

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

*Civil Society Organizations from India*

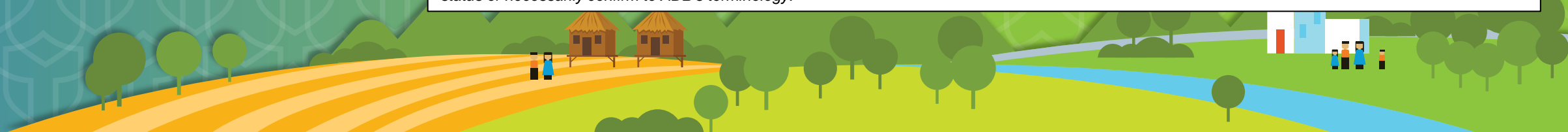
21 February 2024 | Hybrid Session



SAFEGUARD  
POLICY REVIEW  
AND UPDATE



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# Restatement of ADB's Commitment to Meaningful Consultation

The Safeguard Policy Review and Update consultations provide opportunities for stakeholders to express their views and opinions on ADB's draft ESF in the most meaningful and safest manner possible.

All stakeholders are encouraged to articulate their inputs and concerns during these consultation sessions. By joining these sessions (and as noted in paragraph 47 of the Stakeholder Engagement Plan) stakeholders are consenting to the video and audio recording of these consultations for documentation purposes. Recordings will not be disclosed. ADB will prepare a consultation summary for disclosure on SPRU website to ensure transparency of proceedings.

Stakeholders wishing to exclude themselves from such recordings are asked to contact the Safeguards Policy Review and Update Secretariat on [safeguardsupdate@adb.org](mailto:safeguardsupdate@adb.org) within 2 weeks of this session with their exceptions and exclusions.

All types of feedback are welcome. These will not be used for the purposes of retaliation, abuse, or any other kind of discrimination.

If you have any issues or concerns on the disclosure, recording, confidentiality, potential risks, abuse, or any kind of discrimination during the course of the consultations, please get in touch with the Secretariat through email at [safeguardsupdate@adb.org](mailto:safeguardsupdate@adb.org).

# 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 and sharing of experiences in safeguards advocacy and engaging with communities

# Agenda

- 10:10 am Welcome Remarks
- 10:15 am Session 1: Overview of ESF and ESP
- 11:25 am Session 2: Overview of ESS 1 and ESS 10
- 12:35 am Session 3: Overview of ESS 5, ESS 7, and ESS 8
- 02:50 pm Session 4: Overview of ESS 6, ESS 6, and ESS 9
- 03:50 pm Session 5: Overview of ESS 2 and ESS 4
- 05:00 pm Session 6: Overview of E&S Requirements for Financing Modalities and Products and PIAL
- 05:50 pm Synthesis and Closing

# Opening Message and Session 1: Overview of ESF and ESP

***Bruce Dunn***

***Director, Policy and Technical Services, OSFG, ADB***

***Takako Morita***

***Principal Counsel, Office of the General Counsel (OGC), ADB***

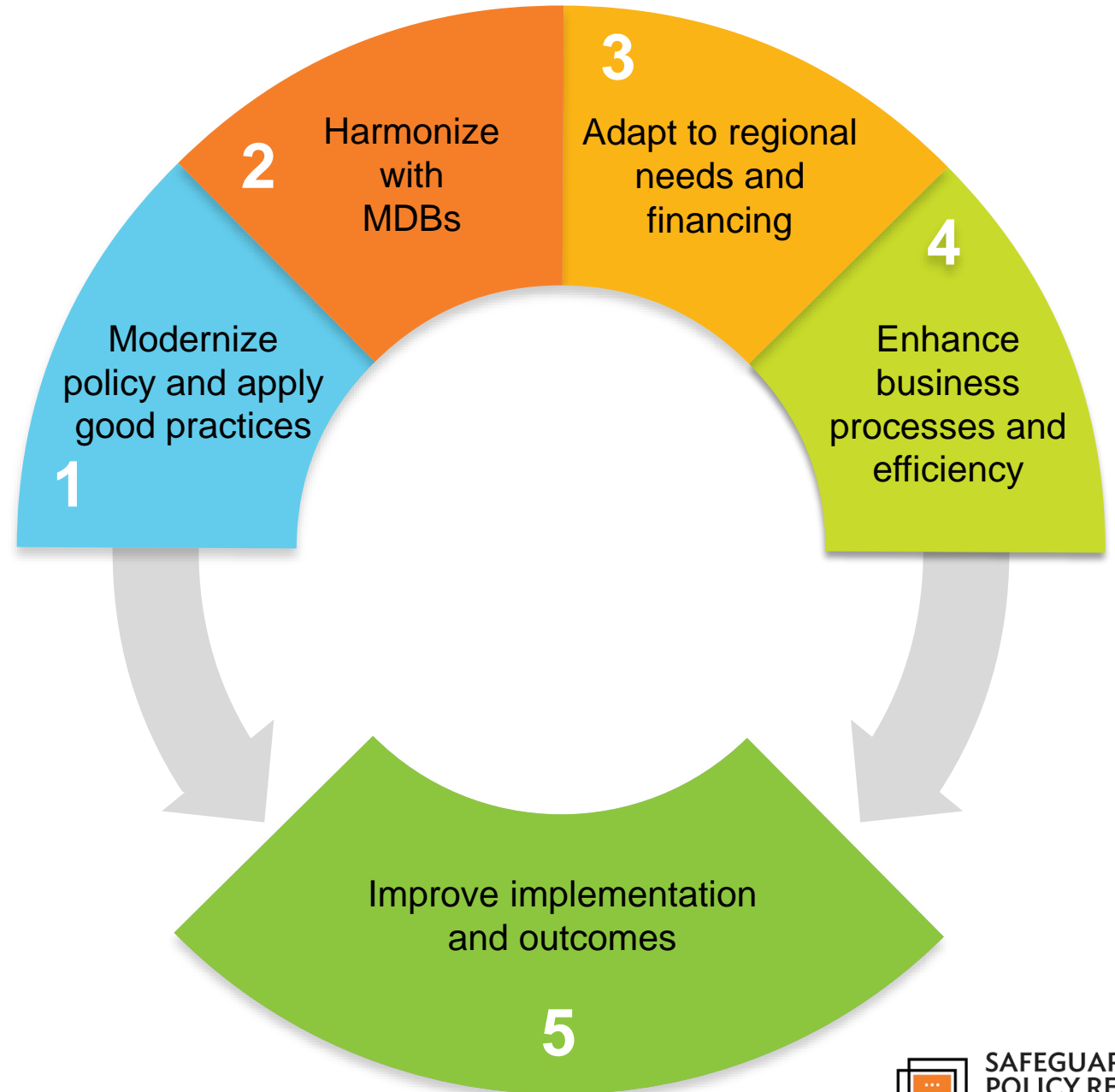


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# Objectives of Safeguard Policy Review and Update



# 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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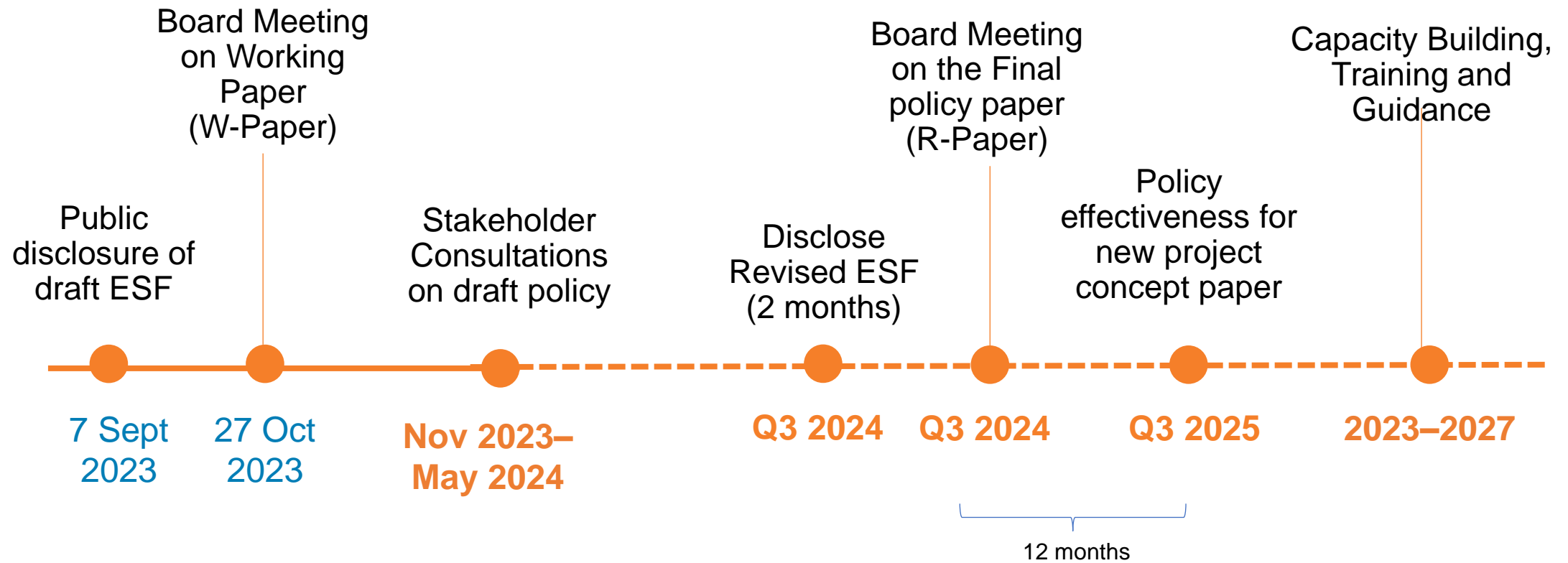
# Summary of Feedback from Consultation with CSOs

(24 November 2022)

1. **Impact assessment** must consider direct and indirect and cumulative impacts; consider project alternatives;
2. **Integrate climate change risks assessments** in the ESIA;
3. **Safeguards for children's rights, SOGIESC, other vulnerable and disadvantaged groups**; also for contract workers when their company goes bankrupt;
4. **Feasibility of biodiversity offsets**;
5. **Provisions to address legacy issues in land acquisition** and compensation;
6. **Stakeholder engagement plan** proportionate to project risks, and consultation throughout the project cycle;
7. **Tailor GRM** based on project-specific circumstances and build on functioning local systems to be effective;
8. **Engage third-party monitor** for high-risk projects and projects under exceptional circumstances;
9. **Role of community in verifying reports** and following up on the progress of recommendations;
10. **Greater monitoring and oversight** on the compliance capacity of implementing agencies and contractors;
11. **Application of ESS** to associated facilities, financial intermediaries, development policy loans and TAs for emergency assistance and recovery;
12. **Learn lessons from Tata Mundra project** on non-policy compliance, continuing adverse impacts to affected communities, and the importance of **remedy framework and responsible exit**;
13. **Clarify the timeline and consultation plan for the development of guidance notes** .



# Preparation Schedule



# Overview of the ESF

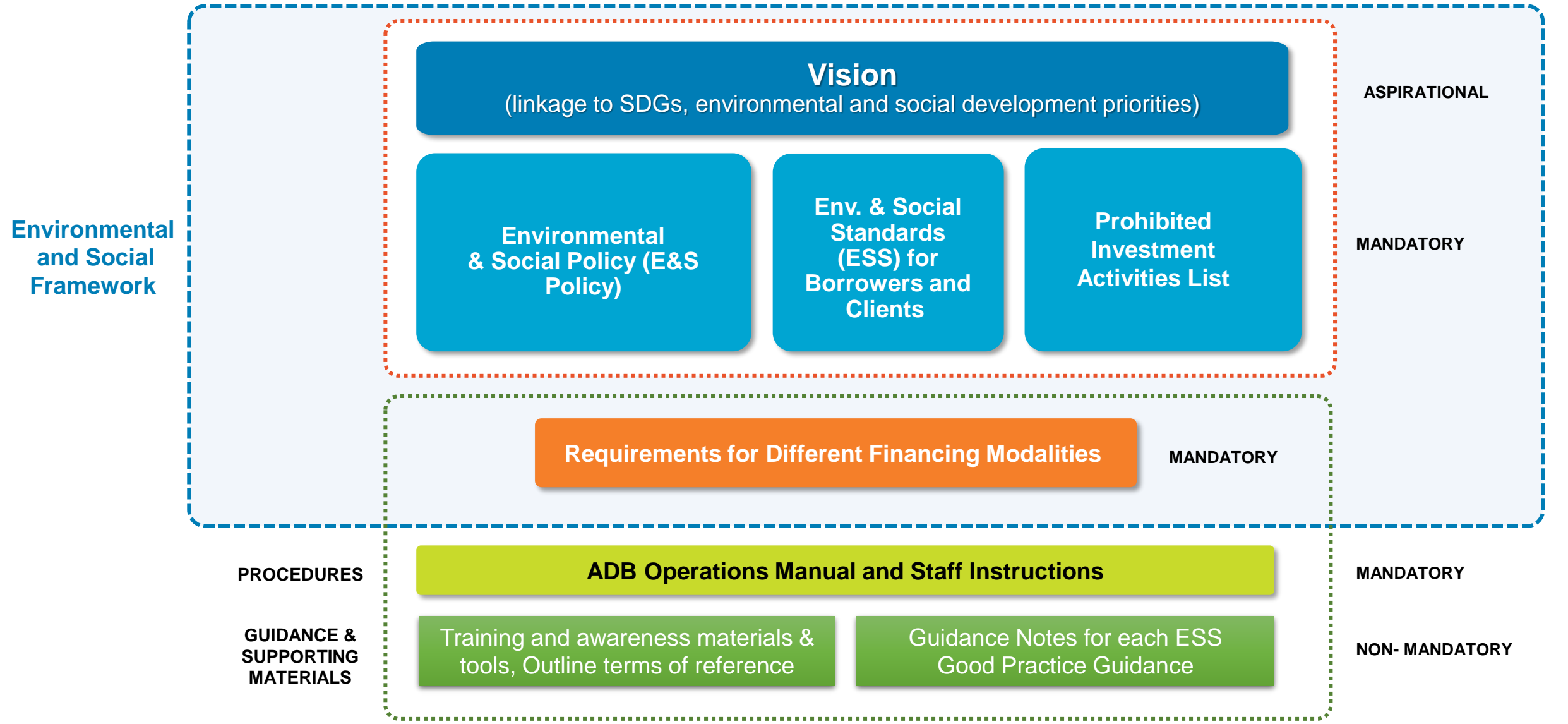


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# Proposed Policy Architecture

## Environmental and Social Framework



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# Environmental and Social Policy Standards (ESS)



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

**1**  
Assessment & Management of Environment and Social Risks and Impacts

**2**  
Labor and Working Conditions

**3**  
Resource Conservation and Pollution Prevention

**4**  
Health, Safety and Security

**5**  
Land Acquisition and Land Use Restriction

**6**  
Biodiversity and Sustainable Natural Resources Management

**7**  
Indigenous Peoples

**8**  
Cultural Heritage

**9**  
Climate Change

**10**  
Stakeholder Engagement and Information Disclosure

# 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:

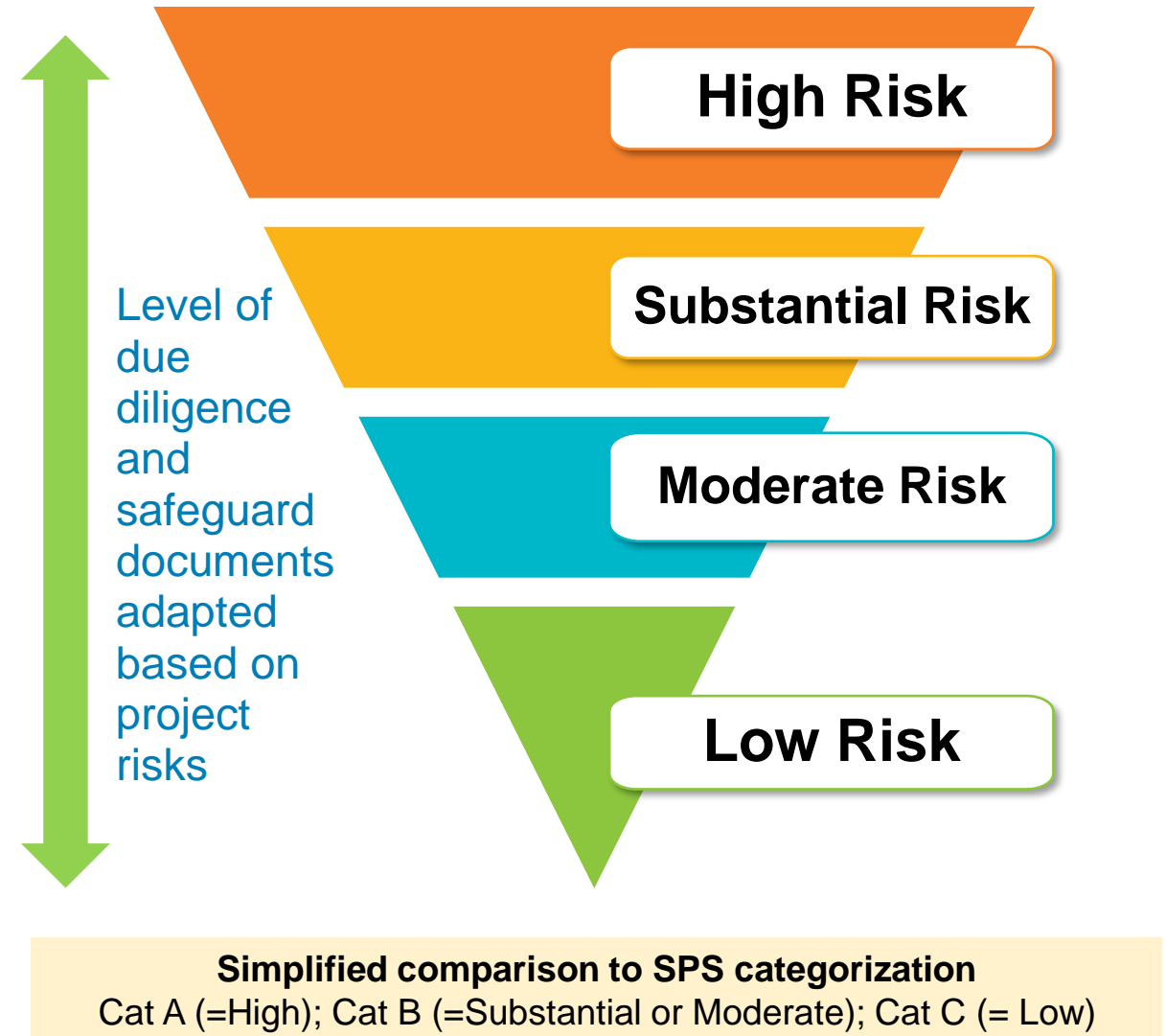
1. Preparing **environmental and social (E&S) risk classification** in consultation with borrowers/clients
2. Reviewing of **E&S assessments** undertaken by a borrower/client, proportionate to the nature and scale of risks
3. Assisting borrowers/clients in identifying **assessment and management tools** 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



# Environment and Social Policy

## New Provisions and Improved Requirements

### 1. *Risk based adaptive management:*

- ✓ Assessment & management process will be proportionate to the nature and scale of E&S risks and impact
- ✓ Use of ESCP/ESAP to allow preparation and disclosure of documents post-approval

### 2. *Use of borrower's E&S systems*

- ✓ Test: “material consistency” with the objectives of the relevant ESSs.
- ✓ Assessment done at the project level. Can be considered for ESSs relevant to a project.
- ✓ Less legalistic than the current “equivalence” & “acceptability” requirements.

### 3. *Use of Common Approach*

- ✓ Test: a common approach has to be materially consistent with the objectives of the relevant ESSs.

### 4. *Consultation and participation*

- ✓ Requires borrower/client to prepare stakeholder engagement plan (information disclosure, meaningful consultation in an inclusive manner including with disadvantaged or vulnerable people and groups )
- ✓ Explicit requirement for differentiated measures for the disadvantaged or vulnerable groups, and consideration of project and country context

### 5. *Monitoring:*

- ✓ ADB will monitor borrower's/client's 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

### 6. *Information Disclosure:*

- ✓ No later than appraisal/final credit approval

### 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

# 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
- **Preparation and consultation on 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

### Stakeholder Engagement process

- Outreach with all key stakeholders on new policy.
- Training programs online and in person
- Targeting executing and implementing agencies and private sector clients
- Orientation programs for other stakeholders including CSOs
- Additional project by project support
- Linkage with country programming and wider capacity support.
- Developing partnerships with national institutions and CSOs for capacity building and strengthening implementation.

# Session 2: Overview of ESS 1 and ESS 10

***Zehra Abbas***

***Principal Environment Specialist, OSFG, ADB***

***Zaruhi Hayrapetyan***

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



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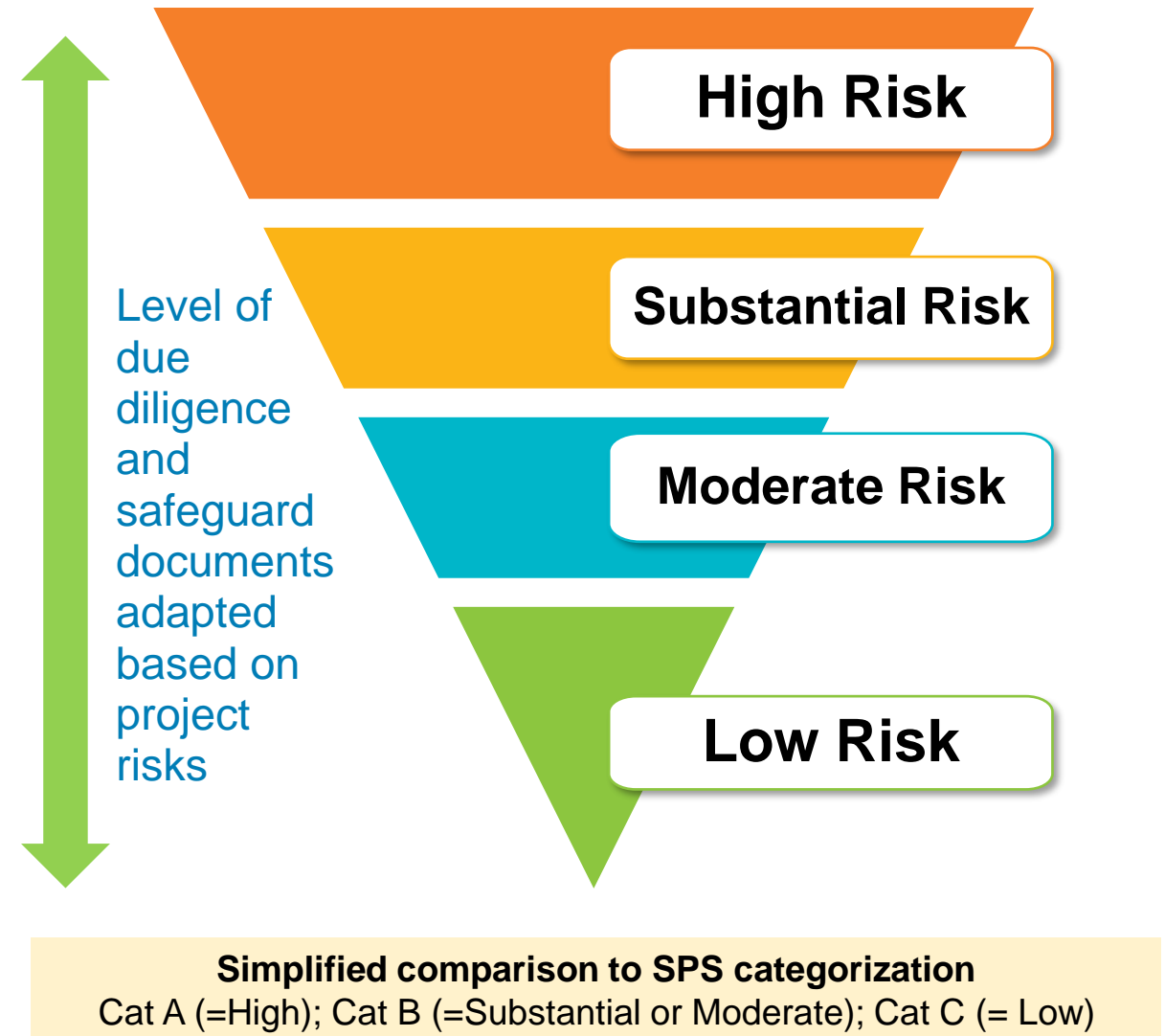




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  - **Vulnerability and sensitivity** of people and environment
- » Also considers other risks (New)
  - **Contextual risk factors**
  - **Performance / capacity related risk**
- » There will be one risk classification assigned to a project (no longer a separate classification for ENV, IR and IP)
- » Safeguard documents will present the basis for risk classification, including risks related to individual standards





# 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 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

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

***Irina Novikova***

***Principal Social Development Specialist, OSFG, ADB***

***Madhumita Gupta***

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

***Zehra Abbas***

***Principal Environment Specialist, OSFG, ADB***



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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 Assessment and Classification:** Integrated ESIA, no stand-alone numerical threshold for involuntary resettlement categorization (ESIA now considers overall impacts/risks). LA/LUR impacts may further be classified for the purpose of ESS5 application.

**Coverage: ESS1 and ESS5** Associated facilities/cumulative social impacts/existing facilities require mitigation of LA/LUR risks and impacts, within the borrower/client's influence and control; past LA/LUR impacts in anticipation and in preparation of the project.

**LA/LUR 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.

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





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

## New Provisions and Improved Requirements

**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 or full assessment are not available at ADB approval of a project, and impacts are uncertain, a LAF may be prepared after providing justification based on detailed scoping and tentative budget.

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

**Disclosure:** ensure disclosure of all LA/LUR instruments.

# ESS 7: Introduction

- ESS 7 builds on the existing IP safeguards in the SPS 2009 and continues to recognize that **Indigenous Peoples** are often among the most marginalized and vulnerable segments of the population. Their economic, social, and legal status limit their capacity to defend their rights to lands and natural and cultural resources and restrict their ability to participate in and benefit from development in ways that are in accordance with their worldview.
- Within Asia and the Pacific, Indigenous Peoples may be referred to in different countries by such terms that include indigenous ethnic minorities, indigenous cultural communities, aboriginals, hill tribes, minority nationalities, scheduled tribes, tribal groups, forest dwellers, hunter-gatherers, pastoralists, or other nomadic groups.



**Objectives:** Elaborated and detailed with FPIC inclusion

**IP identification based on 4 distinctiveness criteria** (i) self-identification, (ii) collective attachment to land, (iii) customary institutions and laws and (iv) distinct language. (The “vulnerability” criterion is dropped)

**Broad Community Support replaced by Free Prior and Informed Consent (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.

**Projects when IP as sole beneficiaries and when not sole beneficiaries:** More clarity in both cases.

**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



- 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

# Discussion



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# Lunch Break



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# Discussion



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

**Zehra Abbas**

**Principal Environment Specialist, OSFG, ADB**



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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)





# 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



### 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<sup>2</sup>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<sup>2</sup>e/yr- absolute and relative GHG emissions between -20,000 tons and +20,000 tCO<sup>2</sup>e/yr
- >20,000 tCO<sup>2</sup>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<sup>2</sup>e/yr = tonnes of carbon dioxide equivalents per year

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# Session 5: Overview of ESS 2 and ESS 4

**Felix Oku**

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



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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 Management Plan (LMP)** – A new instrument to set out a systematic approach to management of labor issues in projects and reflect the requirements of national law, applicable collective agreements, and requirements of ESS2. The amount of detail set out in the **LMP** reflects the type of project; the type, size, and location of the workforce; and the extent to which national law satisfies the requirements of ESS2.



# 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**



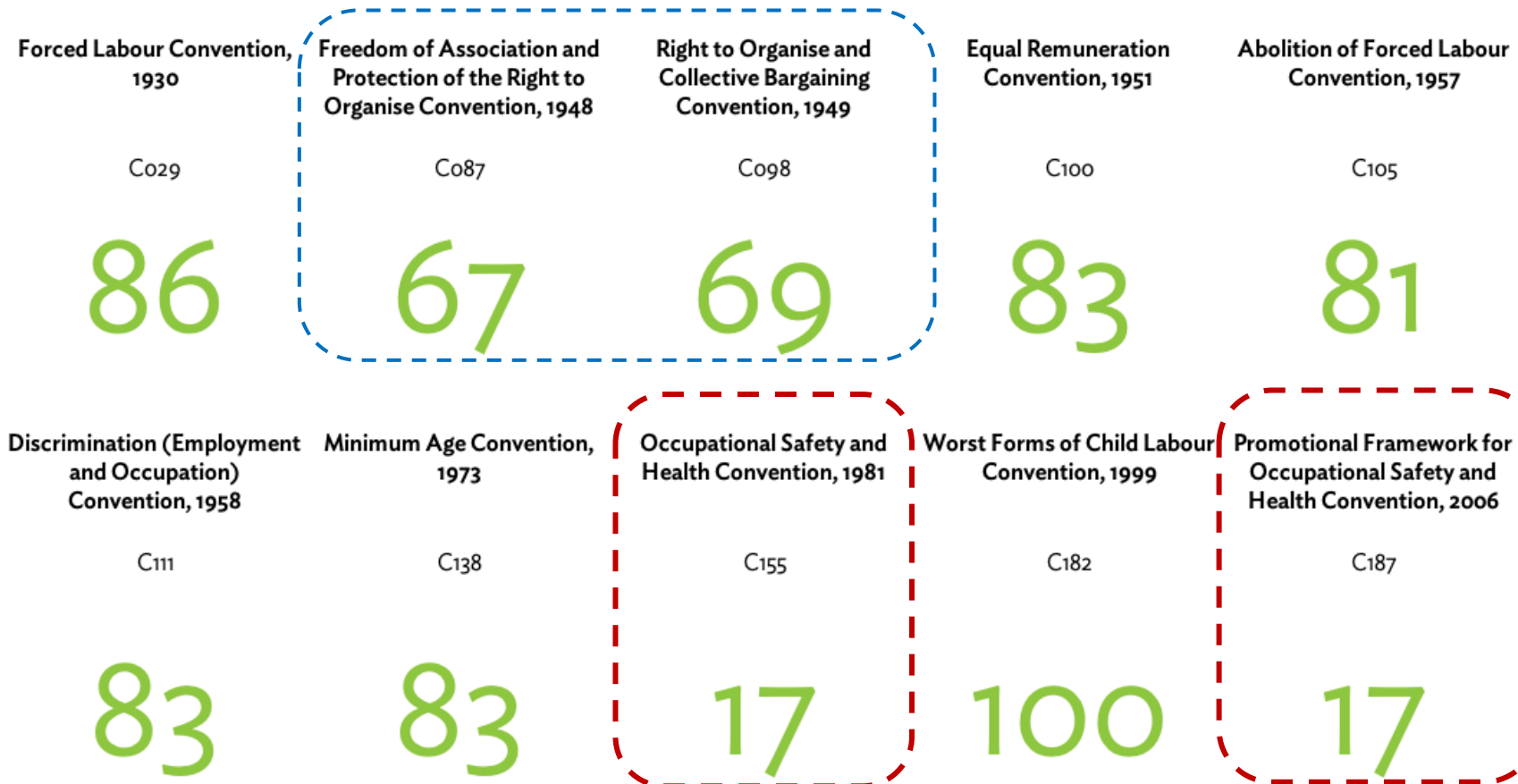


# Labor and Working Conditions

## New Standard and Improved Requirements

Alignment with ILO Core Labor Standards and other Multilateral Development Financing Institutions

% Spread of Fundamental ILO Conventions Ratified by ADB DMCs



\*NB: As of 19/01/2024

# 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



# 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

❖ **Health & Safety Management Plan (HSMP)** – Will set out a systematic approach to the management of health, safety and security risks in projects. Could include **OHS**, **Community H&S** and/or **Security Management plan** base on the type of project; the type, size, and location of the workforce and risks to surrounding communities.

# Session 6: Overview of E&S Requirements for Financing Modalities and Products and PIAL

***Takako Morita***

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



SAFEGUARD  
POLICY REVIEW  
AND UPDATE



### 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.

### 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.**

### Results Based Lending

#### Borrower's requirements:

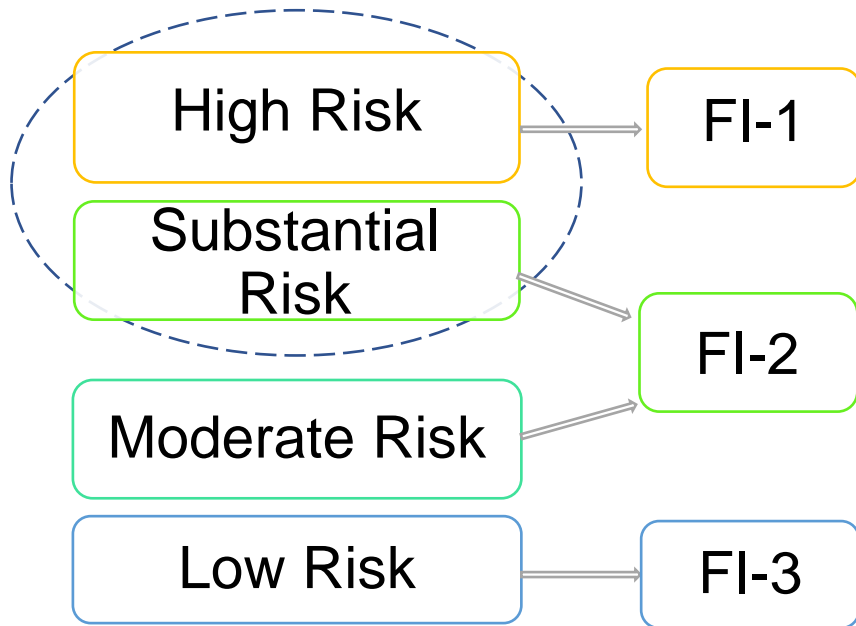
- Using the RBL program system to comply with the applicable objectives of the ESSs for the RBL program
- Agree with ADB on measures and actions to address gaps identified by ADB in a PSSA that are included in an integrated risk management plan and a program action plan (PAP)
- Borrower will assess RBL 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

### 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



# 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.

## 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.

### 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.

# Closing Message and Next Steps

***Bruce Dunn***

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

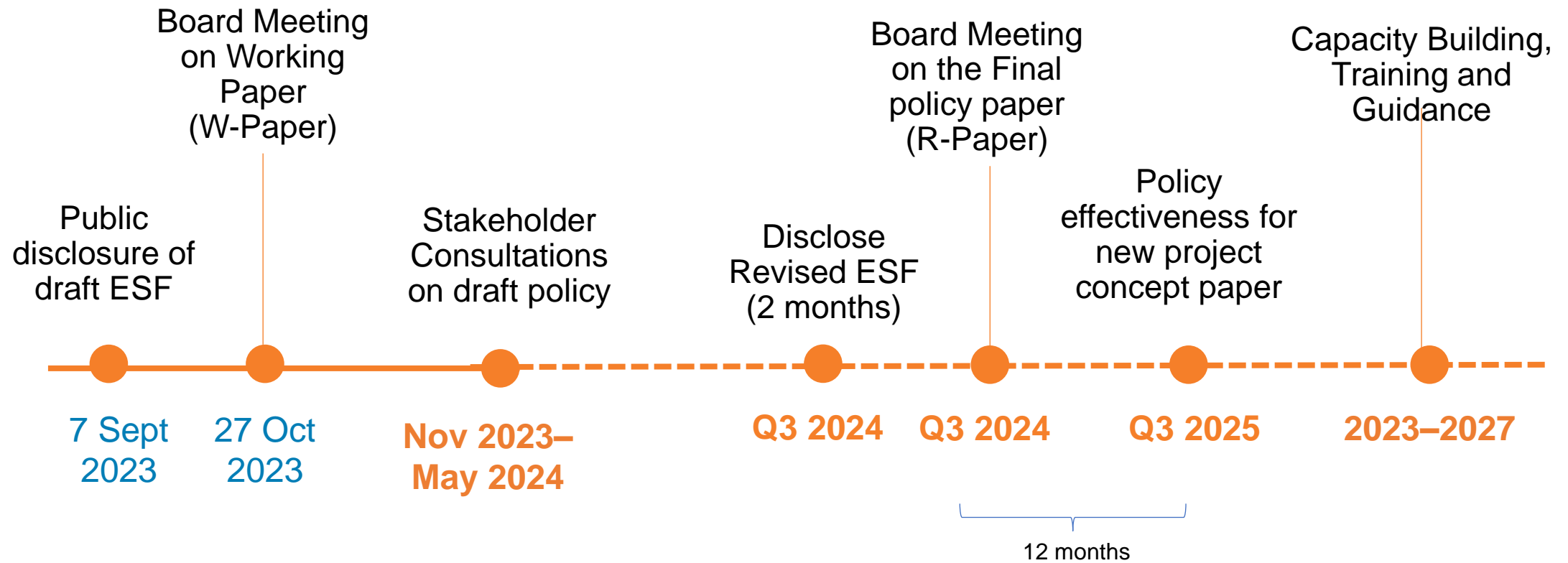


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# Preparation Schedule



# Thank you!

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