

# In-Country Consultation on ADB's Draft Environmental and Social Framework (ESF)

*Civil Society Organizations from Indonesia*

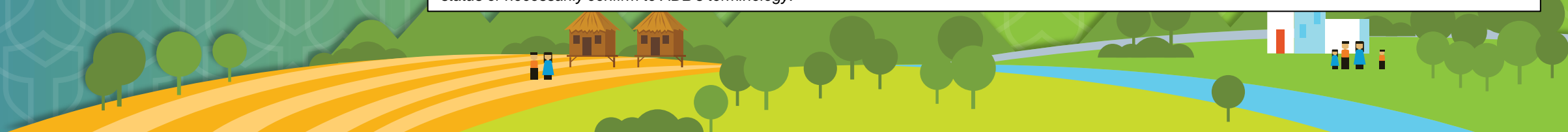
13 December 2023 | Hybrid Meeting



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# Meeting Protocol

The Safeguard Policy Review and Update consultations provide opportunities for stakeholders to express their views and opinions on ADB's environmental and social safeguards in the most meaningful and safest manner possible. Our session today is for CSOs only and will not involve any government representative in person or online. ADB is implementing a protocols to confirm this.

Participants are encouraged to articulate their inputs and concerns in our sessions. There will be no video recording, and cameras set up in the hall will be used for visibility in Zoom only.

All types of respectful feedback are welcome and there is a mechanism to provide feedback anonymously (Mentimeter, written feedback). These will not be used for the purposes of retaliation, abuse, or any other kind of discrimination. ADB has a “no tolerance” policy for retaliation in this consultation process.

A written summary of the meeting will be prepared and shared with participants after the event. ADB will not attribute specific comments to individuals. However, if you would like a specific comment or statement attributed to you, you may inform us.

If you have any issues or concerns on the confidentiality, potential risks, abuse, or any kind of discrimination during the consultations, please contact the Secretariat at [safeguardsupdate@adb.org](mailto:safeguardsupdate@adb.org).

# ICC Session Objective

1. Provide background and introduction to the draft Environmental and Social Framework (ESF):
  - Background and overview of the draft ESF
  - Overview of the proposed Environmental and Social Standards
  - Overview of E&S Requirements for Financing Modalities and Products and Prohibited Investment Activities List (PIAL)
2. Seek feedback on the draft ESF including implementation challenges

# Agenda

9:10 am	Welcome Remarks, Opening Message
9:15 am	Session 1: Overview of ESF
9:35 am	Session 2: Overview of ESS 1 and ESS 10
10:50 am	Session 3: Overview of ESS 5, ESS 7, and ESS 8
1:20 pm	Session 4: Overview of ESS 3, ESS 6, and ESS 9
	Session 5: Overview of ESS 2 and ESS 4
3:55 pm	Session 6: Overview of E&S Requirements for Financing Modalities and Products and PIAL Overview of use of Borrower Systems and Common Approach
5:20 pm	Recap and Closing

# Welcome Remarks

*Jiro Tominaga, Country Director,  
Indonesia Resident Mission, ADB*



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# Session 1: Background and Overview of ESF

***Bruce Dunn***

***Director, Policy and Technical Services, Office of Safeguards,  
ADB***



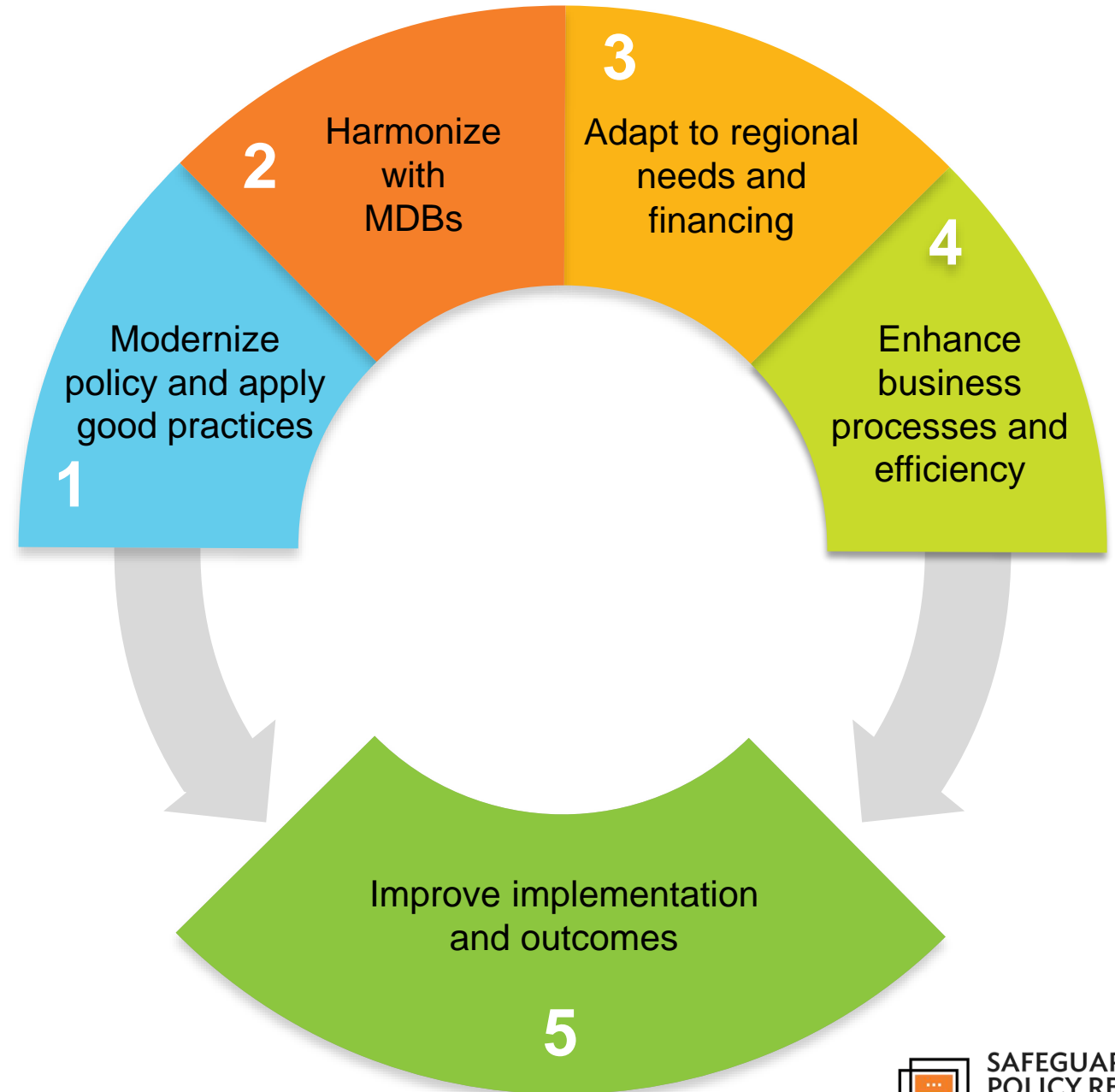
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# IED's Recommendations on SPS Effectiveness

1. **Modernize the SPS, increasing its relevance and customizing it for both sovereign and private sector financing**, by building on evidence from the SPS implementation experience and recent safeguard policy updates at other MFIs.
2. **Adopt a new approach in the policy to strengthening borrower systems**, with a view to a more systematic improvement and pragmatic use of country systems.
3. **Introduce a new safeguard implementation framework**, including an updated oversight structure and reporting lines that are strengthened and contribute to more consistent safeguard outcomes across ADB.
4. **Underpin the safeguards policy and implementation framework with sufficiently detailed policy guidance** (e.g., Operations Manual and Staff Instructions) **and a range of operational guidance documents and good practice notes** with established mechanisms for regular reviews and updates.
5. **Assess the necessary staffing complement** to deliver the safeguards implementation framework and **strengthen skills**, empowering staff to deliver better safeguard outcomes.

# Objectives of Safeguard Policy Review and Update





# Policy Preparations Undertaken

## 1. 18 thematic studies completed

- ✓ Policy architecture, environment, social and gender issues.
- ✓ Benchmarking ADB and MDBs
- ✓ Implementation experience and challenges

## 2. Stakeholder engagement

- ✓ **3600+** individuals consulted in total
- ✓ **80** online consultation events on thematic studies
- ✓ **10 DMCs** visited/participated for in-country consultations
- ✓ **56** private sector clients consulted
- ✓ **9** project consultations with directly affected people
- ✓ **10+** focus group discussions on gender/SOGI issues
- ✓ Established Indigenous People's Advisory Group
- ✓ Dialogue with other MDBs

## 3. ADB Staff and Board Engagement

- ✓ Steering Committee, Lead Coordination Group & Technical Working Groups
- ✓ Informal Board Seminar (2020), Deep-Dives (2021 and 2022), bilateral meetings



### Developing Member Country (DMC) in-country consultation

1. Tonga
2. Papua New Guinea
3. Mongolia
4. People's Republic of China
5. Pakistan
6. Republic of Marshall Islands
7. Philippines
8. India
9. Indonesia
10. Georgia

## Stakeholder Engagement and Consultation



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# High Level Summary of Stakeholder Feedback



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## DMCs

- Recognize the importance of safeguards.
- Still some implementation challenges with the SPS
- Avoid unnecessary transaction costs
- Support closer alignment with country safeguard systems (CSS)
- Greater consistency between MFI policies and procedures would reduce transaction costs
- Need improved guidance & enhanced capacity support from early stages for country and project

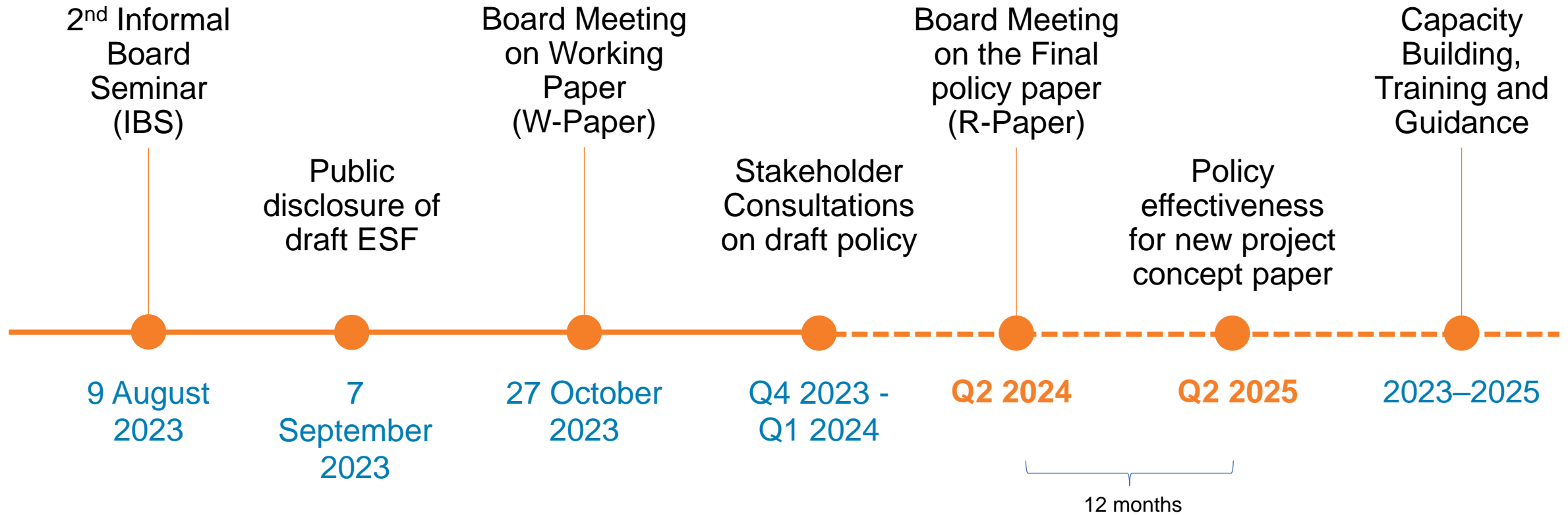
## CSOs

- Don't weaken / water down safeguards
- Concerns on gaps and potential use of CSS
- Enhance stakeholder engagement and disclosure.
- Ensure safe space and address risks of retaliation.
- Concerns on safeguards for financial intermediaries
- Enhance focus on climate change, biodiversity, gender, vulnerable groups, sexual orientation and gender identity, labor issues, Indigenous People
- Include human rights due diligence

## Private sector

- Convergence with International Finance Corporation (IFC) Performance Standards and Equator Principles.
- Closer alignment with CSS and national requirements
- Align disclosure requirements with IFC and other multilateral financing institutions (MFIs) (e.g., reduce 120-day disclosure for EIAs to 60 days)
- Greater clarity & guidance on requirements; provide technical support during preparation and implementation

# Preparation Schedule



# Overview of the ESF

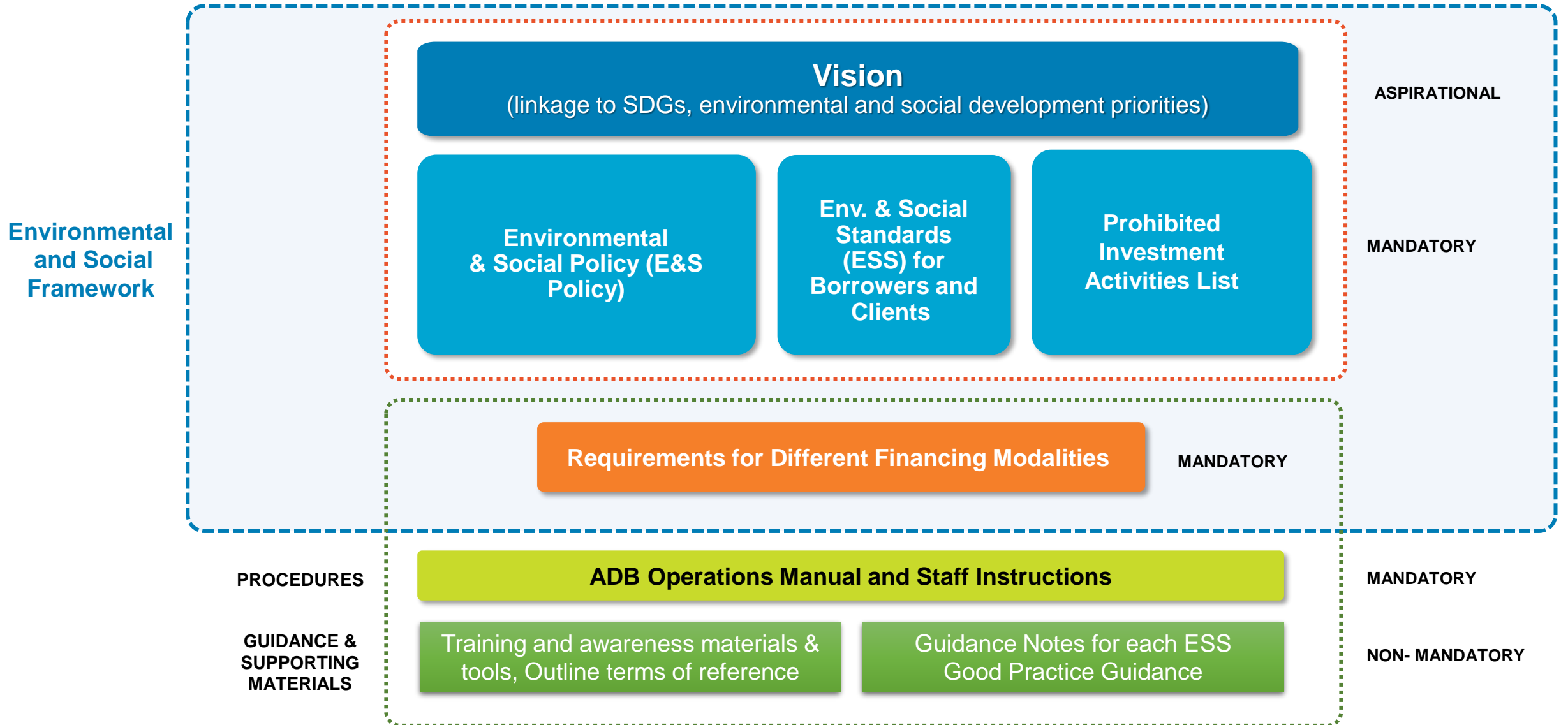


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# Proposed Policy Architecture

## Environmental and Social Framework





# Environment and Social Policy (E&S Policy)

## ADB's Responsibilities



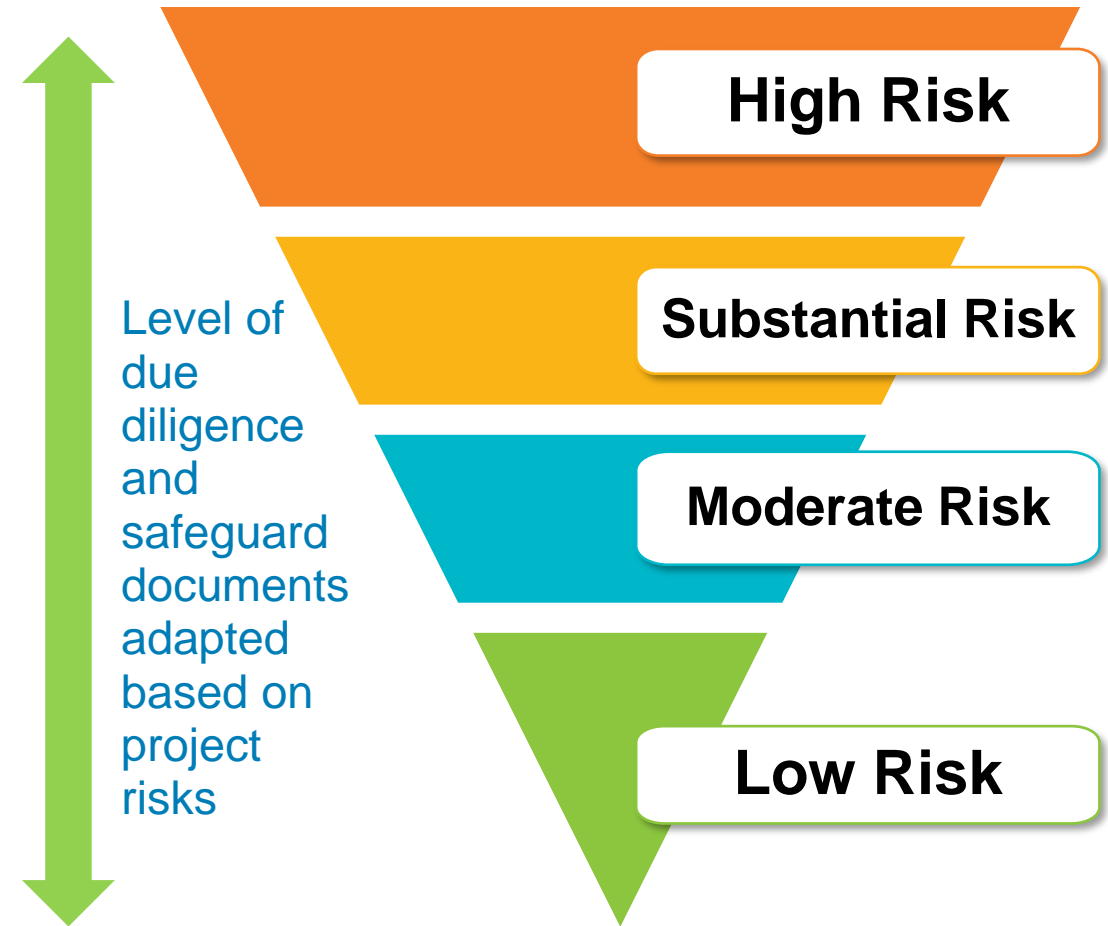
The E&S Policy sets out: (i) policy objectives; (ii) scope; and (iii) ADB responsibilities, including:

1. Preparing **environmental and social (E&S) risk classification** in consultation with borrowers/clients
2. Reviewing of **E&S assessments** undertaken by a borrower/client, proportionate to the nature and scale of risks
3. Assisting borrowers/clients in identifying **assessment and management tools** appropriate to the E&S risks
4. Supporting borrowers/clients with **strengthening of their E&S systems and performance**
5. Agreeing with borrowers/clients on the **conditions** under which ADB will consider financing a project, which will be set out in an Environmental and Social Commitment Plan and/or Environmental and Social Action Plan (ESCP/ESAP)
6. Supporting borrowers/clients to carry out **early and continuing meaningful consultation** with relevant stakeholders and provide project-level grievance mechanisms, consistent with the Environmental and Social Standards (ESSs)
7. Reviewing and **monitoring the E&S performance** of a project throughout a project life cycle in accordance with the ESSs and the ESCP/ESAP

# Environment and Social Policy

## A New Approach to Risk Classification

- » **Risk screening determines standards triggered**, risks to focus on, and resource needs. Not all standards may be triggered by a project
- » **Integrated environmental and social risk screening and classification:**
  - **Direct, indirect and cumulative** impacts
  - **Inherent** risk factors in different sectors
  - **Vulnerability and sensitivity** of people and environment
- » Also considers other risks (New)
  - **Contextual risk factors**
  - **Performance / capacity related risk**
- » There will be one risk classification assigned to a project (no longer a separate classification for ENV, IR and IP)
- » Safeguard documents will present the basis for risk classification, including risks related to individual standards



**Simplified comparison to SPS categorization**  
Cat A (=High); Cat B (=Substantial or Moderate); Cat C (= Low)

### Disadvantaged or Vulnerable Groups

*Individuals or groups by virtue of their age, gender, ethnicity, religion, disability, social, civic or health status, sexual orientation, gender identity, economic disadvantages or indigenous status, and/or dependence on unique natural resources, may be more likely to be at risk of being adversely affected by project impacts, and/or more limited than others in their ability to take advantage of a project's benefits, and/or excluded from/unable to participate fully in consultation processes and benefit sharing*

1. **Disadvantaged or vulnerable groups** should not be disproportionately impacted by a project
2. **Projects should promote non-discrimination & ensure “disadvantaged or vulnerable”** groups benefit equally from a project
3. **Vulnerability is multifaceted and intersectional relationships should be considered.** E.g., relationships between poverty, gender, and disability
4. **Differentiated measures** should be designed to address impacts on the disadvantaged or vulnerable
5. **The design of assessments and measures should adopt a sensitive approach,** tailored to country context and legal frameworks, as well as the project specific context and level of risk
6. **Safeguard measures will focus on managing risk and addressing potential harm** to affected people. Project measures do not imply or suggest the need for wider legal reforms
7. **Approaches should not increase risk exposure of disadvantaged or vulnerable groups** that could occur as a result of the project
8. **Provide appropriate forms of stakeholder engagement and grievance mechanisms** at the project level that are safe and accessible

# Environment and Social Policy

## New Provisions and Requirements



### 1. *Information disclosure:*

- ✓ All disclosure requirements subject to ADB's Access to Information Policy (2018)
- ✓ Disclose documents and information relating to High, Substantial and Moderate Risk projects prior to project appraisal or final credit approval
- ✓ Limited exceptions for documents prepared by a borrower/client post-ADB approval, as reflected in an environmental and social action plan/ environmental and social commitment plan (ESCP/ESAP)

### 2. *Consultation and participation - ADB will require a borrower/client to:*

- ✓ Engage with stakeholders through information disclosure, and **meaningful consultation** in an inclusive manner, without discrimination throughout the project cycle
- ✓ Identify and undertake early engagement with **disadvantaged or vulnerable people and groups**

### 3. *Grievance redress - ADB will require a borrower/client to:*

- ✓ Provide a project-level grievance mechanism to receive and facilitate resolution of concerns and grievances of **project-affected persons** arising in connection with a project

### 4. *Monitoring:*

- ✓ ADB will monitor borrower's/client's environmental and social policy (E&S) performance of a project in accordance with the requirements in the ESCP/ESAP in a manner proportionate to the potential E&S risks and impacts of a project

### 5. *Capacity support:*

- ✓ ADB will help borrowers/clients strengthen their E&S systems and improve their capacity to manage E&S risks

# Environmental and Social Policy Standards (ESS)

10 proposed standards build off the current requirements of the Safeguard Policy Statement (SPS)






# Environmental and Social Standards (ESS)

## Incremental enhancements to Environment Safeguards

### 1




**E&S Risks and Assessment**

- More integrated E&S assessment
- Enhance risk assessment
- Greater focus on gender, vulnerable groups
- Enhanced monitoring

ENV	IR	IP
✓	✓	✓

Integrates and enhances existing Environment (ENV), Involuntary Resettlement (IR), and Indigenous People's (IP) requirements

### 6




**Biodiversity and Natural Resources Management**

- Priority for avoidance of impacts
- Update critical habitat criteria
- Criteria for use of biodiversity offsets
- Natural resource supply chains
- Ecosystem services

ENV	IR	IP
✓		

Builds on the ENV Safeguards

### 3



**Resource Conservation and Pollution Prevention**

- Clearer requirements on hazardous and on pesticide management
- Minimize intensity of resource use: energy, water, soil raw materials

ENV	IR	IP
✓		

Builds on the ENV Safeguards

### 8




**Cultural Heritage**

- Cultural heritage assessment and management
- Intangible cultural heritage

ENV	IR	IP
✓		

Builds on the ENV Safeguards

### 4




**Health, Safety and Security**

- Worker and community security risks
- Sexual exploitation abuse and harassment
- Incident reporting & management

ENV	IR	IP
✓		

Builds on the ENV Safeguards

### 9



**Climate Change**

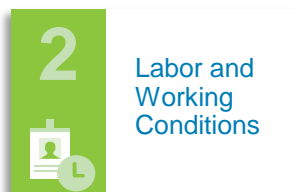
- Lower threshold for assessment and monitoring of GHG
- Climate change risks assessment and resilience

ENV	IR	IP
✓		

Builds on the ENV safeguards, and ADB procedures for risk screening on climate change.

# Environmental and Social Standards (ESS)

## Incremental enhancements to Social Safeguards



Labor and Working Conditions

- Core labor standards in safeguards
- Safe and healthy working conditions
- Coverage on different types of workers
- Primary suppliers

ENV	IR	IP
✓		

Builds on: (i) ADB Social Protection Strategy, 2001; (ii) SPS ENV safeguards & Prohibited Investment Activities List; and (iii) CLS requirements in civil works contracts.



Indigenous Peoples

- Criteria for IPs (removal of vulnerability criteria)
- Free, prior and informed consent (FPIC)

ENV	IR	IP
		✓

Builds on IP Safeguards

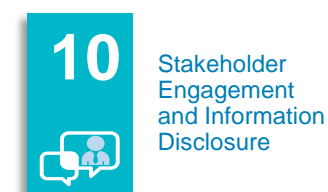


Land Acquisition and Land Use Restriction

- Enhanced provisions on SPS land acquisition requirements
- Increased focus on vulnerability and livelihood restoration
- Coverage of voluntary land transactions
- Enhanced linkage with procurement and implementation of civil works

ENV	IR	IP
	✓	

Builds on IR Safeguards



Stakeholder Engagement and Information Disclosure

- Stakeholder engagement planning and disclosure
- Inclusion of disadvantaged or vulnerable groups
- Ensure no-retaliation against affected people
- Grievance mechanism optimized for different affected peoples and workers

ENV	IR	IP
✓	✓	✓

Integrates meaningful consultation, disclosure & grievance mechanisms from ENV, IR and IP safeguards

# Supporting Environment and Social Framework (ESF) Implementation

## Balancing and supporting increased scope and with efficiency gains

ESF has a wider scope across new ESSs and cross cutting areas. How will this be balanced?

### Efficiency gains from proposed ESF

#### 1. Integrated risk-based and adaptive management approach

- ✓ Encourages early-stage screening of risks to determine requirements and resource needs
- ✓ ESS to be triggered with assessment requirements and documents based on impacts and risk
- ✓ Balance focus on preparation and implementation, with use of ESCP/ESAPs

#### 2. Use of borrower systems where systems are materially consistent, and capacity can manage project risks

#### 3. Use of a “common approach” with co-financiers, where policies are materially consistent

### ADB business processes, staffing and capacity enhancements

#### 1. Streamlining of business processes through the New Operating Model will enhance efficiency of project processing

#### 2. Development of new safeguards Knowledge Hub and Safeguards Knowledge Management Action Plan (KMAP) to enhance staff skills

#### 3. Additional safeguard staffing to address incremental skills gaps and to increase support for project implementation through the Work Program and Budget Framework process in areas including labor, vulnerable groups, climate etc.

#### 4. Decentralization plan for safeguard staff will increase ADB staff in resident missions to be closer to clients

#### 5. Increased technical assistance for DMCs/client capacity support proposed to support country safeguard systems, and capacity support at country, sector and project levels (linked to country knowledge plans)

# Environmental and Social Framework

## Capacity Development and Roll-out Plan

### Objectives:

- **Ensure ADB staff and borrowers/clients have required skills, capacity and supporting guidance and tools to fully implement the ESF**

### Program timing:

- **ESF will be effective 12 months after Board approval** of policy (expected by Q2 2025)
- Implementation of the policy roll-out plan will start in 2023 and continue for 3 years after Board approval

### Program activities:

- **Formulation of a comprehensive 3-year capacity building plan** for DMCs and private sector clients to facilitate seamless transition
- **Implementation procedures for staff** - Operations Manual and Staff Instructions
- **Guidance notes** for each ESS and selected topics
- **Training materials** - for DMCs, private sector clients and other stakeholders to implement the requirements of the ESSs (with e-learning, videos, training programs, templates etc.)
- **Accreditation** of staff and certification programs for other stakeholders

### Engagement process

- Training programs available online, as well as training delivery at DMC level
- Targeting executing and implementing agencies and private sector clients
- Orientation programs for other stakeholders
- Additional project by project support
- Linkage with country programming and wider capacity support

### Partnerships:

- Collaboration with existing regional and DMC resources, including safeguard learning centers
- Collaboration with MDBs capacity-building programs

# Session 2: Overview of ESS 1 and ESS 10

***Zehra Abbas***

***Principal Environment Specialist, OSFG***

***Madhumita Gupta***

***Principal Social Development Specialist (Safeguards), OSFG***



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# Assessment & Management of Environmental & Social Risks

## New Provisions and Improved Requirements

1. **Integrated E&S assessment:** address all direct, indirect, and cumulative E&S risks and impacts, integrating environmental and social factors
2. **Environmental and social factors:** lists issues to be considered consistent with the ESS and issues triggered for the project
3. **Scope:** establish scope of the assessment & relevant ESSs and requirements triggered
4. **E&S assessment:** level of assessment to be proportionate to the E&S risks and impacts and the applicable ESSs
5. **Disadvantaged or vulnerable groups:** identified through E&S assessment and differentiated measures designed based country context, nature of project and E&S risks
6. **E&S readiness:** enhanced by requiring that all E&S assessment requirements under the relevant ESSs are identified and undertaken to the extent possible to the satisfaction of ADB
7. **Environment and Social Commitment/Action Plan (ESCP/ESAP):** provides adaptive management process with measures needed to meet the requirements of the ESSs over a specified timeframe. Include measures to bring a project into compliance or to be undertaken during project implementation
8. **Monitoring:** semi-annual for high and substantial risks, and at least annual for moderate and low risks, or as per ESCP/ESAP
9. **Management of contractors:** contractors and sub-contractors to fulfill requirements of the relevant ESSs and ESCP/ESAP



# Stakeholder Engagement and Information Disclosure

## New Standard and Improved Requirements

**Develop a Stakeholder Engagement Plan:** outlines requirements on meaningful consultation, promoting participation in a manner that is safe and accessible for all stakeholders.

Can be a stand-alone document or as part of another safeguards document

**Disadvantaged or vulnerable groups** identified through stakeholder engagement and ensure their needs and concerns are recognized and accounted for in the stakeholder engagement and information disclosure process and in grievance mechanism

**Establish accessible grievance mechanisms** at the earliest stages to ensure timely response and management of grievances.

Clear requirements to address allegations of reprisal, abuse, intimidation, or discrimination, and take appropriate remedial measures. Provision for handling anonymous complaints

**Disclose project information** as early as possible in project preparation and in a timeframe that enables meaningful consultations with stakeholders on project design, but no later than ADB's project appraisal or final credit approval

**Allocate sufficient financial and human resources** to ensure the implementation of the stakeholder engagement plan, including information disclosure and grievance mechanisms

Qualified third-party experts may be engaged based on the complexity of the project to monitor and report on the implementation and recommendations to resolve identified gaps and concerns

# Plenary Discussion



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# Session 3: Overview of ESS 5, ESS 7 and ESS 8

***Madhumita Gupta***

***Principal Social Development Specialist (Safeguards), OSFG***



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# Land Acquisition and Land Use Restriction (LA/LUR)

## New Provisions and Improved Requirements

**Scope:** covers (i) Involuntary land acquisition/land use restriction, (ii) due diligence requirements for voluntary land transactions and land use restriction, (iii) activities carried out prior to a project, but which were undertaken or initiated in anticipation of, or in preparation for a project

**Risk Classification:** Numerical threshold for involuntary resettlement categorization is removed (now considers overall impacts/risks)

**Coverage:** associated facilities, cumulative social impacts and/or legacy issues require mitigation of LA/LUR risks and impacts, within the borrower/client's influence and control

**Impacts:** (i) covers full, partial, permanent, and/or temporary economic and physical displacement; (ii) covers affected persons without formal, traditional, or recognizable property and use rights under host country laws who occupy or utilize land

**Cutoff date:** publicly established cut-off date will be determined for compensation and other benefit purposes

**Assessment of Impacts:** prepare land acquisition and resettlement plan (LAP) proportionate to impacts, pay particular attention to disadvantaged or vulnerable and gender, ensure stakeholder engagement, grievance mechanisms and information disclosure

**Compensation/Assistance:** provide compensation and entitlement for project affected persons. Provide adequate housing with security of tenure and safety at resettlement sites for physically displaced persons

**Land Acquisition Frameworks (LAF):** if final engineering design is not available at ADB approval of a project, and impacts are uncertain, a LAF may be prepared after providing justification based on detailed scoping

**LAP compliance monitoring:** ensure implementation of the LAP prior to start of civil works, and completion monitoring at the time of project closure





**IP identification based on 4 distinctiveness criteria** (i) self-identification, (ii) collective attachment to land, (ii) customary rights and (iv) distinct language. (Note, the “vulnerability” criteria in the SPS has been dropped)

**BCS replaced by FPIC** : FPIC required under three circumstances: (i) when project has adverse impacts on IP land and natural resources; (ii) causes relocation of IPs from these lands; (iii) significant impacts on IPs’ cultural heritage that is material to their identity and culture, and/or to ceremonial and/or spiritual aspects of their lives

**Participation and meaningful consultation**: inclusive process, allowing sufficient time for collective decision-making process of IPs with special attention to disadvantaged or vulnerable.

**Social Impact Assessment**: requires assessment of intangible impacts, contextual risks, biodiversity and ecosystem services linkages

**IPs Living In Voluntary Isolation**: Establish appropriate measures to recognize, respect, and protect the lands, territories, culture of such IPs and avoid all undesired contact with them that could result from a project

**Indigenous Peoples Plan**: prepared based on the impact assessment and meaningful consultation, proportionate to the assessed project impacts on IP communities

**Budget**: Adequate resources to compensate IP communities and for mitigation measures

**Grievance Mechanism**: Establish a mechanism that integrates IP customary dispute settlement mechanisms where appropriate, and that ensures complainants are protected from retaliation

**Monitoring and reporting**: proportionate to the project’s risks and impacts. projects with significant adverse impacts required qualified and experienced external monitor



## Cultural Heritage

### New Provisions and Improved Requirements

- 1. Intangible cultural resources and visual impacts:** manage the direct and cumulative project specific risks and impacts to both tangible and intangible cultural heritage
- 2. Indigenous people:** provides requirements for coverage over areas with cultural heritage that overlaps with areas with Indigenous Peoples. If cultural heritage is identified in Indigenous Peoples areas, FPIC may be required in accordance with ESS7
- 3. Specific Requirements for Different Types of Cultural Heritage:** includes archaeological sites and materials, underwater cultural heritage, burial sites & human remains, built heritage, landscapes or natural resources, and movable cultural heritage
- 4. Stakeholder engagement:** requires meaningful consultation to identify cultural heritage, its significance, assess risks and impacts, explore methods for avoidance, mitigation, and monitoring and reporting options

# Guidance for Breakout Group Discussion

- What are your clarifications/questions on the ESSs presented?
- What are your concerns and suggestions on the ESSs presented?
- Please prioritize 5 key points that will be discussed in plenary

# Session 4: Overview of ESS 3, ESS 9 and ESS 6

***Zehra Abbas***  
***Principal Environment Specialist, OSFG***



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# Resource Conservation and Pollution Prevention

## New Provisions and Improved Requirements

1. **Resource conservation:** implement measures to improve resource conservation, minimize the intensity of resource use for energy, water, soil, and all types of raw materials
2. **Circular economy:** integrate the principles of circular economy into all aspects of a project
3. **Waste and chemicals:** clear requirements around the direct or indirect generation of hazardous and non-hazardous wastes, and the manufacture, trade, and use of hazardous chemicals, substances and materials
4. **Pesticides:** updated requirements to ensure pesticide use minimization and management
5. **Pollution prevention guidelines:** World Bank Group's Environmental Health and Safety Guidelines, continue to apply, along with national standards, and/or good industry practice (GIP). (Where there are inconsistencies the more stringent standard will apply)





### Current ADB approach to Climate Change

- **ADB portfolio and project level alignment** with the goals of the Paris Agreement
- **SPS environmental safeguards** requires project level GHG emissions assessment and management (with threshold of 100,000 t/CO<sub>2</sub>eq/yr.)
- **ADB undertakes project-level climate risk screening** and climate risk and adaptation assessment

### GHG Mitigation

- Project related GHG Emissions: Estimate, monitor and report project-related GHG emissions
- Undertake ex-ante estimation of absolute and relative GHG emissions of a project
- Threshold: 20,000 tCO<sub>2</sub>e/yr- absolute and relative GHG emissions between - 20,000 tons and +20,000 tCO<sub>2</sub>e/yr
- >20,000 tCO<sub>2</sub>e/yr monitor absolute GHG emissions annually and report to ADB

### Climate Risk

- **Climate risk screening:** undertake climate risk screening at the project level.
- **Assessment of Climate Risks:** assess climate and develop climate change adaptation and resilience measures

Note: tCO<sub>2</sub>e/yr = tonnes of carbon dioxide equivalents per year



# Biodiversity and Sustainable Natural Resource Management

## New Provisions and Improved Requirements

- 1. Classification of habitat types:** Habitat will be classified as modified or natural, and assessment will identify potential priority biodiversity features which will determine the presence of critical habitat
- 2. Conservation of habitats:** strengthens the conservation of biodiversity and the management of living natural resources
- 3. Addressing impacts on biodiversity:**
  - (i) No net loss for modified and natural habitats,
  - (ii) preference for net gain of priority features,
  - (iii) Net gain for critical habitats
- 4. Primary suppliers:** risk-based sustainable resource procurement, management and verification procedures to evaluate primary suppliers of natural resources or suppliers engaged by them
- 5. No go zones:** prohibits developing a project in Alliance for Zero Extinction Sites (AZEs), UNESCO Natural and Mixed World Heritage Sites, and free flowing rivers of >500km in length
- 6. Biodiversity offsets as a last resort:** clarifies that biodiversity offsets should be considered only as a last resort and all viable project alternatives will need to have been previously explored and the 'offsetability' of the project will need to be established

# Session 5: Overview of ESS 2 and ESS 4

**Felix Oku**

**Senior Social Development Specialist (Safeguards), OSFG**



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# Labor and Working Conditions

## New Standard and Improved Requirements

1. This standard builds on and updates ADB's commitment to the core labor standards that are currently set out in the SPS Prohibited Investment Activities List, Social Protection Strategy (2001), the Core Labor Standards Handbook, associated loan covenants in project legal agreements between ADB and borrower, and civil works contracts of the borrowers for the project.
2. The **scope of application** of the requirements depends on the type of employment and the nature of employment relationship between the borrower and project workers.
3. The **focus of labor related risks** is at the project-level and the requirements apply to all sectors and all project workers.

Applies to all types of employment relationships including:

- **direct workers** – workers engaged or employed directly by a borrower to work on a project.
- **contracted workers** – workers engaged or employed by a third party to perform work related to a project, regardless of location.
- **primary supply workers** – workers engaged or employed by a borrower's primary suppliers.

**Primary suppliers** are suppliers who provide directly to a project goods or materials essential for production and/or service processes that are necessary for a specific project activity and without which a project cannot continue.

- **community workers** – workers engaged or employed by a borrower from a community or communities in a project-affected area who contribute their labor to a community development project through different working arrangements.



# Labor and Working Conditions

## New Standard and Improved Requirements

### 4. Objectives

- a. **Promotion of fair treatment, non-discrimination, and equal opportunity for project workers:** the employment of project workers is based on the principle of equal opportunity and fair treatment, with no discrimination with respect to any aspects of the employment, such as recruitment and hiring, compensation, working conditions and terms of employment
- b. **Prevent and address any forms of violence, harassment, bullying, intimidation and exploitation against project workers, including SEAH:** borrowers will take appropriate measures to prevent and address in a project context any forms of violence.
- c. **Support the principles of freedom of association and collective bargaining:** requires borrowers to not prohibit freedom of association and collective bargaining. Takes into account the legal context of the host country. E.g., current loan covenant in legal agreement with PRC already provides the following: "...do not restrict workers from developing a legally permissible means of expressing their grievances and protecting their rights regarding working conditions and terms of employment."
- d. **Prevent the use of forced labor and child labor:\*** prohibits child or forced labor for all workers, including at the level of the primary supply worker and their suppliers.
- e. **Promote, develop and maintain transparent project worker management relationships:** identify different types of project workers and set out how they will be managed based on the employment relationships and in accordance with the requirements of the ESS and applicable host country laws
- f. **Provide project workers with accessible means to raise workplace concerns:** project-level grievance mechanism will be designed to address labor and working conditions, as well as to provide for confidential complaints and special protection measures for SEAH concerns.

**\*more details included in subsequent slides**





# Labor and Working Conditions

## New Standard and Improved Requirements

### **Child Labor Approach (consistent with ILO C138 and C182):** Borrower will not employ or engage:

- Under age 15 (or higher under host country labor law)- no employment under the age of completion of compulsory schooling
- Under age 18- no employment if economically exploitative or is likely to be hazardous or interfere with the child's education, or harmful to the child's health, or physical, mental, spiritual, moral, or societal development
- Exceptions: Ages 13-15 permitted for light work that will not (i) be harmful to their health or development and (ii) prejudice their attendance at school, their participation in vocational orientation or training programs if host country laws allows such work, consistent with the applicable international convention.

### **Forced Labor Approach (consistent with ILO C029 and C105)**

#### *Definition*

“All work or service which is exacted from any person under the threat of a penalty and for which the person has not offered themselves voluntarily.” (definition from ILO C029 on Forced Labor)

- If forced labor or other exploitative form of labor practices are identified, the borrower will promptly take corrective actions to eliminate such practices from a project.
- Borrower will not engage any trafficked persons.

### **Ratification Status of ILO conventions on Forced labor and child labor (out of 39 ADB DMCs who are members of the ILO)\***

Forced labor		Child labor	
<a href="#">C029</a>	<a href="#">C105</a>	<a href="#">C138</a>	<a href="#">C182</a>
36	32	35	40

\*excludes non-ILO DMCs: Bhutan, FSM, Nauru, Tonga, Niue



# Labor and Working Conditions

## New Standard and Improved Requirements

### 5. Approach for preventing the use of forced labor and child labor

- Identify and assess potential or actual risks of child labor, forced labor, and/or serious safety issues that could arise in relation to all types of project workers in a **project context**.
- The focus is on project level risks (e.g., who are the project workers; how large will the work force be; are there likely risks of child labor, forced labor or serious safety issues among the identified project workers in the project; what verifiable information is available?).
- Where there is a significant risk of child labor or forced labor related to primary supply workers and suppliers engaged by a primary supplier, the ESF requirements on child labor and forced labor are also extended to such workers and suppliers, proportionate to the control or influence over the primary supplier.
- This is consistent with the approach of other MDBs such as IFC, WB, IDB, EBRD, and AfDB. AIIB does not include any specific language on primary suppliers but has the following blanket requirement: “If cases of child labor or forced labor are identified, take immediate steps to correct them, to prevent similar occurrences in the future, and to facilitate the rehabilitation of victims.”



# Health, Safety and Security

## New Standard and Improved Requirements

- 1. Safety and security of communities and project workers:** Assessment, planning, management and monitoring of safety and security related risks and impacts, including risks to community and project workers, traffic and road safety, and natural hazards
- 2. Incident reporting and management**
- 3. Sexual exploitation abuse and harassment (SEAH):** requires that the borrower identifies, addresses and manage project related SEAH risks for workers and affected communities
- 4. Emergency preparedness and response:** risk hazard assessment for projects that could potentially cause an emergency, and prepare an emergency response plan
- 5. Responsible security personnel:** where security personnel are hired to protect workers or property, they should not become a threat to the communities and workers
- 6. Infrastructure design and safety:** ensure structural elements of a project comply with host country safety requirements, or good industry practice, and consider appropriate features for users age, ability or disability
- 7. Dam safety:** for new or existing dam projects, apply dam safety requirements

# Guidance for Breakout Group Discussion

- What are your clarifications/questions on the ESSs presented?
- What are your concerns and suggestions on the ESSs presented?
- Please prioritize 5 key points that will be discussed in plenary

# Session 6:

## Overview of E&S Requirements for Financing Modalities and Products and PIAL

### Overview of Use of Borrower Systems and the Common Approach

***Takako Morita***

***Principal Counsel, Office of the General Counsel, ADB***



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# Safeguards Application Across Financing Modalities

## New Provisions and Improved Requirements

### Requirements for Different Financing Modalities and Products

**Scope of application:** consolidates the E&S requirements of ADB and borrower/client for all the financing modalities and products:

- sector lending, emergency assistance, multitranche financing facility (MFF)
  - policy-based lending (PBL) and sector development programs
  - results-based lending (RBL)
  - project readiness financing, small expenditure financing facility, technical assistance (TAs)
  - financial intermediaries (FI) and corporate finance
- E&S Policy and ESS1 set out high level E&S assessment and management approach to help guide future financing modalities and products
  - Policy principles are supplemented by a standalone document that sets out both ADB responsibilities and borrower/client requirements to manage E&S risks and impacts that are applicable to different types of financing modalities and products
  - Coverage for **TAs** limited to pilot activities and policy reforms with E&S risks
  - Provides more details for Financial Intermediaries and Corporate Finance

# Safeguards Application Across Financing Modalities

## New Provisions and Improved Requirements

### Policy Based Lending

- The focus of environmental and social assessment and management is on the policy actions—not on the specific expenditures that will be financed from budget support

#### ADB's responsibilities:

- Prior to finalization of policy matrix, undertake risk classification of the proposed **policy actions** based on the likely E&S risks and impacts resulting from the policy actions
- Factor in contextual or sector specific risks
- ADB will review proposed mitigation measures proposed by the borrower

#### Borrower requirements:

- Identify and assess potential **direct** and **indirect E&S risks and impacts** associated with the proposed **policy actions**
- Integrate mitigation measures proportionate to the risks and impacts into the design of the final policy actions to **achieve objectives materially consistent with the relevant ESSs**.
- If any significant strategic, geographic, and/or sector-wide E&S risks related to the scope and nature of the PBL operation are identified, the borrower will undertake further assessment, such as **strategic environmental and social assessment**, to inform the design of the policy actions and associated E&S management.

# Safeguards Application Across Financing Modalities

## New Provisions and Improved Requirements

### Results Based Lending

- The focus of environmental and social assessment and management is on the adequacy of the **RBL program system** to achieve the objectives consistent with the ESSs

#### ADB's responsibilities:

- Undertake risk classification of the proposed **RBL program** supported by ADB financing, factoring in risks associated with the implementation capacity of the borrower and other contextual risks
- Require borrower to achieve the objectives of the ESSs applicable to the RBL program
- Undertake a Program Safeguard Systems Assessment (PSSA) of the RBL program systems, proportionate to the nature, scope and the risk classification of the RBL program.
- PSSA will include assessment of the borrower's capacity and commitment to manage and mitigate unanticipated impacts or existing impacts. It will also identify programmatic, institutional, and contextual risks that may adversely affect the borrower's ability or capacity to implement the E&S requirements applicable to the RBL program.
- ADB will disclose the PSSA prior to ADB's project appraisal and undertake consultations with RBL program stakeholders.
- All activities are eligible under the RBL program **unless they are assessed to be classified as High Risk.**

# Safeguards Application Across Financing Modalities

## New Provisions and Improved Requirements

### Results Based Lending

#### Borrower's requirements:

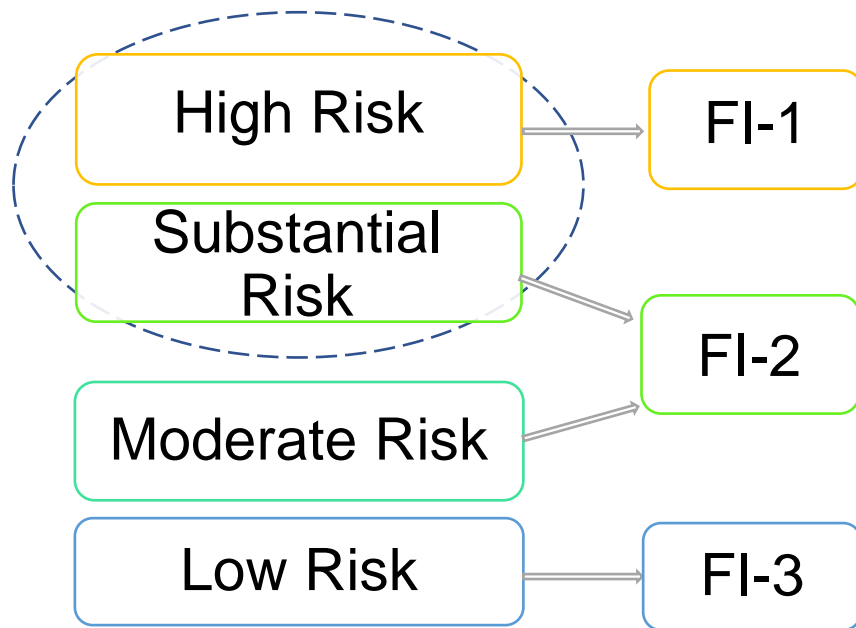
- Using the RBL program system to comply with the applicable objectives of the ESSs for the RBL program
- Agree with ADB on measures and actions to address gaps identified by ADB in a PSSA that are included in an integrated risk management plan and a program action plan (PAP)
- Borrower will assess RBL program activities supported by ADB and will exclude activities that are likely to be classified as **High Risk** and those that are included in the ADB Prohibited Investment Activities List
- Borrower will monitor implementation of the integrated risk management plan and the PAP and submit monitoring reports to ADB
- Borrower will develop and agree with ADB on a time-bound corrective action plan if any non-compliance is found to bring the RBL program back into compliance with the E&S requirements.

# Safeguards Application Across Financing Modalities

## Risk Classification of Financial Intermediaries

All transactions involving FIs are classified as “FI” with the following sub-classification based on the E&S risk profile of the proposed portfolio of transactions supported with ADB’s financing:

### Higher Risk Transactions



**FI-1:** financial exposure to business activities with potential significant adverse E&S risks and impacts that are diverse, irreversible, or unprecedented

**FI-2:** potential limited adverse E&S risks and impacts that are few in number, generally site-specific, largely reversible, and readily addressed through mitigation measures; or includes a very limited number of business activities with potential significant adverse environmental or social risks or impacts that are diverse, irreversible, or unprecedented

**FI-3:** financial exposure to business activities that predominantly have minimal or no adverse environmental or social impacts

**Higher Risk Transactions-** For FIs with portfolio and/or proposed activities and transactions that present high to substantial E&S risks (part or all of FI-1 and FI-2 portfolio). These transactions supported by ADB financing will apply the ESSs



# Safeguards Application Across Financing Modalities

## New Provisions and Improved Requirements

### Financial Intermediaries (FI)

#### ADB's responsibilities:

- Undertake due diligence, determine the E&S risk classification, review and provide guidance on the need and adequacy of an ESMS to be used by an FI
- Review and disclose relevant FI information (e.g., summary of ESMS, monitoring reports, relevant assessment and management tools)
- ADB will review all *higher risk transactions* financed by ADB

#### FI requirements:

- Require FI-1 and FI-2 to develop an EMS, proportionate to the nature and scale of the E&S risks and impacts associated with activities and transactions supported by ADB financing. For FI-3, E&S screening procedures need to confirm minimal or no adverse E&S risks or impacts
- ***Higher risk transactions:*** refer all such transactions financed for ADB's review, clearance and disclosure; monitoring reports will contain details of each activity and transaction supported by ADB financing
- Require stakeholder engagement and grievance mechanism, and provide safe and healthy working environment for workers

Note: ESMS = environmental and social management system

INTERNAL. This information is accessible to ADB management and staff. It may be shared outside ADB with appropriate permission.

# Safeguards Application Across Financing Modalities

## New Provisions and Improved Requirements

### Corporate Finance

#### ADB's responsibilities:

- Undertake due diligence, determine the E&S risk classification
- Review and provide guidance on the need and adequacy of an ESMS to be used by a corporate finance clients,
- Review and disclose relevant information (e.g., summary of ESMS, monitoring reports, relevant assessment and management tools).

#### Corporate finance client requirements:

- Develop an ESMS for activities and transactions supported by ADB financing that present high, substantial or moderate E&S risks and impacts, proportionate to the nature and scale of the E&S risks and impacts.
- Requirements for earmarked activities and transactions, and for equity and general purposes.
- Require stakeholder engagement and grievance mechanism, and provide safe and healthy working environment for workers.

# Safeguards Requirements when using other systems

## New Provisions and Improved Requirements

**Strengthening the borrower's E&S systems and encouraging improved E&S performance** is one of the objectives of the E&S Policy

- In SovOp, ADB may support the use of borrower's E&S systems where such systems can achieve objectives materially consistent with the ESSs, and capacity can manage project risks.
- ADB's responsibilities set out in the E&S Policy and the application of ADB's Accountability Mechanism Policy continues even if using borrower's E&S systems
- The borrower's E&S systems may be considered for all, or part, and material consistency will be determined at the project level.
- ADB will engage with stakeholders so that their views can inform the assessment to be carried out to determine material consistency. The assessment will be disclosed on ADB's website.
- Where the assessment identifies gaps, there will be measures and actions to address to such gaps and strengthen the borrower's E&S systems (which may be part of ESCP).
- Such measures and actions may also address capacity development issues pertaining to a borrower, any relevant national, subnational, or sectoral implementing institutions.

# Safeguards Requirements when using other systems

## New Provisions and Improved Requirements

### To enhance project efficiency, ESF also introduces **Common Approach for Cofinancing**

- Where ADB is cofinancing a project with other multilateral or bilateral agencies, ADB and borrower may agree on a **common approach**—one set of requirements that will apply to a project for assessment, development, and implementation of a project.
- Common approach is acceptable if such approach can **achieve objectives materially consistent** with the ESSs.
- The common approach agreed for a project will be reflected in an ESCP, and E&S performance will be measured against the common approach.
- In addition, where ADB is financing a project for which E&S assessment and management work have already been undertaken by other multilateral or bilateral agencies, ADB may rely on them provided that the requirements will enable the project to achieve objectives materially consistent with the applicable ESSs (**Mutual reliance**).

# Prohibited Investment Activities List

## New Provisions and Improved Requirements

- The prohibited investment activities list (PIAL) is a list of activities that do not qualify for ADB's financing.
- MDBs have different approaches with respect to exclusions; some do not have an explicit list, while others have a more extensive list of exclusions.
- The proposed policy maintains the same list of activities but adds new prohibitions from **ADB's Energy Policy (2021)**. These relate to (i) coal-fired power generation and coal-fired heating plants; (ii) coal mining, processing, storage, or transportation; (iii) upstream or midstream oil projects; and (iv) natural gas exploration or drilling.
- Financing production of, or trade in, or use of asbestos fibers is fully prohibited under the new policy. This is a change from the current SPS, which allows the use of bonded asbestos cement sheeting with asbestos content of less than 20%. This prohibition does not apply to projects involving disposal of existing asbestos, provided a suitable asbestos management plan is adopted for disposal.



# Overview of Use of Borrower Systems and the Common Approach



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# Environment and Social Policy/ ESS 1

## Common Approach in Co-financing

### Common Approach

ADB and other multilateral or bilateral agencies can agree on a common approach for E&S assessment and management acceptable to ADB, provided that such an approach will enable a project to achieve objectives materially consistent with the ESSs

***MDB policies, standards and their implementation procedures will be considered***

### Main Features

1. Common approach will apply to the project, including associated facilities, financed by the same co-financier if agreed by ADB and the borrower/client
2. Possible to disclose one set of project information and documentation for stakeholder engagement.
3. Decision to use common approach to be made early, latest by project appraisal or final credit approval.
4. E&S performance will be measured against the common approach.
5. In the case of differences between MDB standards, an approach will be agreed upon such a project achieves objectives materially consistent with the ESSs.
6. Complemented by policy provisions on mutual reliance on due diligence undertaken by other multilateral/bilateral agencies.

# Environment and Social Policy/ ESS1

## Use of Borrower Systems in ADB Projects

### What are 'Borrower E&S Systems'

The borrower's environmental and social system will include those aspects of the host country's **policy, legal, regulatory and institutional framework**, consisting of its national, subnational, or sectoral implementing institutions and applicable laws, regulations, rules and procedures and implementation capacity relevant to the E&S risks and impacts of a project

1. **Material Consistency:** Borrower's E&S systems may be used provided they address the risks and impacts of the project and enable the project to achieve objectives materially consistent with the ESSs
2. **Assessment:** ADB to undertake an assessment to establish material consistency for the project with the applicable ESSs
3. **Environmental and Social Commitment Plan/Action Plan:** sets out any gap filling measures and timeframes for their completion and sets out the E&S performance measures for a project

### SPS 2009 methodology for use of Country Safeguard Systems

- Under the SPS, the use of CSS determined through establishing equivalence and acceptability
- IED Corporate Evaluation of the SPS (2020) recommended a new approach to strengthening borrower systems, with 'pragmatic use' of CSS

# Recap of key feedback and Closing

***Bruce Dunn***

***Director, Office of Safeguards, ADB***



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# Thank you!

<https://www.adb.org/who-we-are/about/safeguard-policy-review>  
**WEBPAGE**

<https://www.facebook.com/ADBsafeguardreview>  
**FACEBOOK PAGE**

[safeguardsupdate@adb.org](mailto:safeguardsupdate@adb.org)  
**E-MAIL**



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# Additional Slides



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# Next Stage Consultations on Draft ESF

## Regional Consultations with Governments

- Cover Central and West Asia, East Asia, South Asia, Southeast Asia and Pacific
- Events to be held in Fiji, Pakistan, Philippines and India
- In-person sessions with high level government representatives

## In-Country Consultations with Governments and CSOs

- In-person meetings with government representatives in 7 DMCs (PRC, Fiji, Pakistan, Indonesia, Philippines, India, Cambodia)
- Separate hybrid format for CSOs

## CSO-focused Regional Consultations

- Design is a work-in-progress
- Online format

## Private Sector Consultations

- 3 online focus group discussions (FGDs), organized by types of transactions

## Other Consultations

- Non-regional member countries
- Peer MFIs and international organizations

## Timeline

November 2023 to March 2024

# Preliminary Schedule

Host Country	Regional Consultations	In-Country Government Consultations	In-Country CSO Consultations
Pakistan		4-5 Dec 2023	6 Dec 2023
Indonesia	-	12-13 Dec 2023	11 Dec 2023
Philippines	East & Southeast Asia Governments 22-23 Jan 2024	24-25 Jan 2024	26 Jan 2024*
India	South Asia Governments 12-13 Feb 2024	14-16 Feb 2024	19 Feb 2024*
Fiji	Pacific Governments 4-5 Mar 2024	6 Mar 2024	7 Mar 2024*
Cambodia	-	Mar 2024 (TBD)	-
Tajikistan	Central West Asia Governments April 2024 (TBD)		

\* Back-to-back consultation meeting with members of the Indigenous Peoples' Advisory Group (IPAG)

- CSO-focused Regional Consultations – Jan to Mar 2024 (dates tbc)
- Private Sector Consultations – Mar 2024

# Ways To Provide Feedback



**Regional and In-Country  
Consultations, and Other  
Meetings**



**Email**  
**[safeguardsupdate@adb.org](mailto:safeguardsupdate@adb.org)**



**Online Feedback  
Form in the ADB website**

## **What will happen to your feedback?**

- Due to the expected high number of feedback, ADB will not be able to respond individually to all comments.
- Stakeholder inputs from the consultations, and feedback received through various platforms will be documented.
- The stakeholder consultations summaries will be disclosed on the website.