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Environmental and Social Policy



European Bank
for Reconstruction and Development

Foreword

The European Bank for Reconstruction and Development (EBRD) adopted its first Environmental Policy in 1991 at the initial meeting of its Board of Directors. The scope of the Policy has evolved over time and it is now an Environmental and Social Policy.

The Policy and related Performance Requirements were approved by the EBRD Board of Directors on 12 May 2008 and will take effect from 12 November 2008.

The Policy details the commitments of the Bank's Founding Agreement "to promote in the full range of its activities, environmentally sound and sustainable development."

Table of contents

Environmental and Social Policy

A. Purpose of this Policy	2
B. EBRD's commitment	2
C. Integrating environmental and social considerations into the project cycle: EBRD's role and responsibilities	5
D. EBRD public reporting and accountability	9
E. Promoting investments with high environmental and social benefits, including working in partnership with others	10
F. Country and sector strategies	11
G. Institutional and implementation arrangements	11
Appendix 1: Category A projects	12
Appendix 2: EBRD Environmental and Social Exclusion list	14

Performance Requirements

PR 1: Environmental and Social Appraisal and Management	15
PR 2: Labour and Working Conditions	22
PR 3: Pollution Prevention and Abatement	26
PR 4: Community Health, Safety and Security	30
PR 5: Land Acquisition, Involuntary Resettlement and Economic Displacement	34
PR 6: Biodiversity Conservation and Sustainable Management of Living Natural Resources	44
PR 7: Indigenous Peoples	50
PR 8: Cultural Heritage	58
PR 9: Financial Intermediaries	62
PR 10: Information Disclosure and Stakeholder Engagement	68

EBRD Environmental and Social Policy

A. Purpose of this Policy

1. The EBRD is committed to promoting “environmentally sound and sustainable development” in the full range of its investment and technical cooperation activities pursuant to its constituent treaty, the Agreement Establishing the EBRD.¹ The Bank² believes that sustainable development is a fundamental aspect of sound business management. Therefore, EBRD’s mandate to foster transition to market-based economies and promote private entrepreneurship, and its commitment to sustainable development are inextricably linked. All EBRD-financed projects shall meet the Bank’s core operating principles of additionality, transition impact and sound banking. In addition, the Bank recognises that financing sustainable development must rank among the highest priorities of the EBRD’s activities.

2. This Policy covers the environmental and social dimensions of sustainable development. For the purposes of this Policy, the social dimension encompasses (i) labour standards and working conditions including occupational health and safety and (ii) community impacts such as public health, safety and security, gender equality, impacts on Indigenous Peoples and cultural heritage, involuntary resettlement, and affordability of basic services. The Policy outlines how the Bank will put into practice its commitment to promote environmental and social sustainability by:

- mainstreaming of environmental and social considerations into all its activities

- establishing for clients the environmental and social performance requirements that they will be expected to meet in a time frame acceptable to the Bank
- defining the respective roles and responsibilities of both the EBRD and its clients in achieving sustainable outcomes in line with the Policy and the performance requirements
- setting a strategic goal to promote projects with high environmental and social benefits.

B. EBRD’s commitment

3. The EBRD will seek to ensure through its environmental and social appraisal and monitoring processes that the projects it finances:

- are socially and environmentally sustainable
- respect the rights of affected workers and communities
- and are designed and operated in compliance with applicable regulatory requirements and good international practice.

In order to translate this objective into successful practical outcomes, the Bank has adopted a comprehensive set of specific Performance Requirements (“PRs”) that clients are expected to meet, covering key areas of environmental and social impacts and issues. The Bank is committed to promoting European Union (EU) environmental standards as well as the European Principles for the Environment, to which it is a signatory, which is reflected in the PRs.³ The Bank expects clients to assess and

¹ See Article 2.1(vii) of the Agreement Establishing EBRD.

² In this Policy, the terms “the EBRD” and “the Bank” are used interchangeably.

³ The text of the European Principles for the Environment (EPE) can be found at: www.eib.org/infocentre/epe/declaration/index.htm. The EPE is an initiative launched in response to the drive for increased harmonisation of environmental principles, practices and standards associated with the financing of projects. The EPE are defined as the guiding environmental principles in the EC Treaty and the practices and standards incorporated in EU secondary legislation. The EPE commitments are reflected in PRs 1, 2, 3, 4 and 10.

manage the environmental and social issues associated with their projects so that projects meet the PRs. The Bank's role is: (i) to review the clients' assessment; (ii) to assist clients in developing appropriate and efficient measures to avoid or, where this is not possible, minimise, mitigate or offset, or compensate for adverse social and environmental impacts consistent with the PRs; (iii) to help identify opportunities for additional environmental or social benefits; and (iv) to monitor the projects' compliance with its environmental and social covenants as long as the Bank maintains a financial interest in the project.⁴

4. The Bank will enhance the assessment of transition impact of proposed projects⁵ to more explicitly reflect the systemic sustainable development dimension of transition and the benefits of a strategic approach in this area. Any EBRD-financed projects in pursuit of sustainable development objectives will be fully consistent with the Bank's transition mandate.

5. The Bank will seek to finance projects that have the potential to realise additional environmental and social benefits, such as socio-economic benefits to project-affected communities and, where appropriate and feasible, equitable access amongst project-affected parties to those benefits. Particular attention will be given to projects which include elements that focus upon priority environmental and social issues facing the region and which promote implementation of relevant EU strategies, such as climate change mitigation and adaptation, desertification, biodiversity conservation, energy and resource efficiency, poverty alleviation, promotion of decent work, reducing social exclusion, access to basic services, gender equality, transparency, and

social development. The EBRD will also consider whether proposed projects can be expected to contribute to the development of the host country and to broadly benefit project-affected communities in economic, social, or environmental terms. The EBRD will build partnerships with clients to assist them in adding value to their activities, improve long-term sustainability and strengthen their environmental and social management capacity.

6. The Bank recognises the importance of climate change mitigation and adaptation and their high priority for the Bank's activities in the region. It intends to further develop its approach towards climate change, notably as regards the reduction of greenhouse gases, adaptation, promotion of renewables and improvement of energy efficiency, in view of strengthening the treatment of these elements in its operations.

7. The EBRD is strongly committed to the principles of corporate transparency,⁶ accountability and stakeholder engagement. It will disclose, on an ongoing basis, information about the Bank's performance on environmental and social issues and will engage in meaningful dialogue with the Bank's community of stakeholders. The Bank will promote similar good practices amongst its clients. In particular, the EBRD expects clients to identify and interact with their stakeholders on an ongoing basis, and to engage with potentially affected communities through disclosure of information, consultation, and informed participation in a manner deemed by the Bank to be commensurate to the impacts associated with the project. Such stakeholder interaction should be consistent with the spirit, purpose and ultimate goals of the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information,

⁴ For the purpose of this Policy, the Bank will not be considered to have a financial interest in a project where it has sold or exited from its investment (debt or equity) on deferred payment terms.

⁵ The transition impact of projects is assessed by the Bank's Office of the Chief Economist (OCE). See www.ebrd.com/country/sector/econo/impact.htm for more information.

⁶ The Bank has specific requirements related to good governance, money laundering, bribery and corruption, revenue transparency and disclosure of tariffs which are described in other Bank policy documents.

Public Participation in Decision-Making and Access to Justice in Environmental Matters,⁷ the EU Environmental Impact Assessment Directive and, for projects with the potential to have significant environmental impact across international boundaries, the UNECE Convention on Environmental Impact Assessment in a Transboundary Context,⁸ regardless of the status of ratification.

8. The EBRD supports a precautionary approach to the conservation, management and sustainable use of natural biodiversity resources (such as wildlife, fisheries and forest products) and will seek to ensure that its operations include measures to safeguard critical habitats and, where feasible, enhance natural habitats and the biodiversity they support.

9. The EBRD will actively seek, through its investments, to contribute to the effective implementation of relevant principles and rules of international law related to environment, labour, corporate responsibility⁹ and public access to environmental information. These principles and rules are set forth in instruments such as treaties, conventions and multilateral, regional or bilateral agreements, as well as in relevant non-binding instruments. The EBRD will not knowingly finance projects that would contravene country obligations under relevant international treaties and agreements related to environmental protection, human rights, and sustainable development, as identified during project appraisal.

10. The EBRD will work together with other international financial institutions, the EU, bilateral donors, UN agencies and other organisations in coordinating effective

interventions to promote sustainable development at the regional or sectoral level in its countries of operations. When co-financing projects with other international financial institutions, the EBRD will cooperate with them to agree on a common approach to project appraisal, project requirements, and monitoring.

11. Through its technical cooperation activities, the EBRD will seek to mobilise support to provide capacity-building programmes and other forms of assistance to enhance the projects it finances; for example, by promoting sustainable business practices and corporate responsibility, building the necessary capacity for consideration and management of environmental and social issues in its countries of operations, or increasing equitable access to the potential benefits of Bank-funded projects.

12. The EBRD will engage in policy dialogue and, where appropriate, provide technical assistance to work with governments and other partners to address structural and endemic issues related to sustainable development.

13. In its internal operations, the EBRD will pursue best practices in environmental management (including energy and resource efficiency, waste reduction and recycling) and human resources management (such as equal opportunity, work/life balance, health and safety). The EBRD will seek to work with suppliers and contractors who follow similarly high environmental and social standards. The Bank will take into account sustainability issues for the procurement of internal goods and services.

⁷ "Aarhus Convention": www.unece.org/env/pp/.

⁸ "Espoo Convention": www.unece.org/env/eia/.

⁹ Internationally agreed instruments related to corporate responsibility include the International Labour Organisation (ILO) Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, and the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises.

C. Integrating environmental and social considerations into the project cycle: EBRD's role and responsibilities

The project appraisal process

Overall approach

14. All EBRD-financed projects undergo environmental and social appraisal both to help the EBRD decide if an activity should be financed and, if so, the way in which environmental and social issues should be addressed in planning, financing, and implementation. The EBRD's social and environmental appraisal is integrated into the EBRD's overall project appraisal, including the assessment of financial and reputational risks and identification of potential environmental or social opportunities. This appraisal will be appropriate to the nature and scale of the project, and commensurate with the level of environmental and social risks and impacts. The appraisal will ascertain whether activities to be supported by EBRD finance are capable of being implemented in accordance with this Policy and its Performance Requirements (PRs). It is the responsibility of the client to ensure that the required due diligence studies, information disclosure and stakeholder engagement are carried out in accordance with PRs 1 through 10, and submitted to the EBRD for review as part of its own appraisal. The EBRD will review the information provided, and provide guidance to the client on how the project can meet the Bank's requirements.

15. EBRD's environmental and social appraisal includes consideration of three key elements: (i) the environmental and social impacts and issues associated with the proposed project; (ii) the capacity and commitment of the client to address these impacts and issues in accordance with this Policy; and (iii) the role of third parties in achieving compliance with this Policy.

16. The EBRD may refrain from financing a proposed project on environmental or social grounds, for example when a proposed project fails to address environmental and social issues in a satisfactory way and cannot be expected to meet the requirements set out in the applicable PRs of this Policy over a time frame considered reasonable by the Bank, or where residual impacts remain unacceptable. In addition, there are several types of activities that the EBRD does not finance. A list of these activities can be found in Appendix 2.

17. In this Policy, the term "project" refers to the business activity for which EBRD financing is sought by the client regardless of the type of EBRD operation. EBRD operations (that is to say, the act of providing financing) comprise a range of different types of financing for proposed projects, such as project finance/limited recourse finance, corporate finance, working capital, quasi-equity, equity, or grants.

18. EBRD administers a number of Special Funds and cooperation funds. Projects or activities financed in whole or in part with Special Funds will comply with this Policy. For cooperation funds, this Policy shall also apply; however, additional donor requirements relating to environmental or social matters may apply, provided they are consistent with this Policy.

Categorisation

19. EBRD categorises proposed projects as A/B/C/FI based on environmental and social criteria to: (i) reflect the level of potential environmental and social impacts and issues associated with the proposed project; and (ii) determine the nature and level of environmental and social investigations, information disclosure and stakeholder engagement required for each project, taking into account the nature, location, sensitivity and scale of the project, and the nature and magnitude of its possible environmental and social impacts and issues.

Direct investment operations¹⁰

20. A proposed project is classified as Category A when it could result in potentially significant and diverse adverse future environmental and/or social impacts and issues which, at the time of categorisation, cannot readily be identified or assessed and which require a formalised and participatory assessment process carried out by independent third party specialists in accordance with the PRs. An indicative list of Category A projects is presented in Appendix 1 to this Policy.

21. A proposed project is classified as Category B when the potential adverse environmental and/or social impacts that it may give rise to are typically site-specific, and/or readily identified and addressed through mitigation measures. These impacts could be from past, current or future activities. Due diligence requirements may vary depending on the project and will be agreed with the EBRD on a case-by-case basis, in accordance with PR 1.

22. A proposed project is classified as Category C when it is likely to result in minimal or no adverse environmental or social impacts and therefore requires no further environmental and social appraisal beyond categorisation.

23. Initial Environmental and Social Examinations (IESEs) will be carried out by the EBRD's environmental and social specialists where insufficient information is available at the time of categorisation to determine the appropriate category and scope of due diligence.

Financial intermediary operations

24. A proposed project will be classified as FI if the EBRD provides financing to a financial intermediary (FI). Working with FIs is a key way for the EBRD to promote sustainable financial markets and provide a vehicle to channel EBRD

funding to the micro, small and medium-sized enterprise (SME) sector. They include, among others, private equity funds, banks, leasing companies, insurance companies and pension funds. Prior to establishing relationships with an FI, the EBRD conducts due diligence on the FI and its portfolio to assess (i) the FI's existing environmental and social policies and procedures vis-à-vis the Bank's PR 9 and its capacity to implement them; and (ii) environmental and social issues associated with the FI's existing and likely future portfolio.

Stakeholder engagement

25. PR 10 sets out the Bank's requirements for clients to identify stakeholders potentially affected by their projects, disclose sufficient information about issues and impacts arising from the projects and consult with stakeholders in a meaningful and culturally appropriate manner. The Bank may, in some cases, conduct its own public consultation activities for Category A projects in order to gauge stakeholder views on the Bank's potential role in financing the project. Stakeholder identification and engagement may also be built into the Bank's technical cooperation activities, as appropriate.

26. The documentation submitted to the EBRD's Board of Directors for approval of an operation will include a description of the client's stakeholder engagement programme, comments and opinions about the client's practices or the potential impact of the project expressed by stakeholders, and the way these issues are being or will be addressed by clients in accordance with PR 10. The Board of Directors will take the comments and concerns of stakeholders into account in its decision-making process as part of assessing the overall benefits and risks of the Bank operation.

¹⁰ The term "Direct Investment Operations" is used as opposed to "Financial Intermediary Operations". In the case of Financial Intermediary Operations, the client is a financial services provider. All other operations are referred to as direct investment operations.

Performance Requirements (PRs)

27. Bank-financed projects are expected to meet good international practice related to sustainable development. To help clients and/or their projects achieve this, the Bank has defined specific PRs for key areas of environmental and social issues and impacts as listed below:

PR 1: Environmental and Social Appraisal and Management

PR 2: Labour and Working Conditions

PR 3: Pollution Prevention and Abatement

PR 4: Community Health, Safety and Security

PR 5: Land Acquisition, Involuntary Resettlement and Economic Displacement

PR 6: Biodiversity Conservation and Sustainable Natural Resource Management

PR 7: Indigenous Peoples

PR 8: Cultural Heritage

PR 9: Financial Intermediaries

PR 10: Information Disclosure and Stakeholder Engagement.

PRs 1 through 8 and 10 include the requirements for direct investment operations; PR 2 and PR 9 are for financial intermediary operations. Each PR defines, in its objectives, the desired outcomes, followed by specific requirements for clients to help them achieve these outcomes. Compliance with relevant national laws is an integral part of all PRs.

28. The EBRD will require clients to structure projects so that they meet all applicable PRs. Central to this is a consistent approach to seek to avoid adverse impacts on workers, communities, and the environment, or if avoidance is not possible, to reduce, mitigate, or compensate for the impacts, as appropriate. The PRs also provide a solid base from which clients may improve the sustainability of their business operations.

29. New facilities or business activities to be financed by EBRD will be designed to meet the PRs from the outset. If a proposed business activity to be financed by the EBRD relates to existing facilities that do not meet the PRs at the time of Board approval, the client will be required to adopt and implement an Environmental and Social Action Plan (ESAP), satisfactory to the EBRD, that is technically and financially feasible and cost-effective to achieve compliance of these facilities with EBRD's requirements within a time frame acceptable to the EBRD. If the Bank operation is to provide general corporate finance, working capital or equity financing for a multi-site company, the client will be required to develop and implement an ESAP at the corporate level (as opposed to the site-specific level).

30. Where alternative approaches to those described in paragraphs 27–29 are required by the circumstances of a particular project, such approaches will be subject to Board consideration on a case-by-case basis. In deciding whether to approve any derogation to this Policy, the Board will balance the proposed approach against the overall environmental and/or social costs and benefits of the project.

31. In all cases the requirements applying to the project will be summarised in the Project Summary Document and reported to the Board of Directors.

Third party performance

32. At times, the client's ability to achieve social or environmental outcomes consistent with the PRs will be dependent on third party activities. A third party may be, *inter alia*, a government agency, a contractor, a supplier with whom the project/client has a substantial involvement, or an operator of an associated facility. The EBRD seeks to ensure that projects it finances achieve outcomes consistent with the PRs even if the outcomes are dependent upon the performance of third parties. When the third party risk is high and the client has control or influence over the actions and behaviour of the third party, the EBRD will require the client to collaborate with the third party to achieve outcomes consistent with the PRs. Specific requirements and actions will be determined on a case-by-case basis.

Legal documentation

33. EBRD's investment agreements with clients in respect of a project will include specific provisions reflecting EBRD's environmental, social and stakeholder engagement requirements. These include compliance with all applicable PRs and the ESAP (if any), as well as, for example, provisions for environmental and social reporting, ongoing stakeholder engagement, periodic audits by independent specialists, the inclusion of environmental performance criteria in the definition of "Project Completion", exit audits, and/or monitoring visits by EBRD personnel or representatives, as appropriate. Legal documents will also include, where appropriate, rights and/or remedies for the Bank in the event that a borrower or investee company fails to implement the environmental or social provisions during the term of the legal agreements.

Monitoring

34. The Bank considers it essential that the environmental and social performance of projects is monitored. Monitoring serves several purposes. The first is to ensure that the applicable standards and various environmental and social components included in legal agreements, such as the implementation of an ESAP, are being substantially met. The second is to keep track of the ongoing environmental and social impacts associated with investments, and to provide feedback on the effectiveness of mitigation measures. Finally, by tracking improvements achieved during project implementation, the monitoring data serve as indicators of how the Bank's investments are contributing to sustainable development at both the project and the portfolio levels.

35. Monitoring is carried out by both the client and the Bank. The extent of monitoring will be commensurate with the project's issues, impacts and compliance requirements, and with the ability of the client and/or local authorities to adequately monitor and manage these issues and impacts. For each project, the Bank will define with the client a monitoring programme in accordance with PR 1 or PR 9 respectively, specifying the appropriate monitoring tools, based upon the results of due diligence, the results of any public consultation which has taken place and within the framework of legal agreements concluded with the client.

36. In order to verify proper and timely implementation of ESAPs and adherence to agreed environmental and social covenants, the Bank will monitor projects on an ongoing basis as long as the Bank maintains a financial interest in the project, and share with the client the results of its monitoring.¹¹ Monitoring mechanisms include, *inter alia*: (i) review of

¹¹ In the event that the EBRD sells down an equity investment but retains a minimal interest, or in the case of certain publicly listed or traded instruments, the EBRD's ability to monitor activities may be restricted. Also, as set out in footnote 4, where the EBRD has sold or exited from its investment (debt or equity) on deferred payment terms, the Bank will no longer be considered to have financial interest in the project.

periodic reports submitted by the client (at a minimum, annually) on the implementation of ESAPs and any other environmental and social requirements; (ii) monitoring missions by the Bank's environmental and social specialists or consultants to conduct a detailed review of investments with significant social and environmental issues and impacts, in order to determine whether the client is implementing the ESAP and complying with the environmental and social covenants; and (iii) periodic third party monitoring, for example, by independent specialists or representatives of the local communities, submitted to the client and the Bank.

37. If circumstances have changed since appraisal or previous monitoring activities that could result in adverse social or environmental impacts, the EBRD will work with the client to devise a plan for the client to address them. If the client fails to comply with its social and environmental commitments, as expressed in the ESAP or other legal documentation, the EBRD may agree with the client on remedial measures to be taken by the client to achieve compliance to the extent feasible. If the client fails to re-establish compliance, the Bank may take such action and/or exercise such remedies contained in the legal documentation that it deems appropriate. The EBRD will also review with the client any performance improvement opportunities related to projects.

Evaluation

38. The evaluation of the Bank's environmental and social performance and the environmental and social aspects of EBRD-financed projects is carried out by the Bank's Evaluation Department (EvD), which is independent from Bank operations and reports directly to the Bank's Board of Directors. The starting point for such

evaluations are the environmental and social objectives established for each project at the time of commitment, and the relevant Environmental Policy, Country and Sector Strategy effective at the time of commitment. Details of EvD's evaluation criteria and process are set out by EvD in its own procedures, which are approved by the Board.

Operational changes

39. Changes can occur in the nature and scope of the project or the EBRD operation following Bank approval and signing. Such changes may have significant environmental or social implications associated with them.¹² When such material changes are envisaged, the Bank will carry out an appraisal of the proposed changes in accordance with this Policy and any additional due diligence investigations, public consultation requirements, and environmental and social mitigation measures will be incorporated into the modified/restructured project documentation. Where operational changes will result in a materially different environmental and/or social scenario than approved by the Bank, the change will be reported to senior management and if appropriate submitted to the Board for information or approval.

D. EBRD public reporting and accountability

40. The EBRD will publish an annual *Sustainability Report* on its activities and on the implementation of this Policy, including without limitation, aggregate information on greenhouse gas emissions, environmental expenditure in EBRD-financed projects, and the environmental and social issues associated with the EBRD's project portfolio as well as reporting on the EBRD's internal environmental and social performance.

¹² The conversion from a loan to equity, for example, may involve the EBRD becoming associated with projects, sites or facilities which were not previously appraised and which could have significant environmental liabilities or labour compliance problems.

41. Environmental and social issues relating to EBRD investments will be summarised in the EBRD's Project Summary Documents (PSDs) as required by the Bank's Public Information Policy (PIP).¹³

42. The EBRD has established the Independent Recourse Mechanism (IRM) to assess and review complaints about Bank-financed projects. The IRM gives local groups that may be directly and adversely affected by a Bank project a means of raising complaints or grievances with the Bank independently from banking operations. The IRM has two functions: a Compliance Review function which assesses whether the Bank has complied with its policies, specifically this Policy and the project-specific provisions of the PIP in relation to a specific project; and a problem-solving function, which aims to restore a dialogue between the parties, typically the members of the affected group and the project sponsor, with a view to resolving the issues that have given rise to the complaint or grievance. In assessing a complaint, there may be a recommendation for a Compliance Review, or a Problem-solving Initiative, or both, or neither.¹⁴

E. Promoting investments with high environmental and social benefits, including working in partnership with others

43. In addition to monitoring the environmental and social impacts and issues associated with all operations, the EBRD will take a proactive and innovative approach to promote projects and initiatives that are specifically designed to deliver significant environmental and social benefits. This approach will include:

- delivering technical assistance to complement existing or proposed EBRD projects, including the development of effective management systems, obtaining

certification under various quality schemes, and assisting clients in identifying and applying best practices

- improving the enabling environment so that EBRD clients can better address environmental or social issues, including assistance for policy and regulatory reform, institutional capacity building, sector-wide studies and strategic assessments
- promoting stand-alone investment projects in priority areas
- financing pilot projects to explore potential new lines of business with high environmental or social benefits.

44. For these initiatives, EBRD will seek cooperative relationships with clients, donors and other international organisations. The EBRD will maintain regular dialogue on environmental and social issues with donor governments, international organisations, countries of operation and civil society.

45. The EBRD will aim to develop a systematic approach to identifying opportunities for environmental and social improvements through its environmental and social due diligence and project appraisal, including environmental and social assessments or audits where appropriate. The identification of these opportunities will enable clients to incorporate measures to improve the projects' environmental, social, operational and economic performance as well as helping them to meet the EBRD's sound banking and transition impact criteria.

46. The EBRD will support environmental improvements and efficient resource use and allocation by financing municipal environmental infrastructure such as water supplies, sanitation and solid waste management. The EBRD will assess to what extent tariff changes may create

¹³ PSDs will be available from the EBRD's Publications Desk and in its Business Information Centre (BIC), and on the EBRD's web site (www.ebrd.com).

¹⁴ See www.ebrd.com/about/integrity/irm/about/.

problems of affordability for certain consumer groups and satisfy itself that effective support schemes to mitigate adverse social impacts are developed or in place. The EBRD will support climate change mitigation and adaptation, in particular by investing in energy efficiency and renewable energy projects and by supporting best practices in climate change adaptation. Other priority areas for promoting projects with significant environmental or social benefits, including gender equality, will be identified in line with paragraph 5 of this Policy.

F. Country and sector strategies

47. Each of the Bank's country and sector strategies will reflect the EBRD's sustainability mandate and will contain a section which describes the environmental and social implications and opportunities of the EBRD's proposed activities, including technical co-operation projects. The strategies will summarise the principal environmental, human rights, gender equality and other social issues in the relevant country/sector and set out the EBRD's proposals for taking these issues into account in its operations, where appropriate. Country strategies will draw upon the country's environmental and social strategies and planning (for example, National Environmental Action Plans, National Sustainable Development Strategies, Climate Change Adaptation Strategies, EU Accession Strategies, European Partnership and European Neighbourhood Policy Agreements/Action Plans, ILO Decent Work Country Programmes), civil society activities and the environmental and social development work of other international institutions, notably the World Bank and the EU, to describe the country's key environmental, social and human rights issues.

G. Institutional and implementation arrangements

48. In order to ensure that the strategic directions described above are properly addressed, the EBRD will allocate appropriate resources to ensure an effective implementation of this Policy. The Bank will maintain adequate staff resources to oversee the environmental and social appraisal and monitoring processes and to initiate and develop environmentally and socially beneficial projects.

49. This Policy will enter into force six months after its adoption by the Board of Directors. Projects receiving initial approval by Bank management¹⁵ prior to the entry into force of this Policy will be subject to the Bank's 2003 Environmental Policy.

50. The EBRD will develop and maintain Environmental and Social Procedures and appropriate guidance notes and tools to assist in implementing this Policy, and will ensure that staff receive appropriate training on the requirements of this Policy.

51. The EBRD will continue to be assisted by its Environmental and Social Advisory Council (ESAC) whose views will be sought on general policy-related issues and on all sector policies prior to their finalisation. Its views may also be sought on project-specific issues related to the EBRD's financing.

52. The EBRD will monitor and evaluate its environmental and social performance against the aims of this Policy on a continuing basis. The Performance Requirements will be reviewed on an ongoing basis and may be amended or updated, subject to approval of the Board of Directors. In addition, the Policy will be subject to review by the Board of Directors every five years.

¹⁵ At the time of adoption of this Policy, this initial approval is referred to as "Concept Review".

Appendix 1: Category A projects

This list applies to “greenfield” or major extension or transformation-conversion projects in the categories listed below. The list is indicative and the types of projects it contains are examples. The categorisation of each project will depend on the nature and extent of any actual or potential adverse environmental or social impacts, as determined by the specifics of its design, operation, and location.

1. Crude oil refineries (excluding undertakings manufacturing only lubricants from crude oil) and installations for the gasification and liquefaction of 500 tonnes or more of coal or bituminous shale per day.
2. Thermal power stations and other combustion installations with a heat output of 300 megawatts¹ or more and nuclear power stations and other nuclear reactors, including the dismantling or decommissioning of such power stations or reactors (except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load).
3. Installations designed for the production or enrichment of nuclear fuels, the reprocessing, storage or final disposal of irradiated nuclear fuels, or for the storage, disposal or processing of radioactive waste.
4. Integrated works for the initial smelting of cast-iron and steel; installations for the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes.
5. Installations for the extraction of asbestos and for the processing and transformation of asbestos and products containing asbestos; for asbestos-cement products, with an annual production of more than 20,000 tonnes finished product; for friction material, with an annual production of more than 50 tonnes finished product; and for other asbestos utilisation of more than 200 tonnes per year.
6. Integrated chemical installations, that is those installations for the manufacture on an industrial scale of substances using chemical conversion processes, in which several units are juxtaposed and are functionally linked to one another and which are for the production of: basic organic chemicals; basic inorganic chemicals; phosphorous, nitrogen or potassium-based fertilisers (simple or compound fertilisers); basic plant health products and biocides; basic pharmaceutical products using a chemical or biological process; and explosives.
7. Construction of motorways, express roads and lines for long-distance railway traffic; airports with a basic runway length of 2,100 metres or more; new roads of four or more lanes, or realignment and/or widening of existing roads to provide four or more lanes, where such new roads, or realigned and/or widened sections of road would be 10 kilometres or more in a continuous length.
8. Pipelines, terminals and associated facilities for the large-scale transport of gas, oil and chemicals.
9. Sea ports and also inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1,350 tonnes; trading ports, piers for loading and unloading connected to land, and outside ports (excluding ferry piers) which can take vessels of over 1,350 tonnes.
10. Waste-processing and disposal installations for the incineration, chemical treatment or landfill of hazardous, toxic or dangerous wastes.

¹ Equivalent to a gross electrical output of 140 MW for steam and single cycle gas turbine power stations.

11. Large² dams and other impoundments designed for the holding back or permanent storage of water.
12. Groundwater abstraction activities or artificial groundwater recharge schemes in cases where the annual volume of water to be abstracted or recharged amounts to 10 million cubic metres or more.
13. Industrial plants for the: (a) production of pulp from timber or similar fibrous materials; or (b) production of paper and board with a production capacity exceeding 200 air-dried metric tonnes per day.
14. Large-scale peat extraction, quarries and open-cast mining, and processing of metal ores or coal.
15. Extraction of petroleum and natural gas for commercial purposes.
16. Installations for storage of petroleum, petrochemical, or chemical products with a capacity of 200,000 tonnes or more.
17. Large-scale logging.
18. Municipal wastewater treatment plants with a capacity exceeding 150,000 population equivalent.
19. Municipal solid waste processing and disposal facilities.
20. Large-scale tourism and retail development.
21. Construction of high-voltage overhead electrical power lines.
22. Large-scale land reclamation.
23. Large-scale primary agriculture or forestation involving intensification or conversion of natural habitats.
24. Plants for the tanning of hides and skins where the treatment capacity exceeds 12 tonnes of finished products per day.
25. Installations for the intensive rearing of poultry or pigs with more than 40,000 places for poultry; 2,000 places for production pigs (over 30 kilogrammes); or 750 places for sows.
26. Projects³ which are planned to be carried out in sensitive locations or are likely to have a perceptible impact on such locations, even if the project category does not appear in this list. Such sensitive locations include, *inter alia*, national parks and other protected areas identified by national or international law, and other sensitive locations of international, national or regional importance, such as wetlands, forests with high biodiversity value, areas of archaeological or cultural significance, and areas of importance for Indigenous Peoples or other vulnerable groups.
27. Projects which may result in significant adverse social impacts to local communities or other project affected parties.
28. Projects which may involve significant involuntary resettlement or economic displacement.

² As per the definition of the International Commission on Large Dams (ICOLD). ICOLD defines a large dam as a dam with a height of 15 metres or more from the foundation. Dams that are between 5 and 15 metres high and have a reservoir volume of more than 3 million cubic metres are also classified as large dams.

³ Including, without limitation, socially or environmentally oriented projects (such as renewables).

Appendix 2: EBRD Environmental and Social Exclusion List

The EBRD will not knowingly finance, directly or indirectly, projects involving the following:

- a) The production of or trade in any product or activity deemed illegal under host country (that is, national) laws or regulations, or international conventions and agreements, or subject to international phase out or bans, such as:
 - (i) Production of, or trade, in products containing polychlorinated biphenyls (PCBs)⁴
 - (ii) Production of, or trade, in pharmaceuticals, pesticides/herbicides and other hazardous substances subject to international phase-outs or bans⁵
 - (iii) Production of, or trade, in ozone depleting substances subject to international phase-out⁶
 - (iv) Trade in wildlife or production of, or trade, in wildlife products regulated under CITES⁷
 - (v) Transboundary movements of waste prohibited under international law⁸
- b) Production or use of or trade in unbonded asbestos fibres or asbestos-containing products⁹
- c) Activities prohibited by host country legislation or international conventions relating to the protection of biodiversity resources or cultural heritage¹⁰
- d) Driftnet fishing in the marine environment using nets in excess of 2.5 kilometres in length
- e) Shipment of oil or other hazardous substances in tankers which do not comply with International Maritime Organization (IMO) requirements¹¹
- f) Trade in goods without required export or import licenses or other evidence of authorization of transit from the relevant countries of export, import and, if applicable, transit.

⁴ PCBs: Polychlorinated biphenyls – a group of highly toxic chemicals. PCBs are likely to be found in oil-filled electrical transformers, capacitors and switchgear dating from 1950–85.

⁵ Reference documents are EU Regulation (EEC) No 2455/92 Concerning the Export and Import of Certain Dangerous Chemicals, as amended; UN Consolidated List of Products whose Consumption and/or Sale have been Banned, Withdrawn, Severely Restricted or not Approved by Governments; Convention on the Prior Informed Consent Procedures for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam Convention); Stockholm Convention on Persistent Organic Pollutants; World Health Organization (WHO) Classification of Pesticides by Hazard.

⁶ Ozone Depleting Substances (ODSs): Chemical compounds which react with and deplete stratospheric ozone, resulting in the widely publicised 'ozone holes'. The Montreal Protocol lists ODSs and their target reduction and phase-out dates. A list of the chemical compounds regulated by the Montreal Protocol, which includes aerosols, refrigerants, foam blowing agents, solvents, and fire protection agents, together with details of signatory countries and phase-out target dates, is available from the EBRD.

⁷ CITES: Convention on International Trade in Endangered Species of Wild Fauna and Flora. The lists of CITES protected species are available at www.cites.org/eng/app/index.shtml.

⁸ Reference documents are: Regulation (EC) No 1013/2006 of 14 June 2006 on shipments of waste; Decision C(2001)107/Final of the OECD Council concerning the revision of Decision C(92)39/Final on the control of transboundary movements of wastes destined for recovery operations; Basel Convention of 22 March 1989 on the control of transboundary movements of hazardous wastes and their disposal.

⁹ This does not apply to the purchase and use of bonded asbestos cement sheeting where the asbestos content is <20%.

¹⁰ Relevant international conventions include, without limitation: Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention); Convention on Wetlands of International Importance, especially as Waterfowl Habitat (Ramsar Convention); Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention); World Heritage Convention; Convention on Biological Diversity and Protocols.

¹¹ This includes: tankers which do not have all required MARPOL SOLAS certificates (including, without limitation, ISM Code compliance); tankers blacklisted by the European Union or banned by the Paris Memorandum of Understanding on Port State Control (Paris MOU); and tankers due for phase out under MARPOL regulation 13G. No single hull tanker over 25 years old should be used.

Performance Requirements

PR 1: Environmental and Social Appraisal and Management

Introduction

1. The EBRD considers it important that all companies receiving EBRD financing have a systematic approach to managing the environmental and social issues and impacts associated with their activities. Effective management systems, appropriate to the size and nature of the business activity, allow companies to better manage risks, take advantage of opportunities, enhance their social and environmental performance and reputation and often lead to improved financial performance. A successful and efficient environmental and social management system is a dynamic, continuous process, initiated and supported by management, and involves meaningful communication between the client, its workers, and the local communities affected by the project or the client company. It requires a methodical systems approach comprising planning, implementing, reviewing and reacting to outcomes in a structured way with the aim of achieving a continuous improvement in performance.

Objectives

2. The Bank requires clients to develop a systematic approach,¹ tailored to the nature of their activities or projects, to managing environmental and social risks and opportunities that will enable the client to comply with the Bank's Environmental and Social Policy throughout the life of the Bank's involvement with the project.

3. This Performance Requirement ("PR") 1 outlines the client's responsibilities in the process of appraising, managing and monitoring

environmental and social issues associated with projects proposed for EBRD financing. Engagement with the project stakeholders is an integral part of this process. The Bank's requirements regarding stakeholder engagement are outlined in detail in PR 10.

Specific Objectives of PR 1 and PR 10 are as follows:

See table on page 16.

Scope of application

4. This PR applies to projects with potential environmental or social risks and impacts that should be assessed in the early stages of project development, and managed on an ongoing basis.

Requirements

Environmental and social appraisal

5. Through appraisal activities such as risk assessment, auditing, or environmental and social impact assessment, the client will consider in an integrated manner the potential environmental and social issues and impacts associated with the proposed project. The information gained will inform the EBRD's own due diligence related to the client and project and will help to identify the applicable PRs and the appropriate measures to better manage risk and develop opportunities, in accordance with the applicable PRs. The appraisal process will be based on recent information, including an accurate description and delineation of the client's business or the project, and social and environmental baseline data at an appropriate level of detail. The appraisal should also identify applicable laws and regulations of the jurisdictions in which the project operates that pertain to environmental and social matters,

¹ Although not mandatory, the Bank encourages clients to consider adopting accredited management systems such as ISO 14001.

Environmental and Social Appraisal and Management (PR 1)	Information Disclosure and Stakeholder Engagement (PR 10)
<ul style="list-style-type: none"> • To identify and assess environmental and social impacts and issues, both adverse and beneficial, associated with the project. • To adopt measures to avoid, or where avoidance is not possible, minimize, mitigate, or offset/compensate for adverse impacts on workers, affected communities, and the environment. • To identify and, where feasible, adopt opportunities to improve environmental and social performance. • To promote improved environmental and social performance through a dynamic process of performance monitoring and evaluation. 	<ul style="list-style-type: none"> • To identify people or communities that are or could be affected by the project, as well as other interested parties. • To ensure that such stakeholders are appropriately engaged on environmental and social issues that could potentially affect them through a process of information disclosure and meaningful consultation. • To maintain a constructive relationship with stakeholders on an ongoing basis through meaningful engagement during project implementation.

including those laws implementing host country obligations under international law² (for example commitments related to land use planning and protected area management).

6. Environmental and social impacts and issues will be appraised in the context of the project's area of influence. This area of influence may include one or more of the following, as appropriate:

- (i) The assets and facilities directly owned or managed by the client that relate to the project activities to be financed (such as production plant, power transmission corridors, pipelines, canals, ports, access roads and construction camps).
- (ii) Supporting/enabling activities, assets and facilities owned or under the control of parties contracted for the operation of the clients business or for the completion of the project (such as contractors).

(iii) Associated facilities or businesses that are not funded by the EBRD as part of the project and may be separate legal entities yet whose viability and existence depend exclusively on the project and whose goods and services are essential for the successful operation of the project.

(iv) Facilities, operations, and services owned or managed by the client which are part of the security package committed to the EBRD as collateral.

(v) Areas and communities potentially impacted by: cumulative impacts from further planned development of the project or other sources of similar impacts in the geographical area, any existing project or condition, and other project-related developments that can realistically be expected at the time due diligence is undertaken.

² For example, the Aarhus, Espoo and Biodiversity Conventions.

(vi) Areas and communities potentially affected by impacts from unplanned but predictable developments caused by the project that may occur later or at a different location. The area of influence does not include potential impacts that would occur without the project or independently of the project.

Based on the above, the EBRD and the client will agree on the area of influence for each project.

7. Environmental and social issues and impacts will also be analysed for the relevant stages of the project cycle. These may include preconstruction, construction, operations, and decommissioning or closure and reinstatement. Where relevant, the appraisal will also consider the role and capacity of third parties, such as local and national governments, contractors and suppliers, to the extent that they may influence the project, recognising that the client's ability to address these risks and impacts will depend on its control and influence over the third party actions. The impacts associated with supply chains central to the project's core functions will be considered where the resource utilised by the project is ecologically sensitive, or in cases where low labour cost is a material factor in the competitiveness of the item supplied.³ The appraisal will also consider potential transboundary and global issues, such as impacts from effluents and emissions, increased use or contamination of international waterways, greenhouse gas emissions, climate change mitigation and adaptation issues, and impacts on endangered species and habitats.

8. The nature of due diligence studies undertaken will be commensurate with the risks and issues involved. It will be an adequate, accurate, and objective evaluation and presentation of the issues, prepared by qualified and experienced persons. Depending on the

potential significance of issues and impacts, the Bank may require that some due diligence studies are conducted by independent third party specialists. For each project, the Bank will agree with the client the nature of due diligence studies required.

9. Projects categorised by EBRD as "A" will require special formalised and participatory assessment processes. An indicative list of such projects is provided in Appendix 1 to the Policy. Greenfield developments, or major expansions of activities, with potentially significant and diverse adverse environmental or social impacts, such as those listed in Appendix 1, will require a comprehensive environmental and/or social impact assessment, to identify and assess the potential future environmental and social impacts associated with the proposed project, identify potential improvement opportunities, and recommend any measures needed to avoid, or where avoidance is not possible, minimise and mitigate adverse impacts. This assessment will include an examination of technically and financially feasible alternatives to the source of such impacts, and documentation of the rationale for selecting the particular course of action proposed. The Environmental Impact Assessment (EIA)/Social Impact Assessment (SIA) shall meet PR 10 and any applicable requirements of national EIA law and other relevant laws.⁴ In exceptional circumstances, a regional, sectoral or strategic assessment may be required. Projects involving involuntary resettlement or impacts on Indigenous Peoples or cultural heritage will require an assessment in accordance with PRs 5, 7 and 8 respectively, in addition to any other environmental or social due diligence studies that may be required.

10. Projects categorised as "B" may require a variety of due diligence investigations, depending on the project's nature, size and location, as well as the characteristics of the potential

³ See also PR 2, section 20 and PR 6, section 22.

⁴ A report format for EIA/SIA, consistent with the EU EIA Directive, will be available from the EBRD. Projects located in EU Member States are required to comply with the EU EIA Directive and, where necessary, obtain a permit.

environmental and social impacts and risks. Due diligence should identify and assess any potential future impacts associated with the proposed project, identify potential improvement opportunities, and recommend any measures needed to avoid, or where avoidance is not possible, minimise, and mitigate adverse impacts. Depending on the potential environmental and social risks, the Bank may require that existing facilities be subject to an audit to assess the environmental and social impacts of past and current operations of the existing facilities. The purpose of such audits is to identify past or present concerns, current status of regulatory compliance, management systems and performance as well as potential risks, liabilities and opportunities associated with the project. Other types of investigations, such as hazard analyses or risk assessments, may also be required. The focus of the assessment, audit or other investigation may be environmental or social (for example, labour, occupational health and safety, community impacts) or a combination of all, depending on the nature of the project. Any investigations of existing facilities must be carried out by specialists that are independent from the facility being investigated.

11. In cases where clients with multi-site operations are seeking from the EBRD general corporate finance, working capital or equity financing, the appraisal outlined in paragraphs 4 to 10 may not be appropriate. In such cases, which will be confirmed by the EBRD on a project-by-project basis, the client will commission a qualified and experienced, external specialist to conduct a corporate audit of their current environmental and social management system (ESMS) and the company's past and current performance against EBRD's PRs.

The audit will:

- assess the client's ability to manage and address all relevant social and environmental risks and impacts of its business and operations, in particular the issues identified in the PRs (including this PR)
- assess the client's compliance record with applicable laws and regulations of the jurisdictions in which the project operates that pertain to environmental and social matters, including those laws implementing host country obligations under international law
- identify the company's main stakeholder groups and current stakeholder engagement activities.

The exact scope of the corporate audit will be agreed with the EBRD on a case-by-case basis.

12. Projects categorised "C", as having minimal or no adverse impacts, will not be subject to further environmental or social appraisal beyond their identification as such, and will not require an ESAP as per sections 14–16 below.

13. As part of the appraisal process, the client will identify and engage with stakeholders in accordance with PR 10.

Environmental and Social Action Plan (ESAP)

14. Taking into account the findings of the environmental and social appraisal and the result of consultation with affected stakeholders, the client will develop and implement a programme of mitigation and performance improvement measures and actions that address the identified social and environmental issues, impacts and opportunities in the form of an Environmental and Social Action Plan (ESAP). Mitigation measures and actions will be

identified so that all relevant stages of the project (for example, pre-construction, construction, operation, closure, decommissioning/reinstatement) operate in compliance with applicable laws and regulations and the PRs of this Policy. The ESAP should take a long-term and phased approach and also take into account expected future regulatory requirements. The ESAP shall focus on avoidance of impacts, and where this is not possible, mitigation measures to minimise or reduce possible impacts to acceptable levels. Where residual impacts affect biodiversity, environmental offsets may be required in accordance with PR 6 to promote a “no net loss” approach; compensation for involuntary resettlement and for impacts on Indigenous Peoples will be carried out in accordance with PRs 5 and 7. The ESAP will also address, where appropriate, opportunities to achieve additional environmental and social benefits of the project including, where relevant, community development programmes. Where stakeholder groups were identified as disadvantaged or vulnerable during the appraisal process, the ESAP will include differentiated measures so that adverse impacts do not fall disproportionately on them and they are not disadvantaged in sharing any development benefits and opportunities resulting from the project. Depending on the project, the ESAP may consist of a combination of operational policies, procedures, management systems, practices, and capital investments. The measures and actions to address identified impacts and risks will favour the avoidance and prevention of impacts over minimisation, mitigation, or compensation, where technically and financially feasible.

15. The level of detail and complexity of the ESAP and the priority of the identified measures and actions will reflect the project’s risks, impacts and opportunities. The ESAP will document key environmental and social issues, the actions to be taken to address them adequately, as well as any actions to maximise environmental or social benefits, the schedule and person/unit responsible for implementation and monitoring, and an estimate of the associated costs. The client will inform the EBRD how these costs will be met. Desired outcomes will be defined against the baseline established during appraisal as measurable events to the extent possible, with elements such as performance indicators, targets, or acceptance criteria that can be tracked over defined time periods. Where current operations are significantly non-compliant with regulatory requirements and existing permits, the proposed actions and schedules for these areas of non-compliance should be agreed with the relevant competent authorities. Recognizing the dynamic nature of the project development and implementation process, the ESAP will be responsive to changes in project circumstances, unforeseen events, and the results of monitoring. For Category A projects the Bank may agree with the client during appraisal a management of change process to govern the way in which proposed project changes or unforeseen circumstances are managed and reported.

16. In the case of clients with multi-site operations seeking general corporate finance, working capital or equity financing, the ESAP should be incorporated into the client’s corporate environmental and social management system. It will address any issues identified during the corporate audit by specifying time-bound measures to achieve and maintain compliance with the Bank’s PRs within a reasonable time frame.

Organisational capacity and commitment

17. The client will need to establish, maintain, and strengthen as necessary an organisational structure that defines roles, responsibilities, and authority to implement the ESAP and associated management system. Specific personnel, including management representative(s), with clear lines of responsibility and authority should be designated. Key social and environmental responsibilities should be well-defined and communicated to the relevant personnel and to the rest of the organization. Sufficient management commitment and human and financial resources must be provided on an ongoing basis to achieve effective and continuous social and environmental performance.

18. The client will ensure that employees with direct responsibility for activities relevant to the project's or the company's social and environmental performance are adequately qualified and trained so that they have the knowledge and skills necessary to perform their work. Training should also address the specific measures and actions required under the applicable PRs and the ESAP (if any) and the methods required to perform the action items in a competent and efficient manner.

Managing contractors

19. The PRs, including any specific requirements set out in the ESAP, will apply to the project regardless of whether it is carried out directly by the client or through contractors or subcontractors. It is the client's responsibility to ensure that contractors working on project sites meet these requirements. Effective contractor management includes:

- assessing environmental and social risks associated with contracts

- including relevant PRs/ESAP provisions into tender documents as appropriate, and screen potential contractors' capacity to meet the requirements
- contractually requiring contractors to apply these standards and include appropriate non-compliance remedies
- ensuring that contractors have knowledge and skills to perform their project tasks in accordance with the PRs and ESAP requirements
- monitoring contractor compliance with the above requirements
- in the case of sub-contracting, requiring contractors to have similar arrangements with their subcontractors

Requirements related to labour and working conditions of non-employee workers are outlined in PR 2, paragraph 19.

Performance monitoring and review

20. The client will establish procedures to monitor and measure compliance with the environmental and social provisions of the legal agreements including effective implementation of the ESAP and the PRs and improvements achieved over time against the baseline established during appraisal. The extent of monitoring will be commensurate with the risks to and adverse impacts on the environment and affected communities. Monitoring will normally include recording information to track performance and establishing relevant operational controls to verify compliance and progress, as well as acting on inspection reports by the relevant enforcement authorities and feedback from stakeholders such as community members. In addition, the client may use third parties,

such as independent experts, local communities or NGOs, to complement or verify its own monitoring information. For Category A projects, the client will be required to retain qualified and experienced specialists to perform periodic monitoring functions/audits throughout the life of the Bank's involvement with the project. The client will document monitoring results.

21. The results of the monitoring should be used to correct and improve operational performance. Similarly, monitoring activities can be adjusted according to performance experience and feedback. During project implementation, results of client self-monitoring, governmental inspection reports, third party audits/reports or monitoring by lenders may indicate that changes are necessary to the ESAP. Based on the monitoring results, the client will identify and reflect any necessary corrective and preventive actions in an amended ESAP and/or offset programme, which will be submitted to the Bank for approval. The client will implement agreed corrective and preventive actions, and follow up on these actions to ensure their effectiveness.

22. Senior management in the client's organization should receive regular performance assessments of the environmental and social management system and/or progress in implementing the ESAP, based on systematic data collection and analysis. The scope and frequency of such reporting will depend upon the nature and scope of the activities identified and undertaken in accordance with the client's management system/programme, the ESAP and other applicable project requirements.

23. Clients will facilitate monitoring visits to their sites by the Bank's environmental or social specialists, or consultants acting on the Bank's behalf. The frequency and extent of these visits will be commensurate with the project's environmental and social risks.

24. As part of their regular reporting to the Bank, clients will provide the EBRD with updates on their progress in implementing their ESAP. Stakeholder engagement during project implementation, including external reporting on progress with implementing the ESAP, will be undertaken in accordance with PR 10.

PR 2: Labour and Working Conditions

Introduction

1. EBRD believes that for any business, the workforce is a valuable asset, and that good human resources management and a sound worker-management relationship based on respect for workers' rights, including freedom of association and right to collective bargaining, are key ingredients to the sustainability of the enterprise. By treating workers fairly and providing them with safe and healthy working conditions, clients may create tangible benefits, such as enhancement of the efficiency and productivity of their operations. Conversely, failure to establish and foster a sound worker/management relationship can undermine worker commitment and retention, jeopardise a project and damage the client's reputation.

Objectives

2. EBRD will seek to support, through its operations, the initiatives of other institutions such as the ILO and the EU to promote the decent work agenda. At a minimum, the client's human resources policies, procedures and standards shall be designed to:

- establish and maintain a sound worker-management relationship
- promote the fair treatment, non-discrimination and equal opportunity of workers
- promote compliance with any collective agreements to which the client is a party, national labour and employment laws, and the fundamental principles and key regulatory standards embodied in the ILO conventions that are central to this relationship¹
- protect and promote the health of workers, especially by promoting safe and healthy working conditions.

Scope of application

3. The Bank will agree with the client how the relevant requirements of this Performance Requirement (PR) will be addressed, as part of the client's overall environmental and social action plan and/or management system. The environmental and social appraisal and management requirements are outlined in PR 1 and PR 10.

4. Throughout this PR, the term "workers" is used to refer to the employees of the client. The applicability of the PR to non-employee workers is set out in paragraph 19. Supply chain issues are addressed in paragraphs 20 and 21.

Requirements

Management of worker relationship

Human resources policies

5. The client will adopt and/or maintain human resources policies appropriate to its size and workforce that sets out its approach to managing the workforce consistent with the requirements of this PR. These policies will be clear, understandable and accessible to workers.

Working relationships

6. The client will document and communicate to all workers their working conditions and terms of employment including their entitlement to wages, hours of work, overtime arrangements and overtime compensation, and any benefits (such as leave for illness, maternity/paternity, or holiday).

Working conditions and terms of employment

General

7. Projects are required to comply, at a minimum, with:

- national labour, social security and occupational health and safety laws, and

¹ ILO conventions 29 and 105 (forced and bonded labour), 87 (freedom of association), 98 (right to collective bargaining), 100 and 111 (discrimination), 138 (minimum age) 182 (worst forms of child labour).

- the principles and standards embodied in the ILO conventions² related to:
 - a) the abolition of child labour
 - b) the elimination of forced labour
 - c) the elimination of discrimination related to employment
 - d) the freedom of association and collective bargaining.
- base the employment relationship on the principle of equal opportunity and fair treatment, and will not discriminate with respect to all aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training, promotion, termination of employment or retirement, and discipline.

Child labour

8. The client will comply with all relevant national laws provisions related to the employment of minors. In any event, the client will not employ children in a manner that is economically exploitative, or is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development. Young people below the age of 18 years will not be employed in hazardous work and all work of persons under the age of 18 shall be subject to an appropriate risk assessment.

Forced labour

9. The client will not employ forced labour, which consists of any work or service not voluntarily performed that is exacted from an individual under threat of force or penalty. This covers any kind of involuntary or compulsory labour, such as indentured labour, bonded labour or similar labour-contracting arrangements.

Non-discrimination and equal opportunity

10. Projects will comply with EU requirements on non-discrimination related to employment. In particular, the client will:

- not make employment decisions on the basis of personal characteristics, such as gender, race, nationality, ethnic origin, religion or belief, disability, age or sexual orientation, unrelated to inherent job requirements

Special measures of protection or assistance to remedy past discrimination or promote local employment opportunities or selection for a particular job based on the inherent requirements of the job, which are in accordance with national law, will not be deemed discrimination.

Workers' organisations

11. The client will not discourage workers from forming or joining workers' organisations of their choosing or from bargaining collectively, and will not discriminate or retaliate against workers who participate, or seek to participate, in such organisations or bargain collectively. In accordance with national law, the client will engage with such workers' organisations and provide them with information needed for meaningful negotiation in a timely manner. Where national law substantially restricts the establishment or functioning of workers' organisations, the client will enable means for workers to express their grievances and protect their rights regarding working conditions and terms of employment. These means should not be under the influence or control of the client.

² ILO conventions 29 and 105 (forced and bonded labour), 87 (freedom of association), 98 (right to collective bargaining), 100 and 111 (discrimination), 138 (minimum age) 182 (worst forms of child labour).

Wages, benefits and conditions of work

12. Wages, benefits and conditions of work offered should, overall, be comparable to those offered by equivalent employers in the relevant region of that country/region and sector concerned. Where the client is a party to a collective bargaining agreement or is otherwise bound by it, such agreement will be respected.

Occupational Health and Safety (OHS)

13. The client will provide the workers with a safe and healthy work environment, taking into account inherent risks in its particular sector and specific classes of hazards in the client's work areas, including physical, chemical, biological, and radiological hazards. The client will take steps to prevent accidents, injury, and disease arising from, associated with, or occurring in the course of work by:

- identifying and minimising, so far as reasonably practicable, the causes of potential hazards to workers
- provision of preventive and protective measures, including modification, substitution, or elimination of hazardous conditions or substances
- provision of appropriate equipment to minimise risks, and requiring and enforcing its use
- training of workers, and provision of appropriate incentives for them to use and comply with health and safety procedures and protective equipment
- documentation and reporting of occupational accidents, diseases and incidents
- emergency prevention, preparedness and response arrangements.

14. Projects will comply with relevant EU OHS requirements and, where such requirements do not exist, relevant IFC OHS guidelines.

15. To achieve the above requirements, the client will maintain an OHS management system appropriate to the size and nature of its business and in line with good international practice.³

16. Where a client provides accommodation for workers, the accommodation shall be appropriate for its location and be clean, safe and, at a minimum, meet the basic needs of workers. In particular, the provision of accommodation shall meet national legislation and international good practice in relation, but not restricted, to the following: the practice for charging for accommodation; the provision of minimum amounts of space for each worker; provision of sanitary, laundry and cooking facilities and potable water; the location of accommodation in relation to the workplace; any health, fire safety or other hazards or disturbances and local facilities; the provision of first aid and medical facilities; and heating and ventilation. Workers freedom of movement to and from the employer-provided accommodation shall not be unduly restricted.

Retrenchment

17. If the client anticipates collective dismissals as defined in Article 1 of EU Directive 98/59, the client will develop a plan to mitigate the adverse impacts of retrenchment, in line with national law and good industry practice and based on the principles of non-discrimination and consultation. Without prejudice to more stringent provisions in national law, such consultation will involve reasonable notice of employment changes to the workers' representatives and, where appropriate, relevant public authorities,

³ Such as ILO OSH 2001 Guidelines or OHSAS 18001. Management systems should include appropriate incentive and penalty schemes to promote good OHS practices.

so that the retrenchment plan may be examined jointly in order to mitigate adverse effects of job losses on the workers concerned. The outcome of the consultations will be reflected in the final retrenchment plan.

Grievance mechanism

18. The client will provide a grievance mechanism for workers (and their organisations, where they exist) to raise reasonable workplace concerns. The client will inform the workers of the grievance mechanism at the time of hiring, and make it easily accessible to them. The mechanism should involve an appropriate level of management and address concerns promptly, using an understandable and transparent process that provides feedback to those concerned, without any retribution. The mechanism should not impede access to other judicial or administrative remedies that might be available under law or through existing arbitration procedures, or substitute for grievance mechanisms provided through collective agreements.

Non-employee workers

19. In the case of non-employee workers engaged by the client through contractors or other intermediaries to work on project sites or perform work directly related to the core functions of the project, the client will: (i) ascertain that these contractors or intermediaries are reputable and legitimate enterprises; and (ii) require that they apply the requirements stated in paragraphs 6 to 16 and 18 above. When the client contracts non-employee workers directly, the client will apply the requirements of paragraphs 6 to 16 and 18 above.

Supply chain

20. The adverse impacts associated with supply chains will be considered where low labour cost is a material factor in the competitiveness of the item supplied. In such circumstances, the client will take reasonable steps to inquire about the use of child labour and forced labour⁴ in its supply chain in relation to goods and materials which are central to the core functions of the project.

21. If the client learns that child labour or forced labour in contravention with ILO standards are apparent in the supply chain and the goods or materials contribute materially to the core functions of the EBRD-funded activities, the client will take all reasonable steps to address this in accordance with the following requirements:

(a) In relation to child labour, the client should only continue to procure such goods or materials having received satisfactory undertakings or evidence that the supplier is committed to implementing a programme in line with good international practice to eliminate such practices within a reasonable time frame. The client will report on progress with the implementation of such programme to the EBRD on a regular basis.

(b) In relation to forced labour, the client should only continue to procure such goods or materials having received satisfactory undertakings or evidence that the supplier has taken appropriate steps to eliminate the conditions that constitute forced labour.

⁴ As defined in ILO conventions 138, 182, 29, 105.

PR 3: Pollution Prevention and Abatement

Introduction

1. The EBRD recognises that sustainable development is a fundamental aspect of sound business management and that the pursuit of economic growth and a healthy environment are inextricably linked. Pollution prevention and abatement are key ingredients of a sustainable development agenda and EBRD-financed projects must meet good international practice in this regard. The impacts and issues associated with polluting activities need to be considered in all economic activities, and from effluents and emissions at the facility level, to impacts at a regional and global level where appropriate.

2. As a signatory to the European Principles for the Environment, the EBRD is committed to:

- supporting, through the activities it finances, the precautionary principle, the prevention principle, the principle that environmental damage should as a priority be rectified at source, and the polluter pays principle
- requiring compliance with relevant EU environmental standards, in particular those related to industrial production, water and waste management, air and soil pollution, occupational health and safety,¹ and the protection of nature,² where these can be applied at the project level (hereafter: “EU environmental requirements”).³

Objectives

3. The objectives of this Performance Requirement (PR) are:

- to avoid or, where avoidance is not possible, minimise adverse impacts on human health

and the environment by avoiding or minimising pollution directly arising from projects

- to assist clients in identifying project-related opportunities for energy and resource efficiency improvements and waste reduction
- to promote the reduction of project-related greenhouse gas emissions.

Scope of application

4. The Bank will agree with the client how the relevant requirements of this PR will be addressed and managed, as part of the client’s overall environmental and social action plan (ESAP) and/or management system. The environmental and social appraisal and management requirements are outlined in PR 1 and PR 10.

Requirements

General

5. Subject to paragraph 6 below, projects will be designed to comply with relevant EU environmental requirements as well as with applicable national law, and will be operated in accordance with these laws and requirements.

6. It is acknowledged that EU environmental requirements for the pollution prevention and abatement measures are based on the best available techniques, without prescribing the use of any technique or specific technology, but taking into consideration the technical characteristics of the installation concerned, its geographical location and local environmental conditions so as to ensure a high level of protection for the environment as a whole. ESAP provisions to achieve compliance with these requirements should take into account any nationally agreed time frame to bring about

¹ Occupational health and safety is covered in PR 2.

² Biodiversity conservation is covered in PR 6.

³ For the purpose of this Policy and PRs, EU environmental standards can be applied at the project level where the EU legislative document itself contains clear quantitative or qualitative requirements that are applicable at facility level (as opposed to, for example, ambient level).

compliance with EU legislation (for example, in EU candidate countries). For projects in countries other than EU members, candidate and potential candidate countries, the time frame set in the ESAP for achieving compliance with EU environmental requirements should be consistent with any bilateral agreements or action plans agreed between the EU and the relevant country, but may take into account the cost of application and the local conditions that prevail.

7. Where EU environmental requirements do not exist, the client will apply other good international practice such as the World Bank Group Environmental Health and Safety Guidelines. In such cases the Bank will agree the applicable requirements with the client on a project by project basis.

8. When host country regulations differ from the levels and measures presented in EU environmental requirements or requirements agreed pursuant to paragraph 7, projects will be expected to meet whichever is more stringent.

9. For each project, the Bank will identify and agree with the client the relevant applicable environmental requirements and guidelines.

Pollution prevention, resource conservation and energy efficiency

10. During the design, construction, operation and decommissioning of the project (the project lifecycle) the client will consider technical characteristics of the installation concerned, its geographical location and local/ambient environmental conditions and apply pollution prevention and control technologies and practices (techniques) that are best suited to avoid or, where avoidance is not feasible, minimise or reduce adverse impacts on human health and the environment while remaining technically and financially feasible and cost-effective.

11. The client will avoid the release of pollutants or, when avoidance is not feasible, minimise or control their release. This applies to the release of pollutants due to routine, non-routine or accidental circumstances with the potential for local, regional, or transboundary impacts. In addition, the client should examine and incorporate in its operations, energy efficiency measures and measures to conserve water and other resources, consistent with the principles of cleaner production.

Wastes⁴

12. The client will avoid or minimise the generation of hazardous and non-hazardous waste materials and reduce its harmfulness as far as practicable. Where waste generation cannot be avoided but has been minimised, the client will reuse, recycle or recover waste, or use it as a source of energy; where waste can not be recovered or reused, the client will treat, destroy, and dispose of it in an environmentally sound manner. If the generated waste is considered hazardous, the client will explore commercially reasonable alternatives for its environmentally sound disposal considering the limitations applicable to its transboundary movement. When waste disposal is conducted by third parties, the client will use contractors that are reputable and legitimate enterprises licensed by the relevant regulatory agencies.

Safe use and management of hazardous substances and materials

13. The client will seek to avoid, reduce or eliminate the use of hazardous substances and materials, and consider the use of less hazardous substitutes for such substances and materials so as to protect human health and the environment from their potential harmful impacts. Where avoidance is not feasible, the client will consider the safety of their uses and apply appropriate risk management measures in

⁴ For the purposes of this PR, waste is defined as a heterogeneous mixture of gaseous, liquid and/or solid substances/materials which needs to be treated using adequate physical, chemical and/or biological processes before it can be safely disposed of into the environment.

order to minimise or control the release of such substances/materials into air, water and/or land resulting from their production, transportation, handling, storage, use and disposal relating to project activities. The client will avoid the manufacture, trade, and use of hazardous substances and materials subject to international bans or phase-outs due to their high toxicity to living organisms, environmental persistence, potential for bio-accumulation, or potential for depletion of the ozone layer.

Emergency preparedness and response

14. The client will be prepared to respond to process upset, accidental, and emergency situations in a manner appropriate to the operational risks and the need to prevent their potential negative consequences. The client will apply the requirements in paragraphs 18–22 of PR 4 to identify major-accident hazards, prevent major accidents and limit their consequences for humans and the environment, with a view to ensuring high levels of protection in a consistent and effective manner.

Industrial production

15. The client will put in place processes to ensure that all emissions and effluents and wastes are inventoried and monitored on an ongoing basis. Clients required to report project-related releases of pollutants to the European Pollutant Release and Transfer Register (E-PRTR)⁵ will also report these data to the EBRD.

Ambient considerations

16. To address adverse project impacts on existing ambient conditions, the client will: (i) consider a number of factors, including the finite assimilative capacity of the environment, existing and future land use, existing ambient conditions, the project's proximity to ecologically sensitive or protected areas, and the potential for cumulative impacts with uncertain and irreversible consequences; and (ii) promote strategies that avoid or, where avoidance is not feasible, minimise or reduce the release of pollutants, including strategies that contribute to the improvement of ambient conditions when the project has the potential to constitute a significant source of emissions in an already degraded area. These strategies include, but are not limited to, evaluation of project location alternatives and emissions' offsets.

Greenhouse gas emissions

17. The client will promote the reduction of project-related greenhouse gas (GHG) emissions in a manner appropriate to the nature and scale of project operations and impacts.

18. During the development of projects that are expected to or currently produce significant quantities of GHGs,⁶ the client will procure and report the data necessary to enable both an assessment of baseline (pre-investment) GHG emissions and an estimate of post-implementation GHG emissions. Guidance on data requirements should be sought from

⁵ Companies located in the EU and EU candidate countries which release pollutants into air, water and/or land above specified thresholds are required to monitor and report the release quantities to the E-PRTR. E-PRTR was adopted by EU Regulation 166/2006 and will succeed the current European Pollutant Emission Register. See www.eper.ec.europa.eu/eper.

⁶ The significance of a project's contribution to GHG emissions varies between industry sectors. Guidance on the amounts of GHG emissions likely to be associated with projects in different sectors is given in *EBRD Methodology for Assessment of Greenhouse Gas Emissions – Guidance for consultants working on EBRD – financed projects (GNO)*. The significance threshold for this Performance Requirement is generally 100,000 tonnes CO₂ equivalent per year for the aggregate emissions of direct sources and indirect sources associated with purchased electricity for own consumption. However, a lower emission threshold may be appropriate where a project aims to bring about large improvements in production efficiency. Clients are encouraged to consult with the Bank in such cases on whether data procurement for GHG assessment will be required.

the Bank. The GHG assessment will cover direct emissions from the facilities owned or controlled within the physical project boundary, together with those from any external operations on which the project is dependent, including indirect emissions associated with the off-site production of power used by the project.

Guidance on the definition of project boundary should also be sought from the Bank.⁷

Quantification and monitoring of the parameters needed to evaluate GHG emissions⁸ will be conducted annually during the life of the project.

19. In addition, the client will assess technically and financially feasible and cost-effective options to reduce its carbon intensity during the design and operation of the project, and pursue appropriate options.

Pesticide use and management

20. The client will formulate and implement an integrated pest management (IPM) and/or integrated vector management (IVM) approach for pest management activities. The client's IPM and IVM programme will entail coordinated use of pest and environmental information along with available pest control methods, including cultural practices, biological, genetic and, as a last resort, chemical means to prevent unacceptable levels of pest damage. When pest management activities include the use of pesticides, the client will strive to reduce the impacts of pesticides on human health and the environment and, more generally, to achieve a more sustainable use of pesticides as well as a significant overall reduction in the risks and uses of pesticides consistent with the necessary crop protection.

The sustainable use of pesticides shall include:

- minimising or, where possible, elimination of the use of pesticides minimising the hazards and risks to health and environment from the use of pesticides
- reducing the levels of harmful active substances by replacing the most dangerous with safer (including non-chemical) alternatives
- selecting pesticides that are low in human toxicity, known to be effective against the target species, and have minimal effects on non-target species and the environment
- using low-input or pesticide-free crop farming
- minimising damage to natural enemies and preventing the development of resistance in pests.

21. The client will handle, store, apply and dispose of pesticides in accordance with good international industry practice such as the Food and Agriculture Organization (FAO) International Code of Conduct on the Distribution and Use of Pesticides.

22. The client will not use products that fall in World Health Organization Recommended Classification of Pesticides by Hazard Classes 1a (extremely hazardous) and 1b (highly hazardous); or Class II (moderately hazardous), if the project host country lacks restrictions on distribution and use of these chemicals, or if they are likely to be accessible to personnel without proper training, equipment, and facilities to handle, store, apply, and dispose of these products properly.

⁷ Guidance on data requirements and the definition of project boundary are provided, respectively, in the Bank's *Environmental Audit and Appraisal Protocols and EBRD Methodology for Assessment of Greenhouse Gas Emissions – Guidance for consultants working on EBRD – financed projects (GN1)*.

⁸ For example, the quantities of fuel or electricity usage.

PR 4: Community Health, Safety and Security

Introduction

1. The EBRD recognises that project activities, equipment, and infrastructure often bring benefits to communities including employment, services, and opportunities for economic development. However, projects can also increase the potential for community exposure to risks and impacts arising from temporary or permanent changes in population; transport of raw and finished materials; construction, operations and decommissioning; accidents, structural failures, and releases of hazardous materials.

2. Communities may also be affected by impacts on their natural resources, exposure to diseases, and the use of security personnel. While acknowledging the public authorities' role in promoting the health, safety and security of the public, this Performance Requirement ("PR") addresses the client's responsibility to identify and to avoid or minimise the risks and adverse impacts to community health, safety and security that may arise from project activities.

3. The level of risks and impacts described in this PR may be greater in projects located in conflict and post-conflict areas, or in areas subject to significant natural or manmade events (for example, areas subject to seismic events, flooding).

Objectives

4. The objectives of this PR are:

- to avoid or minimise risks to and impacts on the health and safety of the local community during the project life cycle from both routine and non-routine circumstances

- to ensure that the safeguarding of project-related personnel and property is carried out in a legitimate manner that avoids or minimises risks to the community's safety and security.

Scope of application

5. The applicability of this PR is determined by the Bank during the environmental and social appraisal process. If applicable, the Bank will agree with the client how the requirements of this PR will be addressed and managed as part of the client's overall environmental and social action plan (ESAP) and/or management system. The environmental and social appraisal and management requirements are outlined in PR 1 and PR 10.

6. This PR addresses potential risks and impacts to the affected community from project activities, including construction, start-up, operation, and decommissioning. It is noted that potential impacts may vary from stage to stage of the project. Occupational health and safety standards are found in PR 2; detailed requirements on the prevention of impacts on human health and the environment due to pollution are found in PR 3.

Requirements

Community health and safety requirements

General requirements

7. The client will identify and evaluate the risks and potential impacts to the health and safety of the affected community during the design, construction, operation, and decommissioning of the project and will establish preventive measures and plans to address them in a manner commensurate with the identified risks and impacts. These measures will favour the prevention or avoidance of risks and impacts over minimisation and reduction.

8. Where the project or stage of the project poses material risks to or potential adverse impacts on the health and safety of affected communities, the client will disclose relevant project-related information to enable the affected communities and relevant government agencies to understand these risks and potential impacts, as well as the client's proposed prevention, mitigation and emergency response measures, as appropriate. The client will consult with affected communities and relevant government agencies about the proposed measures before they are finalised and take their concerns and comments into account. The client will review the measures regularly, and engage the affected communities and agencies on an ongoing basis, informing them on the status of implementation of plans and commitments, results, and discussing with them any material changes needed to the plans, in advance of changes. Information disclosed may be summarised (maintaining a sufficient level of detail to allow stakeholders to fully understand the risks, potential impacts and measures to be taken) and/or redacted to remove confidential information.

9. The client will report on the risks, potential impacts and benefits of the project and implementation of any action plans on a regular basis (for example, annually) to the EBRD and, as part of its reporting to stakeholders in accordance with PR 10, to the affected community(ies).

Infrastructure and equipment safety

10. The client will design, construct, operate and decommission the structural elements or components of the project in accordance with good international industry practice, and will give particular consideration to potential exposure to natural hazards, especially where the structural elements are accessible to members of the affected community or where their failure could result in direct or indirect injury to the

community. Structural elements will be designed and constructed by qualified and experienced professionals, and certified or approved by competent authorities or professionals.

11. When structural elements or components, such as dams, tailings dams or ash ponds, are situated in high-risk locations and their failure or malfunction may threaten the safety of communities, the client will engage one or more qualified experts with relevant and recognized experience in similar projects, separate from those responsible for the design and construction, to conduct a review as early as possible in project development and throughout the stages of project design, construction, and commissioning. For projects that operate moving equipment on public roads and other forms of infrastructure, the client will seek to prevent the occurrence of incidents and accidents associated with the operation of such equipment.

Hazardous materials safety

12. The client will prevent or minimise the potential for community exposure to hazardous materials that may be released by the project. Where there is a potential for the community (including workers and their families) to be exposed to hazards, particularly those that may be life-threatening, the client will exercise special care to avoid or minimise their exposure by modifying, substituting or eliminating the condition or substance causing the hazards.

13. Where hazardous materials are part of existing project infrastructure or components, the client will exercise special care when conducting start-up and decommissioning activities in order to prevent exposure to the community. The client will liaise with the competent authorities to obtain available information on exposure levels of those materials which are known to cause non-communicable disease, such as cancer or lung disease.

14. In addition, the client will exercise commercially reasonable efforts to control the safety of transporting raw materials and of transportation and disposal of wastes, and will implement measures to avoid or control community exposure. Information on risk, exposure of population, mitigation measures and monitoring will be provided to the relevant authorities and communicated to the public.

Environmental and natural resource issues

15. The client will prevent and avoid or minimise the exacerbation of impacts caused by natural hazards, such as landslides or floods, that could arise from land use changes due to project activities.

16. The client will also avoid or minimise adverse impacts due to project activities on air, soil, water, vegetation and fauna and other natural resources in use by the affected communities.

Community exposure to disease

17. The client will identify those communicable diseases that can be transmitted by the project components or its workforce (including contractors). Action plans should be developed, where appropriate, to prevent or minimise the potential for worker and community exposure to vector-borne and other communicable diseases that could result from project activities. Where specific diseases are endemic in communities in the project area of influence, the client is encouraged to explore opportunities during the project life cycle to improve environmental conditions that could help reduce their incidence, both among the workforce and locally.

Emergency preparedness and response

18. The client will be prepared to respond to process upset, accidental, and emergency situations in a manner appropriate to the operational risks and the need to prevent their potential negative consequences.

19. As part of the client's assessment of public health, safety and security risks and potential impacts from project-related activities (see paragraph 7 on page 30), the client will identify major-accident hazards, and will take all measures necessary to prevent major accidents and to limit their consequences for humans and the environment, with a view to ensuring high levels of protection to humans and the environment in a consistent and effective manner. Such measures will be identified in a major-accident prevention/emergency preparedness policy and an appropriate management system including organisational structures, responsibilities, procedures, communication, training, resources and other aspects required to implement such policy and to respond effectively to emergencies associated with project hazards. The management system will include an internal and an external emergency plan. External emergency plans will be established with the objectives of:

- containing and controlling incidents so as to minimise the effects, and to limit damage to humans, the environment and property
- implementing measures necessary to protect humans and the environment from the effects of major accidents
- communicating the necessary information to the public and to the emergency services or public authorities concerned in the area
- providing for the restoration and clean-up of the environment following a major accident.

20. The client will assist and collaborate with the community and the local government agencies in their preparations to respond effectively to emergency situations, especially when their participation and collaboration are necessary to respond to such emergency situations. If local government agencies have little or no capacity to respond effectively, the client will play an active role in preparing for and

responding to emergencies associated with the project, and will demonstrate capacity to respond to reasonably predictable incidents, either directly or indirectly (for example, with the assistance of emergency responders, third party contracted responders, insurance). The client will document its emergency preparedness and response activities, resources, and responsibilities, and will disclose appropriate information in the ESAP or other relevant document to affected communities and relevant government agencies, in accordance with PR 10. As part of emergency prevention and response planning, the client will inform potentially affected communities of significant hazards and summarise response plans in a culturally appropriate manner.

21. The client will exercise prevention and response plans on a schedule appropriate to the sector and risk associated with the project, but at least on an annual basis. The client will update local authorities and communities regularly as plans change or have to be tested.

22. As part of response in an actual emergency, the client will maintain close communication with appropriate emergency responders, authorities, media, and the local community to inform them about the situation and what is being done to respond to it and to prevent future incidents.

Security personnel requirements

23. When the client directly retains employees or contractors to provide security to safeguard its personnel and property, it will assess risks to those within and outside the project site or facilities posed by its security arrangements. In making such arrangements, the client will be guided by the principles of proportionality, good international practices in terms of hiring, rules of conduct, training, equipping and monitoring of such personnel,¹ and applicable law. The client will make reasonable inquiries to satisfy itself that those providing security are not

implicated in past abuses, will ensure they are trained adequately in the use of force (and where applicable, firearms) and appropriate conduct toward workers and the local community, and require them to act within the applicable law. The client will not sanction any use of force except when used for preventive and defensive purposes in proportion to the nature and extent of the threat. The client's grievance mechanisms established and maintained in accordance with PR 10 and PR 2 will be designed to allow the affected community and workers to express concerns about the security arrangements and acts of security personnel; clients will inform communities and workers of the availability and use of the mechanisms for this purpose.

24. If government security personnel are deployed to provide security services for the client, the client will assess risks arising from such use, communicate to the relevant public authorities its intent that the security personnel act in a manner consistent with paragraph 23 above, and encourage the relevant public authorities to disclose the security arrangements for the client's facilities to the public, subject to overriding security concerns.

25. The client will investigate any allegations of unlawful or abusive acts of security personnel, take action (or urge appropriate parties to take action) to prevent recurrence, and report unlawful and abusive acts to public authorities when appropriate.

¹ Such as the Voluntary Principles on Security and Human Rights: www.voluntaryprinciples.org/principles/.

PR 5: Land Acquisition, Involuntary Resettlement and Economic Displacement

Introduction

1. Involuntary resettlement refers both to physical displacement (relocation or loss of shelter) and to economic displacement (loss of assets or access to assets that leads to loss of income sources or means of livelihood) as a result of project-related land acquisition¹ or restriction of access to natural resources.²

2. Resettlement is considered involuntary when affected individuals or communities do not have the right to refuse land acquisition that results in displacement. This occurs in cases of:

- (i) lawful expropriation or restrictions on land use based on eminent domain;³ and
- (ii) negotiated settlements in which the buyer can resort to expropriation or impose legal restrictions on land use if negotiations with the seller fail.

3. Application of this Performance Requirement (PR) supports and is consistent with the universal respect for, and observance of, human rights and freedoms and specifically the right to adequate housing and the continuous improvement of living conditions.⁴ In cases where there has been displacement as a result of conflict, prior to the EBRD's involvement, this PR supports the application of the Guiding Principles on Internal Displacement.⁵

4. Unless properly managed, involuntary resettlement may result in long-term hardship and impoverishment for affected persons and communities, as well as environmental damage,

and adverse socio-economic impacts in areas to which they have been displaced. Under some circumstances, poorly executed involuntary resettlement may leave the client exposed to legal action in other jurisdictions. This is particularly so where the project is located in a jurisdiction where displaced persons may not have access to full legal remedy or procedural protections consistent with international human rights conventions. For these reasons, involuntary resettlement should be avoided or at least minimised. However, where it is unavoidable, appropriate measures to mitigate adverse impacts on displaced persons and host communities⁶ should be carefully planned and implemented. Experience demonstrates that the direct involvement of the client in resettlement activities and an assessment at the earliest stage possible in the project design, can result in cost-effective, efficient, and timely implementation of those activities, as well as promoting innovative approaches to improving the livelihoods and standards of living of those affected by resettlement.

5. Negotiated settlements help avoid expropriation and eliminate the need to use governmental authority to remove people forcibly. Negotiated settlements can usually be achieved by providing fair and appropriate compensation and other incentives or benefits to affected persons or communities, and by mitigating the risks of asymmetry of information and bargaining power. Clients are therefore encouraged to acquire land rights through negotiated settlements wherever possible, even if they have the legal means to gain access to the land without the seller's consent.

¹ Land acquisition includes both outright purchases of property and purchases of access rights, such as rights-of-way.

² Examples include loss of access to state-owned sub-surface mineral rights by artisanal miners; loss of access to marine fishing grounds due to project activities; restriction of access to resources located within state-determined exclusion zones not acquired by the client; and demonstrated decreases in agricultural, livestock, forest, hunting and fishing yields resulting from project-related disturbance and/or pollution.

³ Such restriction may include restrictions of access to legally designated nature conservation areas.

⁴ Universal Declaration of Human Rights (1948) and International Covenant on Economic, Social and Cultural Rights (1966).

⁵ Office of the High Commissioner for Human Rights: Guiding Principles on Internal Displacement.

⁶ A host community is any community receiving displaced persons.

Objectives

6. The objectives of this PR are:

- to avoid or, at least minimise,⁷ involuntary resettlement wherever feasible by exploring alternative project designs
- to mitigate adverse social and economic impacts from land acquisition or restrictions on affected persons' use of and access to land by: (i) providing compensation for loss of assets at replacement cost;⁸ and (ii) ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation, and the informed participation of those affected
- to improve or, at a minimum, restore the livelihoods and standards of living of displaced persons⁹ to pre-project levels, through measures that can be enterprise-based, wage-based and/or enterprise based, so as to facilitate sustainable improvements to their socio-economic status
- to improve living conditions among displaced persons through provision of adequate housing¹⁰ with security of tenure¹¹ at resettlement sites.

Scope of application

7. This PR applies to physical or economic displacement, that can be full, partial, permanent, or temporary, resulting from the following types of transactions:

- land rights for a project acquired through expropriation or other compulsory procedures
- land rights for a project acquired through negotiated resettlements with property owners or those with legal rights to land, including customary or traditional rights recognised or recognisable under the laws of the country, if expropriation or other compulsory process would have resulted upon the failure of negotiation¹²
- imposition of restrictions that result in people experiencing loss of access to physical assets or natural resources irrespective of whether such rights of restriction are acquired through negotiation, expropriation, compulsory purchase, or by means of government regulation.

8. Requirements and responsibilities towards displaced persons with no recognisable legal right or claim to the land they occupy are contained in paragraphs 31, 36, and 39.

⁷ Unless in the Bank's view this would compromise the health and safety of affected persons.

⁸ This is usually calculated as the market value of the assets plus the transaction costs related to restoring such assets. The calculation of replacement costs is complex due to the potential variety of land, land use claimants, and the differing levels of land market development across member countries. For this reason clients should identify and consult with all persons and communities that shall be displaced by land acquisition as well as host communities who shall receive those who are to be resettled, so as to obtain adequate information about land titles, claims and use. In applying this method of valuation, depreciation of structures and assets should not be taken into account. Where land markets are still in a formative stage, clients should seek valuation by external independent professional valuation experts (or if there are no professional valuation experts, other professionals with relevant expertise acceptable to EBRD and the client). See also footnote 17.

⁹ These may include those who have legally recognisable rights or claims to the land, those with customary claims to the land, those with no legally recognisable rights or claims to the land, seasonal resource users such as herders/fishing families, hunter and gatherers who may have interdependent economic relations with communities located within the project area.

¹⁰ Adequate housing or shelter can be measured by quality, safety, affordability, habitability, cultural appropriateness, accessibility, and locational characteristics. Adequate housing should allow access to employment options, markets, and basic infrastructure and services, such as water, electricity, sanitation, healthcare, and education. This PR affords adequate housing and security of tenure to displaced persons at resettlement sites. Clients should include one or more of the aspects of adequate housing in this paragraph in order to offer improved living conditions at the resettlement site, particularly to those without recognisable legal right or claim to the land they occupy.

¹¹ A resettlement site offers security of tenure if it protects, to the greatest extent possible, the resettled persons from forced evictions.

¹² These negotiations can be carried out by the private sector company acquiring the land or by an agent of the company. In the case of private sector projects in which land rights are acquired by the government, the negotiations may be carried out by the government or by the private company as an agent of the government.

9. This PR does not apply to resettlement resulting from voluntary land transactions (that is, market transactions in which the seller is not obliged to sell and the buyer cannot resort to expropriation or other compulsory procedures if negotiations fail).

10. The applicability of this PR will be determined by the EBRD according to the criteria set out in Paragraphs 7 to 9 during the environmental and social appraisal process. Implementation of the actions necessary to meet this PR is managed through the client's Environmental and Social Action Plan (ESAP) and/or Management System. Where involuntary resettlement has occurred prior to the Bank's involvement, due diligence will be carried out to identify a) any gaps and b) the corrective actions that may be required to ensure compliance with this PR. An action plan shall then be agreed.

The assessment and management of the resettlement process are outlined in this PR. The environmental and social appraisal and management requirements are outlined in PR 1 and PR 10.

Requirements

General requirements

Project design

11. The client will consider feasible alternative project designs to avoid or at least minimise physical and/or economic displacement, while balancing environmental, social, and financial costs and benefits.

Consultation

12. Following disclosure of all relevant information, the client will consult with affected persons and communities, including host communities, and facilitate their early and informed participation in decision-making processes related to resettlement, in accordance with PR 10:

- Affected persons¹³ shall be given the opportunity to participate in the negotiation of the compensation packages, eligibility requirements, resettlement assistance, suitability of proposed resettlement sites and the proposed timing.
- Special provisions shall apply to consultations which involve Indigenous Peoples (See PR 7) as well as individuals belonging to vulnerable groups.¹⁴

Consultation will continue during the implementation, monitoring, and evaluation of compensation payment and resettlement so as to achieve outcomes that are consistent with the objectives of this PR.

Grievance mechanism

13. The grievance mechanism to be established by the client in accordance with PR 10 will be set up as early as possible in the process, consistent with this PR, to receive and address in a timely fashion specific concerns about compensation and relocation that are raised by displaced persons and/or members of host communities, including a recourse mechanism

¹³ Including those who may not be physically present due, for example to displacement as result of a previous or current conflict.

¹⁴ Vulnerable or 'at-risk' groups includes people who, by virtue of gender, ethnicity, age, physical or mental disability, economic disadvantage or social status may be more adversely affected by displacement than others and who may be limited in their ability to claim or take advantage of resettlement assistance and related development benefits. Vulnerable groups in the context of displacement also include people living below the poverty line, the landless, the elderly, women- and children-headed households, ethnic minorities, natural resource dependent communities or other displaced persons who may not be protected through national land compensation or land titling legislation. These groups should be identified through the process of environmental and social appraisal (see PR 1). Special measures in terms of consultation and development assistance may be needed to allow such groups to participate in resettlement planning meaningfully and to benefit from development opportunities. Persons identified as vulnerable should be assisted to fully understand their options for resettlement and compensation, and encouraged to choose the option with the lowest risk.

designed to resolve disputes in an impartial manner. A summary of complaints and the measures taken to resolve them shall be made public on a regular basis, in accordance with PR 10.

Resettlement planning and implementation

14. Where involuntary resettlement is unavoidable, the client will engage a suitably qualified specialist to carry out a census and a socio-economic baseline assessment within a defined affected area, and assist in the preparation of the Resettlement Action Plan or Livelihood Restoration Framework:

- The census and socio-economic baseline assessment will identify the persons who will be displaced (fully or partially) by the project, determine who will be eligible for compensation and assistance and, by setting a cut-off date, discourage inflow of people¹⁵ who are ineligible for these benefits.
- In the absence of national government procedures, the date of completion of the census and assets inventory represents the cut-off date for eligibility. Information regarding the cut-off date will be well-documented and disseminated throughout the project area.
- Seasonal resource users may not be present in the project area during the time of the census and so special consideration should be given to the claims of these communities.

Resettlement Action Plan (RAP)

15. In the case of transactions as described in paragraph 7 that involve the physical displacement of people, the client will, based on the environmental and social impact assessment, develop a Resettlement Action Plan (RAP) that covers, at a minimum, the applicable requirements of this PR, regardless of the number of people affected.

16. The RAP will:

- be designed to mitigate the negative impacts of displacement, identify potential development benefits and establish the entitlements of all categories of affected persons (including host communities), with particular attention paid to the needs of the poor and the vulnerable
- document all transactions to acquire land rights, as well as compensation measures and relocation activities
- establish procedures to monitor and evaluate the implementation of resettlement plans and take corrective action as necessary.

17. The scope and level of detail of the RAP will vary with the magnitude of displacement and the complexity of the measures required to mitigate adverse impacts. In all cases, it will describe the manner in which the objectives of this PR will be achieved. At a minimum, the RAP should:

- state the resettlement objectives
- describe project impacts, identify all people to be displaced and provide an inventory of affected assets
- demonstrate that displacement is unavoidable and has been minimised
- describe the legal framework for land acquisition and compensation
- describe the process of consultation with affected people regarding acceptable resettlement alternatives, and the level of their participation in the decision-making process
- describe the entitlements for all categories of displaced people

¹⁵ Such as opportunistic squatters and recently arrived economic migrants who occupy the land after the cut-off.

- enumerate the rates of compensation for lost assets and demonstrate that these rates are adequate, that is, at least equal to the replacement cost of lost assets
- describe the process for selection, allocation, preparation and land titles relating to housing replacement
- describe relocation assistance to be provided
- provide details of arrangements for improving or, at a minimum, restoring the livelihoods and standards of living of displaced persons
- outline the institutional/organisational responsibility for the implementation of the RAP and procedures for grievance redress
- provide a timetable and budget for the implementation of the RAP
- provide details of arrangements for monitoring, evaluation and reporting
- where the land acquisitions does not result in any loss of livelihoods or loss of income, provide fair compensation for the acquired land and any lost assets on such land at their replacement cost.

18. The RAP should specifically take into account any individuals or groups that may be disadvantaged or vulnerable. In particular, the RAP should include measures to ensure that vulnerable and 'at-risk' groups¹⁶ and women are not disadvantaged in the resettlement process, are fully informed and aware of their rights, and are able to benefit equally from the resettlement opportunities and benefits, by ensuring in particular that the documentation for ownership or occupancy, such as title deeds and lease agreements, and compensation (including the bank accounts established for payment of compensation) is issued in the names of both spouses or women single head of households, as relevant to each situation, and that other resettlement assistance, such as skills training,

access to credit and job opportunities are equally available to women and adapted to their needs. Under circumstances in which national law and tenure systems do not recognise the rights of women to hold or contract in property, provision should be made to ensure, to the extent possible, that the access of women to security of tenure is equivalent to that of men.

19. The RAP should incorporate measures to ensure that displaced people are provided, where possible, with legal assistance to enable them to complete administrative requirements prior to land acquisition and, if needed, to seek redress from the courts.

20. The client should summarise the information contained in the RAP for public disclosure to ensure that affected people understand the compensation procedures and know what to expect at the various stages of the project (for example, when an offer will be made to them, how long they will have to respond, grievance procedures, legal procedures to be followed if negotiations fail).

21. Monitoring of the RAP will be carried out in accordance with PR 1 and may involve the participation of key stakeholders such as affected communities.

22. Resettlement will be considered complete when the adverse impacts of resettlement have been addressed in a manner that is consistent with the objectives stated in the RAP as well as the objectives of this PR.

23. Depending on the scale of a project's resettlement, it may be appropriate for the client to commission an external completion audit of the RAP to determine that the provisions have been met. The completion audit should be undertaken after all inputs in the RAP – including any developmental initiatives – have been completed, but well before the client's financial commitments to the EBRD have been met.

¹⁶ As defined in footnote 14.

The timing of the audit will enable the client to complete corrective actions, if any, as recommended by the auditors before the project is complete. Based on the outcome of the completion audit, EBRD and the client shall jointly determine if the objectives of this PR have been met. In the majority of cases, the completion of corrective actions identified by the completion audit should bring the client's responsibility for resettlement, compensation, livelihood restoration and development benefits to a close.

Livelihood Restoration Framework (LRF)

24. In the case of transactions as described in paragraph 7 involving economic (but not physical) displacement of people the client will develop procedures to offer to the affected persons and communities compensation and other assistance that meet the objectives of this PR. This shall take the form of a Livelihood Restoration Framework (LRF).

25. The LRF will establish the entitlements of affected persons or communities and will ensure that these are provided in a transparent, consistent, and equitable manner. The client should document the procedures for determining and awarding compensation in a LRF that:

- states the LRF objectives
 - describes project impacts, identifies all people to be economically displaced and provides an inventory of affected assets or resources
 - demonstrates that displacement is unavoidable and has been minimised
 - describes the legal framework for compensation
 - describes the process for consultation with affected people regarding alternatives, and their level of participation in the decision-making process
 - describes the entitlements for all categories of displaced people
 - describes the methods applied for valuing affected assets or resources, or the access thereto, at full replacement cost and enumerates the rates of compensation to be paid
 - describes other measures for improving or, at a minimum, restoring the livelihoods and standards of living of displaced persons
 - outlines a schedule for land take (or application of restrictions) and compensation payments
 - describes the process whereby affected people can appeal against valuations they deem to be inadequate
 - outlines the institutional/organisational responsibility for the implementation of the LRF and procedures for grievance redress
 - provide details of arrangements for monitoring, evaluation and reporting
 - provides a timetable and budget for the implementation of the LRF.
26. The client should summarise the information contained in the LRF for public disclosure to ensure that affected people understand the compensation procedures and know what to expect at the various stages of the project (for example, when an offer will be made to them, how long they will have to respond, grievance procedures, legal procedures to be followed if negotiations fail).
27. The client should provide the affected communities the opportunity to participate in the negotiations based on the established procedures.
28. In cases where affected persons reject compensation offers that meet the requirements of this PR and, as a result, expropriation or

other legal procedures are initiated, the client will explore opportunities to collaborate with the responsible government agency, and if permitted by the agency, play an active role in the resettlement planning, implementation, and monitoring.

29. The implementation of the LRF will be considered complete when the adverse impacts of displacement have been addressed in a manner that is consistent with the objectives stated in the LRF as well as the objectives of this PR.

Compensation and benefits for displaced persons

30. When displacement cannot be avoided, the client will offer displaced persons and communities compensation for loss of assets at full replacement cost¹⁷ and other assistance to help them improve or at least restore their standards of living or livelihoods, as provided in this PR. Standards for compensation will be transparent and consistent within the project. Where livelihoods of displaced persons are land-based, or where land is collectively owned, the client will offer land-based compensation, where feasible. The client will make every effort to provide opportunities to displaced persons and communities to derive appropriate development benefits from the project.

Displacement

31. Displaced persons may be classified as persons: (i) who have formal legal rights to the land (including customary and traditional rights recognised under national laws); (ii) who do not have formal legal rights to land at the time of the census, but who have a claim to land that is recognised or recognisable under the national laws;¹⁸ or (iii) who have no recognisable legal right or claim to the land they occupy.¹⁹ The census will establish the status of the displaced persons. Persons moving into the project location after the cut-off date (see paragraph 14) such as opportunistic squatters and recently arrived economic migrants are not entitled to compensation or other assistance.

32. Persons covered under paragraph 31 (i) and (ii) are provided compensation for the land they lose, and other assistance in accordance with paragraphs 34 and 35. Persons covered under paragraph 31 (iii) are not entitled to compensation for land, but they should be compensated for the structures that they own and occupy and for any other improvements to land at full replacement cost. In addition, they should be offered resettlement assistance sufficient to restore their standards of living at a suitable alternative site. Options for resettlement assistance should be generated through consultation with the displaced persons

¹⁷ The rate of compensation for lost assets should be calculated at full replacement cost, that is to say, the market value of the assets plus transaction costs. In applying this method of valuation, depreciation of structures and assets should not be taken into account. For losses that cannot easily be valued or compensated for in monetary terms, in-kind compensation may be appropriate. However, this compensation should be made in goods or resources that are of equivalent or greater value and that are culturally appropriate. With regard to land and structures, replacement costs are defined as follows:

- *Agricultural land* – the market value of land of equal productive use or potential located in the vicinity of the affected land, plus the cost of preparation to levels similar to or better than those of the affected land, and transaction costs such as registration and transfer taxes.
- *Land in urban areas* – the market value of land of equivalent area and use, with similar or improved infrastructure and services preferably located in the vicinity of the affected land, plus transaction costs such as registration and transfer taxes.
- *Houses and other structures* – the cost of purchasing or building a new structure, with an area and quality similar to or better than those of the affected structure, or of repairing a partially affected structure, including labour and contractors' fees and transaction costs such as registration and transfer taxes.

¹⁸ Such claims could be derived from adverse possession or from customary or traditional law.

¹⁹ Such as indigenous groups, customary users, pastoralists, internally displaced persons or squatters who claim or make use of land without formal legal rights, and others, who may have usufruct or customary claims to affected land or other resources not recognised or recognisable under national laws.

and reflect their priorities and preferences. These provisions apply to persons who are occupying all or part of the project area prior to the cut-off date.

33. Land acquisition for the project may result in the physical displacement of people as well as their economic displacement. As a result, requirements for both physical displacement and economic displacement may apply.

Physical displacement

34. If people living in the project area must move to another location, the client will:

- (i) offer displaced persons choices among feasible resettlement options, including adequate replacement housing or cash compensation where appropriate; and
- (ii) provide relocation assistance suited to the needs of each group of displaced persons, with particular attention paid to the needs of the poor and the vulnerable. Alternative housing and/or cash compensation will be made available prior to relocation. New resettlement sites built for displaced persons will offer improved living conditions.

35. In the case of physically displaced persons under paragraph 31 (i) or (ii), the client will offer the choice of replacement property of equal or higher value, with equivalent or better characteristics and advantages of location, or cash compensation at full replacement value where appropriate.²⁰

36. In the case of physically displaced persons under paragraph 31 (iii), the client will offer them a choice of options for adequate housing with security of tenure so that they can resettle legally without having to face the risk of forced eviction.

Where these displaced persons own and occupy structures, the client will compensate them for the loss of assets other than land, such as dwellings and other improvements to the land, at full replacement cost, provided that these people occupy the project area prior to the cut-off date for eligibility.

Compensation in kind will be offered in lieu of cash compensation where feasible, unless the conditions described in footnote 20 can be demonstrated to exist at a level acceptable to the EBRD. This applies to those who have customary and traditional rights recognised under the laws of the country; to claimants who, prior to the cut-off date, do not have formal legal rights to land, but who have a claim to such land or assets, for example, though adverse possession;²¹ and, subject to the qualifications noted in paragraph 31, to those who have no recognisable legal right or claim to the land they occupy.

Based on consultation with such displaced persons, the client will provide relocation assistance sufficient for them to restore their standards of living at an adequate alternative site.²²

37. The client is not required to compensate or assist those who encroach on the project area after the cut-off date.

38. Where communities of Indigenous Peoples are to be physically displaced from their communally held traditional or customary lands under use, the client will meet the applicable requirements of this PR as well as those of PR 7.

²⁰ Payment of cash compensation for lost assets may be appropriate where: (a) livelihoods are not land-based; (b) livelihoods are land-based but the land taken for the project is a small fraction of the affected asset and the residual land is economically viable; or (c) active markets for land, housing, and labour exist, displaced persons use such markets, and there is sufficient supply of land and housing. Cash compensation levels should be sufficient to replace the lost land and other assets at full replacement cost in local markets.

²¹ A method of acquisition of title to real property by possession for a statutory period under certain conditions.

²² Relocation of informal settlers in urban areas often has trade-offs. For example, the relocated families may gain security of tenure, but they may lose advantages of location.

Economic displacement

39. If a transaction of the types described in paragraph 7 causes loss of income or livelihood, through for example interruption or elimination of a person's access to his/her employment or productive assets, regardless of whether or not the affected people are physically displaced, the client will:

- Promptly compensate economically displaced persons for loss of assets or access to assets at full replacement cost. Where compensation is to be paid by a responsible government agency, the client should collaborate with the agency to help accelerate the payments. Where prompt compensation payments cannot be made due to government policy or practice, the client shall explore resettlement assistance options to help the displaced people with temporary loss of income.
- Compensate, in cases where land acquisition affects commercial structures, the affected business owner for (i) the cost of re-establishing commercial activities elsewhere, (ii) lost net income during the period of transition, and (iii) the costs of the transfer and reinstallation of the plant, machinery or other equipment, as applicable.
- Provide replacement property (for example, agricultural or commercial sites) of equal or greater value, or cash compensation at full replacement cost where appropriate, to persons with legal rights or claims to land which are recognised or recognisable under the national laws (see paragraph 31 (i) and (ii).
- Provide assistance that will off-set any loss of a community's commonly held resources.²³ This could take the form of initiatives that enhance the productivity of the remaining resources to which the community has access, in-kind or cash compensation for loss of access or provision of access to alternative sources of the lost resource.
- Compensate economically displaced persons who are without legally recognisable claims to land (see paragraph 31 (iii)) for lost assets (such as crops, irrigation infrastructure and other improvements made to the land) other than land, at full replacement cost. The client is not required to compensate or assist opportunistic settlers who encroach on the project area after the cut-off date.
- Provide additional targeted assistance (for example, credit facilities, training, or job opportunities) and opportunities to improve or at least restore their income-earning capacity, production levels, and standards of living to economically displaced persons whose livelihoods or income levels are adversely affected. In case of businesses experiencing downtime or having to close as a result of project-related displacement, both the owner of the business and employees losing pay or employment are eligible for such assistance.
- Provide transitional support to economically displaced persons, as necessary, based on a reasonable estimate of the time required to restore their income-earning capacity, production levels, and standards of living.

40. Where communities of Indigenous Peoples are economically displaced (but not relocated) as a result of project-related land acquisition, the client will meet the applicable principles of this PR, as well as those of PR 7.

²³ Examples of these include rangeland and pasture, non-timber forest resources (for example, medicinal plants, construction and handicraft materials), woodlots for timber and fuelwood or fishing grounds.

Loss of public amenities²⁴

41. Where a project involves the loss of public amenities, the client shall undertake meaningful consultation, in accordance with PR 10, with the locally affected community to identify and agree upon a suitable alternative where possible.

Private sector responsibilities under government-managed resettlement

42. There may be cases where land acquisition and resettlement are the responsibility of the host government. In such cases, the client will collaborate with the responsible government agency, to the extent permitted by the agency, to achieve outcomes that are consistent with the objectives of this PR. In addition, where government capacity is limited, the client will play an active role during resettlement planning, implementation and monitoring. The client will prepare a plan (or a framework) that, together with the documents prepared by the responsible government agency, will meet the requirements of this PR. The client may need to include in its plan: (i) a description of the entitlements of displaced persons provided under applicable laws and regulations; (ii) the measures proposed to bridge any gaps between such entitlements and the requirements of this PR; and (iii) the financial and implementation responsibilities of the government agency and/or the client.

²⁴ Loss of cultural heritage is covered in PR 8.

PR 6: Biodiversity Conservation and Sustainable Management of Living Natural Resources

Introduction

1. The EBRD recognises the need for the protection and conservation of biodiversity in the context of projects in which it invests. The term ‘biodiversity’ (or biological diversity) is defined in the Convention on Biological Diversity (CBD) as the ‘*variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are a part; this includes diversity within species, between species and of ecosystems*’. The Bank supports a precautionary approach to the conservation and sustainable use of biodiversity and the management of impacts upon it in line with the Rio Declaration and the CBD.

2. In pursuing these aims, the Bank is guided by and supports the implementation of applicable international law and conventions and relevant EU Directives.¹

Objectives

3. The objectives of this Performance Requirement (“PR”) are:

- to protect and conserve biodiversity
- to avoid, minimise and mitigate impacts on biodiversity and offset significant residual impacts, where appropriate, with the aim of achieving no net loss or a net gain of biodiversity

- to promote the sustainable management and use of natural resources
- to ensure that Indigenous Peoples and local communities participate appropriately in decision-making
- to provide for fair and equitable sharing of the benefits from project development and arising out of the utilisation of genetic resources
- to strengthen companies’ license to operate, reputation and competitive advantage through best practice management of biodiversity as a business risk and opportunity
- to foster the development of pro-biodiversity business that offers alternative livelihoods in place of unsustainable exploitation of the natural environment.

Scope of application

4. This PR applies to projects in all types of habitats, irrespective of whether they have been disturbed or degraded previously, or whether or not they are protected or subject to management plans.

5. The applicability of this PR is determined by the Bank during the environmental and social appraisal process. The Bank will outline the generic requirements which must be met to comply with this PR, while the client is responsible for proposing for the Bank’s review a set of specific measures to be taken to ensure compliance, as part of the client’s overall Environmental and Social Action Plan (ESAP)

¹ Examples of relevant conventions and directives:

- Convention on Biological Diversity and its protocols.
- Convention on Wetlands of International Importance Especially as Waterfowl Habitat.
- Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention).
- Convention on the Conservation of Migratory Species of Wild Animals.
- Convention on the Protection of the Black Sea Against Pollution.
- Council Directive 92/43/EEC May 1992 on the Conservation of Natural Habitats and of Wild Fauna and Flora, as amended.
- Council Directive 79/409/EEC April 1979 on the Conservation of Birds.
- Council Directive 2004/35/EC April 2004 on Environmental Liability.
- Council Directive 85/337/EEC 27 June 1985 as amended by Directive 97/11/EC of 3 March 1997 on Environmental Impact.
- Council Directive 2001/42/EC June 2001 on Strategic Environmental Assessment.

Biodiversity Mitigation Hierarchy

Action	Response
1. Avoid	The client will seek to avoid adverse impacts on biodiversity.
2. Minimise	Where significant impacts on biodiversity cannot be avoided, the client should identify ways in which project can be modified to minimise impacts on biodiversity.
3. Mitigate	Where significant impacts on biodiversity can neither be avoided nor minimised, the client should identify measures to mitigate those impacts.
4. Offset	Where significant residual impacts on biodiversity remain, in spite of all reasonable attempts to avoid, minimise and mitigate those impacts the client will identify actions or projects to offset those impacts. Any offset projects must be structured and agreed with EBRD.

and/or Management System. The environmental and social appraisal and management requirements are outlined in PR 1 and PR 10. The Bank may engage independent biodiversity specialists to assist in its due diligence.

Requirements

Appraisal of issues and impacts

6. Through the environmental and appraisal process, the client will identify and characterise the potential impacts on biodiversity likely to be caused by the project. The extent of due diligence should be sufficient to fully characterise the risks and impacts, consistent with a precautionary approach and reflecting the concerns of relevant stakeholders. Suitably experienced and qualified experts may need to be engaged in this process. In planning and implementing impact assessments where biodiversity issues are a key focus, clients should refer to best practice guidelines on

integrating biodiversity into impact assessments.² The appraisal also needs to take into account climate change and adaptation issues. When requirements of paragraphs 13, 14 and 15 apply, the client will retain qualified and experienced external experts to assist in conducting the appraisal.

7. Due diligence should include consideration of the nature, extent, duration, and intensity of potential impacts, assess the probability of impact occurring and determine the significance of those impacts.

8. The client will need to identify measures to avoid, minimise or mitigate potentially adverse impacts and, where appropriate and as a last resort, propose compensatory measures, such as biodiversity offsets, to achieve no net loss or a net gain of the affected biodiversity. See table above.

² Best practice guidelines on integrating biodiversity into impact assessment include:

- *Voluntary Guidelines on Biodiversity-inclusive Environmental Impact Assessment* (Contained in the CBD Decision VIII/28 from COP8 in 2006).
- *Biodiversity in Impact Assessment* (IAIA Special Publication Series No. 3).
- Various products of *The Energy and Biodiversity Initiative*.

Habitat protection and conservation

General

9. All habitats (whether modified, natural or of critical conservation value) support complexities of living organisms which vary in terms of species diversity, abundance and ecosystem and economic value. For this reason, due diligence undertaken by the client should include consideration not only of natural undisturbed habitat, including that of critical conservation value, which may be affected by the project, but also of habitat which has been disturbed or degraded by human activity, and new manmade habitat areas such as reservoirs and grasslands. Such due diligence should include an assessment of any mitigation measures to be applied to the proposed development.

10. Mitigation measures could include avoidance of sensitive sites or disruptive work at sensitive times (for example, breeding seasons), translocation of species to temporary or permanent alternative sites, post-project site restoration and re-colonisation/stocking and the creation of similar habitats (to offset residual impacts. Individuals and communities directly affected by biodiversity loss must be compensated in an adequate and socio-culturally appropriate manner.

Modified habitats

11. Modified habitats are those where there has been apparent alteration of the natural habitat, often with the introduction of alien species of plants and animals, such as agricultural areas. Where modified or newly-created habitats may be impacted, the client should aim to minimise any further degradation or conversion of habitat. Where there is merit on conservation grounds and depending upon the nature and scale of the project, the client should identify opportunities

to enhance habitats, protect and conserve biodiversity or encourage sustainable harvesting/management of the area in question. This might include foraging, bee keeping, bird watching, etc.

Natural habitats

12. Natural habitats are land and water areas where the biological communities are formed largely by native plant and animal species, and where human activity has not essentially modified the area's primary ecological functions. In areas of natural habitat, there must be no significant degradation or conversion of the habitat to the extent that (i) the ecological integrity and functioning of the ecosystem is compromised or (ii) the habitat is depleted to the extent that it could no longer support viable populations of its native species, unless:

- there are no technically and economically feasible alternatives
- the overall benefits of the project outweigh the costs, including those to the environment and biodiversity
- appropriate mitigation measures are put in place to ensure no net loss and preferably a net gain of biodiversity value in the habitat concerned, or, where appropriate, a habitat of greater conservation value.

Critical habitat

13. Irrespective of whether it is natural or modified, some habitat may be considered to be critical by virtue of (i) its high biodiversity value; (ii) its importance to the survival of endangered or critically endangered species; (iii) its importance to endemic or geographically restricted species and sub-species; (iv) its importance to migratory or congregatory species;

(v) its role in supporting assemblages of species associated with key evolutionary processes; (vi) its role in supporting biodiversity of significant social, economical or cultural importance to local communities; or (vii) its importance to species that are vital to the ecosystem as a whole (keystone species).

14. Critical habitat must not be converted or degraded. Consequently, in areas of critical habitat, the client will not implement any project activities unless the following conditions are met:

- Compliance with any due process required under international obligations or domestic law that is a prerequisite to a country granting approval for project activities in or adjacent to a critical habitat has been complied with.³
- There are no measurable adverse impacts, or likelihood of such, on the critical habitat which could impair its ability to function in the way(s) outlined in paragraph 13.
- Taking a precautionary perspective, the project is not anticipated to lead to a reduction in the population of any endangered or critically endangered species or a loss in area of the habitat concerned such that the persistence of a viable and representative host ecosystem be compromised.
- Notwithstanding the above, all other impacts are mitigated in accordance with the mitigation hierarchy.

Protected and designated areas

15. Areas may be designated by government agencies as protected for a variety of purposes, including to meet country obligations under international conventions. Within defined criteria, legislation may permit development in or

adjacent to protected areas. In addition to the applicable requirements of paragraph 14, the client will:

- consult protected area sponsors and managers, local communities and other key stakeholders on the proposed project in accordance with PR 10;
- demonstrate that any proposed development in such areas is legally permitted and that due process leading to such permission has been complied with by the host country, if applicable, and the client; and that the development follows the mitigation hierarchy (avoid, minimise, mitigate, offset) appropriately; and
- implement additional programmes, as appropriate, to promote and enhance the conservation aims of the protected area.

Invasive alien species

16. The accidental or deliberate release or introduction of alien species into native habitats can have significant adverse impacts on biodiversity:

- Clients will not intentionally introduce alien or non-native species into areas where they are not normally found unless this is carried out in accordance with the regulatory framework governing such introduction. Under no circumstances must species known to be invasive be introduced into new environments.
- During due diligence, clients will assess the possibility of accidental transfer and release of alien species (for example, through risk analysis) and identify measures to minimise the potential for release, if any.

³ For example, countries may have to demonstrate that no plausible alternatives exist or that the project is in the national interest.

- With respect to the international shipping of goods and services, the Bank is guided by the International Convention for the Control and Management of Ship's Ballast Water and Sediments. Clients are expected to comply with appropriate obligations developed in the framework of this Convention.
- The use of any resource needs to be considered in the light of the functions it plays within the ecosystem. For example, clear felling of forests may have adverse impacts on soil erosion, watershed hydrology and fisheries. Similarly overfishing of one species may affect the ecological balance and long-term integrity of ecosystems.

Genetically Modified Organisms (GMOs)

17. There are a number of EU Directives which cover the deliberate release of GMOs into the environment (EU Directive 2001/18/EC), the placement on the market of food or feed products containing or consisting of GMOs (EU Regulation 1829/2003), export of GMOs or unintentional transboundary movement of GMOs, contained use of GMOs (in research for example (Directive 98/81/EC)) and labelling and traceability (for example, Regulation 1829/2003, 1830/2003). Within EU Member States and candidate countries clients are required to comply with applicable national and local requirements and policy. Thus, no GMOs should be used or released to the environment without approval being given by the competent authorities, or where the relevant local authority has declared itself as GMO free. In other EBRD countries of operation, clients must adopt the precautionary approach and conduct risk assessment in line with EU requirements and this PR. The Bank will also take these elements into account during its own due diligence.

Sustainable management and use of living resources

18. Clients will manage living resources in a sustainable manner. Clients seeking finance for projects involving the use of living resources will conduct due diligence to assess the sustainability of the resource use, taking into account the following principles:

- A precautionary approach should be taken, and aggregate and cumulative impacts should be considered.
- Users of living resources shall seek to minimise waste and adverse environmental impacts and optimise benefits from uses.
- Plantation or farming of species or populations that are not natural to the location and not tested for their invasiveness and or dominance over local species should be restricted or subject to adequate studies and approval prior to utilisation.
- The needs of indigenous and local communities who live in or around the development area or whose use of biodiversity resources may be affected by the development must be considered as well as their potential positive role in conservation and sustainable ecosystem use.

19. In assessing the sustainability of the project's resource use, the Bank will be guided by the *Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity* which seek to ensure the sustainable use of biodiversity resources.⁴ The Bank will also encourage projects and relevant governments and other responsible agencies to internalise the costs of ecosystem management as appropriate. Clients in the forestry and fishery sectors will also apply the relevant provisions below.

⁴ Sustainable use or management is defined as exploiting resources at a rate or in a manner which enables people and communities to provide for their present social, cultural and economic well-being whilst also sustaining the potential for those resources to meet the reasonably foreseeable needs of future generations and safeguarding the life-supporting capacity of air, water and soil ecosystems as well as the long-term integrity of critical habitats.

Natural and plantation forestry

20. The conversion of disturbed land or natural habitats to forestry shall be subject to due diligence as outlined above. Critical habitat must not be converted or degraded. Clients in the forestry sector will ensure that all natural forests and plantations over which they have management control are independently certified to internationally accepted principles such as those of the Forest Stewardship Council. Where due diligence reveals that forest management practice does not meet such standards, clients will develop a management plan to allow for compliance to be attained within a time frame considered reasonable by the Bank. The harvesting of forest products must be undertaken in a sustainable way.

Fisheries

21. Clients involved in the harvesting of fish or other aquatic species must be able to demonstrate to the Bank that all their activities (from harvesting through to processing) are being undertaken in a sustainable way. This can be achieved through attaining independent certification⁵ (where such exists) or through studies undertaken as part of due diligence. Fishery activities are not necessarily limited to harvesting. Re-population or introduction of different species or populations (especially in closed environments such as lakes) must ensure that the new stock does not destroy or displace existing local fish species.

Supply chain

22. Where the project uses external suppliers of living resources (hereafter: “resources”) over which the client does not have management control and these resources are central to the project’s core functions, the client will adopt and implement a sustainable resources procurement policy, procedures and action plan to ensure that:

- only resources of a legal and sustainable origin are purchased
- the origin of the resources is monitored
- the resources do not originate from protected areas or from areas recognised as having high ecological value, and that the biodiversity and the functions of the affected ecosystem are maintained in accordance with internationally and nationally approved principles.

Clients should give preference to purchasing resources certified to internationally accepted principles of sustainable management, where available.

Biodiversity and tourism

23. Environmental and social impact assessments of new or significantly expanding tourism activities and infrastructure will be consistent with the *Guidelines on Biodiversity and Tourism Development*.⁶ These outline the nature of baseline information needed, the range of issues that should be considered, as well as the nature of impact mitigation and appropriate monitoring and reporting that should be included in the subsequent action plan for the project.

⁵ Such as the Marine Stewardship Council’s *Principles and Criteria for Sustainable Fishing*.

⁶ Contained in the Decisions of the Seventh Conference of the Parties (COP-7) of the CBD and available on EBRD’s web site.

PR 7: Indigenous Peoples

Introduction

1. Private sector projects can create opportunities for Indigenous Peoples to participate in, and benefit from, project-related activities that may help them fulfil their aspiration for economic and social development. This Performance Requirement (“PR”) recognises that Indigenous Peoples may play a role in the process of transition towards open-market economies by promoting and managing activities and enterprises as partners in development alongside the private sector and their governmental representatives.

2. *Partnership.* This PR approaches Indigenous Peoples as partners, respecting them as people and peoples whose values can contribute greatly to not only their own, but also to national socio-economic development. This PR recognises, however, that Indigenous Peoples, as social groups with identities that are distinct from dominant groups in national societies, are often among the most marginalised and vulnerable segments of the population. Their economic, social and legal status often limits their capacity to defend their interests in, and rights to, lands and natural and cultural resources, and may restrict their ability to participate in and benefit from development. They are particularly vulnerable if their lands and resources are transformed, encroached upon by those who are not members of their communities, or significantly degraded.

3. *Need for special measures.* This PR recognises that the identities, cultures, lands and resources of Indigenous Peoples are uniquely intertwined and especially vulnerable to changes caused by some types of investments so that their languages, cultures, religions, spiritual beliefs, and institutions may be threatened. These

characteristics expose Indigenous Peoples to different types of risks and severity of impacts, including loss of identity, culture, and natural resource-based livelihoods, as well as exposure to impoverishment and disease. It is further recognised that the roles of men and women in indigenous cultures are often different from those in the dominant groups, and that women and their children have frequently been marginalised both within their own communities and as a result of external developments. Due to these realities, issues related to Indigenous Peoples are frequently complex. Thus, special measures are required to ensure that indigenous men and women are not disadvantaged and that they are included in, and benefit from, Bank-supported projects as appropriate.

4. *Need for free, prior and informed consent.* This PR recognises the principle, outlined in the UN Declaration on the Rights of Indigenous Peoples,¹ that the prior informed consent of affected Indigenous Peoples is required for the project-related activities identified in paragraphs 31–37, given the specific vulnerability of Indigenous Peoples to the adverse impacts of such projects.

5. *EBRD countries of operations.* This PR recognises that the circumstances of Indigenous Peoples in EBRD’s countries of operations are unique due to their particular history. Indigenous Peoples are no longer involved solely in customary subsistence livelihoods nor can their identity be associated solely with the pursuit of such traditional livelihoods and lifestyles. Furthermore, it is recognised that Indigenous Peoples often live in mixed ethnicity settlements while at the same time the continued existence of nomadism or transhumance and a history of involuntary resettlement means that the expectation of continuing fixed links to specific territories is not always appropriate.

¹ UN General Assembly Declaration on the Rights of Indigenous Peoples adopted on 13 September 2007.

Objectives

6. Specific objectives are as follows:

- to ensure that the transition process fosters full respect for the dignity, rights, aspirations, cultures and natural resource-based livelihoods of Indigenous Peoples
- to avoid adverse impacts of projects on the lives and livelihoods of Indigenous Peoples' communities, or when avoidance is not feasible, to minimise, mitigate, or compensate for such impacts
- to enable Indigenous Peoples to benefit from projects in a culturally appropriate manner
- to support the client to establish and maintain an ongoing relationship with the Indigenous Peoples affected by a project throughout the life of the project
- to foster good faith negotiation of the client with, and the informed participation of, Indigenous Peoples when projects are to be located on traditional or customary lands used by the Indigenous Peoples, when customary or non-traditional livelihoods will be affected by the project, or in the case of commercial exploitation of the Indigenous Peoples' cultural resources
- to recognise and respect the customary laws and customs of Indigenous Peoples and to take these into full consideration
- to respect and preserve the culture, knowledge and practices of Indigenous Peoples in accordance with their wishes.

Scope of application

7. This PR will apply when a project is likely to affect Indigenous Peoples.

8. The applicability of this PR will be determined by the Bank during the environmental and social appraisal process according to the criteria outlined in paragraphs 9–12. Implementation of the actions necessary to meet these requirements is to be managed in accordance with this PR, and PRs 1, 5, 8 and 10 as appropriate.

9. There is no universally accepted definition of "Indigenous Peoples". Indigenous Peoples may also be referred to in different countries by different terms.

10. In the Policy and this PR, the term "Indigenous Peoples" is used in a technical sense to refer to a social and cultural minority group, distinct from dominant groups within national societies, possessing the following characteristics in varying degrees:

- self-identification as members of a distinct indigenous ethnic or cultural group and recognition of this identity by others
- collective attachment to geographically distinct habitats, traditional lands or ancestral territories in the project area and to the natural resources in these habitats and territories²
- descent from populations who have traditionally³ pursued non-wage (and often nomadic/transhumant) subsistence strategies and whose status was regulated by their own customs or traditions or by special laws or regulations

² A group that has lost "collective attachment to geographically distinct habitats or ancestral territories in the project area" because of forced severance remains eligible for coverage under this PR, if expected to be affected by the project. "Forced severance" refers to loss of collective attachment to geographically distinct habitats or ancestral territories occurring within the concerned group members' lifetime because of conflict, government resettlement programmes, dispossession from their lands, natural calamities, or incorporation of such territories into an urban area. For purposes of this PR, "urban area" normally means a city or a large town, and takes into account all of the following characteristics, no single one of which is definitive: (a) the legal designation of the area as urban under domestic law; (b) high population density; and (c) high proportion of non-agricultural economic activities relative to agricultural activities.

³ This applies even if the pursuit no longer takes place, as per previous footnote.

- customary cultural, economic, social, or political institutions that are separate from those of the dominant society or culture
- a distinct language or dialect, often different from the official language or dialect of the country or region.

11. The fact that a group, or members of a group, lead a nomadic or transhumant way of life, live in mixed or urban communities and/or only visit their traditional lands on a seasonal basis, having experienced forced severance, is no *prima facie* bar to the application of this PR.

12. In ascertaining whether a particular group is considered as Indigenous Peoples for the purpose of this PR, the Bank may seek expert advice.

Requirements

13. In projects where Indigenous Peoples are likely to be affected,⁴ the client is required to carry out an assessment (see below) of impacts on Indigenous Peoples. Depending upon the outcome of this, the client is expected to first avoid adverse effects and where this is not feasible, to prepare an Indigenous Peoples' Development Plan (as per paragraph 21) so as to minimise and/or mitigate any potential adverse impacts and identify benefits. The client is also expected to engage in informed consultation and participation with the affected indigenous communities, implement a specific grievance mechanism and identify and determine appropriate modalities for compensation and benefit-sharing.

14. Where the client has commenced project activities that may have affected and/or may affect Indigenous Peoples, prior to the Bank's involvement, due diligence will be carried out to identify a) any gaps and b) the corrective actions that may be required to ensure compliance with this PR. An action plan shall then be agreed.

15. Where the appropriate resource is not available within the client's organisation, the advice of experienced and independent social specialists should be sought throughout the course of the project development and implementation.

Assessment

16. Where there is a national legal requirement for a specific type of social appraisal, the client shall carry this out and share the appraisal with the EBRD, in addition to carrying out any additional social appraisal required by the Bank.

17. In cases where the project has not yet commenced, the client will identify through a social assessment all communities of Indigenous Peoples who may be affected, both positively and negatively, by the project within the project's area of influence, as well as the nature and degree of the expected social, cultural (including cultural heritage), and environmental impacts on them, and the measures planned to (i) avoid or mitigate adverse impacts and (ii) share any project-related benefits.

18. In cases where construction, project-related activities or operations have already commenced in respect of a proposed project, the client shall provide the Bank with documents and information (including those regarding the company's past performance) and a record of documents already submitted to the authorities, which demonstrates that they have sought and acted upon the opinions of project-affected Indigenous Peoples following, to the extent possible, the process outlined in this PR.

19. If the requirements of paragraph 18 are satisfied, the Bank will request that the client commission an objective and independent study of both the effects of the project on the Indigenous Peoples population and their views

⁴ Project affected Indigenous Peoples are those whose socio-economic status and/or traditional culture and way of life are affected by a project.

regarding the project. This study, to be conducted in a culturally appropriate manner, will review the effects to date on the lives and livelihoods of Indigenous Peoples, the efforts of the client to both mitigate adverse effects and to identify and share project benefits, and the level of Indigenous Peoples' participation in project planning and implementation.

Avoidance of adverse effects

20. All efforts should first be directed towards avoiding any adverse project effects on Indigenous Peoples. When avoidance of adverse effects is not feasible, the client will minimise, mitigate or compensate for these impacts in an appropriate and proportional manner.

Preparation of an Indigenous Peoples Development Plan (IPDP)

21. The client's proposed actions to minimise, mitigate and compensate for adverse effects and to identify and share benefits will be developed with the informed participation of affected Indigenous Peoples and contained in a time-bound plan, such as an Indigenous Peoples Development Plan (IPDP), or a broader community development plan with separate components for Indigenous Peoples. The client will retain qualified social scientists with relevant and appropriate technical expertise to prepare the Plan.

The level of details and the scope of an IPDP will vary according to the specific project and nature and scope of the project activities. In general an IPDP will comprise the following components:

Section I – Summary of the Social Assessment

- Baseline Information
- Key findings: analysis of impacts, risks and opportunities.

Section II – Consultation and Participation

- Result of consultations and plan for future engagement.

Implementation Plan

- Measures to avoid, minimise and mitigate negative impacts and enhance positive impacts
- Measures to ensure continuation of community-based natural resource management
- Measures to derive project benefits and/or development opportunities
- Grievance mechanism
- Costs, budget, timetable and organisational responsibilities
- Monitoring, evaluation and reporting.

Information disclosure, meaningful consultation and informed participation

22. The client will establish an ongoing relationship with the affected communities of Indigenous Peoples from as early as possible in the project planning process and throughout the life of the project. The engagement process will ensure their meaningful consultation in order to facilitate their informed participation on matters that affect them directly, proposed mitigation measures, the sharing of development benefits and opportunities, and implementation issues.

23. The client shall ensure that the project-affected Indigenous Peoples are adequately informed in a culturally appropriate manner about EBRD PRs and about project plans affecting them.

24. The process of community engagement will be culturally appropriate, respectful of the Indigenous Peoples' collective decision-making process, and commensurate with the risks and potential impacts on the Indigenous Peoples. It is for the client to demonstrate to the EBRD that this process has been adequately carried out.

25. In particular, the engagement process will include the following:

- involvement of Indigenous Peoples' representative bodies (for example, councils of elders or village councils, among others), Indigenous Peoples' organisations as well as individually affected indigenous persons
- understanding and respect for any relevant customary laws
- provision of sufficient time for Indigenous Peoples' collective decision-making process
- facilitation of the Indigenous Peoples' expression of their views, concerns, and proposals in the language of their choice, and without external manipulation, interference, or intimidation and in a culturally appropriate manner
- disclosure to Indigenous Peoples of all relevant plans and information on potential social and ecological impacts affecting indigenous communities in a culturally appropriate manner and language, and without jargon
- Recognition of community heterogeneity, taking into account the following:
 - Indigenous Peoples live in mixed communities with non-Indigenous Peoples
 - Indigenous communities are multi-vocal; consultations and participation must be inclusive of gender, generational, and excluded groups

- dissemination of appropriate information to the EBRD, and involvement of the Bank in the consultation process, where practicable

- full documentation⁵ of the consultation process.

Grievance mechanism and prevention of ethnically based discrimination

26. The client will ensure that the grievance mechanism established for the project, as described in PR 10 is culturally appropriate and accessible for Indigenous Peoples; this may entail less reliance on written procedures and more use of verbal reporting channels.

27. The Bank will not finance projects where the client excludes Indigenous Peoples on the basis of ethnicity. In Bank-financed projects where implicit factors exist that exclude Indigenous Peoples and individuals from the benefits, such as employment opportunities, on ethnic grounds, the project activities will include such corrective measures as: (i) informing Indigenous Peoples' organisations and individuals of their rights under labour, social, financial, and business legislation and of the recourse mechanisms available; (ii) appropriate and effective information dissemination, training, and measures to eliminate barriers to benefits and resources such as credit, employment, business services, health services and education services, and other benefits generated or facilitated by the projects; and (iii) granting to indigenous workers, entrepreneurs, and beneficiaries the same protection afforded under national legislation to other individuals in similar sectors and categories, taking into account gender issues and ethnic segmentation in goods and labour markets, as well as linguistic factors.

⁵ These can comprise written transcripts and records and/or audio recordings.

Compensation and benefit-sharing

28. Participatory approaches will be the foundation of determining mitigation, benefits-sharing and customary lifestyle-supporting measures. The Bank will require that the client compensate the affected Indigenous Peoples directly for any loss of livelihood (as calculated in accordance with this PR) incurred as a result of project-related activities and reinstate any land used to its previous status. Eligibility for compensation can either be individually or collectively-based, or be a combination of both. Compensation will be available both for adverse effects on customary livelihoods and for negative impacts on wage or profit-dependent economic initiatives. The nature of “customary livelihoods” is to be interpreted flexibly (so as to include contemporary adaptations such as ethno-tourism and food processing). When calculating compensation, clients will adequately take into consideration the adverse social effects of the project on the traditional lifestyles and family life of Indigenous Peoples. This shall be undertaken in cooperation with Indigenous Peoples’ representatives and experts. The provisions of this paragraph also apply in cases where the client has to pay compensation to local or regional government bodies.

29. Acceptable and legally feasible ways of compensation and implementation of IPDPs should be discussed during consultations with Indigenous Peoples. Based on these consultations a mechanism for transferring the compensation and/or resources should be developed and agreed upon. If necessary assistance/support should be facilitated by the client so as to enable the establishment of appropriate management and governance systems.

30. The client will provide, through the process of meaningful consultation with, and the informed participation of, the affected communities of Indigenous Peoples’⁶ opportunities for culturally appropriate development benefits. Such opportunities should be commensurate with the degree of project impacts, with the aim of improving their standard of living and livelihoods in an appropriate manner and of fostering the long-term sustainability of the natural resources on which they may depend. The client will document identified development benefits consistent with the requirements of this PR, and provide them in a timely manner. Strong support should be given to customary subsistence activities, including traditional economic activities and their modern derivatives such as crafts and ethno-tourism.

Special requirements

31. As Indigenous Peoples may be particularly vulnerable in the project circumstances described below, the following special requirements will also apply, in addition to the General Requirements above. Common to these requirements is the need for the client to:

- enter into good faith negotiation with Indigenous Peoples
- ensure the Indigenous Peoples’ informed participation
- obtain the free, prior and informed consent⁷ of Indigenous Peoples before starting with an activity described in paragraphs 32–37.

In the case of any of the following circumstances, the client will retain qualified independent social scientists to assist in conducting and documenting the activities described in paragraphs 32–37.

⁶ As outlined in sections 22–25.

⁷ Consent refers to the process whereby the affected community of Indigenous Peoples, arrive at a decision, in accordance with their cultural traditions, customs and practices, as to whether to become involved in the proposed project.

Impacts on traditional or customary lands under use

32. Indigenous Peoples are often closely tied to their customary lands and its forests, water, wildlife, and other natural resources, and therefore special considerations apply if the project affects such ties. While these lands may not be under legal ownership pursuant to national law, use of these lands, including seasonal or cyclical use, by communities of Indigenous Peoples for their livelihoods, or cultural, ceremonial, or spiritual purposes that define their identity and community, can often be substantiated and documented.

33. If the client proposes to locate the project on, or commercially develop natural resources located within, customary lands under use, and adverse impacts⁸ can be expected on the livelihoods, or cultural, ceremonial, or spiritual uses that define the identity and community of the Indigenous Peoples, the client will respect their use as follows:

- The client will enter into good faith negotiation with the affected communities of Indigenous Peoples, and document their informed participation and consent as a result of the negotiation.
- The client will document its efforts to avoid or at least minimise the size of land used, occupied and/or owned by Indigenous Peoples which is proposed for the project.
- The Indigenous Peoples' land use will be documented by experts in collaboration with the affected communities of Indigenous Peoples without prejudicing any other Indigenous Peoples' land claim.
- The affected communities of Indigenous People will be informed of their rights with respect to these lands under national laws, including any national law recognising customary rights or use.
- The client will offer affected communities of Indigenous Peoples at the minimum compensation and due process available to those with full legal title to land in the case of commercial development of their land under national laws, together with culturally appropriate development opportunities; land-based compensation or compensation-in-kind will be offered in lieu of cash compensation, where feasible.
- The client will give adequate time to the affected indigenous communities to come to an internal agreement, without the client imposing its will directly or indirectly.
- The client may use functions such as an ombudsman and/or other such public institution within the relevant national system to facilitate community consent to the project/the proposed land use by the client and the mitigation package.

34. During project implementation, the client will bring to the immediate attention of the EBRD any conflicts between Indigenous Peoples and the client that remain unresolved despite having gone through the project grievance mechanism. The Bank will assess the situation and decide upon an appropriate approach to resolve the issue.

⁸ Adverse impacts may include but not be limited to impacts occurring as a result from loss of assets or resources, restriction on land use, or carrying out traditional lifestyle activities, resulting from project activities.

Relocation of Indigenous Peoples from traditional or customary lands

35. The client will explore feasible alternative project designs to avoid the relocation of Indigenous Peoples from their communally held traditional or customary lands under use. When relocation is unavoidable, the client will not carry out such relocation without obtaining free, prior and informed consent for it from the affected Indigenous Peoples' communities as a result of good faith negotiations. These negotiations shall take into consideration Indigenous Peoples' laws, traditions, customs and land tenure and involve their full participation. Any relocation of Indigenous Peoples will be consistent with the Resettlement Planning and Implementation requirements of PR 5. Indigenous Peoples shall receive fair and equitable compensation for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied used or damaged as a result of the project without their free, prior and informed consent.

36. Where feasible, the relocated Indigenous Peoples should be able to return to their traditional or customary lands, should the reason for their relocation cease to exist and the land should be fully reinstated.

Cultural resources

37. Where a project proposes to use the cultural resources, knowledge, innovations, or practices of Indigenous Peoples for commercial purposes, the client will inform the Indigenous Peoples of: (i) their rights under national law; (ii) the scope and nature of the proposed commercial development; and (iii) the potential consequences of such development. The client will not proceed with such commercialisation unless it: (i) enters into a good faith negotiation with the affected communities of Indigenous People; (ii) documents their informed participation and their free, prior, informed consent to such an activity; and (iii) provides for fair and equitable sharing of benefits from commercialisation of such knowledge, innovation, or practice, consistent with their customs and traditions.

PR 8: Cultural Heritage

Introduction

1. The EBRD recognises the importance of cultural heritage for present and future generations. Consistent with the Convention Concerning the Protection of the World Cultural and Natural Heritage and the Convention for the Safeguarding of Intangible Heritage, this Performance Requirement aims to protect irreplaceable cultural heritage and to guide clients to avoid or mitigate adverse impacts on cultural heritage in the course of their business operations. In addition, the requirements of this Performance Requirement related to a project's use of cultural heritage are based in part on standards set by the Convention on Biological Diversity. The Bank supports a precautionary approach to the management and sustainable use of cultural heritage in line with the Rio Declaration.

2. Cultural heritage is important as a source of valuable historical and scientific information, as an asset for economic and social development, and as an integral part of a people's cultural identity, practices, and continuity.

3. In pursuing these aims of protection and conservation, the Bank is guided by and supports the implementation of applicable international conventions and other instruments.¹ The EBRD also recognises the need for all parties to respect the laws and regulations that pertain to cultural heritage in a project's area of influence and the country of operation's obligations under relevant international treaties and agreements. These laws may be cultural heritage or antiquities laws, planning or building consent laws, conservation area or protected area regulations, other laws

and regulations governing the built historic environment, or laws relating to the protection of Indigenous Peoples.

Objectives

4. The objectives of this Performance Requirement ("PR") are:

- to support the conservation of cultural heritage in the context of EBRD-financed projects
- to protect cultural heritage from adverse impacts of project activities
- to promote the equitable sharing of benefits from the use of cultural heritage in business activities
- to promote the awareness of and appreciation of cultural heritage where possible.

5. This PR sets a framework for clients to protect cultural heritage through the avoidance, and where avoidance is not feasible, the reduction and mitigation of any potential adverse impacts by EBRD-financed activities, in an appropriate and proportionate manner.

Scope of application

6. This Policy will apply when a project is likely to affect irreplaceable cultural heritage. The provisions of this PR apply whether or not the cultural heritage has been legally protected or previously disturbed.

7. For the purposes of this PR, the term cultural heritage is defined as a group of resources inherited from the past which people identify, independently of ownership, as a reflection and expression of their constantly evolving values, beliefs, knowledge and traditions.

¹ Such as the following:

- Convention concerning the Protection of the World Cultural and Natural Heritage, 1972 (UNESCO World Heritage Convention).
- Convention for the Safeguarding of the Intangible Cultural Heritage, 2003 (UNESCO Intangible Heritage Convention).
- Convention on the Protection of the Underwater Heritage, 2001 (UNESCO Underwater Heritage Convention).
- Council of Europe Framework Convention on the Value of Cultural Heritage for Society, 2005.
- The Australia ICOMOS Charter for the Conservation of Places of Cultural Significance (*The Burra Charter*) (Australia ICOMOS).

It encompasses tangible (physical) and intangible heritage, the boundaries of which are a subject of considerable debate among heritage experts. The cultural heritage may be valued at the local, regional, or national level, or within the international community:²

- Physical cultural heritage concerns movable or immovable objects, sites, groups of structures, and natural features and landscapes that have archaeological, paleontological, historical, architectural, religious, aesthetic or other cultural significance.
- Intangible cultural heritage means the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognise as part of their cultural heritage and which are transmitted from generation to generation.³

8. The EBRD recognises that sites or objects representing cultural heritage value or significance could be uncovered in unexpected locations, during the actual implementation of an approved project. Therefore, a project is subject to the provisions of this PR if it:

- involves significant excavations, demolitions, movement of earth, flooding or other changes in the physical environment
- is located in, or in the vicinity of, a cultural heritage site recognised by the country of operation, or
- may have an adverse impact on the culture, knowledge and practices of Indigenous Peoples.

9. The applicability of this PR in other cases will be determined by the Bank during the environmental and social appraisal process (see paragraph 10 below). Projects specifically designed to support the conservation or management of cultural heritage are individually reviewed by the Bank. If applicable, the Bank will agree with the client how the requirements of this PR will be addressed and managed as part of the client's overall Environmental and Social Action Plan (ESAP) and/or Management System. The environmental and social appraisal and management requirements are outlined in PR 1 and PR 10.

Requirements

Appraisal

Screening for risks or impacts on cultural heritage

10. At an early stage of the environmental and social appraisal (see PR 1), the client will identify if any cultural heritage is likely to be adversely affected by the project, and assess the likelihood of any chance finds (see paragraph 16). In doing so, the client will consult with relevant ministries, experts and local communities as appropriate.⁴ The intensity of study of cultural resources should be sufficient to fully characterise the risks and impacts, consistent with a precautionary approach and reflecting the concerns of relevant stakeholders.

² This definition is consistent with the Council of Europe Framework Convention on the Value of Cultural Heritage for Society. Cultural heritage is also known as cultural patrimony, cultural assets, cultural resources, or cultural property.

³ As set out in the Convention for the Safeguarding of the Intangible Cultural Heritage.

⁴ See PR 1 and 10. In the case of Category A projects, this should be discussed during the scoping meeting. See section 10 of PR 10.

Impacts on intangible heritage

11. Although potential impacts on intangible cultural heritage might be less obvious than impacts on tangible cultural heritage, they may be of equal significance. If the environment is crucial for maintaining traditional skills, knowledge and beliefs, any relocation or detachment could trigger the loss of traditional knowledge, beliefs and/or loss of minor dialects and languages and ultimately result in the disintegration of a community.

Avoiding impacts

12. The client is responsible for locating and designing a project so as to avoid significant damage to cultural heritage. If potential impacts are identified at the early stages of project development, preference should be given to avoiding adverse impacts during the design and site selection phases.

Assessing impacts that cannot be avoided

13. Where impacts cannot be avoided, the client will, based on the results of the preliminary screening undertake studies required to assess potential impacts and, if necessary, the required changes in design. The scope of these studies will be agreed with the EBRD on a case-by-case basis. The studies will be conducted by qualified and experienced cultural heritage specialists, either as part of the overall environmental and social assessment in accordance with PR 1, or separately. The EBRD may require the involvement of external experts.

14. The assessment and mitigation of impacts on cultural heritage will be conducted in accordance with relevant provisions of national and/or local laws, regulations and protected area management plans, national obligations under international laws and internationally accepted good practice. In the majority of the EBRD countries of operations, laws prohibit the removal of objects and demolition of sites of physical cultural heritage. Internationally accepted good practice includes, but is not limited to: archaeological or paleontological field survey, laboratory examination of found objects, exhibitions featuring new finds, and documentation.

Managing impacts on cultural heritage

15. Based on the results of the field surveys, expert assessment of the significance of cultural heritage, requirements of national legislation and relevant international conventions, as well as on the results of consultations with affected communities (see paragraph 17), the client will be required to develop appropriate mitigation measures in order to reduce and mitigate any adverse impacts on the cultural heritage, along with the implementation schedule and required budget for such measures. Such mitigation measures might be included in the Environmental and Social Action Plan for the project or in a specific Cultural Heritage Management Plan. The client will also ensure that trained and qualified personnel are available to oversee the implementation of mitigation measures, and that any contractors working on the project have the necessary skills and expertise and are managed and monitored in accordance with paragraph 19 of PR 1.

Chance find procedures

16. The client will ensure that provisions for managing chance finds, defined as physical cultural heritage encountered unexpectedly during project implementation, are in place. Such provisions shall include notification of relevant competent bodies of found objects or sites; alerting project personnel to the possibility of chance finds being discovered; and fencing-off the area of finds to avoid any further disturbance or destruction. The client will not disturb any chance finds until an assessment by a designated and qualified specialist is made and actions consistent with national legislation and this PR are identified.

Consultation with affected communities

17. Where a project may affect cultural heritage, the client will consult with affected communities within the host country who use or have used the cultural heritage within living memory for longstanding cultural purposes to identify cultural heritage of importance, and to incorporate into the client's decision-making process the views of the affected communities on such cultural heritage. The client will provide information to affected communities, in a transparent and appropriate language, on the scope, location, duration of a project, and any activities that might involve impacts on cultural heritage. Such consultation must follow the requirements of PR 10 and could be a part of a wider consultation process on the projects' environmental and social impacts in accordance with PR 10. Consultation will also involve the relevant national or local regulatory authorities entrusted with protection of cultural heritage. Impacts on cultural heritage will be appropriately mitigated with the informed participation of the affected communities.

18. Where a project may significantly damage cultural heritage, and its damage or loss may endanger the cultural or economic survival of communities within the country of operation, who use the cultural heritage for longstanding cultural purposes, the client will apply the requirements of paragraph 17 and will not proceed unless it: (i) enters into a good faith negotiation with the affected communities; and (ii) documents their informed participation and the successful outcome of the negotiation.

Project's use of cultural heritage

19. Where a project proposes to use the cultural resources, knowledge, innovations, or practices of local communities embodying traditional lifestyles for commercial purposes, the client will inform these communities of: (i) their rights under national law; (ii) the scope and nature of the proposed commercial development; and (iii) the potential consequences of such development. The client will proceed with such commercialization only when it: (i) enters into a good faith negotiation with the affected local communities embodying traditional lifestyles; (ii) documents their informed participation and the successful outcome of the negotiation; and (iii) provides for fair and equitable sharing of benefits from commercialisation of such knowledge, innovation, or practice, consistent with their customs and traditions. Where a project proposes to use the cultural resources, knowledge, innovations, or practices of Indigenous Peoples, the requirements of paragraph 37 of PR 7 apply.

PR 9: Financial Intermediaries

Introduction

1. Financial Intermediaries (FIs) are a key instrument for the EBRD to promote sustainable financial markets and provide a vehicle to channel EBRD funding to the micro, small and medium-sized enterprise (SME) sector. Through its network of partner FIs, the EBRD can support economic development at a scale of enterprise that is smaller than would be possible through direct EBRD investment. The EBRD supports a variety of financial service providers including among others, private equity funds, banks, leasing companies, insurance companies and pension funds. The FIs are engaged in a wide range of activities, such as microfinance, SME lending, trade finance, medium to long-term corporate or project finance, and housing finance.

2. The very nature of intermediated financing means that the EBRD will delegate to the FI responsibility for transaction appraisal and monitoring as well as overall portfolio management. Environmental and social risk management are part of the responsibilities delegated to the FI. Nevertheless, by virtue of its relationship with the FI, the EBRD continues to have an interest in assessing and monitoring whether the environmental and social risks associated with the FI's business activities are adequately addressed by the FI. The exact modalities of delegation and EBRD oversight will depend on a number of factors, including the nature of the FI and its business activities, the type of finance provided and the business environment in the country.

Objectives

3. The objectives of this Performance Requirement (PR) are:

- to establish a practical way in which the Bank's mandate to promote sustainable development can be implemented in its FI investments, in line with best international practice in the commercial financial sector
- to enable FIs to manage environmental and social risks associated with their business activities and to promote good environmental and social business practices amongst their clients
- to promote good environmental and human resource management within FIs.

Scope of application

4. This Performance Requirement applies to all projects classified as "FI" pursuant to paragraph 24 of the Policy.

5. For the purposes of this PR, the word "project" is used in reference to the EBRD transaction with the FI, whereas "subproject" is used to refer to the clients/projects financed by the FIs.

6. Where the EBRD is financing a credit line or other targeted finance facility, the requirements of this PR will apply to all subprojects financed using EBRD funds.

7. Where the EBRD provides equity or quasi-equity financing to an FI, the requirements of this PR will apply to the FI's entire portfolio of commercial subprojects originated from the time of the EBRD becoming a shareholder or investor, subject to paragraph 16.

8. Where an FI project is judged by the EBRD to have minimal or no adverse environmental or social risks, no specific requirements will apply and the FI will not need to adopt any environmental and social risk management procedures.

Requirements

Environmental and social due diligence and monitoring procedures

9. The FI will adopt and implement environmental and social due diligence and monitoring procedures (hereafter “Procedures”) commensurate with the level of environmental and social risks associated with its business activities and type of project with the EBRD. These Procedures will be agreed with the EBRD.

10. Where an FI can demonstrate that it already has in place a set of environmental and social risk management procedures, the EBRD will review the content of these and the FI’s implementation capacity against the requirements of this PR.

11. The FI will design the Procedures so as to ensure that the requirements of paragraphs 13–16 are met. The Procedures will also include risk appraisal and monitoring mechanisms as appropriate, including:

- a risk categorisation of proposed subprojects
- the undertaking of due diligence on clients and subprojects commensurate with the identified risks
- the structuring of subprojects so that they meet national requirements for environment, health, safety, labour and public consultation including, where necessary, requiring clients to implement corrective action plans
- the monitoring of subprojects to ensure compliance with national requirements for environment, health, safety, labour and public consultation, and, where relevant, corrective action plans.

12. To assist FIs with putting the Procedures into practice, the EBRD has developed an environmental and social risk management manual (“eManual”) which includes model Procedures and guidance for various types of FIs and financial services. FIs that do not already have equivalent procedures in place are required to use relevant parts of the eManual in respect of the relevant subprojects.

Requirements for subprojects

13. FIs will screen all subprojects against the Bank’s Environmental and Social Exclusion List included in Annex 1 to this PR. Subprojects involving business activities included on this list are not eligible for FI support and applications involving such activities must be rejected.

14. Annex 2 to this PR includes a number of business activities with particularly high social and environmental risks. Where a subproject involves activities listed in Annex 2 of this PR, the FI will refer that subproject to the Bank, and ensure that the subproject is benchmarked against the applicable EBRD Performance Requirements (PRs). The EBRD strongly encourages FIs to discuss these cases early in their due diligence process. EBRD will assist FIs with the appraisal of these subprojects. EBRD environmental/social specialists will review the due diligence information collected by the FI, determine any additional information needed, assist with determining appropriate mitigation measures and, if necessary, specify conditions under which the subprojects may proceed.

15. FIs will require all clients to comply with national regulations and standards related to (i) the environment, (ii) public consultation, and (iii) employment, including without limitation, occupational health and safety, child labour, forced labour; non-discrimination related to employment, and freedom of association and collective bargaining.

16. When FIs are providing project finance¹ under an EBRD Credit Line with estimated total project capital costs of US\$ 10 million or more for subprojects involving (i) new developments or (ii) expansion or upgrade of an existing facility where changes in scale or scope may create significant additional environmental or social impacts, such subprojects will be required to meet EBRD PRs 1–8 and 10.

17. The EBRD may set additional or alternative environmental and social requirements, depending on the nature of the FI and its portfolio and the country of operation.²

Organisational capacity within the FI

18. The FI will maintain human resources policies, management systems and practices in accordance with EBRD PR 2 – Labour and Working Conditions.

19. The FI will appoint a member of management to have overall responsibility for environmental and social matters, including the implementation of the Procedures.

20. Depending on the size of the FI and its business activities, the FI should also (i) appoint one or more staff responsible for overseeing the day-to-day application of the Procedures, and providing implementation support; and (ii) ensure that adequate technical expertise is available to them to assess transactions with potentially high environmental or social risks, either in-house or as external specialists.

21. The FI will ensure that the Procedures and the requirements set forth in paragraphs 9–20 are clearly communicated to all relevant staff, and provide appropriate training to ensure that staff have the necessary capabilities and support to implement them.

Reporting to the EBRD

22. The FI will submit to the EBRD periodic (typically annual) reports on the implementation of the Procedures and the environmental and social performance of its investment/lending portfolio. Standard reporting formats are included in the eManual.

Stakeholder engagement

23. The FI will put in place a system for dealing with external communication on environmental and social matters, for example a point of contact for dealing with public enquiries and concerns related to environmental and social matters. The FI will respond to such enquiries and concerns in a timely manner.

¹ Project finance is “a method of funding in which the lender looks primarily to the revenues generated by a single project, both as the source of repayment and as security for the exposure. This type of financing is usually for large, complex and expensive installations that might include, for example, power plants, chemical processing plants, mines, transportation infrastructure, environment, and telecommunications infrastructure. Project finance may take the form of financing of the construction of a new capital installation, or re-financing of an existing installation, with or without improvements. In such transactions, the lender is usually paid solely or almost exclusively out of the money generated by the contracts for the facility’s output, such as the electricity sold by a power plant. The borrower is usually an SPE (Special Purpose Entity) that is not permitted to perform any function other than developing, owning, and operating the installation. The consequence is that repayment depends primarily on the project’s cash flow and on the collateral value of the project’s assets.” Source: Basel Committee on Banking Supervision, International Convergence of Capital Measurement and Capital Standards (“Basel II”), November 2005. See www.bis.org/publ/bcbs118.pdf.

² For example, if the country has not ratified all core ILO conventions [ILO conventions 29 and 105 (forced and bonded labour), 87 (freedom of association), 98 (right to collective bargaining), 100 and 111 (discrimination), 138 (minimum age) 182 (worst forms of child labour) and transposed them into national law].

Best practice

24. The EBRD encourages all its FIs to follow best practices in sustainability management in their entire lending and investment operations, irrespective of whether these are financed by the EBRD. In particular, FIs are encouraged to:

- report periodically to their external stakeholders on how they address environmental and social issues in their business and operations. This may, for example, be by including, in the FI's Annual Report, web site or other public document, a section summarising its commitment to the requirements outlined in this PR
- work towards applying best practices in in-house environmental management (including energy and resource efficiency, waste reduction and recycling)
- roll out the application of the Procedures and the eManual to all their business activities, including those to which this PR does not apply
- identify, where appropriate, opportunities for developing financial products with high environmental and/or social benefits (for example, finance for investments in energy efficiency, renewables or pro-biodiversity business, products targeting women entrepreneurs, access to credit for micro entrepreneurs).

Further guidance on best practices is available in EBRD's eManual. FIs should also consider joining appropriate existing international initiatives that promote best practices in the financial sector such as the Equator Principles (EPs), the United Nations Environment Programme Finance Initiative (UNEP FI), and the Principles for Responsible Investment (PRI).³

³ Equator Principles (EPs): www.equator-principles.com; United Nations Environment Programme (UNEP) Finance Initiative (FI): www.unepfi.org; Principles for Responsible Investment (PRI): www.unpri.org.

PR 9 Annex 1: EBRD Environmental and Social Exclusion List

The EBRD will not knowingly finance, directly or indirectly, projects involving the following:

- a) The production of or trade in any product or activity deemed illegal under host country (that is, national) laws or regulations, or international conventions and agreements, or subject to international phase out or bans, such as:
 - (i) Production of, or trade, in products containing polychlorinated biphenyls (PCBs)⁴
 - (ii) Production of, or trade, in pharmaceuticals, pesticides/herbicides and other hazardous substances subject to international phase-outs or bans⁵
 - (iii) Production of, or trade, in ozone depleting substances subject to international phase-out⁶
 - (iv) Trade in wildlife or production of, or trade, in wildlife products regulated under CITES⁷
 - (v) Transboundary movements of waste prohibited under international law;⁸
- b) Production or use of or trade in unbonded asbestos fibres or asbestos-containing products⁹
- c) Activities prohibited by host country legislation or international conventions relating to the protection of biodiversity resources or cultural heritage¹⁰
- d) Driftnet fishing in the marine environment using nets in excess of 2.5 kilometres in length
- e) Shipment of oil or other hazardous substances in tankers which do not comply with International Maritime Organization (IMO) requirements¹¹
- f) Trade in goods without required export or import licenses or other evidence of authorisation of transit from the relevant countries of export, import and, if applicable, transit.

⁴ PCBs: Polychlorinated biphenyls – a group of highly toxic chemicals. PCBs are likely to be found in oil-filled electrical transformers, capacitors and switchgear dating from 1950–85.

⁵ Reference documents are EU Regulation (EEC) No 2455/92 Concerning the Export and Import of Certain Dangerous Chemicals, as amended; UN Consolidated List of Products whose Consumption and/or Sale have been Banned, Withdrawn, Severely Restricted or not Approved by Governments; Convention on the Prior Informed Consent Procedures for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam Convention); Stockholm Convention on Persistent Organic Pollutants; WHO Classification of Pesticides by Hazard.

⁶ Ozone Depleting Substances (ODS): Chemical compounds which react with and deplete stratospheric ozone, resulting in the widely publicised 'ozone holes'. The Montreal Protocol lists ODSs and their target reduction and phase-out dates. A list of the chemical compounds regulated by the Montreal Protocol, which includes aerosols, refrigerants, foam blowing agents, solvents, and fire protection agents, together with details of signatory countries and phase out target dates, is available from the EBRD.

⁷ CITES: Convention on International Trade in Endangered Species of Wild Fauna and Flora. The lists of CITES protected species are available at www.cites.org/eng/app/index.shtml.

⁸ Reference documents are: Regulation (EC) No 1013/2006 of 14 June 2006 on shipments of waste; Decision C(2001)107/Final of the OECD Council concerning the revision of Decision C(92)39/Final on the control of transboundary movements of wastes destined for recovery operations; Basel Convention of 22 March 1989 on the control of transboundary movements of hazardous wastes and their disposal.

⁹ This does not apply to the purchase and use of bonded asbestos cement sheeting where the asbestos content is <20%.

¹⁰ Relevant international conventions include, without limitation: Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention); Convention on Wetlands of International Importance, especially as Waterfowl Habitat (Ramsar Convention); Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention); World Heritage Convention; Convention on Biological Diversity.

¹¹ This includes: tankers which do not have all required MARPOL SOLAS certificates (including, without limitation, ISM Code compliance); tankers blacklisted by the European Union or banned by the Paris Memorandum of Understanding on Port State Control (Paris MOU); and tankers due for phase out under MARPOL regulation 13G. No single hull tanker over 25 years old should be used.

PR 9 Annex 2: The financing by FIs of the following environmentally or socially sensitive business activities is subject to referral to the EBRD.

The principal Performance Requirement that proposed transactions will be expected to meet is indicated in italics.

a) Activities involving involuntary resettlement – *EBRD Performance Requirement 5.*

b) Activities within, adjacent to, or upstream of designated protected areas under national law or international conventions, sites of scientific interest, habitats of rare/endangered species, fisheries of economic importance, and primary/old growth forests of ecological significance – *EBRD Performance Requirement 6.*

c) Activities within, adjacent to, or upstream of land occupied by Indigenous Peoples and/or vulnerable groups including lands and watercourses used for subsistence activities such as livestock grazing, hunting, or fishing – *EBRD Performance Requirement 7.*

d) Activities which may affect adversely sites of cultural or archaeological significance – *EBRD Performance Requirement 8.*

e) Activities in the nuclear fuel production cycle (uranium mining, production, enrichment, storage or transport of nuclear fuels).¹²

f) Energy generation using nuclear fuels (excluding electricity import/export).¹³

g) Activities involving the release of GMOs into the natural environment – *EBRD Performance Requirement 6.*

h) Construction of mini-hydro cascades – *EBRD Eligibility Criteria for Small Hydro Projects.*

¹² In compliance with the EBRD's Energy Policy, the Bank is permitted to use its funding (directly or indirectly through FIs) in relation to nuclear safety improvements, or for the safe and secure management of radioactive waste and spent nuclear fuel, as well as for decommissioning, without a direct link to the closure of high-risk reactors. Any other activities in the nuclear fuel production cycle are therefore excluded from FI financing.

¹³ In compliance with the EBRD's Energy Policy, the Bank is permitted to use its funding (directly or indirectly through FIs) in relation to nuclear safety improvements, or for the safe and secure management of radioactive waste and spent nuclear fuel, as well as for decommissioning, without a direct link to the closure of high-risk reactors. Any other activities involving energy generation using nuclear fuels are therefore excluded from FI financing.

PR 10: Information Disclosure and Stakeholder Engagement

Introduction

1. The EBRD considers stakeholder engagement as an essential part of good business practices and corporate citizenship, and a way of improving the quality of projects. In particular, effective community engagement is central to the successful management of risks and impacts on communities affected by projects, as well as central to achieving enhanced community benefits.

2. On environmental matters in particular, the Bank supports the approach of the UNECE Aarhus Convention, which identifies the environment as a public good. The Convention affirms the public's right to be informed as to the state of that environment and what emissions and discharges are being released into it; the right to meaningful consultation on proposed projects or programmes that might affect the environment; and the right to complain if they believe that the environment is not being adequately taken into account.

3. Stakeholder engagement is an ongoing process involving (i) the client's public disclosure of appropriate information so as to enable meaningful consultation with stakeholders, (ii) meaningful consultation with potentially affected parties, and (iii) a procedure or policy by which people can make comments or complaints. This process should begin at the earliest stage of project planning and continue throughout the life of the project.

Objectives

4. This Performance Requirement ("PR") outlines a systematic approach to stakeholder engagement that will help clients build and maintain over time a constructive relationship

with their stakeholders, in particular the locally affected communities. The process of stakeholder engagement is an essential component of the appraisal, management and monitoring of environmental and social issues associated with the client's investments. Therefore, this performance requirement should be read in conjunction with PR 1.

Specific objectives of PR 1 and PR 10 are as follows:

See table opposite.

Scope of application¹

5. The Bank will agree with the client how the relevant requirements of this PR will be addressed as part of the client's overall environmental and social appraisal process, Environmental and Social Action Plan (ESAP) and/or Management System (outlined in PR 1).

Requirements

6. Stakeholder engagement will be free of manipulation, interference, coercion, and intimidation, and conducted on the basis of timely, relevant, understandable and accessible information, in a culturally appropriate format.

7. The nature and frequency of stakeholder engagement will vary from project to project, depending on the risks to and adverse impacts on the affected communities, the sensitivity of the sector and environment, and the level of public interest. In order to tailor the engagement to the specifics of the clients and the project, it is essential that all clients seeking EBRD finance undertake the steps outlined in paragraphs 8 to 10 early in the environmental and social appraisal process. As part of its own due diligence, the Bank will assess the level of information disclosure and consultation conducted by the client against the requirements of this PR and may require additional

¹ In addition, special provisions on emergency preparedness and response are covered in PR 4.

Environmental and Social Appraisal and Management (PR 1)	Information Disclosure and Stakeholder Engagement (PR 10)
<ul style="list-style-type: none"> • To identify and assess environmental and social impacts and issues, both adverse and beneficial, associated with the project. • To adopt measures to avoid, or where avoidance is not possible, minimize, mitigate, or offset/compensate for adverse impacts on workers, affected communities and the environment. • To identify and, where feasible, adopt opportunities to improve environmental and social performance. • To promote improved environmental and social performance through a dynamic process of performance monitoring and evaluation. 	<ul style="list-style-type: none"> • To identify people or communities that are or could be affected by the project, as well as other interested parties. • To ensure that such stakeholders are appropriately engaged on environmental and social issues that could potentially affect them through a process of information disclosure and meaningful consultation. • To maintain a constructive relationship with stakeholders on an ongoing basis through meaningful engagement during project implementation.

engagement. The requirements of national law with respect to public information and consultation, including those laws implementing host country obligations under international law² must always be met.

Engagement during project preparation

Stakeholder identification and analysis

8. The first step in successful stakeholder engagement is for the client to identify the various individuals or groups who (i) are affected or likely to be affected (directly or indirectly) by the project (“affected parties”), or (ii) may have an interest in the project (“other interested parties”). Resources for public information and consultation should focus on affected parties, in the first instance.

9. As part of the stakeholder identification process, the client will identify individuals and groups that may be differentially or disproportionately affected by the project

because of their disadvantaged or vulnerable status. The client will also identify how stakeholders may be affected and the extent of the potential (actual or perceived) impacts. Where impacts are perceived, additional communication may be required to provide information and reassurance of the assessed level of impacts. An adequate level of detail must be included in the stakeholder identification and analysis so as to enable the Bank to determine the level of communication that is appropriate for the project under consideration. Employees are always considered stakeholders.

10. In the case of Category A projects the client will engage in a scoping process with identified stakeholders to ensure identification of all key issues to be investigated as part of the Environmental and Social Impact Assessment (ESIA) process. The scoping process will also

² For example, the Aarhus and Espoo Conventions.

facilitate development of a Stakeholder Engagement Plan for the project. As part of the scoping process, stakeholders should be able to provide comments and recommendations on the draft Stakeholder Engagement Plan and any other scoping documents.

Stakeholder engagement plan

11. The client will inform the EBRD how communication with the identified stakeholders will be handled throughout project preparation and implementation, including the type of grievance procedure (see paragraphs 24–26) envisaged. Different levels of engagement and consultation might be appropriate for affected parties and other interested parties. The client should develop separate processes for worker engagement and engagement with affected communities; engagement with workers about working conditions, including occupational health and safety, and the workplace relationship must follow the requirements of PR 2 at a minimum. Where stakeholder groups are identified as disadvantaged or vulnerable, dedicated approaches and an increased level of resources may be needed for communication with such stakeholders so that they fully understand the issues that are potentially affecting them. Clients should also inform the EBRD of any information provided or consultation activities conducted prior to approaching the EBRD for financing.

Information disclosure

12. Disclosure of relevant project information helps stakeholders understand the risks, impacts and opportunities of the project. If communities may be affected by adverse environmental or social impacts from the project,

the client will disclose to them the following information (“the Information”):

- the purpose nature and scale of the project
- the duration of proposed project activities
- any risks to and potential impacts with regard to environment, worker health and safety, public health and safety and other social impacts on communities, and proposed mitigation plans
- the envisaged consultation process, if any, and opportunities and ways in which the public can participate
- time/venue of any envisaged public meetings, and the process by which meetings are notified, summarised, and reported.

13. The Information will be disclosed in the local language(s) and in a manner that is accessible and culturally appropriate, taking into account any vulnerable people (for example ethnic groups or displaced persons). For projects with potentially significant adverse social or environmental impacts, disclosure should occur early in the environmental and social appraisal process.

14. If an Environmental and Social Action Plan (“ESAP”) has been agreed, the client will disclose the ESAP for a Category A project to the affected parties. In all other cases, the client will disclose a non-technical summary. The ESAP/summary will be disclosed in accordance with paragraph 13, and also on the client’s web site, if any. Additional information may need to be disclosed on an ongoing basis, as the project progresses, in case of any material changes in the nature of the project or its impacts, or if material new risks and impacts arise.

Meaningful consultation

15. The need for and nature of any specific consultation will be agreed with the EBRD based on the stakeholder identification, analysis and detailed project description, and depending on the nature and magnitude of current and potential adverse impacts on workers and affected communities. Where workers and/or affected communities are, or may be, subject to significant risks or adverse impacts from a project, the client will undertake a process of meaningful consultation in a manner that provides the affected parties with opportunities to express their views on project risks, impacts, and mitigation measures, and allows the client to consider and respond to them.

Meaningful consultation:

- should be based on the disclosure of relevant and adequate information including, where appropriate and relevant, draft documents and plans, prior to decisions being taken when options are still open
- should begin early in the environmental and social appraisal process
- will focus on the social and environmental risks and adverse impacts, and the proposed measures and actions to address these
- will be carried out on an ongoing basis as the nature of issues, impacts and opportunities evolves.

16. The consultation process will be undertaken in a manner that is inclusive and culturally appropriate. The client will tailor its consultation process to the language preferences of the affected parties, their decision-making process, and the needs of any disadvantaged or vulnerable groups. The consultation will also include, beyond the affected parties, any groups or individuals who have been identified as other interested parties. The consultation process will

be documented as part of the public commitment of the client. The client will inform those who have participated in the public consultation process in a timely manner of the final decision on the project, associated environmental and social mitigation measures and any benefits of the project for the local communities, along with reasons and considerations on which the decision is based, and the grievance or complaint mechanism or process available.

Disclosure and consultation on Category A projects

17. Projects classified as Category A could result in potentially significant and diverse adverse future environmental and/or social impacts that cannot be readily identified, assessed and mitigated and therefore require a formalised and participatory assessment process. Disclosure and consultation requirements are built into each stage of this process. Clients shall ensure meaningful dialogue with affected parties and facilitate their informed participation in the decision-making process, in accordance with paragraphs 12 to 16 above. Informed participation involves organised and iterative consultation, leading to the client's incorporating into their decision-making process the views of the affected parties on matters that affect them directly such as proposed mitigation measures, the sharing of development benefits and opportunities, and implementation issues. Vulnerable people may need special attention and could require resources to understand the impacts and to allow meaningful input.

18. In the case of projects involving an EIA/SIA, clients shall ensure that the disclosure and consultation are carried out in accordance with paragraphs 12–17. Information disclosed must include a full EIA/SIA report in accordance with the Bank's requirements.³ In addition, the consultation process must meet the timing

³ An EIA/SIA format, consistent with the EU EIA Directive, will be available from the EBRD.

requirements for EBRD disclosure detailed in paragraph 3.4.1 of the Bank's Public Information Policy (PIP), as well as any applicable requirements under national EIA law and other relevant laws. The EIA/SIA must stay in the public domain throughout the life of the project, but can be amended, from time to time, with additional information.

19. In the case of projects involving involuntary resettlement, affecting Indigenous Peoples or cultural heritage, the client will also apply the special requirements of PR 5, PR 7 and PR 8.

20. Where local communities are, or are likely to be, severely and permanently adversely affected by a project but do not commensurately benefit from it, the client shall engage with the affected communities in a meaningful way to examine options for community development programmes that would benefit them.

Engagement during project implementation and external reporting

21. Throughout the life of the project, the client will provide ongoing information to identified stakeholders, commensurate to the nature of the project and its associated environmental and social impacts, and the level of public interest. This ongoing engagement should build upon the channels of communication and engagement established during the due diligence process. In particular, clients should use appropriate community engagement practices to disclose information and receive feedback on the effectiveness of the implementation of the mitigation measures in the ESAP as well as the affected communities' ongoing interests and concerns about the project. Additional information may need to be disclosed at key stages in the project cycle, for example before construction commences, or prior to start-up of operations.

22. Where affected communities have been identified during project preparation, the client will provide them with periodic reports on progress with implementation of the ESAP, on issues that involve ongoing risk to or impacts on them, and on any issues that the consultation process or grievance mechanism has identified as of concern to those communities. These reports will be in a format accessible to the affected communities, and their frequency will be proportionate to the concerns of affected communities, but not less than annually. If there are material changes to the project which results in additional adverse impacts or issues of concern to the affected communities, the client will inform them how these impacts and issues are being addressed in the updated ESAP. If these additional adverse impacts on affected communities are significant and diverse, the Bank may, on a case-by-case basis, require additional consultation activities in line with paragraphs 15 to 20. The client is encouraged to release this information also on their web site for the benefit of other interested parties.

23. In addition, the client is also encouraged to publish regular reports to their external stakeholders on their environmental and social performance, for example as part of their Annual Report or other public document, as a separate publication, or on their web site.

Grievance mechanism

24. The client will need to be aware of and respond to stakeholders' concerns related to the project in a timely manner. For this purpose, the client will establish a grievance mechanism, process, or procedure to receive and facilitate resolution of stakeholders' concerns and grievances about the client's environmental and social performance. The grievance mechanism should be scaled to the risks and potential adverse impacts of the project.

25. The grievance mechanism, process, or procedure should address concerns promptly and effectively, using an understandable and transparent process that is culturally appropriate and readily accessible to all segments of the affected communities, at no cost and without retribution. The mechanism, process of procedure must not impede access to judicial or administrative remedies. For projects to which PR 5 or PR 7 applies, the client will ensure that there is an independent, objective appeal mechanism. The client will inform the affected communities about the grievance process in the course of its community engagement activities, and report regularly to the public on its implementation, protecting the privacy of individuals.

26. Grievance mechanisms for workers will be separate from public grievance mechanisms and must be in accordance with PR 2.

Corporate finance

27. Clients with multi-site operations in receipt of general corporate finance, working capital or equity financing will adopt and implement a corporate stakeholder information and communication programme including a grievance mechanism in line with paragraphs 22 and 25 above. The stakeholder engagement programme will be commensurate to the nature of the company's business and its associated environmental and social impacts, and the level of public interest. The programme should be rolled out to facilities in a timely manner. It will include procedures and resources to ensure that adequate stakeholder engagement is conducted at the facility level, and that stakeholders proximal to its facilities receive information on the relevant facility's environmental and social performance. At least annually, clients will produce public reports on their social and environmental performance, including a non-

technical summary of any agreed ESMS/ESAP and progress made with the implementation of the ESMS/ESAP, against agreed indicators and targets. For any investment projects that would be categorised A under the EBRD Environmental and Social Policy the client will apply the stakeholder engagement process outlined in paragraphs 6–20.

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The EBRD uses the tools of investment to help build market economies and democracies and promote entrepreneurship in 29 countries from central Europe to central Asia.

Abbreviations

The Bank, EBRD	The European Bank for Reconstruction and Development
EPE	European Principles for the Environment
EU	European Union
FI	Financial Intermediary
IFI	International financial institution
IRM	Independent Recourse Mechanism
PIP	Public Information Policy
PSD	Project summary document
TC	Technical cooperation

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