for its finding with regard to the state of compliance of the projects, any significant environmental or social risks, and recommendations for follow-up action or changes to the operation. Follow-up action might include adjusting the risk rating for the project, agreeing revisions to the Environmental and Social Action Plan, developing a remedial action plan, or arranging further visits by ESD specialists.

- ⇒ *The requirement for audits needs to be established and agreed with the client during due diligence on a case-by-case basis.*
- ⇒ *ESD specialists will review all audit reports and, where necessary, agree a remedial action plan with the client to address any identified non-compliances.*
- ⇒ *For high risk projects, or where there are numerous or significant non-compliances, the project Reviewer and/or the ESDMT should be consulted on the development of a remedial action plan.*

The scope, frequency and funding arrangements for audits should be documented in the ESMP and in the legal agreement between the Bank and the client. Consideration will be given to linking audits to specific stages of the project such as the start of operations, project completion (e.g. following the closure of a mine), or when the Bank is exiting from a transaction.

9.5.2 Other third party monitoring

For some projects, the ESMP may assign certain monitoring activities to members of the surrounding local communities and/or NGOs. This may be an effective monitoring mechanism where local communities hold relevant special local knowledge (e.g. on biodiversity or cultural heritage) and/or are physically close to the area being monitored. Community/NGO involvement in monitoring of complex and sensitive projects may also help build trust between the client and surrounding communities by addressing particular concerns raised during public consultation. Typically, it would be part of a more comprehensive stakeholder engagement programme. The nature, scope, method, frequency and funding arrangements will need to be agreed between the client and the Bank in consultation with the relevant community representatives.

9.6 Portfolio review by the Credit Department

The Credit Department conducts routine reviews of each project in the Bank's portfolio, and 'as-needed' reviews for projects in high risk categories. The basis of the review is a Project Monitoring Module (PMM) report, which is prepared by the OL. Credit hosts twice-weekly Portfolio Review Meetings to review project performance, which ESD specialists can attend.

All ESD specialists receive the Portfolio Review Meeting agendas in advance of the meetings. ESD specialists should use the portfolio review process as a prompt to check on the progress of transactions in addition to scheduled monitoring events and activities.

- ⇒ *Lead specialists should review the project EMD file and latest PMM report, particularly with respect to the environmental performance ratings. If there are significant environmental or social issues, the ratings are considered inaccurate, or the project appears to be proceeding in a different manner to that anticipated*

(a material change), the OL should be informed, copied to the Credit Officer appointed to the project.

⇒ *If appropriate, the ESD specialist(s) should attend the meeting, raise the issue(s) and request that outcomes are documented in the meeting minutes.*

When the project reaches the stage where an Expanded Monitoring Report (XMR) is required, the OL must agree the environmental and social sections of the report and the performance ratings therein with ESD prior to finalising the report.

⇒ *The ESD monitoring specialist will maintain an overview of weekly portfolio review activities and brief the ESDMT as appropriate.*

⇒ *The ESD Project Information Officer will ensure that EMD project entries are updated as appropriate.*

9.7 Project information management

All documents relating to the implementation and monitoring of projects, whether produced by the Bank or the client, should be stored promptly in the appropriate system. This will enable other environmental and social specialists to quickly take over responsibility for transactions in the absence of the original specialist. AESRs, back-to-office reports and any other relevant documents or correspondence should be stored in the relevant environmental and social *monitoring* folder in *ProjectLink*, the EBRD's electronic document storage system. Back-to-office reports should also be sent to the relevant Group Head, the monitoring specialist and, if relevant, the designated environment specialist and second specialist.

After each monitoring visit the ESD specialist should update the Department's monitoring spreadsheet to include the dates of the trip, a link to the back-to-office report and brief details of any follow-up action, including a deadline for the next visit.

9.8 Addressing issues arising during implementation

Monitoring activities may identify non-compliances with agreed environmental and social standards or failure to properly implement commitments from the ESAP or legal agreements. These should be identified by the client's own monitoring programme and reported to the Bank through reporting mechanisms⁵ or incident notification, but may also be detected during visits by Bank staff or brought to the Bank's attention by NGOs or other stakeholders. However issues are identified, it is essential that they are promptly followed up and addressed to the fullest possible and practical extent.

The first response of ESD to any material deficiency in a client's performance should be to communicate concerns to the Banking Team and client/project staff and to work positively with client/project staff on remedial measures. The nature of these will depend on the nature and potential impact of the issue, but the aim should be to tackle the root cause, which could be, for example, lack of technical knowledge, insufficient resource or poorly performing sub-contractors.

ESD specialists should consider what assistance the Bank can provide. This could include technical advice, capacity building for client/project staff, or additional Bank financing for new plant or equipment.

⁵ Legal documentation requires clients to incorporate additional mitigation measures into the ESAP if the agreed measures are insufficient to meet the PRs within the agreed timeframe, or if unforeseen circumstances arise. Such changes to the ESAP must be approved by the EBRD.

The lead specialist will brief the ESDMT on any serious or persistent issues of non-compliance associated with their assigned projects.

9.9 Emergency notification of an incident or accident

In the event of an incident or accident, the Bank staff member notified (OL, ESD, OAU) should follow the agreed internal procedure. The OL has the overall responsibility for carrying out the procedure with advice from, *inter alia*, ESD. In all cases, ESD specialists should notify the ESDMT by e-mail (as well as verbally) to initiate a management led response.

9.10 Material changes

The nature of a project may change due to unforeseen circumstances. Such changes can involve the construction of new infrastructure, such as access roads and new production facilities, or yield a different array of effluents and emissions.

Clauses within legal documentation require clients to report such material changes to the Bank.

- ⇒ *The OL will need to inform ESD specialists about the nature of any material changes arising.*
- ⇒ *ESD specialists will need to determine whether any additional studies or requirements are needed to address the material change. See section 8.3 for details.*

9.11 Workouts, provisioning, and writing off investments

If the Bank believes that there has been a serious deterioration in a project's performance, either during the construction or operation phase, the OL will complete an Early Warning Memorandum. The financial condition of the borrower or investee company may require that the Bank consider making provisions for losses expected in respect of (part of) a loan or investment, or writing off such loans or investments.

When taking over a project, Corporate Recovery should contact ESD to understand the key environmental and social issues associated with a project and to ensure that, as far as possible, the client continues to honour the environmental and social obligations as defined in any agreements with the Bank and environmental and social impacts of the workout are minimised.

If, during workout or foreclosure, the Bank is considering taking physical assets which have been pledged as security on the investment, these should not be acquired until ESD has advised the OL on the need, if any, for further environmental or social due diligence (e.g. exit audit). In all cases involving real property or equipment which has been pledged as security, the Bank's Corporate Recovery Unit should contact the appropriate ESD specialists to review the environmental and social status of the operation and determine if future due diligence is necessary.

ESD specialists should consider attending all monitoring meetings on risk level 8 and above projects or ones that have been transferred to Corporate Recovery where real property or equipment is involved that may have cost or reputational risk implications associated with environmental, safety or labour issues.

9.12 Project completion

For investment operations, project completion normally coincides with the end of the Bank's disbursement phase and is legally defined in the Bank's agreement with the client. The definition may include environmental or social performance criteria or tests, such as environmental audit of the implementation of the ESAP. ESD will assist the OL in determining whether such criteria have been met by the client. If a project completes 'early', ESD will assist the OL in preparing an XMR.

9.13 Environmental evaluation

The Evaluation Department (EvD) undertakes an independent assessment, typically after physical completion, of the impact of an operation. Its responsibilities include the preparation of a focused and brief Operation Performance Evaluation Report (OPER) for each operation that has been assessed, providing a performance rating making specific suggestions on how to improve future operations and identifying any matters for monitoring follow-up. The OPER has a section on environment⁶ and the OPER team member will request the appropriate ESD specialists to read and comment on the draft environmental section. As EvD provides an independent assessment of the project, the ESD review is mainly to correct errors and to highlight any issues EvD may wish to include or change. ESD cannot require changes to the OPER, but should provide comments in writing (memo or e-mail) and document the project file. Where the ESD specialists do not agree with the judgments expressed in the OPER, and where differences of opinion cannot be reconciled and accommodated through discussion, the differing views are recorded in the final version of the OPER.

⁶ In the Bank's 2003 Environmental Policy, the term "environment" was defined as also including certain social issues.