

GUIDANCE FOR CONSULTANTS ON THE CONTENTS OF A REPORT FOR AN INDEPENDENT ENVIRONMENTAL AND SOCIAL DUE DILIGENCE REVIEW

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INTRODUCTION

Under Principle 7 of the Equator Principles (EP), an Independent Environmental and Social Due Diligence Review (Review) by an Independent Environmental and Social Consultant (the ‘Consultant’) is required for all Category A and, as appropriate Category B Projects. This guidance is applicable to Project Finance, Project-Related Corporate Loans, Project Related Refinance, Project-Related Acquisition Finance and Bridge Loans (as appropriate). The Consultant must be able to demonstrate expertise in evaluating the types of environmental and social risks and impacts relevant to the Project.

The Consultant undertaking the Review plays a critical role in an Equator Principles Financial Institution’s (EPFI) understanding of when a Project does or does not meet the Applicable Environmental and Social Standards (as noted in Principle 3 of the EP, and hereafter referred to as ‘Applicable Standards’), and if not, whether gaps may be addressed through an EP Action Plan (AP)¹ to bring the Project into compliance with the EP.

This guidance document is intended to be used by Consultants to support their engagement with EPFIs when undertaking a Review as required under Principle 7 of the EP. It can also be used by EPFIs to assess whether a Review delivered by a Consultant is appropriate. It should be noted that EPFIs may have additional requirements for a Review which are specific to the EPFI and/ or a particular Project and are not covered in this document.

WHAT SHOULD A REVIEW REPORT CONTAIN AS A MINIMUM?

Whilst it is recognised that Consultants have their in-house reporting formats and styles, the key components that should be in a Review report are detailed below.

Component	Contents
Introduction	<ul style="list-style-type: none"> • Set out the objectives, scope and approach of the Review and specify any relevant limitations (e.g. information gaps). • This should include clear identification of ‘the Project’ with a suitable description including: items to provide a sense of scale (e.g. production capacity, number of people employed, area of site), any associated facilities² and the location, the context and the level of influence the Project has on these facilities, the timelines and phases throughout the Project Development Lifecycle, and the approach and methodology, (e.g. desktop review, site visit, interviews).

¹ As defined in EP4 (dated July 2020).

² Associated facilities are those as described under International Finance Corporation (IFC) Performance Standard 1.

Component	Contents
Standards	<ul style="list-style-type: none"><li data-bbox="470 371 1414 497">• The report should clearly name 'the Applicable Standards' that are being used as the reference framework against which the Review of the Project is being undertaken.

Component	Contents
Evaluation	<ul style="list-style-type: none"> • The Review must include a summary of the main environmental and social risks and potential impacts of the Project. • The Review must include the evaluation of the Environmental and Social Impact Assessment (ESIA), Environmental and Social Management Plan (ESMP), Environmental and Social Management System (ESMS), Stakeholder Engagement Plan (SEP) and documentation, and grievance mechanism against the Applicable Standards. • The Review must include an evaluation of assessments of potential adverse Human Rights impacts and climate change risks as part of the ESIA or other Assessment (as required by EP4 and other Applicable Standards). • Adequacy of the management, mitigation, monitoring and compensation measures, including the ESMS, the ESMP, the SEP and the thematic action or management plans (e.g. corrective action plan, Resettlement Action Plan (RAP), Indigenous Peoples Plan (IPP)). • Adequacy of the cumulative impact assessment (as required by the Applicable Standards) and transboundary impacts assessment, if applicable. • Applicability and adequacy of the assessment of associated facilities. • In the case of existing facilities, assessment of the Project's environmental and social performance based on site visit observations (if required) and records/documentation review. • The Project's capacity and resources to successfully manage the environmental and social risks and impacts, and to address the identified gaps in accordance with the Applicable Standards, or if additional capacity and resources are required. • The Review should aim to demonstrate in a comprehensive, clear and transparent manner how the Project does or does not meet the requirements of the Applicable Standards. There are many ways of presenting this, for example in the form of tables, lists, or a narrative. The format chosen should clearly demonstrate compliance with, or identify gaps against, the Applicable Standards, and be organised by main topic (e.g. E & S Assessment, Stakeholder Engagement, monitoring). An example format for a gap analysis is shown in Exhibit I. • Where gaps against the Applicable Standards are identified, the Review should provide clear recommendations to address the gaps and identify whether the gaps represent a significant issue and can (or cannot) be closed to achieve compliance.

Component	Contents
EP Action Plan (AP)	<ul style="list-style-type: none"> Where gaps against the Applicable Standards are identified, the Review should include a stand-alone EP AP that aggregates the gaps identified and can be easily incorporated into the loan documentation. Further guidance on the structure of the EP AP is detailed further on page 5 and in Exhibit II.
Appendices	<ul style="list-style-type: none"> It may be appropriate to include relevant appendices (e.g. photologs, drawings/figures, list of documents reviewed) to enhance and support the understanding of the Project and the Review.
Categorisation	<ul style="list-style-type: none"> The Review should include recommendations on the categorisation of the Project. Further guidance on categorisation is provided below.

SHOULD CATEGORISATION OF A PROJECT BE INCLUDED IN THE REVIEW REPORT?

Yes. Whilst an EPFI is ultimately responsible for the selection of the Project category, it is often informed by the categorisation provided in the Review. Therefore, a rationale for the categorisation of a Project, in accordance with Principle 1 of the EP, should be included in the Review. It is also important that a robust description and justification is included so the rationale for the categorisation of a Project is clearly conveyed.

WHAT SHOULD BE DONE WHEN A SIGNIFICANT DEVIATION FROM THE APPLICABLE STANDARDS IS IDENTIFIED?

The Consultant should clearly highlight any deviations that represent a significant and unmitigated risk/impact to human health and/or the environment and should indicate the magnitude and frequency of each deviation (e.g. once a year, with localised impacts, continual with significant impacts). Additionally, the Consultant should provide a full and detailed justification for each deviation and indicate whether the differing levels of performance and mitigation would still be protective of human health and the environment. This will assist in formulating the contents of the EP AP (as described below).

HOW SHOULD AN EP ACTION PLAN BE STRUCTURED?

The EP AP is a critical part of the Review and should draw together the identified gaps against the Applicable Standards that need to be addressed in a consolidated manner and should be in a form that facilitates its incorporation into the loan documentation.

The EP AP should build on the Assessment Documentation (e.g. Environmental and Social Impact Assessment 'ESIA'), the ESMP, the ESMS, and the Stakeholder Engagement process to enhance (not replace) them and bring the Project in line with the Applicable Standards.

In order to accomplish this, the most appropriate way to present an EP AP is in table format.

The EP AP should, at a minimum:

- diligently aggregate and describe the gaps identified against the Applicable Standards;
- describe and prioritise the actions required to address the gaps;
- set realistic deadlines for the completion of the actions required (with the emphasis on achieving compliance as soon as possible); and
- indicate the documentation to be produced or how completion will be monitored.

Additional information (e.g. responsibility for the implementation of each action) may be included in the EP AP where appropriate.

The EP AP descriptions should be succinct (but suitably detailed), accurate and clear, and be placed in a separate column referenced against the Applicable Standards so that they can be used as a standalone document from the main Review report.

The reasons for producing a standalone EP AP are:

- it is easier to covenant into facility documentation by including the EP AP only;
- it is easier to use by the Project personnel (e.g. Sustainability Manager, EHSS Manager);
- it is more straightforward for the Consultant undertaking monitoring to assess progress and compliance; and
- it is simpler for the EPFI to verify ongoing compliance.

An example template for an EP AP is provided in Exhibit II.

When producing an EP AP, the following should also be noted:

- Issues with associated high risks (e.g. off-site impacts, potential for regulatory action) should be prioritised in the EP AP.
- The need for additional staff, skills, and consultancy support to build systems and develop capacity to meet the Applicable Standards should be highlighted.
- Where appropriate, larger or longer-term actions should be further broken down into milestones to facilitate the monitoring of progress in achieving them.

WHAT ARE THE NEXT STEPS AFTER THE DRAFT REVIEW REPORT HAS BEEN ISSUED?

If required, the EPFI may organise a workshop or conference call with the Consultant and the Sponsor (if required) to discuss:

- The key findings of the draft Review Report, including the EP AP;
- Potential reputation risks associated with complaints from NGOs, communities, media, or other stakeholders; and
- Any outstanding issues and recommended actions or next steps.

This provides an opportunity for the EPFI to ask questions and receive clarifications from the Consultant. For the purposes of independence, it is expected that the EPFI will have had access to the document at the same time as, or prior to, it being provided to the Sponsor. A copy of the draft Review report should be shared³ with the Project Sponsor for their review and comment and to ensure accuracy. Furthermore, there may be additional information that the Sponsor wishes to share with the Consultant.

The output should be a set of comments provided to the Consultant that then allows them to move to issuing a final report.

WHAT IF THERE ARE COMMENTS THAT WOULD AMEND THE FINDINGS OF THE REPORT?

The Review report is produced by an independent party, and therefore the findings should only be changed if additional information or evidence is provided to support a change. Comments or requests that compromise the Consultant's professional opinion, or the report's accuracy or comprehensiveness will not be considered. If this situation occurs the Consultant should contact the relevant environmental and social risk personnel within the EPFI.

WHAT STEPS ARE TAKEN TO PREPARE THE FINAL INDEPENDENT ENVIRONMENTAL & SOCIAL DUE DILIGENCE REPORT?

The Consultant will update the draft Review report to reflect the comments received from the EPFI and the Sponsor, and will issue the final Review report. A systematic process for gathering comments and conveying them in a consolidated way to the Consultant should be adopted, to avoid providing conflicting comments and to ensure clarity and transparency in the comment process.

³ The Draft Review Report is typically shared with the Project Sponsor by the EPFI but can also be shared by the Consultant if agreed by all parties.



EXHIBIT I: EXAMPLE FORMAT FOR A GAP ANALYSIS

An EPFI can, at its discretion, request a gap analysis in a modified or different format, however they are encouraged to request as much detail as possible from the Consultant as per the example below.

Paragraph	Requirement	Findings	Gap
Performance Standard 2 - Human Resources Policies and Procedures			
8	The client will adopt and implement human resources policies and procedures appropriate to its size and workforce that set out its approach to managing workers consistent with the requirements of this Performance Standard and national law.	Construction Phase Operational Phase	(Gap description and whether significant).
9	The client will provide workers with documented information that is clear and understandable, regarding their rights under national labor and employment law and any applicable collective agreements, including their rights related to hours of work, wages, overtime, compensation, and benefits upon beginning the working relationship and when any material changes occur.	Construction Phase Operational Phase	(Gap description and whether significant).

EXHIBIT II: EXAMPLE EQUATOR PRINCIPLES ACTION PLAN TEMPLATE

Action Item	Related Standard	Action Description	Documentation/ Indicator of Completion	Required completion date
1	PS1	Design an Environmental and Social Management System (ESMS) for the Project, for both the Construction and Operation Phases, to ensure ongoing compliance with requisite environmental, health and safety and social standards (i.e., adopted Environmental, Social, Health and Safety Standards (ESHS)), company commitments (as outlined in ESIA), and to meet [host country] legal requirements, the IFC Performance Standards, and the World Bank Group Environmental, Health and Safety (EHS) Guidelines.	<ul style="list-style-type: none"> - ESMS for the Construction Phase developed and implemented - ESMS for the Operation Phase developed and implemented 	<ul style="list-style-type: none"> - Construction Phase ESMS to be implemented by [MMYYYYY]. - Operation Phase ESMS to be implemented prior to the start of operations.

Action Item	Related Standard	Action Description	Documentation/ Indicator of Completion	Required completion date
2	PS1	Design and implement a Public Consultation and Disclosure Plan or Community Engagement Plan to ensure: a) Consultation and disclosure of ESIA and Management Plan documentation; and b) Ongoing community engagement during Construction and Operation Phases.	Public Consultation and Disclosure Plan or Community Engagement Plan developed for the Construction and Operation Phases.	a) Prior to construction. b) Ongoing.
3	PS1	Establish, and report on progress, related to the Project's Grievance Mechanism system during both Construction and Operation Phases	- Grievance mechanism established. - Grievance reports available.	- Grievance mechanism established by [MMYY]. - Reports available and reviewed quarterly during Construction Phase, and annually thereafter.
4	PS1	Incorporate the requirements of IFC Performance Standard 2 into a Human Resources policy.	Human Resources policy updated.	By [MMYYYY].

Action Item	Related Standard	Action Description	Documentation/ Indicator of Completion	Required completion date
5	PS5	<p>Prepare a Resettlement Action Plan (RAP) to manage land acquisition-related impacts for:</p> <p>a) The local road upgrade to the plant site; and</p> <p>b) The corridor for the high-tension transmission line.</p>	<p>a) RAP prepared for the road upgrade.</p> <p>b) RAP prepared for the transmission line.</p>	<p>a) Prior to start road enlargement.</p> <p>b) Prior to Construction of the transmission line.</p>
6	PS1	<p>Submit monitoring reports relating to compliance with applicable standards and monitoring requirements including air emissions, ambient air quality, noise and vibrations, effluent quality, groundwater quality and level in community wells and dedicated monitoring wells, and solid wastes.</p>	<p>Monitoring reports.</p>	<p>Quarterly during Construction, and six monthly during Operation.</p>