

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,¹ 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 rights² of workers
 - promote the decent work agenda,³ 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.⁴

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.

¹ Occupational health and safety requirements are covered under PR 4.

² 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).

³ 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.

⁴ 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.⁵

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),⁶ 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

⁵ 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.

⁶ 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.⁷ Workers' freedom of movement to and from the employer-provided accommodation shall not be unreasonably restricted.

Retrenchment

19. Prior to implementing any collective dismissals⁸ 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

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

⁸ 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 labour⁹ 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

⁹ 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,¹⁰ 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.

¹⁰ For example, the *Voluntary Principles on Security and Human Rights*.