

**TRADE AND AGRICULTURE DIRECTORATE
TRADE COMMITTEE****Working Party on Export Credits and Credit Guarantees****GOOD PRACTICE NOTE FOR ENVIRONMENTAL AND SOCIAL AGENTS**

This document provides an overview of good practice for banks, Export Credit Agencies or other entities acting in the role of Environmental and Social Agents on behalf of a Lenders' Group involved in a transaction.

It has been prepared by, and is issued on the responsibility of, the Environmental and Social Practitioners from Export Credit Agencies of Members of the OECD Working Party on Export Credits and Credit Guarantees (ECG) within the framework of technical work relating to the application of the Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence (the "Common Approaches") [[OECD/LEGAL/0393](#)].

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Table of Contents

GOOD PRACTICE NOTE FOR ENVIRONMENTAL AND SOCIAL AGENTS..... 3

1. Introduction 3

2. Appropriate expertise and capacity 3

3. Duty of care..... 4

4. Communications 5

5. Documentation management..... 5

Annex A. Definitions & Terminology 6

GOOD PRACTICE NOTE FOR ENVIRONMENTAL AND SOCIAL AGENTS

1. Introduction

1. This Good Practice Note (“Note”) has been developed by the Environmental and Social Practitioners of the OECD Working Party on Export Credits and Credit Guarantees, with input from Equator Principles Financial Institutions (EPFIs) belonging to the Equator Principles Association (EPA). It does not necessarily reflect or represent the official views of individual Export Credit Agencies (ECAs), the OECD or its member countries, nor of individual EPFIs or the EPA.

2. This Note provides an overview of good practice for banks, ECAs or other entities acting in the role of Environmental and Social Agents (“E & S Agent”) on behalf of a Lenders’ Group in any capacity, and more specifically with respect to project-related transactions. It is recognised that a single entity could play the role of both Technical Agent and E & S Agent, depending on the nature and complexity of a transaction.

3. The Note is intended as an informational resource in the scenario that an E & S Agent will be or has been appointed to coordinate the environmental and social aspects related to a transaction. Regardless of whether the appointment is for the due diligence phase, the monitoring phase or the full life-cycle of a transaction, this Note is intended as a tool to provide clarity to the E & S Agent, the Project Sponsor/Borrower (or their agents) and the Lenders regarding good practices and expectations for the E & S Agent role. In addition, this Note aims to encourage greater consistency in E & S Agent practice and to improve the effectiveness and efficiency of the due diligence phase, as well as the monitoring phase, where applicable.

4. This Note is not advocating for the appointment of an E & S Agent, nor does it presume that E & S Agents will be appointed on all project-related transactions. Furthermore, the appointment of an E & S Agent or use of this Note are not intended to remove Lenders’ responsibility for ensuring their own institutional E & S due diligence is completed nor take the place of any independent environmental, social and human rights due diligence required by Lenders.

5. This Note is a public document to facilitate its use by different entities that may be appointed as E & S Agent or by a Lender in a transaction that has or will have an E & S Agent.

6. This Note does not aim to replace, modify or supersede any relevant policies or processes that banks, ECAs or other entities have developed or may develop in the future. Accordingly, this Note should not be considered as a standard or as a required action list, but as a tool to be used by banks, ECAs or other entities, as appropriate and at their own discretion.

2. Appropriate expertise and capacity

7. The institution acting as E & S Agent should have:

- Personnel dedicated to, and the capacity for, analysing the environmental, social and human rights risks of clients/Project Sponsors;

- Expertise with respect to environmental, social and human rights matters in lending transactions, including experience in the application of international standards and frameworks (*e.g.* the IFC Performance Standards, the Equator Principles, OECD Recommendation of the Council on Common Approaches for Environmental and Social Due Diligence and Officially Supported Export Credits [[OECD/LEGAL/0393](#)], etc.); and
- A commitment to ensuring a consistent and continuous service for the duration of transaction due diligence phase and/or transaction monitoring phase, to the extent possible and in line with any applicable Agent-related agreements.

3. Duty of care

8. The E & S Agent acts on behalf of the other financial institutions in the Lenders' Group. In so doing, the E & S Agent should:

3.1. In general

- Act in good faith on behalf of the Lenders' Group in advancing environmental, social and human rights matters and associated E & S Agent duties;
- Act as a facilitator for reaching agreement on environmental, social and human rights matters between the different parties involved in the transaction or project (or their representatives), where appropriate, including between the Sponsor and the Lenders, the Sponsor and the Independent Environmental and Social Consultant¹ (IESC), as well as the Lenders and the IESC;

3.2. Due diligence phase

- Ensure the Sponsor (and/or their representative) is aware of Lenders' requirements, expectations and the due diligence process (fact finding/data gathering, site visits, analysis, conclusions and recommendations);
- Assist in coordinating the selection and output of the IESC, including critical scrutiny of the Consultant's work to ensure accurate, high quality and timely outputs;
- Work with Lenders to finalise Lenders' environmental, social and human rights due diligence, such as development of an Environmental and Social Action Plan (ESAP);
- Take steps to ensure that the Sponsor understands Lenders' requirements as the transaction progresses; and

3.3. Monitoring phase

- Undertake Agent role as governed by the terms of the loan documentation.

¹ For more information on Good Practice in the use of Consultants by Export Credit Agencies, please see the Guidance note available on the [OECD website](#) (under "Technical Work").

4. Communications

9. Communications are fundamental to the role throughout the full transaction life-cycle, including:

- Establishing communications protocol(s) among parties at the outset and for the duration of the transaction due diligence, document finalisation, as well as after financial close;
- Serving as the primary conduit of information between the Sponsor (and/or their representative) and the IESC and the Lenders;
- Curating and consolidating information in a transparent manner;
- Ensuring timely and equitable distribution of the environmental, social and human rights information to all Lenders; and
- After financial close, coordinating discussion amongst Lenders if an environmental, social and human rights incident and/or covenant breach is observed, or information supplied by the Sponsor is not of required quality or timeliness.

5. Documentation management

10. Diligent, transparent and detail-oriented management of the documentation is a critical element, including:

- Further to the requirement above that a communications protocol be established, ensuring roles and responsibilities with respect to document management are well understood;
- Collaborating and sharing responsibility with a transaction's designated Documentation Bank, as appropriate;
- Ensuring that inputs from different parties are consolidated in a coherent and collaborative way;
- Navigating various viewpoints to ensure documentation appropriately reflects Lenders' positions on environmental, social and human rights matters; and,
- Respectfully and inclusively facilitating documentation negotiations.

11. A list of definitions and terminology has been attached to clarify, *inter alia*, the different actors with whom the E & S Agent may interact in carrying out their responsibilities.

Date updated: March 2021.

Annex A. Definitions & Terminology

Term	Alternative term(s)	Definition
Agent-related Agreements		Facility agreements to which the Agent is a party.
Arrangers	Mandated Lead Arrangers (MLAs)	Arrangers will be appointed through a competitive bid process, and are responsible for negotiating and structuring the financing and ensuring the transaction will achieve financial close, is fully funded and that all requirements are fulfilled. Arrangers or MLAs will commonly have the largest financial commitment in a transaction.
Documentation Bank		The bank holding this role is responsible for liaising with the lawyers to ensure that the requirements of the other banks in the financing are incorporated into the Facility Agreement. A Documentation Bank is not provided for in all transactions, typically only in large, complex transactions, with multiple Lenders.
Environmental and Social Action Plan (ESAP)		Describes and prioritises time-bound commitments deemed necessary to ensure that a Project will be in full compliance with the environmental and social standards (either host country or international) of Lenders.
Environmental and Social (E & S) Agent	Environment Bank, Technical Agent or Bank	The entity appointed to coordinate environmental, social and human rights matters. A single entity could play the role of both Technical Agent and E & S Agent, depending on the nature and complexity of a transaction.
Facility Agent	Administrative Agent	After financial close, the Facility Agent is responsible for ensuring that the requirements of the Facility Documentation are observed, including, <i>inter alia</i> , monitoring covenant compliance as well as acting as the interface between the Borrower and Lenders in respect of any waiver, consent, or amendments requested by the Borrower.
Facility Agreement	Loan Agreement	An agreement in which the Lender(s) sets out the terms and conditions, including conditions pertaining to environmental, social and human rights-related matters, on which it is prepared to make the loan facility available to the Borrower.

Term	Alternative term(s)	Definition
Financial Advisor	Sponsor's Advisor	This is an optional role, which may be fulfilled by entities with no lending capacity (<i>e.g.</i> an investment bank or a financial advisory firm with sector/project specific experience). The Financial Advisor's role is to help the client achieve an optimal financial structure to aid bankability. An advisory role may continue to financial close, in which case the Financial Advisor may be involved in managing the Lenders' Group and therefore a key stakeholder in enabling banks to communicate.
Independent Environmental and Social Consultant (IESC)	Independent Environmental and Social Advisor, Lenders' E & S Advisor	A qualified independent firm or consultant (not directly tied to the Project Sponsor) acceptable to the financial institutions engaged in a transaction.
Loan Documentation	Finance Documents	The legal documents that establish the terms and conditions of a financing or insured transaction. They provide ECAs with an opportunity to require project sponsors or Obligors to address E & S issues for the life of an ECA's cover.
Technical Agent	Technical Bank	The entity appointed to coordinate technical matters. A single entity could play the role of both the Technical Agent and the E & S Agent, depending on the nature and complexity of a transaction.