

May 2014

# Environmental and Social Policy



**European Bank**  
for Reconstruction and Development

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 current Policy and related Performance Requirements were approved by the EBRD Board of Directors on 7 May 2014 and will apply to projects that are initiated after 7 November 2014. 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".

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# Environmental and Social Policy

As approved by the Board of Directors at its Meeting on 7th May 2014

## A. Purpose of this Policy

1. The European Bank for Reconstruction and Development (EBRD or the Bank) is committed to promoting “environmentally sound and sustainable development” in the full range of its investment and technical cooperation activities pursuant to the Agreement Establishing the EBRD.<sup>1</sup> The Bank believes that environmental and social<sup>2</sup> sustainability is a fundamental aspect of achieving outcomes consistent with its transition mandate and recognises that projects that foster environmental and social sustainability rank among the highest priorities of its activities.
2. In this Policy, the term “project” refers to the defined set of business activities for which EBRD financing is sought by a client, or where EBRD financing has already been committed, the set of business activities defined in the financing agreements, and as approved by the Board of Directors or other decision-making body.
3. This Policy outlines how the Bank will address the environmental and social impacts of its projects by:
  - defining the respective roles and responsibilities of both EBRD and its clients in designing, implementing and operating projects in line with this Policy and the Performance Requirements
  - setting a strategic goal to promote projects with high environmental and social benefits
  - mainstreaming environmental and social

sustainability considerations into all its activities.

## B. The EBRD’s commitments

4. All projects financed by the EBRD shall be structured to meet the requirements of this Policy.
5. The EBRD has adopted a comprehensive set of specific Performance Requirements (PRs) that the projects are expected to meet. The Bank expects its clients to manage the environmental and social issues associated with the projects to meet the PRs over a reasonable period of time.
6. The EBRD will seek within its mandate to ensure through its environmental and social appraisal and monitoring processes that projects are designed, implemented and operated in compliance with applicable regulatory requirements and good international practice (GIP).<sup>3</sup> Central to this approach is the application of the mitigation hierarchy.<sup>4</sup>
7. The EBRD, as a signatory to the European Principles for the Environment,<sup>5</sup> is committed to promoting the adoption of EU environmental principles, practices and substantive standards<sup>6</sup> by EBRD-financed projects, where these can be applied at the project level, regardless of their geographical location. When host country regulations differ from EU substantive environmental standards, projects will be expected to meet whichever is more stringent.

<sup>1</sup> Article 2.1(vii) of the Agreement Establishing the European Bank for Reconstruction and Development.

<sup>2</sup> For the purpose of this Policy, social refers to those issues which pertain to project-affected people and their communities and workers and related to socioeconomic status, vulnerability, gender identity, human rights, sexual orientation, cultural heritage, labour and working conditions, health and safety and participation in decision making.

<sup>3</sup> Good international practice refers to the exercise of professional skill, diligence, prudence and foresight that would reasonably be expected from skilled and experienced professionals engaged in the same type of undertaking under the same or similar circumstances globally or regionally. The outcome of such exercise should be that the project employs the most appropriate technologies in the project-specific circumstances.

<sup>4</sup> The mitigation hierarchy comprises measures taken to avoid creating environmental or social impacts from the outset of development activities, and where this is not possible, to implement additional measures that would minimise, mitigate and, as a last resort, offset and/or compensate any potential residual adverse impacts.

<sup>5</sup> The European Principles for the Environment (EPE) were adopted by the Council of Europe Development Bank, the EBRD, European Investment Bank, Nordic Environment Finance Corporation and Nordic Investment Bank. 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 commitments are reflected in PRs 1, 3, 4 and 10.

<sup>6</sup> Substantive environmental standards of the European Union are contained in EU secondary legislation, for example, regulations, directives and decisions. Procedural norms directed at member states and EU institutions and the jurisprudence of the European Court of Justice and the Court of First Instance which applies to member states, EU institutions and EU legal and natural persons, is excluded from this definition.

8. The EBRD recognises the ratification of international environmental and social agreements, treaties and conventions by its countries of operations. Within its mandate, the EBRD will seek to structure the projects it finances so that they are guided by the relevant principles and substantive requirements of international law. The EBRD will not knowingly finance projects that would contravene country obligations under relevant international treaties and agreements, as identified during project appraisal.
9. The EBRD recognises the responsibility of clients and their business activities to respect human rights<sup>7</sup> and that this is an integral aspect of environmental and social sustainability. This responsibility involves respecting human rights, avoiding infringement on the human rights of others, and addressing adverse human rights impacts that their business activities may cause, or to which they may contribute.
10. The EBRD believes that gender equality is a fundamental aspect of a modern, well-functioning market economy and democratic society. The EBRD expects its clients to identify any potential gender-specific and disproportionate, adverse impacts, and undertake to develop mitigation measures to reduce these. Where relevant, clients will be requested to enhance the positive gender impact of projects by promoting equality of opportunity and women's socio-economic empowerment, particularly with respect to access to finance, services and employment.
11. The EBRD will assess to what extent tariff changes caused by projects may create problems of affordability of basic levels of services for disadvantaged and/or vulnerable groups<sup>8</sup> of the population, and satisfy itself that effective schemes to address this issue are developed and put in place.
12. Through the implementation of this Policy 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.
13. The EBRD recognises the importance of addressing both the causes and the consequences of climate change in its countries of operations. The EBRD will engage, whenever appropriate, in innovative investments and technical assistance to support no/low-carbon investments and climate-change mitigation and adaptation opportunities, as well as identify opportunities to reduce emissions in EBRD-supported projects. The EBRD will also support its clients in developing adaptation measures that promote climate-resilient investments.
14. The EBRD will be precautionary in its approach to the protection, conservation, management and sustainable use of living natural resources and will require relevant projects to include measures to safeguard and, where feasible, enhance ecosystems and the biodiversity they support.
15. The EBRD is committed to the principles of transparency, accountability and stakeholder engagement. It will disclose, on an ongoing basis, summary information about the Bank's performance on environmental and social issues and will engage in meaningful dialogue with the Bank's stakeholders, in accordance with the EBRD Public Information Policy (PIP). The Bank will promote similar good practices amongst its clients.
16. The EBRD will work together with other international financial institutions, the European Union, bilateral donors, UN agencies and other organisations in coordinating effective interventions to promote environmental and social sustainability at the regional or sectoral level in its countries of operations. When co-financing projects with other international financial institutions, the EBRD will seek to cooperate with them to agree on a common

<sup>7</sup> For the purposes of this policy, the EBRD will be guided by the International Bill of Human Rights, the UN Declaration of Human Rights and the eight core conventions of the International Labour Organization.

<sup>8</sup> For the purpose of this Policy, vulnerable groups refers to people who, by virtue of gender identity, sexual orientation, religion, ethnicity, indigenous status, age, disability, economic disadvantage or social status may be more adversely affected by project impacts than others and who may be limited in their ability to claim or take advantage of project benefits. Vulnerable individuals and/or groups may also include, but not be limited to, people living below the poverty line, the landless, the elderly, women and children-headed households, refugees, internally displaced people, ethnic minorities, natural resource dependent communities or other displaced persons who may not be protected through national legislation and/or international law.

approach to project appraisal, project requirements and monitoring.

17. The EBRD's country strategies, as well as sector strategies and policies, will contain information on the potential environmental and social challenges and opportunities associated with the EBRD's envisaged activities.
18. Through its technical cooperation and policy dialogue, the EBRD will seek opportunities to build capacity to consider and manage environmental and social issues in its countries of operations. The EBRD will facilitate development of an enabling environment for its clients to achieve environmentally and socially sustainable outcomes in their projects.
19. In its internal operations, the EBRD will employ GIP with regards to environmental and social sustainability and will seek to work with suppliers and contractors who follow similarly high standards.

## C. Integrating environmental and social considerations into the project cycle

### The EBRD's role and responsibilities

20. The EBRD's responsibilities are consistent with its role as an international financial institution providing bank financing for projects through the use of EBRD resources approved by its management and Board of Directors or other decision-making body. With respect to any particular investment or technical cooperation project, the level of EBRD engagement is determined by the nature and scope of the project, availability of donor funding, as well as the specific circumstances of the collaboration and relationship with the client.
21. The EBRD may refrain from financing a project on environmental or social grounds. The EBRD will not knowingly finance projects which either involve or result in forced evictions.<sup>9</sup> In addition, there are several types of activities that the

EBRD does not finance in accordance with the EBRD Environmental and Social Exclusion List, included as Appendix 1 to this Policy.

22. The 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.

### The project life cycle

#### Categorisation

23. The EBRD categorises each project to determine the nature and level of environmental and social investigations, information disclosure and stakeholder engagement required. This will be commensurate with the nature, location, sensitivity and scale of the project, and the significance of its potential adverse future environmental and social impacts. Past and present environmental and social issues and risks associated with project-related existing facilities will be subject to environmental and social appraisal regardless of the categorisation.

#### Direct investments<sup>10</sup>

24. A project is categorised A when it could result in potentially significant adverse future environmental and/or social impacts which, at the time of categorisation, cannot readily be identified or assessed, and which, therefore, require a formalised and participatory environmental and social impact assessment process. A list of indicative Category A projects is presented in Appendix 2 to this Policy.
25. A project is categorised B when its potential adverse future environmental and/or social impacts are typically site-specific, and/or readily identified and addressed through mitigation measures. Environmental and social appraisal

<sup>9</sup> Acts and/or omissions involving the coerced or involuntary displacement of individuals, groups and communities from homes and/or lands and common property resources that were occupied or depended upon, thus eliminating or limiting the ability of an individual, group or community to reside or work in a particular dwelling, residence or location, without the provision of, and access to, appropriate forms of legal or other protection. It does not refer to evictions carried out both in accordance with the law and in conformity with the provisions of international human rights treaties.

<sup>10</sup> EBRD projects are divided into "Direct Investment Projects" and "Financial Intermediary Projects". In the case of Financial Intermediary Projects, the client is a financial services provider, an investment fund or other similar entity. All other projects are referred to as Direct Investment Projects.

requirements may vary depending on the project and will be determined by the EBRD on a case-by-case basis.

26. A project is categorised C when it is likely to have minimal or no potential adverse future environmental and/or social impacts, and can readily be addressed through limited environmental and social appraisal.
27. Initial Environmental and Social Examinations (IESEs) will be carried out where insufficient information is available at the time of categorisation to determine the appropriate category and scope of appraisal.

### Financial intermediaries

28. A project will be categorised as “FI” if the financing structure involves the provision of funds through financial intermediaries (FI) whereby the FI<sup>11</sup> undertakes the task of sub-project appraisal and monitoring.

### Overall approach to project appraisal

29. All projects undergo environmental and social appraisal both to help the EBRD decide if the project should be financed and, if so, the way in which environmental and social issues should be addressed in its planning, implementation and operation. The appraisal will be appropriate to the nature and scale of the project, commensurate with the level of environmental and social impacts and issues, and with due regard to the mitigation hierarchy. The appraisal will assess whether the project is capable of being implemented in accordance with this Policy and its PRs and include the assessment of the potential financial, legal and reputational risks as well as identify potential environmental or social opportunities. The social and environmental appraisal is integrated into the EBRD’s overall project appraisal. The EBRD may retain specialist third party advice to assist in the assessment of specialised or technical issues.
30. The EBRD’s environmental and social appraisal includes consideration of three key elements: (i) the environmental and social impacts and issues associated with the project; (ii) the capacity

and commitment of the client to implement the project in accordance with the relevant PRs; and (iii) to the extent appropriate, the facilities and activities that are associated with the project, but are not financed by the EBRD. The scope of the EBRD’s environmental and social appraisal will be defined on a case-by-case basis, and may also review potential risks and liabilities associated with assets pledged as security.

31. It is the responsibility of the client to ensure that adequate information is provided so that the Bank can undertake an environmental and social appraisal in accordance with this Policy. The Bank’s role is to: (i) review the clients’ information; (ii) provide guidance to assist clients in developing appropriate measures consistent with the mitigation hierarchy to address environmental and social impacts to meet the relevant PRs; and (iii) help identify opportunities for additional environmental or social benefits.
32. The EBRD recognises that the projects may have different levels of information available at the time of the Bank’s appraisal. In some cases, the proposed use of proceeds from the EBRD’s investment and the associated environmental and social footprint are known and largely understood at the time of the Bank’s decision to invest, as is typical in traditional project finance. In other cases, however, the Bank’s investment may not be directed at specific physical assets, as in the case of working capital finance and some types of equity investments, or when the funds are designated for future activities. In such circumstances, the proposed use of proceeds and the environmental and social footprint are largely indeterminate at the time of the EBRD’s decision to invest. The Bank will therefore (i) assess the investment based on the risks and impacts inherent to the particular sector and the context of the business activity, and (ii) assess the client’s capacity to implement the project in accordance with the PRs.
33. Where the EBRD is approached to finance a project that is under construction, or where the project has received its permits from the host country, including the approval of local environmental and social impact assessments, the Bank’s appraisal will include a gap analysis of the project design and implementation

<sup>11</sup> FIs include, inter alia, private equity funds, banks, leasing companies, insurance companies and pension funds.

against the PRs to identify whether any additional studies and/or mitigation measures are required to meet the EBRD's requirements.

34. The EBRD's appraisal requires the clients to identify stakeholders potentially affected by and/or interested in the projects, disclose sufficient information about the impacts and issues arising from the projects and consult with stakeholders in a meaningful and culturally appropriate manner. In particular, the EBRD requires its clients to engage with relevant stakeholders, in proportion to the potential impacts associated with the project and level of concern. Such stakeholder engagement should be carried out bearing in mind the spirit and principles of the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. For projects subject to ESIA that have the potential to have significant environmental impacts across international boundaries, the Bank will encourage the approach of the UNECE Convention on Environmental Impact Assessment in a Transboundary Context, regardless of geographical location of a project or its potential impacts. The Bank may, in some cases, conduct its own public consultation activities to gauge stakeholder views. Stakeholder identification and engagement may also be built into the Bank's technical cooperation activities, as appropriate.
35. For FI projects, the EBRD will conduct due diligence on the FI and its portfolio to assess (i) the FI's existing environmental and social policies and procedures and its capacity to implement them, (ii) environmental and social issues associated with the FI's existing and likely future portfolio, and (iii) measures necessary to strengthen the FI's existing environmental and social safeguard system.

### Performance Requirements

36. Projects are expected to meet GIP related to environmental and social sustainability. To help clients and/or their projects achieve this, the Bank has defined specific PRs for key areas of environmental and social sustainability as listed below:
- PR 1 - Assessment and Management of Environmental and Social Impacts and Issues

- PR 2 - Labour and Working Conditions  
PR 3 - Resource Efficiency, Pollution Prevention and Control  
PR 4 - Health and Safety  
PR 5 - Land Acquisition, Involuntary Resettlement and Economic Displacement  
PR 6 - Biodiversity Conservation and Sustainable Management of Living Natural Resources  
PR 7 - Indigenous Peoples  
PR 8 - Cultural Heritage  
PR 9 - Financial Intermediaries  
PR 10 - Information Disclosure and Stakeholder Engagement

Direct investment projects must meet PRs 1 to 8 and 10; FI projects must meet PRs 2, 9 and the occupational health and safety requirements of PR 4. Each PR defines, in its objectives, the desired outcomes, followed by specific requirements for projects to help clients achieve these outcomes. Compliance with relevant national law is an integral part of all PRs.

37. Projects involving new facilities or business activities will be designed to meet the PRs from the outset. If a project involves existing facilities or activities that do not meet the PRs at the time of Board approval, the client will be required to adopt measures satisfactory to the EBRD, that are technically and financially feasible and cost-effective to achieve compliance of these facilities or activities with the PRs within a time frame acceptable to the EBRD. In addition, the EBRD will work with its clients to manage environmental and social risks consistent with the PRs in their other operations that are associated with but not part of the project.
38. Where the project involves general corporate finance, working capital or equity financing for a multi-site company, the client will be required to develop measures at the corporate level (as opposed to the project-specific level) to meet the PRs over a reasonable time period. Where the use of proceeds is for specific physical assets, the use of proceeds will be subject to the Performance Requirements. In the case of proceeds that are not directed at specific physical assets, the requirements of paragraph 32 above will apply.

### Third party performance

39. At times, the project's ability to meet the PRs



will be dependent on third party activities.<sup>12</sup> The EBRD seeks to ensure that the 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. Certain third party risks may result in the Bank deciding to refrain from financing the project.

### Decision-making

40. The documentation submitted to the EBRD's Board of Directors or other decision-making body for approval of a project will include a description of the environmental and social appraisal, substantive impacts and issues, identified mitigation measures and a summary of stakeholder engagement, and the way in which these impacts and issues are being or will be addressed by clients. The Board of Directors or other decision-making body 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 project.
41. The EBRD's Board of Directors has the discretion to agree, as a condition to EBRD financing, that certain elements of environmental and social appraisal take place following Board approval and after the signing of the financing agreements. The Board will consider the overall impacts, risks and benefits of the proposed approach. Where a project has been approved subject to such conditions, the Project Summary Document will include a description of the approach.

### Legal documentation

42. The EBRD's financing agreements with clients in respect of a project will include specific provisions reflecting the EBRD's environmental and social requirements. These include compliance with all applicable PRs, as well as provisions for environmental and social reporting, stakeholder engagement and monitoring. 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 consistent with the requirements of the financing agreements.

### Monitoring

43. The EBRD reviews the environmental and social performance of projects and the compliance with the environmental and social commitments as agreed in the legal documentation. The extent of monitoring will be commensurate with the environmental and social impacts and issues associated with the project, including both direct investment and FI projects. As a minimum, monitoring requirements and commitments will include reviewing Annual Environmental and Social Reports on projects prepared by clients. The EBRD may also periodically verify the monitoring information prepared by clients through site visits to projects by the Bank's environmental and social specialists and/or independent experts.
44. If the client fails to comply with its social and environmental commitments as set out in the legal agreements, the EBRD may agree with the client remedial measures to be taken by the client to achieve compliance. If the client fails to comply with the agreed remedial measures, the Bank may take such action and/or exercise such remedies contained in the financing agreements that it deems appropriate. The EBRD will also review with the client any performance improvement opportunities related to projects.

### Operational changes

45. Changes can occur in the nature and scope of the project following the EBRD's approval and signing of the financing agreements. Such changes may have significant environmental or social implications associated with them. When such material changes are envisaged, the Bank will carry out an environmental and social appraisal of the relevant changes in accordance with this Policy and any additional appraisal and stakeholder engagement requirements, and environmental and social mitigation measures will be incorporated into the modified/restructured project documentation. Where operational changes

<sup>12</sup> 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 or service.

result in a materially different environmental and/or social scenario to the one approved by the Board, the change will be reported to senior management and, if appropriate, consistent with applicable EBRD policies, submitted to the Board for information or approval.

## **D. EBRD public reporting and accountability**

46. The EBRD will publish an annual report on the environmental and social sustainability issues relating to its activities and on the implementation of this Policy.
47. Environmental and social issues relating to EBRD-financed projects will be summarised in EBRD Project Summary Documents as required by the Bank's Public Information Policy.<sup>13</sup>
48. The Bank's Evaluation Department evaluates the environmental and social performance dimensions of EBRD-financed projects as appropriate, in accordance with the Bank's Evaluation Policy and relevant guidance notes.
49. The EBRD has established the Project Complaint Mechanism (PCM) to assess and review complaints about Bank-financed projects. The PCM gives local individuals, organisations and local groups that perceive harm from a Bank project, a means of raising complaints and seeking assistance with problem solving independently from banking operations. It can also be used by individuals or groups to file a complaint if they believe that the Bank has not complied with this Policy or project-specific components of the PIP.

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

50. The EBRD will promote projects and initiatives that are specifically designed to deliver significant environmental and social benefits. This approach will include:
  - delivering technical cooperation to complement existing or proposed EBRD projects
  - improving the enabling environment, through technical cooperation and policy dialogue,

so that EBRD clients can better address environmental or social issues

- promoting stand-alone investment projects in priority areas
- promoting resource efficiency in projects
- financing pilot projects to explore potential new lines of business with significant environmental or social benefits.

## **F. Institutional and implementation arrangements**

51. In order to ensure that the strategic directions described above are sufficiently addressed, the EBRD will allocate responsibilities and appropriate resources to 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.
52. This Policy will enter into force six months after its approval by the Board of Directors. Projects receiving initial approval by Bank management<sup>14</sup> prior to the entry into force of this Policy will be subject to the Policy in force at the time of the initial approval of the project.
53. 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.
54. 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 sector policies and strategies prior to their finalisation. Its views may also be sought on specific issues related to the EBRD's projects and activities.

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

<sup>13</sup> PSDs will be available from the EBRD's Publications Desk and on the EBRD web site ([www.ebrd.com](http://www.ebrd.com)).

<sup>14</sup> At the time of adoption of this Policy, this initial approval is referred to as "Concept Review".

## Appendix 1:

# EBRD Environmental and Social Exclusion List

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

- the production of or trade in any product or activity deemed illegal under host country ( national) laws or regulations, or international conventions and agreements, or subject to international phase out or bans, such as:
  - production of or trade in products containing PCBs<sup>15</sup>
  - production of or trade in pharmaceuticals, pesticides/herbicides and other hazardous substances subject to international phase-outs or bans<sup>16</sup>
  - production of or trade in ozone depleting substances subject to international phase out<sup>17</sup>
  - trade in wildlife or production of or trade in wildlife products regulated under CITES<sup>18</sup>
  - transboundary movements of waste prohibited under international law<sup>19</sup>
- production or use of or trade in unbonded asbestos fibres or asbestos-containing products
- activities prohibited by host country legislation or international conventions relating to the protection of biodiversity resources or cultural heritage<sup>20</sup>
- drift net fishing in the marine environment using nets in excess of 2.5 km in length
- shipment of oil or other hazardous substances in tankers which do not comply with IMO requirements<sup>21</sup>
- trade in goods without required export or import licences or other evidence of authorisation of transit from the relevant countries of export, import and, if applicable, transit.

<sup>15</sup> PCBs: Polychlorinated biphenyls are a group of highly toxic chemicals. PCBs are likely to be found in oil-filled electrical transformers, capacitors and switchgear dating from 1950-1985.

<sup>16</sup> Reference documents are Council Regulation (EEC) No 2455/92 of 23 July 1992 Concerning the Export and Import of Certain Dangerous Chemicals, as amended from time to time; United Nations 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 Recommended Classification of Pesticides by Hazard.

<sup>17</sup> Ozone Depleting Substances (ODSs): Chemical compounds which react with and deplete stratospheric ozone, resulting in the widely publicised "ozone holes". The Montreal Protocol on Substances that Deplete the Ozone Layer 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 United Nations Environment Programme.

<sup>18</sup> CITES: The Convention on International Trade in Endangered Species of Wild Fauna and Flora. A list of CITES listed species is available from the CITES secretariat.

<sup>19</sup> 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 on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.

<sup>20</sup> Relevant international conventions include: 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); Convention Concerning the Protection of the World Cultural and Natural Heritage; Convention on Biological Diversity.

<sup>21</sup> This includes: tankers which do not have all required International Convention for the Prevention of Pollution from Ships (MARPOL), International Convention for the Safety of Life at Sea (SOLAS) certificates (including, without limitation International Safety Management 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.

## Appendix 2:

# Category A Projects

This list applies to “greenfield” or major extension or transformation-conversion projects in the categories listed below. The indicative types of projects listed below are examples of projects that could result in potentially significant adverse future environmental and/or social impacts and therefore require an environmental and social impact assessment. The categorisation of each project will depend on the nature and significance of any actual or potential adverse future environmental or social impacts, as determined by the specifics of nature, location, sensitivity and scale of the project.

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 megawatts<sup>22</sup> 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. Integrated chemical installations: 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; explosives.
6. 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 km or more in a continuous length.
7. Pipelines, terminals and associated facilities for the large-scale transport of gas, oil and chemicals.
8. Large-scale sea ports as well as inland waterways and ports for inland-waterway traffic; trading ports, piers for loading and unloading connected to land, and outside ports (excluding ferry piers).
9. Waste-processing and disposal installations for the incineration, chemical treatment or landfill of hazardous, toxic or dangerous wastes.
10. Large-scale waste disposal installations for the incineration or chemical treatment of non-hazardous wastes.
11. Large<sup>23</sup> 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: (i) production of pulp from timber or similar fibrous materials; or (ii) 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

<sup>22</sup> Equivalent to a gross electrical output of 140 MW for steam and single cycle gas turbine power stations.

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 or deforestation of large areas.
18. Municipal wastewater treatment plants with a capacity exceeding 150,000 population equivalent.
19. Large-scale 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 wind power installations for energy production (wind farms).
23. Large-scale land reclamation and sea dredging operations.
24. Large-scale primary agriculture or forestation involving intensification, land use change or conversion of priority biodiversity features and/or critical habitats.
25. Plants for the tanning of hides and skins where the treatment capacity exceeds 12 tonnes of finished products per day.
26. Installations for the intensive rearing of poultry or pigs with more than: (i) 85,000 places for broilers and 60,000 places for hens; (ii) 3,000 places for production pigs (over 30 kg); or (iii) 900 places for sows.
27. Projects<sup>24</sup> which are planned to be carried out or are likely to have a perceptible impact on sensitive locations of international, national or regional importance, even if the project category does not appear in this list. Such sensitive locations include, inter alia, nature protected areas designated by national or international law, critical habitat or other ecosystems which support priority biodiversity features, areas of archaeological or cultural significance, and areas of importance for Indigenous Peoples or other vulnerable groups.
28. Projects which may result in significant adverse social impacts to local communities or other project affected parties.
29. Projects which may involve significant involuntary resettlement or economic displacement.

<sup>23</sup> The International Commission on Large Dams (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.

<sup>24</sup> Including, without limitation, environmentally or socially oriented projects (such as renewables).

# EBRD Performance Requirement 1

## Assessment and Management of Environmental and Social Impacts and Issues

### Introduction

1. This Performance Requirement (PR) establishes the importance of integrated assessment to identify the environmental and social impacts<sup>1</sup> and issues associated with projects and the client's management of environmental and social performance throughout the life of the project. A successful and efficient Environmental and Social Management System (ESMS) 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 and/or the client's other activities, and where appropriate, other stakeholders. 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 management. An ESMS appropriate to the nature and scale of the project promotes sound and sustainable environmental and social performance, and can lead to improved financial, environmental and social outcomes.
2. This PR outlines the responsibilities of the client in the process of assessing the potential environmental and social impacts and issues associated with the project, and developing and implementing procedures for managing and monitoring these impacts and issues. Engagement with the project stakeholders is an integral part of this process. PR 10, which outlines requirements regarding stakeholder engagement, should be read in conjunction with this PR.

### Objectives

3. The objectives of this PR are to:

- identify and evaluate environmental and social impacts and issues of the project
- adopt a mitigation hierarchy<sup>2</sup> approach to address adverse environmental or social impacts and issues to workers, affected communities, and the environment from project activities
- promote improved environmental and social performance of clients through the effective use of management systems
- develop an ESMS tailored to the nature of the project, for assessing and managing environmental and social issues and impacts in a manner consistent with relevant PRs.

### Scope of application

4. This PR applies to all projects directly financed by the EBRD. The client will, as part of its environmental and social assessment process, identify the relevant requirements of this PR, and how they will be addressed and managed through the project design, construction, operations, and decommissioning or closure and reinstatement.
5. For the purposes of the PRs, the term "project" refers to the defined set of business activities for which EBRD financing is sought by a client, or where EBRD financing has already been committed, the set of business activities defined in the financing agreements, and as approved by the EBRD Board of Directors or other decision-making body.
6. Projects involving new facilities or business activities should be designed to meet the PRs from the outset. Where the project relates to existing facilities, or where the project does not meet the PRs from the outset, the client will be required to develop and implement an Environmental and Social Action Plan (ESAP),<sup>3</sup>

<sup>1</sup> For the purposes of this Policy, social impact refers to the impacts on individuals, community and workers, resulting from the business activity to be supported and the way in which their working conditions, socio-economic status, cultural identity, human rights and/or health may be affected.

<sup>2</sup> The mitigation hierarchy comprises measures taken to avoid creating environmental or social impacts from the outset of development activities, and where this is not possible, to implement additional measures that would minimise, mitigate and, as a last resort, offset and/or compensate any potential residual adverse impacts.

<sup>3</sup> The ESAP constitutes an integral part of the financing agreements.

which will include a series of measures that are needed to achieve compliance of these facilities with the PRs within a reasonable time frame.

## Requirements

### Environmental and social assessment

7. The environmental and social assessment process will be based on recent information, including an accurate description and delineation of the project and the client's associated activities, and social and environmental baseline data at an appropriate level of detail. The assessment process should also identify: (i) applicable environmental and social laws and regulatory requirements of the jurisdictions in which the project operates, including those laws implementing host country obligations under international law; and (ii) applicable requirements under the PRs. Central to this approach is the application of the mitigation hierarchy and GIP.<sup>4</sup> For projects that could have adverse environmental and social impacts, the client will, as an integral part of the assessment process, identify the project's stakeholders and design a plan for engaging with the stakeholders in a meaningful manner to take their views and concerns into consideration in planning, implementing and operating the project in accordance with PR 10.
8. The assessment process will be commensurate with and proportional to the potential impacts and issues of the project and will cover, in an integrated way, all relevant direct and indirect environmental and social impacts and issues of the project, and the relevant stages of the project cycle (for example, preconstruction, construction, operation, and decommissioning or closure and reinstatement). It may be appropriate for the client to complement its environmental and social assessment with further studies focusing on specific risks and impacts, such as climate change, human rights and gender.
9. The environmental and social assessment process will also identify and characterise, to the extent appropriate, potentially significant environmental and social issues associated with activities or facilities which are not part of the project, but which may be directly or indirectly influenced by the project, exist solely because of the project or could present a risk to the project. These associated activities or facilities may be essential for the viability of the project, and may either be under the control of the client or carried out by, or belong to, third parties. Where the client cannot control or influence these activities or facilities, the environmental and social assessment process should identify the corresponding risks they present to the project. Where potentially significant adverse environmental and/or social risks relating to third party activities or facilities are identified, the client should collaborate with those relevant third parties to manage and mitigate these risks. Similarly, where there are opportunities to enhance benefits, the client should exercise its leverage and influence on relevant third parties. Additionally, the assessment process will consider cumulative impacts of the project in combination with impacts from other relevant past, present and reasonably foreseeable developments as well as unplanned but predictable activities enabled by the project that may occur later or at a different location.
10. Category A projects<sup>5</sup> could result in potentially significant adverse future environmental and/or social impacts which cannot readily be identified or assessed and will require the client to carry out a comprehensive Environmental and Social Impact Assessment (ESIA). The ESIA process will include a scoping stage to identify the potential future environmental and social impacts associated with the project. The ESIA will include an examination of technically and financially feasible alternatives to the source of such impacts, including the non-project alternative, and document the rationale for selecting the particular course of action proposed. It will also identify potential improvement opportunities and recommend any measures needed to avoid, or where avoidance is not possible, minimise and mitigate adverse impacts.<sup>6</sup> The ESIA may

<sup>4</sup> Good international practice refers to the exercise of professional skill, diligence, prudence and foresight that would reasonably be expected from skilled and experienced professionals engaged in the same type of undertaking under the same or similar circumstances globally or regionally. The outcome of such exercise should be that the project employs the most appropriate technologies in the project-specific circumstances.

<sup>5</sup> A list of indicative Category A projects is provided in Appendix 2 to the EBRD Environmental and Social Policy

<sup>6</sup> The assessment of environmental and social impacts will consider potential direct, indirect and cumulative impacts related to the project, as well as potential transboundary impacts, where relevant.

need to be carried out or verified by independent experts. The ESIA process will also include a public disclosure and consultation process as specified in PR 10.

11. For Category B projects, where potential adverse future environmental and social impacts are typically site specific and/or readily identified and addressed through mitigation measures, the client will undertake an environmental and social assessment that is proportionate to the project's nature, size and location, as well as the characteristics of the potential impacts and risks. The assessment will characterise potential future adverse impacts associated with the project, identify potential improvement opportunities, and recommend any measures needed to avoid, or where avoidance is not possible, minimise and mitigate adverse impacts.
12. For Category A and B projects which involve existing facilities, an assessment of the environmental and social issues of past and current operations will be required. The purpose of this assessment is to identify potential risks, liabilities and opportunities associated with the existing facilities and operations, to confirm the current status of regulatory compliance and to assess the client's existing management systems and overall performance against the PRs. Any investigations of existing facilities must be carried out by experts that are independent from the facility that is being investigated.
13. For Category C projects, which are likely to have minimal or no adverse future environmental and social impacts and that are readily identified and addressed through mitigation measures, the client will implement an ESMS proportionate to the impacts and risks in accordance with paragraphs 14-22 of this PR and monitor and report on the project's compliance with the PRs as per paragraphs 23-28 of PR 1.
14. In cases where clients with multi-site operations are seeking general corporate finance, working capital or equity financing, the assessment outlined in paragraphs 7 to 12 may not be appropriate. In such cases, the client's current ESMS and past and current performance will be assessed against the applicable PRs and an ESAP will be developed and implemented at the corporate level (as opposed to site-specific level).

The corporate level assessment will:

- assess the client's ability to manage and address all relevant social and environmental impacts and issues associated with its operations and facilities against the requirements described in the PRs
- assess the client's compliance record with applicable environmental and social regulatory requirements applicable in the jurisdictions in which the project operates
- identify the client's main stakeholder groups and current stakeholder engagement activities.

The exact scope of the corporate assessment will be determined on a case-by-case basis.

## **Environmental and Social Management Systems**

15. Clients are required to establish and maintain an ESMS appropriate to the nature and scale of the project and commensurate with the level of its environmental and social impacts and issues in line with GIP. The objective of such a management system is to integrate the implementation of environmental and social requirements into a streamlined and coordinated process and to embed it in the main operational activities of the client assessment of impacts and issues.

## **Environmental and Social Policy**

16. The client will establish, as appropriate, an overarching policy defining the environmental and social objectives and principles that enable the project to achieve sound environmental and social performance. The policy will provide a framework for the environmental and social assessment and management process consistent with the principles of the PRs.

## **Environmental and Social Management Plan**

17. Taking into account the findings of the environmental and social assessment process and the outcomes of stakeholder engagement, the client will develop and implement a programme of actions to address the identified project's environmental and social impacts and issues and other performance improvement measures to meet the PRs. Depending on the project, the programme may consist of



a combination of documented operational policies, management systems, procedures, plans, practices and capital investments, collectively known as Environmental and Social Management Plans (ESMPs).

18. The ESMP will reflect the mitigation hierarchy and, where technically and financially feasible, favour the avoidance and prevention of impacts over minimisation, mitigation or compensation, and ensure that all relevant stages of the project are structured to meet applicable laws and regulatory requirements and the PRs. Where affected individuals or groups are identified as disadvantaged or vulnerable<sup>7</sup> during the appraisal process, the ESMP will include differentiated measures so that adverse impacts do not fall disproportionately on them and they are able to take advantage of opportunities to benefit from the project. Where relevant, the ESMP will also cover management of third party and supply chain issues.

19. The level of detail and complexity of the ESMP will be commensurate with the project's impacts and issues addressing risks, impacts and opportunities specific to the project. The ESMP will define desired outcomes as measurable events to the extent possible with elements such as targets and performance indicators that can be tracked over defined periods. Recognising the dynamic nature of the project development and implementation process, the ESMPs will be responsive to changes in project circumstances, unforeseen events, regulatory changes and the results of monitoring and review, and will be updated from time to time.

20. The ESMS, including any specific requirements and actions it sets out, 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 by adopting and implementing an appropriate contractor management system. Effective contractor management includes:

- assessing environmental and social

risks associated with contracted works and services and incorporating relevant ESMP conditions into tender documents as appropriate, contractually requiring contractors to apply these standards and provide for mitigation of non-compliance

- overseeing that contractors have the knowledge and skills to perform their project tasks in accordance with the contract conditions
- monitoring contractor compliance with the contract conditions
- in the case of subcontracting, 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. Requirements on occupational health and safety of all workers are in PR 4.

### **Organisational capacity and commitment**

21. The client will establish, maintain and strengthen, as necessary, an organisational structure that defines roles, responsibilities and authority to implement the ESMS for ensuring ongoing compliance with relevant national regulatory requirements, and the PRs. The client will designate specific personnel, including management representative(s), with clear lines of responsibility and authority to maintain and implement the ESMS. Key environmental and social responsibilities will be defined and communicated to the relevant personnel. The client will provide adequate support and human and financial resources on an ongoing basis to achieve effective and continuous environmental and social performance.

22. The client will ensure that employees with direct responsibility for activities relevant to the environmental and social performance of the project are suitably qualified and trained.

### **Supply chain management**

23. A client is required to identify risks associated with its supply chain. Where the client can reasonably

<sup>7</sup> For the purpose of this Policy, vulnerable groups refers to people who, by virtue of gender identity, sexual orientation, religion, ethnicity, indigenous status, age, disability, economic disadvantage or social status may be more adversely affected by project impacts than others and who may be limited in their ability to claim or take advantage of project benefits. Vulnerable individuals and/or groups may also include, but not be limited to, people living below the poverty line, the landless, the elderly, women and children headed households, refugees, internally displaced people, ethnic minorities, natural resource dependent communities or other displaced persons who may not be protected through national legislation and/or international law.

exercise control over its primary suppliers, the environmental and social assessment process will also consider whether the primary supply chains central to the project's core operational functions are likely to be associated with environmental and social risks. If this is the case, the client will adopt and implement a supply chain management system commensurate to the complexity of these supply chains and associated environmental and social issues appropriate for the nature and scale of the project. The management system will include processes for taking action to address environmental and social issues identified during the supply chain assessment or ongoing monitoring, taking into account: (i) whether the client caused or contributed to the issues; (ii) the client's leverage over the supplier; (iii) how crucial the relationship is to the client; (iv) the severity of the issues; and (v) whether terminating the relationship with the supplier would itself have adverse consequences. Requirements for labour standards in the supply chain are outlined in PR 2; requirements for supply chains for living natural resources are defined in PR 6.

## Project monitoring and reporting

24. The client will monitor the environmental and social performance of the project. This monitoring is intended to: (i) determine whether the project is being implemented in accordance with the PRs; and (ii) learn lessons, allocate resources and identify opportunities for continuous improvement.
25. Monitoring requirements will be proportional to the nature of the project and its environmental and social impacts and issues. Monitoring will address:
  - any significant environmental and social impacts and issues identified during the environmental and social assessment process
  - relevant parts of the PRs as identified during the project assessment process and subsequent monitoring as appropriate
  - actions specified in the ESMP or ESAP, where relevant
  - grievances received from workers and external stakeholders, and how they were resolved
  - any regulatory monitoring and reporting requirements
  - any monitoring/reporting required by other parties (for example, off-takers, financiers or certification bodies).
26. The client will ensure that adequate systems, resources and personnel are in place to carry out monitoring. The client should review the results of monitoring and initiate corrective actions as necessary. In addition, the client may use third parties, such as independent experts, local communities or civil society organisations, to complement or verify its own monitoring information. Where relevant authorities or other third parties have responsibility for managing specific impacts and issues and associated mitigation measures, the client will collaborate with the relevant authorities or other third parties in establishing and monitoring such mitigation measures.
27. The client will provide regular reports to the EBRD on the environmental and social performance of the project, including compliance with the PRs and implementation of the ESMS, ESMP, ESAP and Stakeholder Engagement Plan where appropriate. Based on the monitoring results the client will identify and reflect any necessary corrective and preventive actions in an amended ESMP or ESAP, as agreed with the EBRD. The client will implement agreed corrective and preventive actions, and follow up on these actions to enhance their performance.
28. The client must promptly notify the EBRD of any environmental or social incident or accident relating to the client or the project which has, or is likely to have, a significant adverse effect.
29. The client must promptly notify the EBRD of any changes to the project's scope, design or operation that is likely to materially change its environmental or social impacts and issues. The client will carry out any additional assessment and stakeholder engagement in accordance with the PRs and amend the ESMP or ESAP in accordance with the findings, as agreed with the EBRD.
30. For projects that could have significant adverse environmental and social impacts and issues, the client may be required to engage relevant external experts to perform periodic independent reviews of the project, or to carry out monitoring of specific environmental or social issues. The scope of this work and follow-up actions will be determined on case-by-case basis.

# EBRD Performance Requirement 2

## Labour and Working Conditions

### Introduction

1. This Performance Requirement (PR) recognises that for clients and their business activities, 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 business activities. By treating workers fairly and providing them with safe and healthy working conditions,<sup>1</sup> clients may create tangible benefits, such as enhanced efficiency and productivity of their operations.

### Objectives

2. The objectives of this PR are to:
  - respect and protect the fundamental principles and rights<sup>2</sup> of workers
  - promote the decent work agenda,<sup>3</sup> including fair treatment, non-discrimination and equal opportunities of workers
  - establish, maintain and improve a sound worker-management relationship
  - promote compliance with any collective agreements to which the client is a party, national labour and employment laws
  - protect and promote the safety and health of workers, especially by promoting safe and healthy working conditions
  - prevent the use of forced labour and child labour (as defined by the ILO) as it relates to project activities.

### Scope of application

3. The client will, as part of its environmental and social assessment process, identify the relevant requirements of this PR, and how they

will be addressed and managed through the project life cycle. The implementation of the actions necessary to meet the requirements of this PR will be managed under the client's overall Environmental and Social Management System (ESMS) and project-specific Environmental and Social Management Plans (ESMPs). The environmental and social assessment and management requirements are provided in PR 1.

4. Throughout this PR, the term "workers" is used to refer to the employees of the client, including part-time, temporary, seasonal and migrant workers. The applicability of the PR to non-employee workers is set out in paragraphs 21-23. Supply chain related labour issues are addressed in paragraphs 24-26.

### Requirements

#### General

5. Projects are required to comply, at a minimum, with (i) national labour, social security and occupational health and safety laws, and (ii) the fundamental principles and standards embodied in the ILO conventions.<sup>4</sup>

#### Management of worker relationships Human resources policies

6. The client will adopt and/or maintain human resources policies and management systems or procedures appropriate to its size and workforce that sets out its approach to managing the workforce in accordance with the requirements of this PR and national law. These policies and procedures will be understandable and accessible to workers, and in the main language(s) spoken by the workforce.

<sup>1</sup> Occupational health and safety requirements are covered under PR 4.

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

<sup>3</sup> Decent work sums up the aspirations of people in their working lives. It involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organise and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.

<sup>4</sup> See note 2 above.

## Working relationships

7. The client will document and communicate to all workers their rights under national labour and employment law and any applicable collective agreements, working conditions and terms of employment including their entitlement to wages, hours of work, overtime arrangements and overtime compensation, any benefits (such as leave for illness, maternity/paternity or holiday), and when any material changes occur. This information will be understandable and accessible to workers and available in the main language(s) spoken by the workforce. Human resources management systems will respect the rights of workers to privacy and data protection.
8. Communications should be managed with a view to providing the workers with: (i) adequate information, in particular, on changes anticipated that might affect the workforce and (ii) the opportunity to provide comments as part of continuous improvement, including how to raise grievances as detailed in paragraph 20.

## Child labour

9. The client will comply with all relevant national laws or international labour standards regarding employment of minors, whichever provide a higher degree of protection for the child, related to the employment of minors.
10. 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 will be identified by the client and will not be employed in hazardous work. All work of persons under the age of 18 shall be subject to an appropriate risk assessment and regular monitoring of health, working conditions, and hours of work.

## Forced labour

11. The client will not employ forced labour, which

consists of work or service not voluntarily performed that is exacted from an individual under threat of force or penalty. This covers involuntary or compulsory labour, such as indentured labour, bonded labour or similar labour-contracting arrangements, or trafficked persons.<sup>5</sup>

## Non-discrimination and equal opportunity

12. Projects will comply with relevant requirements on non-discrimination related to employment. In particular, with reference to the project, the client will:
  - not make employment decisions on the basis of personal characteristics, such as gender, race, nationality, political opinion, affiliation to a union, ethnic, social or indigenous origin, religion or belief, marital or family status, disability, age, sexual orientation or gender identity, unrelated to inherent job requirements
  - base the employment relationship on the principle of equal opportunities and fair treatment, and will not discriminate with respect to all aspects of the employment relationship, including recruitment and hiring, job assignment, compensation (including wages and benefits),<sup>6</sup> working conditions and terms of employment, including reasonable adaptation of the workplace related to disabilities, access to training, promotion, termination of employment or retirement, and discipline.
  - take measures to prevent and address harassment, including sexual harassment, bullying, intimidation and/or exploitation.

The following measures will not be considered discrimination: special measures of protection or assistance to remedy past discriminatory actions; promotion of local employment opportunities; or selection for a particular job based on the inherent requirements of the job, which are in accordance with national law.

## Workers' organisations

13. The client will not discourage workers from electing workers' representatives, forming or

<sup>5</sup> Trafficking in persons is defined as the recruitment, transportation, transfer, harbouring or receipt of persons by means of a threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power, or of a position of vulnerability, or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

<sup>6</sup> The client will take into consideration the principle of equal remuneration for work of equal value. The client will take into consideration the principle of equal remuneration for work of equal value.

joining workers' organisations of their choosing or from bargaining collectively. The client will not discriminate or retaliate against workers who act as representatives, participate, or seek to participate, in such organisations or bargain collectively. In accordance with national law, the client will engage with such workers' representatives or 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 establish an independent process for workers to express their grievances and protect their rights regarding working conditions and terms of employment appropriate to its size and workforce.

### **Wages, benefits and conditions of work**

14. Wages, benefits and conditions of work offered (including hours of work) should, overall, be at least comparable to those offered by equivalent employers in the relevant country/region and sector concerned.
15. Where the client is a party to a collective bargaining agreement or is otherwise bound by it, such agreement will be respected. Where such agreements do not exist, or do not address working conditions and terms of employment, the client will provide reasonable working conditions and terms of employment.
16. The client will identify migrant workers and ensure that they are engaged on substantially equivalent terms and conditions to non-migrant workers carrying out the same work.

### **Occupational health and safety**

17. Clients will provide workers with a safe and healthy work environment, and projects will comply with the provisions of PR 4.

### **Worker accommodation**

18. 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 good international industry practice.<sup>7</sup> Workers' freedom of movement to and from the employer-provided accommodation shall not be unreasonably restricted.

### **Retrenchment**

19. Prior to implementing any collective dismissals<sup>8</sup> in connection with the project, the client will carry out an analysis of alternatives to retrenchment. If the analysis does not identify viable alternatives to retrenchment, the client will develop and implement a retrenchment plan to assess, reduce and mitigate the adverse impacts of retrenchment on workers, in line with national law and good international industry practice and based on the principles of non-discrimination and consultation. The selection process for retrenchment will be transparent, based on fair, objective, consistently applied criteria, and subject to an effective grievance mechanism. Clients will provide reasonable notice of changes to employment conditions to the unions concerned (where they exist), and to workers and their representatives and, where appropriate, relevant public authorities. This consultation will aim to reduce and mitigate potential adverse effects of job losses on the workers concerned. The outcome of the consultations will be reflected in the final retrenchment plan. All outstanding back pay and social security benefits and pension contributions and benefits will be paid: (i) on or before termination of the working relationship to the workers; (ii) where appropriate, at a point in time agreed with the worker; or (iii) payment will be made in accordance with a timeline agreed through a collective agreement.

### **Grievance mechanism**

20. The client will provide an effective grievance mechanism for workers (and their organisations, where they exist) to raise 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

<sup>7</sup> EBRD/IFC Guidance Note "Workers' accommodation: processes and standards", 2009.

<sup>8</sup> Collective dismissals are defined in Article 1 of EU Directive 98/59.

and transparent process that provides timely feedback to those concerned, without any retribution. The mechanism should also allow for confidential complaints to be raised and addressed. The mechanism should not impede access to other judicial or administrative remedies that might be available under law or through existing arbitration or mediation procedures, nor should it substitute for grievance mechanisms provided through workers unions or collective agreements.

### Non-employee workers

21. For 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 use reasonable efforts to: (i) ascertain that these contractors or intermediaries are reputable and legitimate enterprises; and (ii) require that they apply the requirements stated in paragraphs 6-18 and 20 above. When the client contracts non-employee workers directly, the client will apply the requirements of paragraphs 6 to 18 and 20 above.
22. In accordance with PR 1, the client will establish policies and procedures for managing and monitoring the performance of third party employers in relation to the project and requirements of this PR. In addition, the client will assess and use reasonable efforts to incorporate these requirements in contractual agreements with such third party employers and, where relevant, will develop and implement a contractor management plan.
23. A client is required to identify risks associated with non-employee workers. The client will ensure that non-employee workers have access to an effective grievance mechanism that meets the requirements of PR 2. In cases where the third party is not able to provide a grievance mechanism, the client will provide an effective grievance mechanism to serve workers engaged by the third party.

### Supply chain

24. As part of the supply chain assessment process outlined in PR 1, the client will identify and assess the risk of child labour and forced labour<sup>9</sup> being used in its supply chains of goods and materials which are central to the core functions of the project (core supply chains).
25. If the client learns that child labour or forced labour in contravention of ILO standards are present in a core supply chain, the client will take appropriate steps to remedy this in accordance with the requirements below.
  - If child labour is detected, good faith efforts should be made to remediate or mitigate the problem. The client should only continue to procure such goods or materials from that supplier, having received satisfactory undertakings or evidence that the supplier is committed to implementing a programme in line with GIP to eliminate such practices within a reasonable time frame. The client will report on progress with the implementation of such programme on a regular basis.
  - In relation to forced labour, the client should only continue to procure such goods or materials from that supplier having received satisfactory undertakings or evidence that the supplier has taken appropriate steps to eliminate the conditions that constitute forced labour.
  - Where there is a risk of child and/or forced labour, the client will monitor its primary supply chain on an ongoing basis in order to identify any significant changes in its supply chain and new risks or incidents of child and/or forced labour.

Additionally, where significant safety issues are identified among primary supply chain workers, the client will introduce procedures and mitigation measures to ensure that relevant suppliers are taking steps to prevent these situations.

26. The ability of the client to fully address these risks will depend on the client's level of management control or influence over its primary suppliers. The client will shift the affected primary supply chain over an agreed

<sup>9</sup> As defined in ILO conventions 138, 182, 29 and 105.

time frame to suppliers that can demonstrate that they are complying with this PR.

## Security personnel requirements

27. When the client retains employees or contractors to provide security to safeguard its personnel and property, it will agree a standard of practice and behaviour for the security personnel, guided by the principle of proportionality and GIP,<sup>10</sup> in terms of hiring, rules of conduct, training, equipping and monitoring of such personnel. The client will make reasonable inquiries to satisfy itself that those providing security services are not implicated in past abuses, will ensure they are trained adequately in the use of force (and where applicable, firearms) and appropriate conduct towards 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 will establish and maintain an effective grievance mechanism to allow the affected community and workers to express concerns about the security arrangements and actions of security personnel, and will inform communities and workers of the availability and use of the grievance mechanisms, in accordance with this PR and PR 10.
28. If government security personnel are deployed to provide security services for the client, the client will identify and assess potential risks arising from such use, communicate to the relevant public authorities its intent that the security personnel act in a manner consistent with paragraph 27 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.
29. 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.

<sup>10</sup> For example, the *Voluntary Principles on Security and Human Rights*.

# EBRD Performance Requirement 3

## Resource Efficiency and Pollution Prevention and Control

### Introduction

1. This Performance Requirement (PR) recognises that increased economic activity and urbanisation can generate increased levels of pollution to air, water, and land, and consume finite resources in a manner that may threaten people and the environment at the local, regional, and global levels. Therefore, resource efficiency and pollution prevention and control are essential elements of environmental and social sustainability and projects must meet good international practice (GIP) in this regard.
2. This PR acknowledges the importance of using best available techniques and GIP to optimise resource use and efficiently prevent and control release of pollutants into the environment.
3. This PR outlines a project-level approach to resource management and pollution prevention and control, building on the mitigation hierarchy, the principle that environmental damage should as a priority be rectified at its source, and the “polluter pays” principle. The project-related impacts and issues associated with resource use, and the generation of waste and emissions need to be assessed in the context of project location and local environmental conditions.

### Objectives

4. The objectives of this PR are to:
  - identify project-related opportunities for energy, water and resource efficiency improvements and waste minimisation
  - adopt the mitigation hierarchy approach to addressing adverse impacts on human health and the environment arising from the resource

- use and pollution released from the project
- promote the reduction of project-related greenhouse gas emissions.

### Scope of application

5. The client will, as part of its environmental and social assessment process, identify the relevant requirements of this PR, and how they will be addressed and managed through the project life cycle. The implementation of the actions necessary to meet the requirements of this PR will be managed under the client’s overall environmental and social management system (ESMS) and project-specific environmental and social management plans (ESMPs). The environmental and social assessment and management requirements are provided in PR 1.

### Requirements

#### Resource efficiency

6. The environmental and social assessment process will identify opportunities and alternatives for resource efficiency relating to the project in accordance with GIP. In doing so, the client will adopt technically and financially feasible<sup>1</sup> and cost effective<sup>2</sup> measures for minimising its consumption and improving efficiency in its use of energy, water and other resources and material inputs as well as for recovering and re-utilising waste materials in implementing the project. The key focus will be on activities that are considered the project’s core functions, but similar opportunities in the client’s other business activities that are not part of the project will also be considered. Where benchmarking data are available, the client’s assessment will make a comparison of

<sup>1</sup> Technical feasibility is based on whether the proposed measures and actions can be implemented with commercially available skills, equipment, and materials, taking into consideration prevailing local factors such as climate, geography, infrastructure, security, governance, capacity and operational reliability. Financial feasibility is based on commercial considerations, including relative magnitude of the incremental cost of adopting such measures and actions compared with the project’s investment, operating and maintenance costs.

<sup>2</sup> Cost-effectiveness is determined according to the capital and operational cost and financial benefits of the measure considered over the life of the measure. For the purpose of this PR, a resource efficiency or GHG emissions reduction measure is considered cost-effective if it is expected to provide a risk-rated return on investment at least comparable to the project itself.



its operations with GIP to establish the relative level of efficiency.

7. The client will integrate resource efficiency measures and the principles of cleaner production into product design and production processes with the objective of conserving raw materials, energy and water and, at the same time, reducing release of pollutants into the environment.

## Pollution prevention and control

8. The client's environmental and social assessment process will determine the appropriate pollution prevention and control methods, technologies and practices ("techniques") to be applied to the project. The assessment will take into consideration the characteristics of the facilities and operations that are part of the project, the project's geographical location and local ambient environmental conditions. The assessment process will identify technically and financially feasible and cost-effective pollution prevention and control techniques that are best suited to avoid or minimise adverse impacts on human health and the environment. The techniques applied to the project will favour the prevention or avoidance of risks and impacts over minimisation and reduction, in line with the mitigation hierarchy approach and consistent with GIP, and will be appropriate to the nature and scale of the project's adverse impacts and issues.
9. Clients will structure the projects to meet relevant EU substantive environmental standards, where these can be applied at the project level.<sup>3</sup> Certain projects that, due to their nature and scale, would be subject to the EU Industrial Emissions Directive and will be required to meet EU Best Available Techniques (BAT) and related emission and discharge standards, regardless of location.
10. Where no EU substantive environmental standards at project level exist, the client will identify, in agreement with the EBRD, other appropriate environmental standards in accordance with GIP. In addition, projects will

be designed to comply with applicable national law, and will be maintained and operated in accordance with national laws and regulatory requirements. When host country regulations differ from the levels and measures presented in EU environmental requirements or other identified appropriate environmental standards, projects will be expected to meet whichever is more stringent.

11. Projects involving new facilities and operations are expected to meet EU substantive environmental standards or other agreed environmental standards, and national regulatory requirements from the outset. Projects that involve rehabilitation of existing facilities and/or operations are expected to meet the requirements of paragraph 9 and/or 10 over a reasonable period of time, to be determined by a formal assessment of their performance against the applicable standards.
12. In respect of projects located in the EU member states and the EU acceding, candidate and potential candidate countries which involve the rehabilitation of existing facilities and/or operations and where relevant EU substantive environmental standards have been identified, the time frame to achieve compliance with these standards should take into account any nationally agreed time frames. For projects in all other countries, the time frame for achieving compliance with EU substantive environmental standards should take into account local conditions and the cost of application, and should be consistent with the European Neighbourhood Policy and any bilateral agreements or action plans agreed between the EU and the relevant host country.
13. Throughout the project life cycle, the client will apply pollution prevention and control techniques consistent with the mitigation hierarchy approach to minimise potential adverse impacts on human health and the environment while remaining technically and financially feasible and cost-effective. This applies to the release of pollutants due to routine, non-routine or accidental circumstances.

<sup>3</sup> For the purpose of this PR, EU environmental standards can be applied at the project level where the EU secondary legislative document itself contains clear quantitative or qualitative requirements that are applicable at the project level (as opposed to the ambient level, for example).

## Greenhouse gases

14. The client's environmental and social assessment process will consider alternatives and implement technically and financially feasible and cost-effective options to avoid or minimise project-related greenhouse gas (GHG) emissions during the design and operation of the project. These options may include, but are not limited to, alternative project locations, techniques or processes, adoption of renewable or low carbon energy sources, sustainable agricultural, forestry and livestock management practices, the reduction of fugitive emissions and the reduction of gas flaring.
15. For projects that currently produce, or are expected to produce post-investment, more than 25,000 tonnes of CO<sub>2</sub>-equivalent annually, the client will quantify these emissions in accordance with EBRD Methodology for Assessment of Greenhouse Gas Emissions. The scope of GHG assessment shall include all direct emissions from the facilities, activities and operations that are part of the project or system, as well as indirect emissions associated with the production of energy used by the project. Quantification of GHG emissions will be conducted by the client annually and reported to the EBRD.

## Water

16. Clients must seek to minimise the project's water use, and in situations where a project-specific water supply needs to be developed, the client will seek to utilise water for technical purposes that is not fit for human consumption, where feasible.
17. All technically and financially feasible and cost-effective opportunities for water minimisation, reuse and recycling in accordance with GIP must be identified and considered as part of the project design.
18. For projects with a high water demand (greater than 5,000 m<sup>3</sup>/day), the following must be applied:
  - a detailed water balance must be developed, maintained and reported annually to the

## EBRD

- opportunities for continuous improvement in terms of water use efficiency should be identified
  - specific water use (measured by volume of water used per unit production) must be assessed
  - operations must be benchmarked to available industry standards of water use efficiency.
19. The client will need to consider the potential cumulative impacts of water abstraction upon third party users and local ecosystems. Where relevant, the client will assess the impacts of its activities on the water supply to third parties and will need to demonstrate that its proposed water supply will not have adverse impacts on the water resources crucial to third parties or to sensitive ecosystems. As part of the client's environmental assessment process, the client will identify and implement appropriate mitigation measures that favour the prevention or avoidance of risks and impacts over minimisation and reduction in line with the mitigation hierarchy approach and GIP.

## Waste<sup>4</sup>

20. The client will avoid or minimise the generation of hazardous and non-hazardous waste materials and reduce their 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 cannot be recovered or reused, the client will treat and dispose of it in an environmentally sound manner.
21. If the generated waste is considered hazardous, the client will assess technically and financially feasible and cost-effective alternatives for its environmentally sound disposal considering the limitations applicable to transboundary movement and other legal requirements.
22. When waste disposal is transferred offsite and/or conducted by third parties, the client will obtain chain of custody documentation to the final destination and will use contractors that are reputable and legitimate enterprises

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

licensed by the relevant regulatory agencies. The client should also ascertain whether licensed disposal sites are being operated to acceptable standards. Where this is not the case, clients will consider alternative disposal options, including the possibility of developing their own recovery and disposal facilities at the project site.

### **Safe use and management of hazardous substances and materials**

23. In all activities directly related to the project, the client will avoid or minimise 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 potentially harmful impacts. Where avoidance or substitution is not feasible, the client will apply appropriate risk management measures in 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.
24. 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 bioaccumulation, or potential for depletion of the ozone layer.

### **Pesticide use and management**

25. Clients who manage or use pesticides 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 coordinate use of pest and environmental information together 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 biodiversity, human health and the broader 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.
26. The sustainable use of pesticides shall include:
  - avoiding, or if not possible, minimising, the impacts of pesticides on biodiversity, human health and the broader environment
  - reducing the levels of harmful active substances by replacing the most dangerous ones with safer (including non-chemical) alternatives
  - selecting pesticides that are low in toxicity, known to be effective against the target species, and have minimal effects on non-target species, such as pollinating insects and the environment
  - the promotion of low-input or pesticide-free crop farming
  - minimising damage to natural enemies of target pests and preventing the development of resistance in pests.
27. The client will handle, store, apply and dispose of pesticides in accordance with GIP.

# EBRD Performance Requirement 4

## Health and Safety

### Introduction

1. This Performance Requirement (PR) recognises the importance of avoiding or mitigating adverse health and safety impacts and issues associated with project activities on workers, project-affected communities and consumers.
2. Project activities, equipment and infrastructure may increase the potential for worker and community exposure to health and safety risks and impacts, including those associated with construction, operations and decommissioning, or of transport of raw and finished materials.
3. Clients have the primary responsibility to provide safe and healthy conditions for their workers and informing, training, supervising and consulting workers on health and safety. Workers have the responsibility to cooperate actively with their employer and take care of their own health and safety and the health and safety others.
4. While acknowledging the role of relevant authorities in protecting and promoting the health and safety of the public, the client has the duty to identify, avoid, minimise or mitigate the risks and adverse impacts health and safety of the affected communities that may arise from the project.
5. The potential risks and impacts to the workers and affected communities may vary according to the stage of the project, including construction, start-up, operation and decommissioning. Detailed requirements for the prevention and control of impacts on human health and the environment due to the release of pollution are found in PR 3; while those relating to labour and working conditions, other than worker health and safety, are addressed in PR 2.
6. Throughout this PR, the term “workers” is used to refer to the employees of the client, including part-time, temporary, seasonal and migrant workers, and 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.

### Objectives

5. The objectives of this PR are to:
  - protect and promote the safety and health of workers by ensuring safe and healthy working conditions and implementing a health and safety management system, appropriate to the relevant issues and risks associated with the project.
  - anticipate, assess, and prevent or minimise adverse impacts on the health and safety of project-affected communities and consumers during the project life cycle from both routine and non-routine circumstances.

### Scope of application

6. The client will, as part of its environmental and social assessment process, identify the relevant requirements of this PR, and how they

7. will be addressed and managed through the project life cycle. The implementation of the actions necessary to meet the requirements of this PR is managed as an integral part of the client’s overall Environmental and Social Management System (ESMS) and/or the project specific Environmental and Social Management Plan (ESMP), as provided in PR 1.
8. The client will take steps to identify and prevent accidents, injury and disease to workers and affected communities arising from or associated with, or occurring in the course of the project activities and prepare and implement preventative measures and plans to manage health and safety risks in accordance with the mitigation hierarchy approach and GIP.
9. The client will provide workers and affected communities with relevant information, guidance and training relating to health and safety hazards, risks, protective and preventive measures and emergency arrangements that are necessary for their

### Requirements

#### General requirements for health and safety management

9. The client will take steps to identify and prevent accidents, injury and disease to workers and affected communities arising from or associated with, or occurring in the course of the project activities and prepare and implement preventative measures and plans to manage health and safety risks in accordance with the mitigation hierarchy approach and GIP.
10. The client will provide workers and affected communities with relevant information, guidance and training relating to health and safety hazards, risks, protective and preventive measures and emergency arrangements that are necessary for their

safety throughout the project.

11. Where any accident, injury and disease arises or occurs in the course of works associated with the project, or there is a potential of such event, the client will investigate, document and analyse the findings and adopt measures to prevent reoccurrence and, where required by law, notify and cooperate with the relevant authorities.

### **Occupational health and safety**

12. The client will provide workers with a safe and healthy workplace, taking into account inherent risks in its particular sector and specific classes of hazards that may be present. The client will identify the health and safety risks and protection measures appropriate to the stage, size and nature of the project in accordance with relevant substantive EU Occupational Health and Safety (OHS) standards<sup>1</sup> and GIP. The client will develop a project-specific health and safety plan, where appropriate, that will be integrated into the ESMS.
13. The client will implement occupational health and safety measures that will provide: (i) preventive and protective measures, including modification, substitution or elimination of hazardous conditions or substances; (ii) equipment to minimise risks, and require and enforce its use; (iii) personal protective equipment at no cost to the workers; and (iv) training to workers to use and comply with health and safety procedures and protective equipment. The client will require its non-employee workers, contractors and other third parties engaged to work on project sites or perform work directly related to the core functions of the project to comply with the health and safety plan.
14. During the course of any work activity the client will ensure that all workers are provided with continued and appropriate supervision to ensure adequate implementation, maintenance and enforcement of the health and safety measures.
15. The client will monitor the health of its workers and consult and encourage the workers to

participate in matters related to health and safety in the workplace. This shall include, although not be limited to, accident investigation, risk assessment and selection of work.

16. Where there are specific risks associated with certain work activities that could result in adverse effects on the health and safety of workers with sensitivities such as age, gender, disability or short- or long-term health conditions, the client will carry out a risk assessment and make adjustments to prevent injury and ill health.

### **Community health and safety**

17. The client will identify and assess project-related risks and adverse impacts to the health and safety of the potentially affected communities and will develop protection, prevention and mitigation measures proportionate to the impacts and risks, and appropriate to the stage, size and nature of the project. The client will cooperate with the relevant authorities and other stakeholders, as appropriate, on mitigation measures and plans. These measures will be consistent with the mitigation hierarchy approach and GIP.
18. Measures to avoid or mitigate community health and safety impacts of the project may be the responsibility of the relevant public authorities. Under these circumstances, the client will clarify its role and its responsibility to notify and cooperate with the relevant authorities.

### **Specific requirements for health and safety management**

#### **Infrastructure, building, and equipment design and safety**

19. The client will incorporate health and safety considerations into the design, construction, operation and decommissioning of the structural elements or components of the project in accordance with GIP, taking into consideration safety risks to third parties and affected communities. Structural elements will be designed and constructed by qualified and experienced professionals. Third-party life and fire safety audits should be undertaken both for existing buildings, which are used for communal purposes, and for

<sup>1</sup> EU OHS standards mean substantive requirements in EU legislative requirements in the field of safety and health at work setting out minimum health and safety requirements for the protection of workers.

new buildings prior to their commissioning or use.

20. The construction and major refurbishments of buildings used for communal purposes should be designed in accordance with the concept of universal access.<sup>2</sup>
21. 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 workers and communities, the client will engage one or more qualified experts with relevant and recognised 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, operation and commissioning.

### **Hazardous materials safety**

22. The client will prevent or minimise the potential for worker and community exposure to hazardous materials that may be released by the project. Where there is a potential for workers and the affected community to be exposed to hazards, the client will exercise due care to avoid or minimise their exposure by modifying, substituting or eliminating the condition or substance causing the hazards.
23. Where hazardous materials are part of existing facilities or operations associated with the project, the client will exercise due care when conducting start-up and decommissioning activities in order to prevent exposure of the workers and the affected community to such hazardous materials. Where use of such materials cannot be avoided, the client will take the necessary measures for handling, storage and transport in accordance with GIP.
24. The client will take reasonable efforts to ensure the safe transport of raw materials, and products, and transportation and disposal of wastes, and will implement measures to avoid or control community exposure.

### **Product safety**

25. Where the project involves production of and/

or trade in consumer products, the client should ensure product safety through good design and manufacturing processes, as well as adequate storage, handling and transportation for the product distribution. Good international practice should be followed, including general safety requirements specific to the product safety standards and codes of practice in a given business sector and country.

26. The client will identify and evaluate potential risks and impacts of their products on consumers' health and safety during the project assessment process. The approach to product safety should adhere to mitigation hierarchy and ensure adequate information on the product's health and safety risks is provided to consumers. For situations involving products which may pose serious health threats, the client will ensure product recall, and that product withdrawal policy and procedures are in place.

### **Services safety**

27. Where the project involves provision of services to communities, the client should ensure safety and quality of such services through appropriate quality management systems to make sure that such services do not pose risks and impacts on workers or community health and safety.
28. Where the project involves the provision of public services, the client should incorporate the principles of universal access, to the extent possible.

### **Traffic and road safety**

29. The client will identify, evaluate and monitor the potential traffic and road safety risks to workers and potentially affected communities throughout the project life cycle and, where appropriate, will develop measures and plans to address them. 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 injuries to members of the public associated with the operation of such equipment.
30. The client will take into consideration relevant EU road and traffic safety management standards,<sup>3</sup> identify road safety measures and incorporate

<sup>2</sup> Universal access means free access for people of all ages and abilities in different situations and under various circumstances.

<sup>3</sup> Consistent with the objectives of Directive 2008/96/EC of 19 November 2008 on Road Infrastructure Safety Management.

technically and economically feasible and cost-effective road safety components into the project design to mitigate potential road safety impacts on the local affected communities. Where appropriate, the client will undertake a road safety audit for each phase of the project and routinely monitor incident and accident reports to identify and resolve problems or negative safety trends. For clients with vehicles or fleets of vehicles (owned or leased), the client will provide appropriate training to workers on driver and vehicle safety. The client will ensure regular maintenance of all project vehicles.

### **Natural hazards**

31. The client will identify and assess the potential impacts and risks caused by natural hazards, such as earthquakes, landslides or floods as these relate to the project.
32. The client will avoid and/or minimise the exacerbation of impacts caused by natural hazards or land use changes to which the project activities may contribute.

### **Exposure to disease**

33. In order to help prevent or minimise the potential for worker and community exposure to diseases, taking into consideration differentiated exposure to and higher sensitivity of vulnerable groups, the client will develop appropriate mitigation in consultation with the relevant authorities. The client will take measures to avoid or minimise transmission of communicable diseases that may be associated with the influx of temporary and/or permanent project workers.
34. Where specific diseases are endemic in communities affected by the project, the client is encouraged to identify opportunities throughout the project life cycle to improve conditions that could help reduce their incidence, both among the workers and communities. The client will take measures to avoid or minimise transmission of communicable diseases that may be associated with the influx of temporary and/or permanent project labour.

### **Emergency preparedness and response**

35. The client will be prepared to respond to incidents, accidents and emergency situations in a manner appropriate to the operational risks related to the project and the need to prevent or minimise their potential adverse impacts and in accordance with regulatory applicable requirements.<sup>4</sup>
36. The client will identify and assess major-accident hazards, and will take all measures necessary to prevent major accidents or limit their adverse impacts on workers, affected communities and the environment, with a view to ensuring high levels of protection to people 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 plan, integrated into the client's overall ESMS. This plan will include organisational structures, responsibilities, procedures, communication, training, resources and other aspects required to implement such policy to ensure the client has the capacity to respond effectively to emergencies associated with project hazards, with the overall objective to:
  - prevent, contain and control incidents so as to minimise the effects, and to limit damage to people, the environment and property
  - implement measures necessary to protect people and the environment from the effects of major accidents
  - communicate the necessary information to relevant emergency services or authorities, as well as to the potentially affected workers and public
  - provide for the restoration and clean-up of the environment following a major accident.
37. For projects where major-accident risk is present, the client will assist and cooperate with the relevant authorities and the project affected community in their preparations to respond effectively to emergency situations. If local authorities or responders 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 provide adequate evidence to demonstrate capacity to respond to reasonably predictable incidents, either directly or indirectly.

<sup>4</sup> As elaborated by Directive 2012/18/EU of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC (EU SEVESO III Directive).

# EBRD Performance Requirement 5

## Land Acquisition, Involuntary Resettlement and Economic Displacement

### Introduction

1. Involuntary resettlement refers both to physical displacement (relocation or loss of shelter) and economic displacement (loss of assets or resources, and/or loss of access to assets or resources that leads to loss of income sources or means of livelihood) as a result of project-related land acquisition<sup>1</sup> and/or restrictions on land use.<sup>2</sup>
2. Resettlement is considered involuntary when affected individuals or communities do not have the right to refuse land acquisition, or restrictions on land use, that result in displacement. This occurs in cases of: (i) lawful expropriation or restrictions on land use based on eminent domain;<sup>3</sup> 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.<sup>4</sup> In cases where there has already been displacement as a result of conflict, this PR is guided by the Guiding Principles on Internal Displacement.<sup>5</sup>
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. For these reasons, involuntary resettlement should be avoided. However, where it is unavoidable, resettlement should be minimised and appropriate measures to mitigate adverse impacts on displaced persons and host communities<sup>6</sup> 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 promote innovative approaches to improving the livelihoods and standards of living of those affected by resettlement.

### Objectives

5. The objectives of this PR are to:
  - avoid or, when unavoidable, minimise, involuntary resettlement by exploring alternative project designs
  - mitigate adverse social and economic impacts from land acquisition or restrictions on affected persons' use of and access to assets and land by: (i) providing compensation for loss of assets at replacement cost;<sup>7</sup> and (ii) ensuring that

<sup>1</sup> Land acquisition includes both outright purchases of property and purchases of access rights, such as easements or rights of way.

<sup>2</sup> 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.

<sup>3</sup> Such restrictions may include restrictions of access to legally protected and internationally recognised areas of biodiversity importance.

<sup>4</sup> Universal Declaration of Human Rights and International Covenant on Economic, Social and Cultural Rights.

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

<sup>6</sup> A host community is any community receiving displaced persons.

<sup>7</sup> 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. The valuation method for determining replacement cost should be documented in respective Resettlement and/or Livelihood Restoration plans. 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 the EBRD and the client). See also notes 12 and 14 below.



resettlement activities are implemented with appropriate disclosure of information, consultation and the informed participation of those affected

- restore or, where possible, improve the livelihoods and standards of living of displaced persons<sup>8</sup> to pre-displacement levels
- improve living conditions among physically displaced persons through the provision of adequate housing,<sup>9</sup> including security of tenure at resettlement sites.<sup>10</sup>

or other compulsory procedures if negotiations fail) and where such a transaction affects only those with legal rights.

9. The applicability of this PR will be determined during the environmental and social assessment process according to the criteria set out in paragraphs 6 to 8 above. Where involuntary resettlement has already occurred, the assessment will identify: (i) any gaps; and (ii) the corrective actions that may be required to ensure compliance with this PR. An action plan shall then be agreed.

## Scope of application

6. 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 or land use 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 negotiation
  - 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.
7. Requirements and responsibilities towards displaced persons with no recognisable legal right or claim to the land they occupy are contained in paragraphs 18, 32 and 37 below.
8. This PR does not apply to resettlement resulting from voluntary land transactions (market transactions in which the seller is not obliged to sell and the buyer cannot resort to expropriation

## Requirements

10. Clients are encouraged to acquire land rights through negotiated settlements even if they have the legal means to gain access to the land without the consent of the seller. 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.

## Avoid or minimise displacement

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 economic costs and benefits.

## Consultation

12. From the earliest stages and through all resettlement activities the client will involve affected men and women, including host communities. This will facilitate their early and informed participation in decision-making processes related to resettlement, and in PR 10:

<sup>8</sup> 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.

<sup>9</sup> 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, health care and education. Clients should include these aspects of adequate housing 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.

<sup>10</sup> A resettlement site offers security of tenure if it protects, to the greatest extent possible, the resettled persons from forced evictions.

- affected persons shall be given the opportunity to participate in the eligibility requirements, negotiation of the compensation packages, resettlement assistance, suitability of proposed resettlement sites and proposed timing
- additional requirements apply to consultations which involve Indigenous Peoples (as provided in PR 7) as well as individuals belonging to vulnerable groups<sup>11</sup>
- 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.

13. The client will take into account any individuals or groups that may be disadvantaged or vulnerable. In particular, the client will take necessary actions to ensure that vulnerable groups 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. These groups should be identified through the process of environmental and social assessment (as outlined in PR 1).

### Socio-economic assessment and census

14. The client will carry out a socio-economic baseline assessment on people affected by the project, including impacts related to land acquisition and restrictions on land use. The assessment will identify impacts within a project's social context and the needs and rights of the affected people and develop appropriate actions to minimise and mitigate resettlement impacts.
15. The client will carry out a detailed census to: (i) identify persons who will be displaced by the project; (ii) determine who will be eligible for compensation and assistance; and (iii) take

inventory of affected land and property. The census should take into account the needs of seasonal resource users who may not be present in the project area during the time of the census.

16. In the absence of specific national government procedures, the client will establish the cut-off date for eligibility as foreseen in the applicable legislation and project timeline as appropriate. Often the most practicable cut-off date is during the baseline assessment or census. Information regarding the cut-off date will be well documented and communicated throughout the project area. Setting a cut-off date will provide clarity as to eligibility for compensation and assistance. Persons moving into the project location after the cut-off date are not entitled to compensation or other assistance.

### Compensation for displaced persons

17. The client will offer all displaced persons and communities compensation for loss of assets at full replacement cost<sup>12</sup> and other assistance. This is intended to restore, and potentially improve, their standards of living and/or livelihoods<sup>13</sup> of displaced persons to pre-displacement levels. The measures can be based on land, resources, wages and/or business activities. Standards for compensation will be transparent and consistent within the project. Compensation will be provided before displacement or imposition of access restrictions. Where livelihoods of displaced persons are land-based, or where land is collectively owned, the client will offer, where feasible, land-based compensation, taking into account seasonal and agricultural timing requirements. The client will provide opportunities to displaced persons and communities to derive appropriate development benefits from the project.
18. Displaced persons may be classified as persons: (i) who have formal legal rights to the

<sup>11</sup> For the purpose of this Policy, vulnerable groups refers to people who, by virtue of gender identity, ethnicity, age, disability, economic disadvantage or social status may be more adversely affected by project impacts than others and who may be limited in their ability to claim or take advantage of project benefits. Vulnerable individuals and/or groups may also include people living below the poverty line, the landless, the elderly, women and children headed households, refugees, internally displaced people, ethnic minorities, natural resource dependent communities or other displaced persons who may not be protected by national and/or international law.

<sup>12</sup> The rate of compensation for lost assets should be calculated at full replacement cost including transaction costs. 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. See notes 7 and 14.

<sup>13</sup> Livelihoods may consist of wage-based incomes, and/or incomes derived by individuals, families and/or communities from resource utilisation.

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 national laws; or (iii) who have no recognisable legal right or claim to the land they occupy.

19. The documentation for ownership or occupancy, such as title deeds and lease agreements (including the bank accounts established for payment of compensation), should be issued in the names of both spouses or single head of households, as relevant. Other resettlement assistance, such as skills training, access to credit and job opportunities should be made equally available to men and women and adapted to their needs.
20. The client should consider offering alternative methods and/or modalities for compensation especially in countries and regions where women are less likely to have access to formal financial institutions and/or have bank accounts. Under circumstances in which national law and tenure systems do not recognise the rights of women to hold or exchange property, provision should be made to ensure, to the extent possible, that women are enabled to have access to security of tenure.

### **Grievance mechanism**

21. The client will establish an effective grievance mechanism as early as possible in the process. It will be consistent with this PR and with the objectives and principles of PR 10 in order 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. It will include a recourse mechanism designed to resolve disputes in an impartial manner.

### **Resettlement and/or Livelihood Restoration Framework**

22. A Resettlement and/or Livelihood Restoration Framework will be developed where the exact nature or magnitude of the land acquisition or restrictions on land use related to a project with potential to cause physical and/or economic displacement is unknown due to the project development stage. This

framework will outline the general principles, procedures and entitlement framework consistent with this PR. Once the individual project components are defined and the required information becomes available, the framework will serve as a basis for the development of a detailed Resettlement Action Plan (RAP) or Livelihood Restoration Plan (LRP) in accordance with paragraphs 26 to 39 below.

### **Monitoring**

23. Monitoring of the resettlement and livelihood restoration process will be carried out in accordance with PR 1 and should involve the participation of key stakeholders such as affected communities.
24. Depending on the scale of a project's resettlement, it may be appropriate for the client to commission an external completion report of the RAP/LRP to determine that the provisions have been met. The completion report should be undertaken after all inputs in the process, including any developmental initiatives, have been completed. The report may identify further actions to be completed by the client. In the majority of cases, the completion of corrective actions identified by the completion report should bring the client's obligations for resettlement, compensation, livelihood restoration and development benefits to a close.

### **Displacement**

25. Project-related land acquisition and/or restrictions on land use often leads to both physical displacement of people as well as their economic displacement. Thus, the requirements of this PR in respect of physical displacement and economic displacement may apply simultaneously. In such case, the specific requirements concerning economic displacement established in paragraphs 36 through 39 should be incorporated into the Resettlement Action Plans or Frameworks respectively.

## Physical displacement

26. In the case of transactions as described in paragraph 6 that involve the physical displacement of people, the client will develop a RAP that covers, at a minimum, the applicable requirements set forth in this PR, regardless of the number of people affected. The plan will be designed to mitigate the negative impacts of displacement, identify potential benefits and establish the entitlements of all categories of affected persons (including host communities), with particular attention paid to the needs of the vulnerable. The plan will document all procedures to acquire land rights, as well as compensation measures and relocation activities. It will establish procedures to monitor and evaluate the implementation of resettlement activities and take corrective action as necessary.
27. 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 ways and means by which the objectives of this PR will be achieved.
28. The RAP should incorporate measures to provide displaced people with legal assistance to enable them to complete administrative requirements prior to land acquisition and, if needed, to seek redress from the courts.
29. The client shall consult with the affected persons in preparing the RAP and shall 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).
30. 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, at a minimum, pre-displacement living conditions and where achievable, sustainable and cost-effective opportunities to improve the standard of living.
31. In the case of physically displaced persons under paragraph 18 (i) or (ii), the client will offer the choice of replacement property of equal or higher value, or cash compensation at full replacement value where appropriate.<sup>14</sup>
32. In the case of physically displaced persons under paragraph 18 (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.
- Compensation in kind will be offered in lieu of cash compensation where feasible, unless the conditions described in footnote 14 can be demonstrated to exist. 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, through adverse possession;<sup>15</sup> and, subject to the qualifications noted in paragraph 18, 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, and where possible improve, their standards of living at an adequate alternative site.<sup>16</sup>
33. In cases where affected persons reject

<sup>14</sup> Payment of cash compensation for lost assets may be appropriate where: (i) livelihoods are not land-based; (ii) 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 (iii) 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. See also notes 7 and 12.

<sup>15</sup> A method of acquisition of title to real property by possession for a statutory period under certain conditions.

<sup>16</sup> 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.

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 cooperate with the responsible government authority, and if permitted by the authority, play an active role in the resettlement planning, implementation and monitoring.

34. The client will identify and assess potential adverse impacts on host communities that could be affected by the resettlement process. Any mitigation measures agreed with the host community should be included in the RAP.
35. 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.

### **Economic displacement**

36. In the case of transactions described in paragraph 6, involving economic displacement only, the client will develop and implement an LRP. The LRP will establish the entitlements of affected persons and communities and will ensure that these are provided in a transparent, consistent and equitable manner.
37. If a transaction of the types described in paragraph 6 causes temporary or permanent 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 the affected people are physically displaced, the client will:

- promptly compensate economically displaced persons for loss of assets or access to assets. This process should be initiated prior to displacement. Where compensation is to be paid by a responsible government agency, the client should collaborate with the agency to help accelerate the payments.
- 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 (as provided for in paragraph 18 (i) and (ii)).
  - provide assistance that will offset any loss of a community's commonly held resources.<sup>17</sup> 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 18 (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 restore, and where possible improve, their income-earning capacity, production levels and standards of living. In the case of businesses experiencing temporary losses 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.
38. The client will summarise the information contained in the LRP for public disclosure to ensure that affected people understand the

<sup>17</sup> Examples of these include rangeland and pasture, non-timber forest resources (for example, medicinal plants, construction and handicraft materials), woodlots for timber and fuel wood; water resources for agriculture, recreation or fishing.

compensation procedures and know what to expect at the various stages of the project.

39. 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.

#### **Loss of public amenities<sup>18</sup>**

40. 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, where possible, agree upon a suitable alternative.

#### **Private sector responsibilities under government-managed resettlement**

41. 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.

<sup>18</sup> Loss of cultural heritage is covered in PR 8.

# EBRD Performance Requirement 6

## Biodiversity Conservation and Sustainable Management of Living Natural Resources

### Introduction

1. This Performance Requirement (PR) recognises that the conservation of biodiversity<sup>1</sup> and sustainable management of living natural resources<sup>2</sup> are fundamental to environmental and social sustainability.
2. This PR recognises the importance of maintaining core ecological functions of ecosystems and the biodiversity they support. All ecosystems support a complexity of living organisms and vary in terms richness, abundance and importance of species.
3. The objective of biodiversity conservation and sustainable management of living resources must be balanced with the potential for utilising the multiple economic, social and cultural values of biodiversity and living natural resources in an optimised manner.
4. It is recognised that: (i) the livelihood of Indigenous Peoples and affected communities whose access to, or use of, biodiversity or living natural resources may be affected by project activities; and (ii) they may have a positive role in biodiversity conservation and sustainable management of living natural resources.

### Objectives

5. The objectives of this PR are to:
  - protect and conserve biodiversity using a precautionary approach

- adopt the mitigation hierarchy<sup>3</sup> approach, with the aim of achieving no net loss of biodiversity, and where appropriate, a net gain of biodiversity
- promote good international practice (GIP) in the sustainable management and use of living natural resources.

### Conservation of biodiversity

#### Scope of application

6. The client will, as part of its environmental and social assessment process, identify the relevant requirements of this PR, and how they will be addressed and managed through the project life cycle. The implementation of the actions necessary to meet the requirements of this PR will be managed under the client's overall environmental and social management system (ESMS) and project-specific environmental and social management plans (ESMPs), including Biodiversity Management Plans, or where appropriate, a specific Biodiversity Action Plan,<sup>4</sup> to structure the project to meet this PR within an acceptable time frame. The environmental and social assessment and management requirements are provided in PR 1.

### General requirements

#### Assessment of issues and impacts

7. The assessment process will characterise the baseline conditions to a degree that is proportional and specific to the anticipated

<sup>1</sup> For the purpose of this PR, biodiversity is defined in accordance with the Convention on Biological Diversity 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".

<sup>2</sup> "Living natural resources" are defined as being "the plants and animals cultivated for human or animal consumption and use, whether in the wild or in a cultivated situation. It includes all types of forestry, biofuels, agriculture, including both annual and perennial crops and animal husbandry, including livestock; and both wild and capture fisheries, including all types of marine and freshwater organisms, both vertebrate and invertebrate".

<sup>3</sup> The mitigation hierarchy comprises measures taken to avoid impacts to biodiversity from the outset of development activities, and where this is not possible, to implement additional measures that would minimise, mitigate and, as a last resort, offset and/or compensate any potential residual adverse impacts.

<sup>4</sup> Biodiversity Actions Plans (BAPs) typically include a series of goals, objectives and management measures to mitigate residual impacts to achieve no net loss/net gains of priority biodiversity features or critical habitat. The goal/objectives should be realistic and based on measurable targets. Each objective should outline a series of actions and include completion indicators or monitoring targets, and the responsible party and a time frame. BAPs should be developed in consultation with relevant stakeholders, including government, external experts, local/international conservation organisations and project-affected communities.

risk and significance of impacts. The baseline assessment will consider, but will not be limited to, loss of habitat,<sup>5</sup> degradation and fragmentation, invasive alien species, overexploitation, migratory corridors, hydrological changes, nutrient loading and pollution, as well as impacts relevant to climate change and adaptation. In planning and carrying out biodiversity-related baseline and impact assessments, the client will refer to relevant good practice guidance, utilising desktop and field-based approaches as required. Where further investigations are needed to provide greater certainty of the significance of potential impacts, the client should carry out additional studies and/or monitoring before undertaking project-related activities that could cause irreversible impacts.

8. Through the assessment process, the client should identify and characterise, early in the project life cycle, the potential project-related opportunities, risks and impacts on biodiversity. The extent of the assessment should be sufficient to characterise the impacts, based on their likelihood and the significance and severity of impact, and reflect the concerns of potentially affected communities and, where relevant, other stakeholders. The assessment should also consider direct, indirect and cumulative impacts and evaluate the effectiveness and feasibility of the mitigation measures to be applied to the project. The assessment process should include consideration of potential landscape level impacts, as well as impacts on the ecological integrity of the ecosystems, independent of their protection status and regardless of the degree of their disturbance or degradation.
9. The assessment will consider the use of, and dependence on, ecosystems by potentially affected communities and/or Indigenous Peoples whose use of these biodiversity resources may be affected by the project. The assessment will also consider the project's dependence on these ecosystems. Where the project has the potential to impact these ecosystems, and where the client has direct management control or significant influence, adverse impacts should be avoided. If these

impacts cannot be avoided, the client will minimise them and/or implement appropriate mitigation measures with an aim to maintain the overall functionality of these ecosystems.

10. For projects that could potentially have such impacts on Indigenous Peoples and local communities, the client will provide opportunities for fair and equitable sharing of the benefits derived from the utilisation of living natural resources in accordance with: (i) the requirements for addressing economic displacement issues in PR 5; (ii) the specific requirements relating to managing potential issues and impacts on Indigenous Peoples in PR 7; and (iii) the stakeholder engagement requirements provided in PR 10.

### **Biodiversity conservation requirements**

11. Where the assessment has identified potential project-related impacts to biodiversity, the client will manage its risks in accordance with the mitigation hierarchy and GIP. The client should adopt a precautionary approach and apply adaptive management practices in which the implementation of mitigation and management measures are responsive to changing conditions and the results of project monitoring throughout the project life cycle.
12. Notwithstanding the above, some areas affected by the project may be considered "priority biodiversity features"<sup>6</sup> which include: (i) threatened habitats; (ii) vulnerable species; (iii) significant biodiversity features identified by a broad set of stakeholders or governments (such as Key Biodiversity Areas or Important Bird Areas); and (iv) ecological structure and functions needed to maintain the viability of priority biodiversity features described in this paragraph.
13. Where the assessment has identified that the project could have significant, adverse and irreversible impacts to priority biodiversity features, the client should not implement any project-related activities unless:
  - there are no technically and economically feasible alternatives
  - the overall benefits outweigh the project

<sup>5</sup> Habitat is defined as a terrestrial, freshwater or marine geographical unit or airway that supports assemblages of living organisms and their interactions with the non-living environment.

<sup>6</sup> Priority biodiversity features are a subset of biodiversity that is particularly irreplaceable or vulnerable, but at a lower priority level than critical habitats (as defined in paragraph 14).



impacts on biodiversity

- stakeholders are consulted in accordance with PR 10
- the project is permitted under applicable environmental laws, recognising the priority biodiversity features
- appropriate mitigation measures are put in place, in accordance with the mitigation hierarchy,<sup>7</sup> to ensure no net loss and preferably a net gain of priority biodiversity features over the long term, to achieve measurable conservation outcomes.

14. The most sensitive biodiversity features are defined as critical habitat, which comprise one of the following: (i) highly threatened or unique ecosystems; (ii) habitats of significant importance to endangered<sup>8</sup> or critically endangered species; (iii) habitats of significant importance to endemic or geographically restricted species; (iv) habitats supporting globally significant migratory or congregatory species; (v) areas associated with key evolutionary processes; or (vi) ecological functions that are vital to maintaining the viability of biodiversity features described in this paragraph.

15. Where the assessment has identified that the project could have adverse impacts on a critical habitat, the client will retain experienced external experts to conduct the assessment of the potential adverse impacts on this critical habitat.

16. Critical habitat must not be further fragmented, converted or degraded to the extent that its ecological integrity or biodiversity importance is compromised. Consequently, in areas of

critical habitat, the client will not implement any project activities unless the following conditions are met:

- no other viable alternatives within the region exist for development of the project in habitats of lesser biodiversity value
- stakeholders are consulted in accordance with PR 10
- the project is permitted under applicable environmental laws, recognising the priority biodiversity features
- the project does not lead to measurable adverse impacts on those biodiversity features for which the critical habitat was designated as outlined in paragraph 14
- the project is designed to deliver net gains<sup>9</sup> for critical habitat impacted by the project
- the project is not anticipated to lead to a net reduction in the population<sup>10</sup> of any endangered or critically endangered species, over a reasonable time period<sup>11</sup>
- a robust and appropriately designed, long-term biodiversity monitoring and evaluation programme aimed at assessing the status of critical habitat is integrated into the client's adaptive management programme.

17. In such cases where a client is able to meet the requirements defined in paragraph 16, the project's mitigation strategy will be described in a Biodiversity Management Plan or Biodiversity Action Plan, wherever appropriate.

18. In instances where biodiversity offsets are proposed for priority biodiversity features or critical habitat, the client must demonstrate through an assessment that the project's significant residual impacts on biodiversity

<sup>7</sup> As a last resort, where any significant residual impacts remain, the client may need to consider the use of compensatory measures, such as biodiversity offsets.

<sup>8</sup> As listed on the International Union for the Conservation of Nature (IUCN) Red List of Threatened Species. The determination of critical habitat based on other listings is as follows: (i) if the species is listed nationally/regionally as critically endangered or endangered, in countries that have adhered to IUCN guidance, the critical habitat determination will be made on a project-by-project basis in consultation with competent professionals; and (ii) in instances where nationally or regionally listed species' categorisations do not correspond exactly to those of the IUCN (for example, some countries more generally list species as "protected" or "restricted"), an assessment will be conducted to determine the rationale and purpose of the listing. In this case, the critical habitat determination will be based on such an assessment.

<sup>9</sup> Net gains are additional conservation outcomes that can be achieved for the biodiversity values for which the critical habitat was designated. Net gains may be achieved through the development of a biodiversity offset and/or, in instances where the client could meet the requirements of paragraph 16 of this Performance Requirement without a biodiversity offset, the client should achieve net gains through the implementation of programmes that could be implemented in situ (on-the-ground) to enhance habitat, and protect and conserve biodiversity.

<sup>10</sup> Net reduction is a singular or cumulative loss of individuals that prevents the species' ability to persist at the global and/or regional/national scales for many generations or over a long period of time. The scale (for example, global and/or regional/national) of the potential net reduction is determined based on the species' listing on either the (global) IUCN Red List of Threatened Species and/or on regional/national lists. For species listed on both the (global) IUCN Red List of Threatened Species and the national/ regional lists, the net reduction will be based on the national/ regional population.

<sup>11</sup> The time frame in which clients must demonstrate "no net reduction" of critically endangered and endangered species will be determined on a case-by-case basis and in consultation with external experts.

will be adequately mitigated to meet the requirements of paragraphs 13 and 15-17, as applicable. In these instances, the client will retain experienced external experts with knowledge in offset design and implementation.

### **Legally protected and internationally recognised areas of biodiversity value**

19. Where the project occurs within or has the potential to adversely affect an area that is protected through legal or other effective means,<sup>12</sup> and/or is internationally recognised,<sup>13</sup> or proposed for such status by national governments, the client must identify and assess potential project-related impacts and apply the mitigation hierarchy so that impacts from the project will not compromise the integrity, conservation objectives and/or biodiversity importance of such an area.
20. If the assessment identifies that the project has the potential to adversely impact priority biodiversity features and/or critical habitat within the legally protected areas or internationally recognised areas of biodiversity value, the client will seek to avoid such impacts in accordance with paragraphs 13 or 15-17 respectively. In addition the client will:
  - demonstrate that any proposed development is legally permitted, which may have entailed that a specific assessment of the project-related impacts on the protected area has been carried out as required under national law
  - act in a manner consistent with any government recognised management plans for such areas
  - consult protected area managers, relevant authorities, local communities and other stakeholders on the proposed project in accordance with PR 10
  - implement additional programmes, as appropriate, to promote and enhance the conservation objectives of the protected area.

### **Invasive alien species**

21. The client must avoid and proactively prevent accidental or deliberate introduction of alien species that could have significant adverse impacts on biodiversity, specifically:
  - the client will not intentionally introduce alien 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.
  - the client will identify potential risks, impacts and mitigation options related to the accidental transfer and release of alien species<sup>14</sup>
  - where alien species are already established in the country or region of the proposed project, the client will exercise diligence in not spreading the invasive species into areas in which they have not already been established. As practicable, the client should take measures to eradicate such species from areas having biodiversity importance over which they have management control.

### **Sustainable management of living natural resources**

#### **Scope of application**

22. This PR applies to projects which involve the primary production of living natural resources or where such resources are central to the project's core function.<sup>15</sup>
23. The client will, as part of its environmental and social assessment process, identify the relevant requirements of this PR and how they will be addressed and managed through the project life cycle. The client will adopt and implement measures to comply with this PR, as part of the client's overall ESMS and/or ESMP. Environmental and social assessment and management requirements are outlined in PR 1.

<sup>12</sup> This PR is guided by the IUCN definition of "Protected Area".

<sup>13</sup> Sites identified under international conventions or agreements, including, but not limited to, UNESCO Natural World Heritage Sites, UNESCO Man-and-Biosphere Reserves and the Ramsar List of Wetlands of International Importance .

<sup>14</sup> With respect to the international shipping of goods and services, this PR is guided by the International Convention for the Control and Management of Ship's Ballast Water and Sediments (BWM). Clients seeking EBRD finance for a project involving such shipping activities are expected to comply with appropriate obligations developed in the framework of this convention.

<sup>15</sup> Projects that include crop or livestock production, natural or plantation forestry, aquaculture or fisheries, and production and use of biomass for energy or biofuel production are subject to this PR.

## Requirements

### General requirements

24. Clients will manage living natural resources through the application of national regulatory requirements and relevant EU substantive environmental standards, as applicable at the project level.
25. Clients will give priority to adopting and implementing relevant globally, regionally or nationally recognised standards that are subject to independent certification or verification within a reasonable time frame. Where no relevant standards exist for particular living natural resources applicable to the project, the client will commit to applying appropriate industry-specific sustainable management practices.

### Assessment of issues and impacts

26. Clients with projects involving the use of living natural resources will assess the sustainability of the resource, as well as taking into account the potential impacts on ecosystems and the biodiversity they support and the following principles:
  - the use of any living natural resource needs to be considered in the context of the core ecological functions it provides within the ecosystem<sup>16</sup>
  - consideration of direct, indirect and cumulative impacts
  - the use of the living natural resource will follow the mitigation hierarchy approach and seek to optimise benefits for other users
  - production and/or use 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 be subject to adequate studies and approval by the relevant national competent authorities, prior to production or use.

### Crop and livestock production

27. Clients involved in crop or livestock production should ensure that they are employing GIP

to avoid or minimise negative impacts and resource consumption.

28. Clients involved in the farming, transport and slaughtering of animals for meat or by-products (for example, milk, eggs, wool) will adopt and implement national regulatory requirements, relevant EU animal welfare standards and GIP, whichever is most stringent, in animal husbandry techniques.

### Fisheries and aquaculture

29. Clients involved in the farming, harvesting or processing of fish or other aquatic species must demonstrate that their activities are being, or will be, undertaken in a sustainable manner. This can be achieved through attainment of independent certification,<sup>17</sup> or through studies undertaken as part of the assessment process. 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 endemic/natural fish species.
30. For aquaculture projects, clients will assess and minimise the risk of escape of non-native species into the aquatic environment. Clients should also assess and minimise the potential for transfer of disease and/or parasites into the environment.

### Natural and plantation forestry

31. Clients involved in primary forestry must plan their operations to avoid, or minimise, impacts on ecosystems and the biodiversity they support and meet the relevant requirements outlined in paragraphs 11 and/or 13-15 if their project-related activities have the potential to result in the conversion, fragmentation or degradation of priority biodiversity features or critical habitats.
32. Clients will obtain independent certification that internationally recognised principles and

<sup>16</sup> For example, clear felling of forests may have adverse impacts on other biodiversity, soil erosion, watershed hydrology, water quality and fisheries. Similarly, over-fishing of one species may affect the ecological balance and long-term integrity of ecosystems.

<sup>17</sup> For example, internationally recognised sustainable fisheries programmes include the Marine Stewardship Council certification scheme.

<sup>18</sup> Internationally recognised forestry certification programmes include the Forest Stewardship Council (FSC) and Programme for the Endorsement of Forest Certification (PEFC).

standards of sustainable forest management<sup>18</sup> are being met for the forests and/or plantations over which they have direct management control. Where the assessment identifies that forest management practices do not meet such standards, clients will develop a management plan to obtain such a certification within a reasonable time frame.

- the sourcing of the living natural resources is monitored and documented
- the sourcing of living natural resources does not adversely impact core ecological functions of the affected ecosystems, legally protected areas, internationally recognised areas of biodiversity value, priority biodiversity features or critical habitats.

### **Use of biomass fuel and biofuel production**

33. Clients involved in the production and use of biomass will minimise adverse effects on ecosystems and the biodiversity they support through (i) the use of residues and waste materials as the primary source of biomass fuel, where available on technically and financially feasible and cost-effective terms; and (ii) adopting and implementing relevant EU principles and standards, and, where available, seeking to certify its operations to such standards within a reasonable time frame.
34. Clients involved in biofuel production will use feedstock that is produced in a sustainable manner so that adverse effects on ecosystems and the biodiversity they support as well as the use of, and impacts on, land, water and other resources needed to produce each unit of energy are minimised. The client will adopt and implement relevant EU principles and standards or guidelines for biofuel feedstock production, and where available seek to certify its operations to such standards within a reasonable time frame.

36. Clients should give preference to purchasing living natural resources produced in accordance with internationally recognised principles and standards of sustainable management, where available for the product being purchased. Where internationally recognised industry sustainability certification systems exist, the client will seek to certify its operations and supply chain management system to such standards, within a reasonable time frame. In the absence of such certification systems, the client will apply GIP and technologies.

### **Genetically Modified Organisms (GMOs)**

37. In EU member states, GMOs may not be used or released into the environment without approval being given by the competent authorities. In other EBRD countries of operations, GMOs may not be used or released into the environment without a risk assessment, conducted in line with EU substantive standards.

### **Supply chain**

35. Where: (i) the project uses external suppliers of living natural resources over which the client does not have direct management control; (ii) these resources are central to the project's core functions; and (iii) suppliers have the potential to significantly impact ecosystems and the biodiversity that they support, the client will, as part of its overall ESMS or ESMP, adopt and implement a sustainable resources procurement policy, management procedures and verification system to evaluate its primary suppliers. The policies, procedures and verification systems will specify that:
  - only living natural resources of a legal and sustainable origin are purchased

# EBRD Performance Requirement 7

## Indigenous Peoples

### Introduction

1. This Performance Requirement (PR) recognises that 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. As government often plays a central role in the management of issues related to Indigenous Peoples, clients should cooperate and collaborate, as appropriate, with the responsible authorities and relevant communities in managing the risks and impacts of their activities.
2. There is no universally accepted definition of “Indigenous Peoples”. Indigenous Peoples may also be referred to in different countries by different terms. It is also recognised that groups who might not be classified as Indigenous People in one country or region, may be classified as such in another.
3. In the Policy and this PR, the term “Indigenous Peoples” is used in a technical sense to refer to a social and cultural group, distinct from dominant groups within national societies, possessing all of 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 territories<sup>1</sup>
  - descent from populations who have traditionally<sup>2</sup> 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
4. 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.
5. This PR approaches Indigenous Peoples as partners, respecting them as people and peoples whose values can contribute greatly to their own, and 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, may be 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 (which may be both individual and/or collective) 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 or encroached upon by those who are not members of their communities.
6. 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

<sup>1</sup> 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 because of conflict, government resettlement programmes, dispossession from their lands, natural disasters, 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: (i) the legal designation of the area as urban under domestic law; (ii) high population density; and (iii) high proportion of non-agricultural economic activities relative to agricultural activities.

<sup>2</sup> This applies even if the pursuit no longer takes place, as per previous footnote.

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, women and children in indigenous cultures may be different from those in the dominant groups; men and women may experience differential treatment both within their communities and within broader society, which may amount to discrimination. Children may be particularly marginalised due to their status as children, and also experience discrimination due to their indigenous status. Due to these realities, issues related to Indigenous Peoples are frequently complex. Moreover, the dominant culture may sometimes be unaware of or reluctant to admit the existence of an indigenous status for certain groups of people. 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.

7. This PR recognises that the circumstances of Indigenous Peoples in the EBRD's countries of operations are unique due to their particular history. Indigenous Peoples may no longer be 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. The continued existence of nomadism or transhumance and a history of involuntary resettlement have resulted in an expectation of continuing fixed links to specific territories which is not always appropriate. It is understood by this PR that Indigenous Peoples' means and patterns of livelihood may be quite distinct from the dominant culture, and may have also experienced change over time.

## Objectives

8. Specific objectives are as follows:
  - to ensure that the transition process fosters full respect for the dignity, human rights,

aspirations, cultures and natural resource-based livelihoods of Indigenous Peoples

- to both anticipate and 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 the principle, outlined in the UN Declaration on the Rights of Indigenous Peoples,<sup>3</sup> that the prior informed consent of affected Indigenous Peoples is required for the project-related activities identified in paragraphs 30-34 below, given the specific vulnerability of Indigenous Peoples to the adverse impacts of such projects<sup>4</sup>
- to recognise the specific needs of men, women and children of Indigenous Peoples by addressing gender issues and mitigating potential disproportionate gender impacts of a project
- 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

9. This PR will apply when a project is likely to affect Indigenous Peoples. In ascertaining whether a particular group is considered as an Indigenous People for the purpose of this PR, the client may be required to seek expert advice.

<sup>3</sup> General Assembly Declaration on the Rights of Indigenous Peoples adopted on 13 September 2007.

<sup>4</sup> ILO Convention no. 169 (Indigenous and Tribal Peoples Convention) which covers a wide range of issues pertaining to Indigenous Peoples, including land, employment, health and social security and customary law. Consultation and participation constitute the cornerstone of the Convention.

10. The applicability of this PR will be established during the environmental and social assessment process according to the criteria outlined in paragraphs 2-7 below. 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 applicable.

## Requirements

11. In projects where Indigenous Peoples are likely to be affected,<sup>5</sup> the client is required to carry out an assessment of impacts on Indigenous Peoples. Depending on 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 19 below 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 opportunities for communities to benefit. In carrying out consultation, the client will be mindful of the fact that in some cases there is a seasonality to the livelihood structure of Indigenous People and the client should design the consultation in a way that ensures that Indigenous Peoples' views are obtained with enough time to ensure adequate input into the design process.
12. Where the client has commenced project activities that may have affected and/or may affect Indigenous Peoples, the assessment will identify: (i) any gaps; and (ii) the corrective actions that may be required to ensure compliance with this PR. An action plan shall then be agreed.
13. 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

14. Where there is a national legal requirement for a specific type of social assessment, the client shall carry this out, in addition to carrying out any additional social assessment required by this PR.
15. In cases where the project has not yet commenced, the client will identify through a social assessment process all communities of Indigenous Peoples who may be directly or indirectly affected, both positively and negatively, by the project, as well as the nature and degree of the expected social, cultural (including cultural heritage) and environmental impacts on them. This assessment will consider the specific vulnerability of indigenous communities to changes in their environment and way of life. The client will plan measures to: (i) avoid or mitigate adverse impacts; and (ii) share any project-related benefits.
16. In cases where construction, project-related activities or operations have already commenced in respect of a project, the client will provide all relevant information and documents (including those regarding the client's past performance) together with a record of documents already submitted to the authorities, to demonstrate 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.
17. If the requirements of paragraph 16 are not satisfied, the client will commission an objective and independent study of both the effects of the project on the Indigenous Peoples and their views 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 identify and share project benefits, and the level of Indigenous Peoples' participation in project planning and implementation.

## Avoidance of adverse effects

18. All efforts should first be directed towards avoiding any adverse project effects on

<sup>5</sup> Project-affected Indigenous Peoples are those whose socio-economic status and/or traditional culture and way of life are adversely impacted by project activities.

Indigenous Peoples. When avoidance of adverse effects is not feasible, the client will minimise, mitigate and provide compensation for these impacts in a fair, appropriate and proportional manner.

### **Preparation of an Indigenous Peoples Development Plan**

19. 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 IPDP. The IPDP will systematically assess differentiated impacts of a project with respect to gender and different generations, and will include actions to address these impacts on groups in the community.

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: it is important that the baseline provides an understanding of both the community social structure of Indigenous Peoples and the intra-household roles and responsibilities. This will assist in developing an appropriate implementation plan.
- 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 participate in opportunities to benefit

from the project.

- Grievance mechanism.
- Costs, budget, time table and organisational responsibilities.
- Monitoring, evaluation and reporting.

### **Information disclosure, meaningful consultation and informed participation**

20. 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 a common understanding of the nature and duration of the impacts; informed participation on matters that affect them directly; proposed mitigation measures; the sharing of development benefits and opportunities; and implementation issues.
21. The client shall ensure that the project-affected Indigenous Peoples are adequately informed in a culturally appropriate manner about the relevant PRs and about project plans affecting them, ensuring, where relevant, measures for effective participation by all parts of the community.
22. The process of community engagement will be culturally appropriate, respectful of the Indigenous Peoples' collective decision-making processes, and commensurate with the risks and potential impacts on the Indigenous Peoples. The client will provide adequate documented evidence to demonstrate that this process has been adequately carried out.
23. 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:
  - that Indigenous Peoples live in mixed communities with people who are not indigenous
  - that Indigenous communities are multi-vocal – consultations and participation must be inclusive of gender, generational and excluded groups
  - the dissemination of appropriate information to the EBRD, and the involvement of the EBRD in the consultation process, where practicable
- full documentation<sup>6</sup> of the consultation process.

### **Grievance mechanism and prevention of ethnically based discrimination**

24. 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.
25. 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.

### **Compensation and benefit-sharing**

26. Participatory approaches will be the foundation of determining mitigation, benefit-sharing and customary lifestyle-supporting measures. The client will ensure that the affected Indigenous Peoples are compensated directly for any loss of livelihood (as calculated in accordance with this PR) incurred as a result of project-related activities and rehabilitate in agreement with the local community. 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.
27. 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. This may need to be provided on a collective basis where the land and resources are collectively owned. If necessary, assistance/support should be facilitated by the client so as to enable the establishment of appropriate management and governance systems.

<sup>6</sup> These can comprise written transcripts and records and/or audio recordings.

28. The client will provide, through the process of meaningful consultation with, and the informed participation of, the affected communities of Indigenous Peoples as provided for in paragraphs 20 to 23 above, 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

29. 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 and inclusive participation
- obtain the free, prior and informed consent (FPIC)<sup>7</sup> of Indigenous Peoples before starting with an activity described below (paragraphs 30-35).

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 30-35 of this PR.

## Impacts on traditional or customary lands under use

30. 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.

31. If the client proposes to locate the project on, or commercially develop natural resources located within, customary lands under use, and adverse impacts<sup>8</sup> 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 by:

- entering into good faith negotiation with the affected communities of Indigenous Peoples, and document their free, prior and informed participation and consent as a result of the negotiation
- documenting 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
- documenting the Indigenous Peoples' land use by experts in collaboration with the affected communities of Indigenous Peoples without prejudicing any other Indigenous Peoples' land claim
- informing the affected communities of Indigenous Peoples of their rights with respect to these lands under national laws, including any national law recognising customary rights or use
- offering affected communities of Indigenous Peoples, at the minimum, fair compensation and due process 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
- providing, subject to the consent of the

<sup>7</sup> There is no universally accepted definition of FPIC; however, for the purpose of this PR, 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.

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

Indigenous Peoples, collective ownership rights to the land and natural resources are to be offered as compensation, unless prohibited by law

- giving adequate time to the affected indigenous communities to come to an internal agreement, without the client imposing its will directly or indirectly
- using functions such as an ombudsman and/or other such public institution within the relevant national system to facilitate community consent to the project and/or the proposed land use by the client and the mitigation package
- ensuring continued access to natural resources, identifying the equivalent replacement of resources or, as a final option, providing compensation
- ensuring fair and equitable sharing of benefits associated with project usage of the resources that are integral to the identity and livelihood of affected communities of Indigenous People
- providing affected communities of Indigenous Peoples with access, usage and transit on land the client is developing subject to overriding health, safety and security considerations.

32. 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 client will also assess the facts and develop an appropriate approach to resolve the issue.

### **Relocation of Indigenous Peoples from traditional or customary lands**

33. The client will explore feasible alternative project designs to avoid the relocation of Indigenous Peoples from their communally held traditional or customary lands. When relocation is unavoidable, the client will not carry out such relocation without obtaining FPIC 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 FPIC.

34. 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 heritage**

35. 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 and international 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 Peoples; (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.

# EBRD Performance Requirement 8

## Cultural Heritage

### Introduction

1. This Performance Requirement (PR) recognises the importance of cultural heritage for present and future generations. The aim is to protect cultural heritage and to guide clients in avoiding or mitigating adverse impacts on cultural heritage in the course of their business operations. The clients are expected to be precautionary in their approach to the management and sustainable use of cultural heritage.
2. Both tangible and intangible cultural heritage are important assets for economic and social development, and are an integral part of the continuity of cultural identity and practices (including traditional skills, knowledge, beliefs and/or minor dialects and languages).
3. In pursuing these aims of protection and conservation, this PR is guided by applicable international conventions and other instruments. It also recognises the need for all parties to respect the laws and regulations that pertain to cultural heritage that could be affected by a project and the obligations under relevant international treaties and agreements ratified by host countries. These laws may be on cultural heritage or antiquities, planning or building consent, conservation areas, protected areas, and other laws and regulations governing the built historic environment, or laws relating to the protection of cultures of Indigenous Peoples. Detailed requirements for protecting Indigenous Peoples are in PR 7.

### Objectives

4. The objectives of this PR are to:
  - support the protection and conservation of cultural heritage
  - adopt the mitigation hierarchy approach to protecting cultural heritage from adverse impacts arising from the project
  - promote the equitable sharing of benefits from the use of cultural heritage in business activities

- promote the awareness and appreciation of cultural heritage where possible.

### Scope of application

5. The client will, as part of its environmental and social assessment process, identify the relevant requirements of this PR, and how they will be addressed as an integral part of the client's overall Environmental and Social Management System (ESMS) and/or the project's Environmental and Social Management Plan (ESMP). The environmental and social assessment and management requirements are provided in PR 1. In addition, the client will apply this PR during project implementation if the project affects, or has the potential to affect, cultural heritage (tangible and intangible) which had not been previously identified.
6. 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 evolving values, beliefs, knowledge and traditions. It encompasses tangible (physical) and intangible cultural heritage, which is recognised at the local, regional or national level, or within the international community.
  - Physical cultural heritage refers to movable or immovable objects, sites, groups of structures as well as cultural or sacred spaces associated therewith, and natural features and landscapes that have archaeological, paleontological, historical, architectural, religious, aesthetic or other cultural significance.
  - Intangible cultural heritage refers to practices, representations, expressions, knowledge and skills that communities, groups and, in some cases, individuals recognise as part of their cultural heritage and which are transmitted from generation to generation.
7. Recognising that sites, objects or cultural traditions representing cultural heritage value or

significance could be discovered in unexpected locations, 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 is in the vicinity of, a cultural heritage site recognised by the country of operation
- may have an adverse impact on the intangible forms of cultural heritage of people, including Indigenous Peoples.

## Requirements

### Assessment process

#### Screening for impacts on cultural heritage

8. At an early stage of the environmental and social assessment, 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. In doing so, the client will consult with relevant authorities, experts, local communities and other stakeholders as appropriate. The intensity of the study of cultural resources should be adequate for characterising the potential impacts and issues of the project and reflecting the concerns of relevant stakeholders.

#### Avoiding impacts

9. The client, based on the outcomes of the screening process, will select the location for and design the project so as to avoid significant impacts on cultural heritage. Where the client's screening process identifies potential adverse impacts 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

10. Where impacts cannot be avoided, the client will, on the basis of the results of the preliminary screening, undertake studies and consultation to assess potential impacts and, if necessary, the required changes in design. The scope of these studies and consultation will be determined on a case-by-case basis in consultation with the national or local regulatory

authorities entrusted with protection of cultural heritage. The studies will be conducted by qualified and experienced cultural heritage specialists, either as part of the overall environmental and social assessment process, or separately.

11. The assessment and mitigation of impacts on cultural heritage will be conducted in accordance with relevant provisions of national and/or local laws, protected area management plans and regulations, national obligations under international laws and GIP.

#### Managing impacts on cultural heritage

12. The client will be required to develop appropriate measures for minimising and mitigating adverse impacts on the cultural heritage. The mitigation measures will address the results of the field surveys, expert assessment of the significance of cultural heritage, national legislation and relevant international conventions, and the results of consultations with affected communities and other relevant stakeholders. Such mitigation measures will be included in the client's overall ESMS and project-specific ESMP, or in a specific Cultural Heritage Management Plan that will also include an implementation timeline and a resource need estimate for each of the mitigation measures. The client will also ensure that trained and qualified personnel are available to oversee the implementation of mitigation measures, and that any third parties, such as contractors, working on the project have the necessary skills and expertise and are managed and monitored in accordance with PR 1.
13. Where the project site is associated with impacts to cultural heritage or prevents access to previously accessible cultural heritage sites, the client will assess the use of the site by affected communities. Where the site has been used by affected communities within living memory for long-standing cultural purposes, the client will, based on consultation, allow continued access to the cultural site or will provide an alternative access route, subject to overriding health, safety and security considerations.

#### Chance finds procedure

14. 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 securing 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.

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 affected local communities with 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 PR 7 will apply.

### **Consultation with affected communities and other stakeholders**

15. 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 and 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 part of a wider consultation process on the project's environmental and social impacts. Consultation will also involve other relevant stakeholders such as national or local authorities entrusted with protection of cultural heritage, cultural heritage experts and non-governmental and civil society organisations. Impacts on cultural heritage will be appropriately mitigated with the free prior and informed participation of the affected communities.

### **Project's use of cultural heritage**

16. Where a project entails the use of 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 commercialisation only when it: (i) enters

# EBRD Performance Requirement 9

## Financial Intermediaries

### Introduction

1. This Performance Requirement (PR) recognises that Financial Intermediaries (FIs) are a key instrument for promoting sustainable financial markets and provide a vehicle to channel funding to the micro, small and medium-sized enterprise (SME) sector. Such FIs include a variety of financial service providers, including private equity funds, banks, leasing companies, insurance companies and pension funds. FIs are engaged in a wide range of activities, such as microfinance, SME lending, trade finance, large-scale infrastructure finance, medium to long-term corporate or project finance, and housing finance.
2. The nature of intermediated financing means that the FIs will assume delegated responsibility for environmental and social assessment, risk management and monitoring as well as overall portfolio management. The nature of delegation may take various forms depending on a number of factors, such as the type of finance provided. The effectiveness of the FIs' environmental and social risk management will be evaluated and monitored on a continuous basis throughout the project life cycle.

### Objectives

3. The objectives of this PR are to:
  - enable the FIs to manage environmental and social risks associated with their business activities and to promote good environmental and social business practices among their clients
  - establish a practical way in which the FIs can promote and achieve environmentally and socially sustainable business practices consistent with this PR through their investments, in line with good international practice in the commercial financial sector
  - promote good environmental and human resource management within the FIs.

### Scope of application

4. For the purposes of this PR, the word “project” refers to the set of defined business activities for which EBRD funding is sought, or where

financing has already been committed, the set of business activities defined in the financing agreements, and as approved by the EBRD Board of Directors, whereas “subproject” refers to the projects financed by the FIs.

5. Where the project involves a clearly defined set of business activities (for example, a credit line or other targeted finance facility), the specific requirements of this PR will be applicable to all subprojects.
6. Where the project involves general corporate finance, which cannot be traced to specific subproject financing, such as equity, mezzanine financing or subordinated debt, the requirements of this PR will apply to all of the FI future subprojects.
7. Where an FI project is likely to have minimal or no adverse environmental or social risks, such as providing consumer loans and cross-currency basis swaps, the FI will not need to apply any environmental and social risk management procedures.
8. An FI may be required to adopt and implement additional or alternative environmental and social requirements, depending on the nature of the FI and its business activities, portfolio and the country of operation.

### Organisational capacity within the FI

9. The FI will maintain human resources policies, management systems and practices in accordance with PR 2: Labour and Working Conditions and the relevant occupational health and safety requirements of PR 4: Health and Safety, and communicate these to its workers. The FI will provide its workers and contractors with a safe and healthy working environment.
10. The FI will designate a representative of the FI's senior management to have overall responsibility for environmental, health, safety and social matters, including the implementation of this PR, PR 2 and PR 4 (as referenced above). The responsible senior management representative will need to: (i) designate a member of staff to be responsible for day-to-day implementation

of the environmental and social requirements and provide implementation support; (ii) identify environmental and social training needs and required budget; and (iii) ensure that adequate technical expertise, either in-house or external, is available to carry out assessments and manage subprojects with potentially significant adverse environmental or social impacts and issues.

## Requirements

11. The FI will put in place a clearly defined Environmental and Social Management System (ESMS), including an environmental and social policy and environmental and social procedures<sup>1</sup> commensurate with the nature of the FI, the level of environmental and social risks associated with its business activities, and the type of the project and subprojects.
12. Where the FI can demonstrate that it already has an ESMS in place, it will provide adequate documented evidence of such an ESMS.
13. The environmental and social procedures must include risk assessment and monitoring mechanisms, as appropriate, to:
  - screen all clients/subprojects against the FI Environmental and Social Exclusion List included as Appendix 1 in the ESP
  - categorise the environmental and social risk of proposed subprojects (low/medium/high) in accordance with the EBRD's Environmental and Social Risk Categorisation List for FIs
  - ensure, through its assessment, that subprojects are structured to meet national regulatory requirements relating to environmental and social matters, including, where necessary, requiring clients to implement corrective action plans
  - ensure that subprojects being financed meet the criteria in the indicative list of Category A projects included as Appendix 2 in the EBRD Environmental and Social Policy (ESP); such subprojects will be required to meet PRs 1 to 8 and 10
  - keep and regularly update environmental and social records on subprojects
  - monitor subprojects to ensure compliance with national laws on environment, health and safety and labour.

## Stakeholder engagement

14. The FI will put in place a system for dealing with external communication on environmental and social matters, for example, by establishing a point of contact for dealing with public enquiries, including concerns related to environmental and social matters. The FI will respond to such enquiries and concerns in a timely manner. The FIs are also encouraged to publish their corporate environmental and social policy or a summary of their ESMS on their web site, if available. Where possible, FIs will list on their web site the link to any Environmental and Social Impact Assessment (ESIA) reports for Category A subprojects which they finance.

## Reporting to the EBRD

15. The FI will submit to the EBRD annual environmental and social reports on the implementation of its ESMS, this PR, PR 2, the occupational health and safety requirements of PR 4, as well as the environmental and social performance of its portfolio of subprojects.

## Voluntary initiatives

16. FIs are encouraged to follow GIP in environmental and social management in their entire lending and investment operations, irrespective of whether these are part of the project. In particular, FIs are encouraged to:
  - roll out the application of ESMS and environmental and social risk management procedures 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).FIs are also encouraged to consider joining appropriate existing international initiatives that promote best practices in the financial sector such as the Equator Principles, the UNEP Finance Initiative, and the Principles for Responsible Investment.

<sup>1</sup> To assist FIs with putting an ESMS and procedures into practice, the EBRD has developed an environmental and social risk management manual which includes 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 manual in respect of the relevant subprojects.



# EBRD Performance Requirement 10

## Information Disclosure and Stakeholder Engagement

### Introduction

1. This Performance Requirement (PR) recognises the importance of an open and transparent engagement between the client, its workers, local communities directly affected by the project and, where appropriate, other stakeholders as an essential element of good international practice (GIP) and corporate citizenship.<sup>1</sup> Such engagement is also a way of improving the environmental and social sustainability of projects. In particular, effective community engagement, appropriate to the nature and scale of the project, promotes sound and sustainable environmental and social performance, and can lead to improved financial, social and environmental outcomes, together with enhanced community benefits. Stakeholder engagement is central to building strong, constructive and responsive relationships which are essential for the successful management of a project's environmental and social impacts and issues. To be effective, stakeholder engagement should be initiated at an early stage of the project cycle.
2. This PR identifies GIP relating to ongoing stakeholder engagement as an ongoing process which involves: (i) public disclosure of appropriate information; (ii) meaningful consultation with stakeholders; and (iii) an effective procedure or mechanism by which people can make comments or raise grievances. The process of stakeholder engagement should begin at the earliest stage of project planning and continue throughout the life of the project. It is an integral part of the assessment, management and monitoring of environmental and social impacts and issues of the project. Therefore, this PR should be read in conjunction with PR 1, and with the requirements in PR 2 regarding engagement with workers. In the case of projects involving involuntary resettlement and/or economic

displacement, affecting Indigenous Peoples or having an adverse impact on cultural heritage, the client will also apply the special disclosure and consultation requirements as foreseen in PR 5, PR 7 and PR 8.

### Objectives

3. The objectives of this PR are to:
  - outline a systematic approach to stakeholder engagement that will help clients build and maintain a constructive relationship with their stakeholders, in particular the directly affected communities
  - promote improved environmental and social performance of clients through effective engagement with the project's stakeholders
  - promote and provide means for adequate engagement with affected communities throughout the project cycle on issues that could potentially affect them and to ensure that meaningful environmental and social information is disclosed to the project's stakeholders
  - ensure that grievances from affected communities and other stakeholders are responded to and managed appropriately.

### Scope of application<sup>2</sup>

4. This PR applies to all projects that are likely to have adverse environmental and social impacts and issues on the environment, workers or the local communities directly affected by the project. The clients are expected to identify and engage with stakeholders as an integral part of their overall environmental and social management system (ESMS), the project's environmental and social assessment process and the environmental and social management plan (ESMP) as outlined in PR 1.

### Requirements

5. Clients will conduct stakeholder engagement

<sup>1</sup> This Performance Requirement is guided by the spirit, principles and ultimate goals on public disclosure and stakeholder engagement comprised in the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.

<sup>2</sup> In addition, special provisions on emergency preparedness and response are covered in PR 4.

on the basis of providing local communities that are directly affected by the project and other relevant stakeholders with access to timely, relevant, understandable and accessible information, in a culturally appropriate manner, and free of manipulation, interference, coercion and intimidation.

6. Stakeholder engagement will involve the following elements: stakeholder identification and analysis, stakeholder engagement planning, disclosure of information, consultation and participation, grievance mechanism, and ongoing reporting to relevant stakeholders.
7. The nature and frequency of stakeholder engagement will be proportionate to the nature and scale of the project and its potential adverse impacts on the affected communities, the sensitivity of the environment and the level of public interest. In order to tailor the engagement to the specifics of the client and the project, it is essential that clients identify stakeholders as outlined below. The requirements of national law with respect to public information and consultation, including those laws implementing host country obligations under international law, must always be met.
8. The client will define clear roles, responsibilities and authority as well as designate specific personnel to be responsible for the implementation and monitoring of stakeholder engagement activities.

## **Engagement during project preparation**

### **Stakeholder identification**

9. The client will identify and document 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).
10. The client will identify individuals and groups that may be differentially or disproportionately affected by the project because of their disadvantaged or vulnerable status (See PRs 1, 5 and 7) and identify whether these individuals or any other stakeholder groups are likely to be excluded from, or unable to participate in, the mainstream consultation process or would require specific measures and/or assistance to

do so. Where relevant, the client will also identify different interests within the identified groups. This may be due to issues such as differing ages, gender and ethnic and cultural diversity, giving rise to different concerns and priorities about project impacts, mitigation measures and benefits. Therefore this may require different and/or separate forms of engagement. 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 so as to determine the level of communication that is appropriate for the project.

### **Stakeholder Engagement Plan**

11. For projects that are likely to have adverse environmental or social impacts and issues, the client will develop and implement a Stakeholder Engagement Plan (SEP) appropriate to the nature and scale or the risks, impacts and development stage of the project. For any project that requires an Environmental and Social Impact Assessment (ESIA), the SEP will apply the disclosure and consultation requirements outlined below in paragraphs 21 to 25. The SEP will be tailored to take into account the main characteristics and interests of the affected parties, and the different levels of engagement and consultation that might be appropriate for affected parties and other interested parties. The SEP will outline how communication with identified stakeholders will be handled throughout project preparation and implementation, including the grievance procedure (see below) envisaged. The level of detail needed will be determined on a case-by-case basis. Resources available for public information and consultation should focus on affected parties, in the first instance.
12. The SEP should document how consultation will be carried out with different groups in the community, identifying what measures will be implemented to remove barriers from participation. These may be based on issues such as gender, age, or other differences, and how the views of differently affected groups

will be documented. Where applicable, the SEP will include differentiated measures to allow the effective participation of those identified as disadvantaged or vulnerable. Dedicated approaches and an increased level of resources may be needed to communicate effectively with such stakeholders. When the stakeholder engagement depends substantially on community representatives,<sup>3</sup> the client will make reasonable efforts to verify that such persons do, in fact, represent the views of affected communities and that they are facilitating the communication process by communicating the information to their constituents and conveying their comments to the client or authorities, as appropriate.

13. Where stakeholder engagement is the responsibility of the relevant governmental authorities, the client will collaborate with the responsible government authority to the extent permitted to achieve outcomes that are consistent with this PR. Where there are gaps between the local regulatory requirements and this PR, the client will identify engagement activities to supplement the formal regulatory process and, where appropriate, commit to supplemental actions.
14. In cases where the exact location of the project is not known, the SEP will take the format of a framework approach as part of the client's overall ESMS, outlining general principles and a strategy to identify affected stakeholders and plan for an engagement process in accordance with this PR that will be implemented once the location is known.
15. Clients with multi-site operations and projects involving general corporate finance, working capital or equity financing will adopt and implement a corporate SEP. The corporate SEP will be commensurate to the nature of the client's business and its associated environmental and social impacts, and the level of public interest. The SEP 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.

### Information disclosure

16. 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 provide them with access to the following information (the Information):
  - the purpose, nature, scale and duration of the project activities
  - risks to, and potential impacts on, stakeholders and proposed mitigation plans
  - the envisaged stakeholder engagement process, if any, and opportunities and ways in which the public can participate
  - the time and venue of any envisaged public consultation meetings, and the process by which meetings are notified, summarised and reported
  - the process by which any grievances will be managed.
17. The Information will be disclosed in the local language(s), as identified in the SEP, and in a manner that is accessible and culturally appropriate. This will take into account specific needs of groups that may be differentially or disproportionately affected by the project because of their status, or groups of the population with specific information needs.

### Meaningful consultation

18. Meaningful consultation is a two-way process. The consultation process with affected parties will be undertaken in a manner that is inclusive and culturally appropriate, and which represents the views and specific needs of various groups as identified in the SEP or made aware to the client during the implementation of the SEP. The consultation will also include, beyond the affected parties, any groups or individuals who have been identified as other interested parties. The client will take into consideration the main language preferences of the affected parties, their decision-making process, and the needs of disadvantaged or vulnerable groups. The client

<sup>3</sup> For example, community and religious leaders, local government representatives, civil society representatives, politicians, teachers, and/or others representing one or more affected stakeholder groups.

will ensure that the consultation will be free of external manipulation, interference, coercion or intimidation.

19. The need for, and nature of, any specific consultation will be determined on the basis of the stakeholder identification, and depending on the nature and scale of the project's potential adverse impacts on affected communities. Where affected communities may be subject to significant adverse future impacts from a project, the client will undertake a process of meaningful consultation in a manner that provides stakeholders 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 will be carried out on an ongoing basis as the nature of issues, impacts and opportunities evolves. If clients have already engaged in such a process, they will provide adequate documented evidence of such engagement.
20. 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**

21. Category A projects<sup>4</sup> could result in potentially significant adverse future environmental and/or social impacts which cannot readily be identified and will require the client to carry out a formalised, participatory ESIA process. Disclosure and consultation requirements will be built into each stage of the ESIA process on a case-by-case basis. Informed participation involves organised and iterative consultation, leading to the client's incorporating into its decision-making process the views of the affected parties on matters that affect them directly, such as proposed mitigation measures, the equitable sharing of benefits and opportunities from projects, and implementation issues.
22. The client will engage in a scoping process with interested parties and identified stakeholders at an early stage of the ESIA process to ensure identification of key issues to be assessed as part of the ESIA. As part of the scoping process, stakeholders should be able to provide comments and recommendations on a draft SEP and other scoping documents.
23. If an environmental and social action plan (ESAP) has been agreed for a project requiring an ESIA, the client will disclose the ESAP to the affected parties in accordance with the SEP.
24. In addition, the consultation process must meet any applicable requirements under national environmental impact assessment laws and other relevant laws. The client must keep the ESIA in the public domain throughout the life of the project, but it may be amended, from time to time, with additional information, or archived following project completion, as long as it is available on request in a timely manner.
25. The client is required to provide regular reports to its interested stakeholders on its environmental and social performance, as a separate publication, or on its web site, as detailed in the SEP. 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.

### **Engagement during project implementation and external reporting**

26. For all projects, the client will provide information to identified stakeholders, on an ongoing basis, appropriate to the nature of the project and its adverse environmental and social impacts and issues, and the level of public interest throughout the life of the project. Additional information may need to be disclosed at key stages in the project cycle, for example prior to start-up of operations, and on any specific issues that the disclosure and consultation process or grievance mechanism has identified as of concern to the affected communities.

<sup>4</sup> A list of indicative Category A projects is provided in Appendix 2 to the EBRD Environmental and Social Policy.

27. If there are material changes to the project which result 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 and disclose an updated ESMP in accordance with the SEP. If these additional adverse impacts on affected communities are significant, the client may, on a case-by-case basis, be required to carry out additional information disclosure and consultation in line with paragraphs 16 to 20.

### **Grievance mechanism**

28. 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 an effective grievance mechanism, process or procedure to receive and facilitate resolution of stakeholders' concerns and grievances, in particular, about the client's environmental and social performance. The grievance mechanism should be scaled to the risks and potential adverse impacts of the project.
- The grievance mechanism process or procedures should address concerns promptly and effectively, in a transparent manner that is culturally appropriate and readily accessible to all segments of the affected communities, at no cost and without retribution. The mechanism, process or procedure must not prevent access to judicial or administrative remedies. 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 affected individuals.
  - Handling of grievances should be done in a culturally appropriate manner and be discreet, objective, sensitive and responsive to the stakeholders' needs and concerns. The mechanism should also allow for anonymous complaints to be raised and addressed.





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