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Environmental, Social and Human Rights Aspects

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INVESTMENT GUARANTEES OF THE
FEDERAL REPUBLIC OF GERMANY

► **Direct Investments Abroad**

► Environmental, Social and Human Rights Aspects

Sustainability in its various dimensions is a high priority for the foreign trade promotion scheme of the Federal Republic of Germany (Federal Republic). The environmental, social and human rights aspects involved in a project play a very important role in deciding whether a foreign investment is eligible for cover. The process for reviewing applications for investment guarantees in terms of their environmental, social and human rights aspects is guided by the OECD Common Approaches¹ for export credit guarantees (Hermes Cover). At the same time the particular features of the various instruments for the promotion of foreign trade are taken into consideration. German companies are also urged to act in compliance with the UN Guiding Principles on Business and Human Rights², the OECD Guidelines on Multinational Enterprises³ as well as the German Sustainability Code⁴.

The procedure for assessing the environmental, social and human rights impacts of an investment is regularly reviewed and adapted to developments at the international and national level. It is used to prepare the decision on assuming a guarantee and to accompany already covered investments during the term of a guarantee. This information sheet is intended to give an overview of this procedure and the requirements set by the Federal Government. It replaces the “Environmental Information Sheet June 2001“.

Federal guarantees can be assumed on the basis of Federal Budget Law and according to the guidelines on **eligibility for cover** for cover and **justifiable risk** in projects. The Federal Government expects companies making use of an investment guarantee to implement good international practice in assessing and managing the environmental, social and human rights aspects of their investment. What this means in concrete terms is explained in the following sections.

WHAT IS THE SUBJECT MATTER OF THE REVIEW (PROJECT SCOPE)?

The question of the scope of the project is crucial, since it has a direct influence on the scope of the review. The starting point in allocating a project to a category and assessing it is the project company, branch office or permanent establishment and all the activities in connection with it, such as construction, operation and sometimes even shutdown (e.g. in the mining sector). In the case of holding companies, the rule applies that the activities of its subsidiary or subsidiaries are also regarded as an integral part of the project. If production processes (e.g. for precursor or intermediate products) are outsourced, these upstream and downstream processes are also regarded as part of the project where the applicant company is a joint owner of such companies. The actual influence the applicant company can bring to bear on the individual company is taken into consideration during the review.

IN WHAT WAY ARE FACILITIES NECESSARY FOR THE PROJECT (ASSOCIATED FACILITIES) AND THE SUPPLY AND VALUE CHAIN INCLUDED IN THE REVIEW?

Especially in large-scale projects, additional plant and infrastructure are often set up which, although they are not strictly speaking part of the project, would not have been built or expanded without the project and which are essential for its realization. It does not matter for the purposes of the review whether the applicant company finances, owns, operates or erects such plant or whether this is done by third parties.

If relevant risks are to be expected in connection with such associated facilities, all reasonable efforts should nevertheless be made to evaluate their environmental, social and human rights aspects and to react appropriately. The review takes account of the extent to which the

applicant company is in a position to obtain the required information and to counter any risks which may exist. In deciding whether a project is eligible for cover, account is taken of the fact that it is often not feasible to insist on implementing the same standards for the necessary associated facilities as for the project itself.

THE SUPPLY AND VALUE CHAIN

If elevated risks exist in the primary supply chain, for instance involving child or forced labour or safety standards at work, and the applicant company can bring the necessary influence to bear on the supplier, this is also included in the review. The same is true for projects which source primary raw materials from regions in which there is a risk that natural and critical habitats as defined by the 2012 Performance Standards on Environmental and Social Sustainability of the International Finance Corporation (IFC PS⁵) might be modified to a significant extent. These aspects may be relevant in, for instance, the food, timber, artisanal mining, textile, paper and cellulose sectors. Where necessary, the potential buyers for the products manufactured by the project company must similarly be taken into account. The project company's potential influence on the supply and value chain are taken into consideration in deciding on eligibility just as in the case of the associated facilities (cf. above).

WHAT IS THE REVIEW PROCEDURE AND WHAT INFORMATION IS NEEDED FOR IT?

There are three steps in the review of the environmental, social and human rights aspects. First comes a preliminary **screening process** in order to identify the relevant risk areas and focal points to be checked. The projects are **assigned to a category** on the basis of this. The scope of the following **review** as well as its basis and the assessment criteria depend on the results of the screening and the category the project is assigned to.

The results in each case are summarised in a decision proposal for the Interministerial Committee (IMC⁶), which takes the decision on whether to assume investment guarantees. If and when it is necessary to evaluate eligibility for cover, this decision may have conditions attached (e.g. developing management systems for the protection of workers). The implementation of such conditions is followed up in a **monitoring** process. Besides this, monitoring is carried out in general for all projects with relevant environmental, social and human rights aspects.

Some initial information is essential for the screening process and the allocation to a category and thus for determining the scope of the review. There is a checklist of this in the application form and additional information may be added as needed during the processing of the application. In this, due consideration will be given where appropriate, besides the regular business activity of the project company itself, to further necessary facilities as well as the supply and value chain.

WHY DO PROJECTS NEED TO BE SCREENED AND CATEGORISED?

The Federal Government applies a risk-oriented approach so that the scope of the review depends on the potential environmental, social and human rights impacts involved in the investment. In the screening process the relevant environmental, social and human rights aspects of a project are first of all identified. The goal of this is to map out the main risks of the project in order to focus the review on these aspects. This enables effective risk management while at the same time keeping the workload for the applicant to the minimum needed. The screening process looks at specific aspects of the sector and location of the investment as well as the social, legal and political context of the project.

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Depending on the intensity of the potential adverse impacts, a project is assigned to Category A, B or C. Projects in Category A and B are subject to an in-depth assessment. If a project is allocated to Category C, no further checks are made as a rule. It is only if individual risk aspects have been identified (e.g. in the supply chain) that a targeted check is also made on these aspects in Category C projects.

WHAT ARE THE CHARACTERISTICS OF A CATEGORY A PROJECT?

A project is assigned to Category A when it might have significant environmental, social or human rights impacts which could be manifold, irreversible or without precedent for the location. Category A projects are therefore subjected to an in-depth examination.

Just as for the export credit guarantees, the categorization is based on the recommendations in the OECD Common Approaches. The Annex I to this lists examples of the types of project which are most likely to fulfil the criteria for Category A. These include, besides projects in certain sectors, also projects which are to be realized in sensitive regions or which could have a tangible impact on such a region. Sensitive regions are deemed to be national parks, other areas protected by international or national law as well as sensitive regions of international, national or regional importance. These include wetlands, forest areas with high biodiversity, areas of archaeological or cultural significance as well as areas which are important for indigenous peoples or other minorities. Projects which could have significant adverse impacts on surrounding communities or other stakeholders – also those involved in the construction or operation of the project facilities – as well as those which involve a considerable number of resettlements, are likewise assigned to Category A.

WHAT ARE THE CHARACTERISTICS OF A CATEGORY B PROJECT?

Category B projects have smaller potential impacts compared with Category A projects. The possible effects are typically restricted to just a few aspects, do not go far beyond the actual location itself, have minor to no irreversible impacts, and measures to mitigate such impacts are easier to implement.

Accordingly, the scope of the assessment is usually smaller and checks are focused on the risk aspects identified during screening. In accordance with this, the level of detail examined may vary from project to project. Typical Category B projects are production facilities in the metalworking and mineral processing industries, small-scale thermal power stations and wind farms.

WHAT ARE THE CHARACTERISTICS OF A CATEGORY C PROJECT?

Allocation to Category C is for projects from which no or only very minor impacts on the location are to be expected. There may at most be a follow-up assessment on individual aspects of these projects if these have been identified during screening. This may involve, e.g. certain aspects of the supply chain.

WHAT REVIEW CRITERIA (STANDARDS) ARE APPLIED?

Projects with relevant environmental, social and human rights impacts are expected to be carried out in such a way that these aspects are assessed and managed in line with international good practice in the sector concerned. The most important frame of reference for the

review are the IFC PS and the general technical and sector-specific Environmental, Health and Safety Guidelines of the World Bank Group (the relevant version of the Guideline here is that which applies at the time the processing of the application begins⁷).

The IFC PS stipulate an assessment of the environmental and social aspects proportionate with the risks and the expected impacts of the project. Based on the results of this assessment, an integrated management system must be implemented to deal appropriately with the identified risks and impacts. It is assumed here that there will be a continual reduction of the impacts and improvement in their management, enabling the goals formulated in the IFC PS to be achieved within a reasonable timeframe. The goals and standards are set individually for each project.

While a full review according to IFC PS is carried out for Category A projects, in the case of Category B and C projects, only the risk aspects identified during screening are looked at more closely using the IFC PS criteria.

WHAT IS THE BASIS FOR THE REVIEW?

The applicant company is responsible for making the necessary information available.

As a rule, **Category A** projects are assessed on the basis of the following information:

- ▶ Environmental and Social Impact Assessment (ESIA) or other similar expert opinions which enable a comparable assessment.

IFC Performance Standards (PS):

- ▶ PS 1 Assessment and Management of Environmental and Social Risks and Impacts
- ▶ PS 2 Labor and Working Conditions
- ▶ PS 3 Resource Efficiency and Pollution Prevention
- ▶ PS 4 Community Health, Safety, and Security
- ▶ PS 5 Land Acquisition and Involuntary Resettlement
- ▶ PS 6 Biodiversity Conservation and Sustainable Management of Living Natural Resources
- ▶ PS 7 Indigenous Peoples
- ▶ PS 8 Cultural Heritage

- ▶ Environmental and Social Management System (ESMS) or policy documents, concrete project descriptions and schedules and/or manuals which enable an equivalent assessment of the management systems.
- ▶ Any Group policy documents, guidelines, standards, management plans or external certifications which might be relevant for the assessment.

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The assessments and other documentation should cover all those aspects of the IFC PS which are relevant for the project. Where necessary, additional documentation may be requested for a particular project. In individual cases site visits may be made on top of checking the documentation if this adds usefully to the assessment.

In line with the lower risks identified for **Category B and C** projects, targeted questions specifically aimed at these may be asked during the processing of the application. The assessment is normally carried out on the basis of the information directly provided by the applicant company.

If there is a high risk of serious human rights violations (e.g. with projects in the context of conflict zones), it may be necessary to provide expert opinions evaluating the human rights impacts (Human Rights Due Diligence/ Human Rights Impact Assessment) irrespective of the project category.

WHEN CAN A DECISION BE MADE ON A PROJECT?

A **positive decision** concerning the eligibility of an investment for cover regarding the environmental, social and human rights aspects can be taken when the project complies with good international practice and guidelines. Full compliance with the IFC PS is expected for a Category A project and IFC PS compliance regarding the identified risk aspects of the individual project for Category B and C projects.

A Federal Government guarantee can in principle also be assumed for projects in which the IFC PS have not yet been completely implemented with regard to individual risk aspects at the date of the decision on the guarantee. In these cases, a binding agreement is reached with the applicant company on which measures must be carried out at specified times in order to implement the relevant stipulations and recommendations of the IFC PS (a so-called Environmental and Social Action Plan – ESAP). The implementation of the ESAP is written as a condition into the guarantee document.

WHAT ACCOMPANYING MEASURES ARE THERE FOR THE PROJECT AFTER THE GUARANTEE DECISION HAS BEEN MADE?

According to the General Conditions, every policyholder is required to report annually on the development of his investment project. In the case of Category A projects this **general duty to report developments** also includes information on the environmental, social and human rights aspects of the project. A template for this reporting will be made available to policyholders. In the case of projects for which an action plan (ESAP, see above) has been agreed, the policyholder must report in addition at each of the times specified in the plan regarding the implementation measures and, where appropriate, submit the agreed documentation. In the event of serious environmental, social or human rights related incidents (serious occupational safety incidents, complaints/stakeholder difficulties or serious environmental incidents), the policyholder is obliged to report the incident regardless of the Category of the project.

For projects that are still at an early project stage at the time of the IMC decision and for which no ESAP exists, a one-time reporting obligation applies. This reporting generally takes place six months after the start of operations and confirms that the mitigation measures originally communicated in the application process have been implemented accordingly.

Related links:

- ¹ OECD Common Approaches:
<http://www.oecd.org>
- ² UN Guiding Principles on Business and Human Rights:
<https://www.ohchr.org>
- ³ OECD Guidelines for Multinational Enterprises:
<http://www.oecd.org>
- ⁴ German Sustainability Code:
<https://www.deutscher-nachhaltigkeitskodex.de/en-gb/>
- ⁵ Performance Standards on Environmental and Social Sustainability of the International Finance Corporation:
<https://www.ifc.org>
- ⁶ Interministerial Committee (IMC):
<https://www.investitions Garantien.de/en>
- ⁷ Environmental, Health and Safety Guidelines of the World Bank Group:
<https://www.ifc.org>

Investment Guarantees: an instrument to promote foreign trade and investment provided by the



Federal Ministry
for Economic Affairs
and Climate Action

Commissioned to implement the federal funding instrument Investment Guarantees:



Investment Guarantees of the Federal Republic of Germany

Investment Guarantees have been an established and effective foreign trade promotion instrument of the Federal Government for decades. Investment Guarantees protect eligible German direct investments in developing countries and emerging economies against political risks. This promotion instrument plays an important role in fostering economic growth as well as in protecting and creating jobs both in the host country and in Germany. The Federal Government commissioned PricewaterhouseCoopers GmbH Wirtschaftsprüfungsgesellschaft to manage the federal funding instrument Investment Guarantees.

Information on other foreign trade promotion instruments of the Federal Government can be found at www.bmwk.de/en under the heading Promotion of foreign trade and investment.

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