



Sub-sectoral Environmental and Social Guidelines: Leasing Machinery and Equipment

PROCESS DESCRIPTION

Companies in this sector may be leasing a wide range of machinery and equipment. Some of the more commonly leased items include:

- industrial equipment (production, cleaning, machinery/equipment, cooling systems);
- construction equipment (cement mixers, scaffolding, tools);
- demolition/excavation equipment (machinery/equipment, cranes);
- tools (motors, generators, pumps, chain saws, welding equipment);
- forestry equipment (logging equipment);
- agricultural equipment (harvesters, tractors);
- office and IT equipment (e.g. computers, printers, photocopiers).

Leasing agreements differ based on the type of equipment, form of leasing, national regulations and whether the lessee is a business or individual. Based on these factors, the leasing contract outlines the rights and obligations of each party.

Typically, the leasing company remains the owner of the leased good, but collateral duties of the owner, such as maintenance, repair, and insurance, may be contractually assigned to the lessee. The terms of the lease agreement generally determine the types and levels and types of risks facing the leasing company.

KEY ENVIRONMENTAL, HEALTH AND SAFETY RISKS/LIABILITY ISSUES

Contractual Agreement

The leasing contract outlines the responsibilities and liabilities of each party to the agreement.

The leasing company should include information on appropriate and prohibited use of the machinery/equipment as well as customer guidance on safe use of the product. The contract must be understood by both parties prior to signing the lease. Note that the local customer protection laws may prohibit the leasing company from contracting away some or all of the above responsibilities.

Environmental product standards

National legislation may include a variety of environmental product standards which can be highly prescriptive.

The operation of the leased machinery and equipment may release pollutants or emissions, which have potential environmental and health and safety impacts. These may include PCBs, ozone-depleting substances, greenhouse gases, asbestos containing materials and radioactive sources, all of which pose environmental and human health hazards. Environmental product standards may restrict the concentration or level of these substances contained in the product or released during use. Certain hazardous materials may require permits from local or national regulatory bodies.

Examples of other environmental product standards include: maximum noise, exhaust emission standards, hazardous substance content, construction/integrity specifications, specifications for energy efficiency, or minimum content of recyclable materials. Leasing companies should ensure their products meet the latest regulatory standards in the territories/jurisdictions they lease in.

Older or worn out equipment may not meet current or pending regulatory requirements. Machinery and equipment should be evaluated to identify potential compliance, upgrade or disposal costs. The leasing company could also be held accountable for environmental or health consequences associated with poorly maintained or outdated equipment. Furthermore, in certain jurisdictions, the leasing company can be held liable to pay for remediating pollution or contamination caused by leased machinery, typically in circumstances where the lessee ("polluter") has ceased to trade.

Regulatory requirements are rising in many parts of the world. For example, the European Union restricts the use of hazardous substances in electronic and electrical equipment through the Restriction of Hazardous Substance (RoHS) Directive. In addition, emissions to air and noise are restricted from a range of equipment such as power tools and mobile generators. Other



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countries may have similar or emerging legislation to increase the environmental and health and safety performance of these goods.

Product and Operational Safety

The use and operation of leased machinery and equipment may raise a range of potential health and safety risks for the operator. These vary by type of machine and equipment.

Machinery and equipment for lease must be both suitable for its intended purpose and safe to use without significant risk when correctly operated for its intended purpose.

This places considerable responsibility on the leasing company to ensure that the leased machinery/equipment is maintained, supplied in a safe condition and that the lessees are provided with all relevant information to enable them to operate it in a safe manner.

Leasing companies are responsible for including all relevant information on product safety standards and safe operation of machinery and equipment as part of the leasing agreement, unless local legislation requires otherwise.

The leasing company also owes a duty of care to take reasonable steps to confirm that the lessees are competent to operate the equipment in a safe manner unless local legislation provides otherwise

Failure to exercise this duty of care may lead to legal and financial penalties as well reputational damage.

Climate Change Adaptation

Climate change is widely regarded as one of the greatest challenges facing the world today. The scientific community has reached a broad consensus on the role human society has played in accelerating climate change through the release of greenhouse gasses associated with activities such as burning fossil fuels and deforestation. This has led to growing action on and expectations for climate change mitigation and adaptation. Increasingly, businesses and consumers are demanding more environmentally

friendly alternatives to traditional goods and services.

Companies across industrial sectors face climate change related physical, regulatory and market risks. Growth in the use and demand for green technology, safer and greener materials and increased energy efficiency are important trends seen in the manufacture and purchase of equipment and machinery. Leasing companies should consider these factors when purchasing new products.

Companies with older product portfolios should evaluate the value of these products in the current and future market as well as the potential compliance costs associated with upgrades or disposal.

Oil and Chemical Spillage

During the servicing and maintenance of machinery/equipment, spillages of oil and chemicals may occur. Depending on the nature of the local hydrology and underlying geological conditions, chronic spillage may result in soil, groundwater and/or surface water contamination.

Occupational Health & Safety

Where the leasing company is responsible for maintenance and cleaning, its employees may be exposed to occupational health and safety risks such as hazardous chemicals and cleaning agents, dangerous machinery and other workplace risks.

Preventative and protective measures should be in place for the elimination, control and minimisation of health and safety risks. This encompasses a range of measures such as using less hazardous chemicals, ensuring appropriate ventilation, the design of safe working environments and procedures, training and provision of protective equipment.

These measures should be based on analysis of the health and safety risks present and appropriate to the machinery and equipment leased.



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Waste Disposal

The main source of waste from a machinery and equipment leasing company occurs during maintenance and servicing activities. Some of these waste types are defined as hazardous under local regulations and require specific procedures for handling and disposal.

End-of-life Disposal

The disposal of end-of-life machinery and equipment can, if done improperly, have serious social and environmental impacts. These products and their components contain a variety of substances and materials, including hazardous materials, ferrous and non-ferrous metals, plastics and oils. In addition to the consequences of increasing waste in landfills, improper disposal can result in the leaching of hazardous materials into soil and water. This can have environmental and human health impacts. Legal and illegal transport of discarded machinery and equipment to developing countries has led to human health consequences and environmental damage in parts of Africa, China and India.

If the leasing company sells off old machinery/equipment for scrap, the company may be at risk of subsidiary liabilities if the waste contractor does not dispose of the material in an environmentally acceptable manner.

Legislative requirements may govern the end-of-life disposal of machinery and equipment. In Europe, this is taking place through its Waste Electrical and Electronic Equipment (WEEE) Directive, which the European Union uses to govern the recycling and disposal of electronic and electrical goods. Regulatory developments such as this are likely to be forthcoming in other countries. In addition, such regulatory developments may affect leasing companies operating in multiple locations or their geographically diverse suppliers and customers.

OTHER ENVIRONMENTAL, HEALTH & SAFETY RISKS/LIABILITY ISSUES

Historical contamination status of site

Start-up leasing companies or those moving premises need to conduct environmental due diligence on proposed facilities to ensure that they are not significantly contaminated and to seek advice on potential clean-up requirements according to existing or planned local legislation. This is particularly important where companies intend to lease derelict/rehabilitated land for storage of machinery.

Insurance Certification

Some equipment may need to be inspected by insurance brokers prior to being leased, or to any repairs being carried out on the equipment (e.g. pressurised vessels) or on a regular prescribed basis. If the necessary insurance inspections are not carried out and documented, the leasing company may be liable for any incidents that occur.

KEY SOCIAL, LABOUR AND COMMUNITY RISKS/LIABILITY ISSUES

Working Conditions and Labour Standards

Leasing companies may have their own employees for the maintenance and repair of their equipment and machinery. Such companies are therefore exposed to reputational and legal risks where labour standards and working conditions are sub-standard.

Labour standards are rules that govern working conditions and industrial relations. They may be formal, such as national level regulation and international agreements, or informal, expressed through norms and values. In general, developed countries have more robust labour standards than developing countries where the associated risks are higher. The commonly accepted rights and principles, enshrined in the International Labour Organisation's conventions, are the right to collective bargaining, elimination of forced or compulsory labour, abolition of child labour and elimination of all forms of discrimination. In addition to fair wages and working hours and



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acceptable working conditions should be expected.

Controversial Use of Equipment/Machinery

Leasing companies may face criticism and protest from community groups or NGOs against the use of their machinery or equipment to carry out perceived or real human rights violations, crimes, or environmentally damaging activities such as illegal deforestation. Leasing companies with branded equipment and machinery may face reputational risk issues if their products are used for controversial purposes.

FINANCIAL IMPLICATIONS

Regulatory Risks

Companies may face fines or penalties if they are found to be negligent in maintaining appropriate environmental and product safety requirements, such as pollution standards. Companies slow to adapt also face compliance costs associated with increasingly stringent regulations with respect to environmental and social standards.

Litigation

Leasing companies face the risks of civil suits due to a number of environmental and social risks. These may include failure to clearly detail responsibilities in the leasing agreement, failure to meet regulatory or legal obligations, and/or negligence causing injury or harm. Suits may be brought by individuals, communities, customers or government and can have significant financial implications.

Loss of Business

The reputation risk associated with poor environmental and social management can result in loss of business and social licence to operate. For example, machinery not maintained according to product standards may not be authorised for lease, resulting in loss of business.

Remediation

Costs may be incurred for clean up/remediation of soil and groundwater contamination which occurred in the course of the leasing business, e.g. that caused by improper dumping of redundant equipment.

IMPROVEMENTS

Environment, Health & Safety

- Conduct regular reviews of the company's product lines to ensure they meet the latest and pending regulatory requirements for product safety and environmental standards. Evaluate products for potential impact from climate change related market trends that might affect demand for specific products.
- Review the intended use of the product prior to leasing where machinery/equipment may be at higher risk of being used for controversial purposes.

Labour, Social and Community

- Review the intended use of products being leased prior to release. Identify whether the lessee faces material unresolved environmental or social issues and consider these factors in deciding to lease products to such businesses.

GUIDE TO INITIAL DUE DILIGENCE SITE VISITS

The issues and risks associated with an equipment leasing site will vary depending on the contractual obligations of the leasing company, the size of operation, types of equipment, site location, country of operation and quality of management.

Conduct a review of the leasing company's policies and leasing agreements. If the leasing company owns multiple leasing sites, select one site with potentially higher environmental and social risks based on initial discussions.



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A due diligence visit should consist of a tour of the entire site. When assessing the site, consider the following issues:

Environmental, health and safety

- If the site is being used as collateral for the loan, check current and past uses of the site and neighbouring properties. This may reveal material environmental or social issues to be considered by the current management. For example, if the site was previously used by heavy industry, the property may be contaminated.
- Has the leasing company has conducted pre-acquisition environmental and social impact assessments for all its sites? If these are available, review them for any significant issues and follow up on any recommended actions by the company.
- Does the company have an environmental and health and safety policy in place? Does the business plan contain line items for improvements in this area?
- Do the lease agreements contain environmental, health and safety and social clauses addressing safe and appropriate operation, liability for environmental damage, accidents and community impact?
- Are there any outstanding claims for personal injury/loss of life and property damage from past accidents?
- Have there been any recent (within the last three years) incidents on site such as serious injuries, fires / explosions, spills? Is there insurance cover in place for such incidents?
- Does the company have waste management policies and procedures in place related to its product servicing and cleaning work? Are waste storage areas free of debris and covered to prevent leakage?
- What is the standard of housekeeping on site? Look for evidence that the walking and working surfaces are kept clean and dry.

- Check that staff wear appropriate personal protective equipment, For example, overalls, gloves or eye protection for cleaning or maintenance activities.
- Are chemicals and cleaning agents stored appropriately and contained on a concrete floor within a bunded area?
- Check signage around the site. Does it convey the health & safety risks? Are fire exits clearly marked?
- Check the age and condition of the equipment being leased. Look for signs of wear and tear, degradation, leaks, etc.
- Have the premises been inspected recently (within the past 2 years) by the regulatory authorities for health, safety and environment? What was the result?
- Do the policies and procedures for end-of-life disposal comply with local regulation? Do they follow best practice environmental standards?

Social, Labour and Community

- Check that labour standards, contracting and remuneration are in line with national law and are consistent with the average for the sector. Check that these are applied to employees, key contractors and suppliers.
- Check that working conditions are of adequate quality – working areas not cramped, access to drinking water, areas well lit, etc.
- Check that hours worked, including overtime, are recorded and that staff receive written details of hours worked and payment received.
- Check that there are no illegal labour practices such as child or forced labour, prevention of the right to collective



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bargaining, or discrimination (by interviewing a sample of the workers if possible);

- Has the leasing company received inspections from the local labour inspectorate in the previous three years? Have these resulted in any penalties, fines, major recommendations or corrective action plans?
- Does the leasing company have a grievance mechanism which allows employees to raise workplace concerns?
- Are employees free to form, or join, a worker's organisation of their choosing?

ACTION PLANS

Action plans should consider the risks described above as well as the results of any due diligence visits and assessments. The content of the action plan should also consider the level of environmental and social risks associated with the products being leased. An action plan may contain the following:

Environment, Health & Safety

- Implement or upgrade environmental, health and safety policies and procedures suitable to the types of products being leased.
- Conduct regular reviews of the company's waste management plan, especially with respect to hazardous substances and end-of-life products.
- Include in the standard leasing agreement(s), the duties of the leasing company and lessee regarding operation and maintenance of machinery/equipment.
- Incorporate into the contractual agreement, sufficient customer information regarding appropriate and safe use of the leased machinery/equipment.
- Use safer alternatives to hazardous chemicals used in cleaning and maintenance activities.

- Implement a spill prevention and control programme in maintenance areas.
- Maintain good housekeeping practices at all times to ensure a safe working environment.
- Provide relevant personal protective equipment which is required to be worn for the safe use of machinery in accordance with any applicable local legislation.
- Fit additional safety components to the machinery that is being leased, for example machine guarding, safety catches, provision of local exhaust ventilation, providing this is done following a suitable risk assessment and in accordance with any applicable local legislation.
- Implement a formal inspection regime for leased equipment (e.g. check in, check out procedures) during use and prior to selling on to third parties, to ensure the equipment complies with regulatory requirements and safety standards.
- Dispose of wastes in accordance with regulatory requirements, taking particular care in the case of hazardous wastes.
- Facilitate recycling and reuse in the disposal of end-of-life products and components where technically and economically viable. Ensure disposal is conducted in an environmentally and socially safe manner.

Labour, Social and Community

- Develop or improve labour standards for own and third-party employees, contractors and suppliers to at minimum be in line with national regulations and international norms.



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REFERENCES AND ADDITIONAL SOURCES

European Commission - Waste Electronic and Electrical Equipment - http://ec.europa.eu/environment/waste/weee/index_en.htm

Inter-governmental Panel on Climate Change - <http://www.ipcc.ch/>

International Labour Organisation - <http://www.ilo.org/global/lang-en/index.htm>