

Responsible
business conduct
due diligence
for project and asset
finance transactions

Responsible Business Conduct Due Diligence for Project and Asset Finance Transactions

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This paper provides a common framework for financial institutions on how to carry out due diligence to identify, respond to, and publicly communicate on environmental and social risks associated with project and assets they finance. Financial institutions are increasingly being called on to enable the provision of financing towards projects, infrastructure and other assets that will help achieve societal and development objectives, including the Sustainable Development Goals and the Paris Agreement. Embedding responsible business conduct (RBC) into their activities and across their value chains can help them meaningfully contribute to these objectives. This paper is designed for financial institutions that wish to implement the recommendations of the OECD Guidelines for Multinational Enterprises with respect to RBC due diligence in the context of project and asset finance transactions. It provides practical recommendations to financial institutions on key aspects of the RBC due diligence process including on stakeholder engagement and providing for or contributing towards remediation where impacts arise. It also explains how these recommendations relate to existing standards and frameworks for responsible project and asset financing.

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Foreword

Financial institutions are increasingly being called on to enable the provision of financing towards projects, infrastructure and other assets that will help achieve societal and development objectives, including the Sustainable Development Goals (SDGs) and the Paris Agreement.

Since the introduction of the Paris Agreement in 2015, investors have been facing increasing expectations to manage climate risks in their investments and portfolios. International financial institutions have also signalled plans to mobilise USD 400 billion towards achieving the SDGs. Strong due diligence processes can help ensure that investments are put towards projects and companies that behave responsibly and ultimately help achieve the objectives of the SDGs.

This paper can help financial institutions carry out due diligence to identify, respond to, and publicly communicate on environmental and social risks associated with projects and assets they finance. The paper identifies key actions for financial institutions under each step of the due diligence process and includes discussion of key considerations, such as stakeholder engagement, respecting client confidentiality, and providing for or contributing towards remediation where impacts arise. It also explains how these recommendations relate to existing standards and frameworks (i.e. the IFC Performance Standards and the Equator Principles).

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This paper has been developed through close consultation with a multi-stakeholder advisory group of over 50 representatives including financial sector industry leaders, government, trade unions, civil society, international organisations and other experts. This paper was approved by the OECD Working Party on Responsible Business Conduct on 15 August 2022 and the OECD Investment Committee on 20 September 2022.

This paper is part of the work the OECD undertakes to clarify expectations of responsible business conduct in the context of enterprises operating in the financial sector. The OECD has also developed tailored guidance to help enterprises carry out due diligence in other sectors, specifically: extractives, and particularly minerals from conflict affected and high-risk areas; garment and footwear; and agriculture.

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1 Overview

Introduction

Financial institutions play a key role in contributing to societal and development objectives, including the Sustainable Development Goals (SDGs) and the objectives of the Paris Agreement, through enabling provision of financing towards key services, infrastructure, technology and enabling quality jobs. Through promoting responsible business conduct (RBC) amongst themselves, their clients and undertaking due diligence processes, financial institutions can also avoid financing projects or assets that may be associated with harm to workers, communities or the environment. In this respect, one of the most powerful contributions business can make towards sustainable development is to embed RBC in their activities and across their value chains through strong due diligence processes. By carrying out RBC due diligence, financial institutions can ensure that financing flows to projects and companies that behave responsibly and ultimately benefit people and the planet.

Purpose and target audience

This paper provides guidance for financial institutions that wish to implement the recommendations of the OECD Guidelines for Multinational Enterprises (“MNE Guidelines”). It explains what the MNE Guidelines recommend with respect to RBC due diligence and provides guidance for how financial institutions can carry out RBC due diligence in the context of project and asset finance transactions (see Scope).

The MNE Guidelines are non-binding RBC recommendations by governments for multinational enterprises (MNEs). They acknowledge and encourage the positive contributions that business can make to economic, environmental and social progress, but also recognise that business activities, including those carried out by financial institutions, can result in adverse impacts related to workers’ rights, human rights, the environment, corruption, consumer interests and corporate governance. The MNE Guidelines recommend that businesses carry out risk-based due diligence to minimize, avoid and address such adverse impacts associated with their operations, their supply chains and other business relationships.¹

The MNE Guidelines also have a unique promotion and grievance mechanism — National Contact Points (NCPs).² This paper can also be a useful resource for NCPs in understanding and promoting the MNE Guidelines.

This paper is part of the work that the Organisation for Economic Co-operation and Development (OECD) undertakes to clarify RBC expectations in the context of enterprises operating in the financial sector. This paper represents one outcome of the OECD’s work towards this objective. Particularly, it builds on recommendations established by the OECD paper on Responsible Business Conduct for Institutional Investors (2017) (OECD, 2017^[1]) and the OECD paper on Due Diligence for Responsible Corporate Lending and Securities Underwriting (2019). (OECD, 2019^[2])

Scope

This paper provides an overview of practical actions and key considerations with respect to RBC due diligence approaches for financial institutions in the context of two major types of financing: project and asset finance transactions. For the purposes of this paper:

- **Project finance** includes bridge loans where they are associated with a specific project; and
- **Asset finance**, including machinery, equipment and transport finance (including assets exclusively built for a project as well as movable assets e.g. a fleet of construction trucks, ships etc.)³

The above-mentioned transactions are described in more detail in Annex B. These descriptions are intended to provide explanatory information for stakeholders such as NCPs, policymakers, workers, trade unions and civil society and other entities who are not finance practitioners but may be interacting with issues of RBC in the context of project and asset finance transactions.

Whenever appropriate, this paper includes differentiated expectations for specific types of transactions. In this respect, most of the recommendations and key considerations of this paper focus on project finance activity as due diligence practices are more developed and extensive for this type of transaction. Recommendations and examples for asset finance activities are included where appropriate but covered less extensively than project finance transactions. Where finance is provided for an asset exclusively built for a specific project the recommendations related to project finance may be relevant.

This document is without prejudice to any views concerning the scope of application of the MNE Guidelines. General corporate lending activities are not within the scope of this paper and are treated in the paper on Due Diligence for Responsible Corporate Lending and Securities Underwriting. (OECD, 2019^[2]) Likewise sovereign lending through purchase of bonds, bills or other debt securities, is not within the scope of this paper.

Financial institutions may cause adverse impacts through their own actions just like any other enterprise (e.g. adverse labour impacts with respect to their own employees). However these types of impacts are not the focus of this paper. Rather, this paper focuses on carrying out RBC due diligence with respect to adverse impacts financial institutions may contribute to or may be directly linked to through their clients or other *business relationships* in the context of project or asset finance transactions. In this respect, under the MNE Guidelines:

- Financial institutions may be contributing to or be directly linked to adverse impacts associated with a project or asset where they provide financing to **a client** to develop or operate that project or acquire that asset.
- Financial institutions may also be contributing to or be directly linked to adverse impacts associated with a project where they provide financing through one or several intermediaries, or finance assets built for a specific project. For example, a financial institution may finance a project or an asset through an intermediary such as a local bank. The entity developing or managing the project (**project sponsor**⁴) thus may not be a direct client of the financial institution but, under the MNE Guidelines, it may be considered to have a business relationship⁵ to the financial institution by way of the financial transaction. Likewise, a financial institution may provide asset finance to an entity producing a critical good for a project (e.g. turbines associated with a power plant etc.). Here again, the project sponsor may not be a direct client of the financial institution but may be considered to have a business relationship with it through the financing transaction.

Financial institutions will also have *business relationships* with other financial institutions involved in a project or asset finance transaction for example, in the context of syndicated finance or co-financing transactions or where a transaction involves financial intermediaries. To the extent it is relevant to

identifying and responding to potential risks associated with financing a specific project or asset, this paper provides recommendations on how to collaborate on due diligence with other financiers (e.g. in a syndicated or co-financing transaction) and financial intermediaries (see Box 3.9 on collaborating on carrying out due diligence).

Topics covered by RBC due diligence expectations cover a wide range of risks and impacts: human rights; employment and industrial relations; environment; combating bribery, bribe solicitation and extortion; consumer interests and disclosure. (OECD, 2018^[3])⁶ This paper focuses primarily on opportunities to address those risks associated with the human rights, employment and environment chapters of the MNE Guidelines (see Table 2.1).

Corruption issues are often subject to rigorous national laws and are closely monitored by legal and/or compliance departments of financial institutions. As such, although RBC due diligence expectations extend to impacts under the chapter on Combating Bribery, Bribe Solicitation and Extortion of the MNE Guidelines, the recommendations and key considerations of this paper do not focus on these risks on the assumption that they are already well defined under international and national laws and guidance. Similarly, while several financial activities will have impacts on consumers in the context of the retail market, consumer interest issues are not the focus of this paper.

Relationship to existing standards for project and asset finance transactions

There are several recognised existing standards and frameworks which some financial institutions may already be applying in the context of project and asset finance transactions. One of the most widely used and referenced standards for private financing transactions is the International Finance Corporation Performance Standards on Environmental and Social Sustainability (**IFC Performance Standards**). (IFC, 2012^[4]) The IFC Performance Standards define the environmental and social performance expectations of clients receiving financing from the IFC including how clients should assess and manage environmental and social risks and impacts.⁷ While the IFC Performance Standards only formally apply to financing provided by the IFC, their standards have been incorporated in other operational frameworks used by financial institutions to identify and respond to environmental and social risks related to project and asset finance transactions⁸ including:

- The **Equator Principles** (EPs), (Equator Principles, 2020^[5]) a voluntary risk management framework for determining, assessing and managing environmental and social risk in project-related finance which have been adopted by over 131 financial institutions at the time of writing.
- The OECD Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence (**Common Approaches**) (OECD, 2016^[6]), a framework for addressing environmental and social issues in the context of applications for officially supported export credits.⁹

Various other environmental and social “safeguards” and “sustainability standards” have also been developed by international financial institutions. While most of these have not been incorporated into the policies and practices of private sector financial practitioners as widely as the Common Approaches, the EPs or the IFC Performance Standards, they may serve as a useful reference.¹⁰

The IFC Performance Standards and EPs, like the RBC due diligence process, lay out expectations with respect to identifying and responding to environmental and social risks in the context of project and asset finance transactions. There are important alignments between the measures expected under the RBC due diligence approach and the IFC Performance Standards and EPs. As such by meaningfully implementing the recommendations of the IFC Performance Standards and EPs financial institutions can observe many of the expectations of the RBC due diligence approach subject to the qualifications below.

With respect to certain aspects of environmental and social performance (e.g. for biodiversity, climate reporting etc.), the IFC Performance Standards and EPs provide more detailed standards and benchmarks compared to RBC due diligence recommendations. However, in some areas, due diligence expectations may go beyond requirements and recommendations outlined in these standards and frameworks both with respect to process-oriented expectations as well as the scope of issues covered. Most notably, under the OECD RBC due diligence processes outlined in this paper:

- From a thematic perspective, expectations related to social issues, in particular human rights, are covered in more detail.
- From a process perspective, expectations are addressed *to* financial institutions, rather than to the client receiving financing. In this respect RBC due diligence includes expectations that *financial institutions* themselves introduce RBC policies and embed them across management systems (See Measure 1), play an active role in identifying and responding to risks and impacts associated with projects and assets they finance (See Measure 2 and 3); track and publicly report on their own due diligence efforts, which may go beyond reporting expectation under current standards and frameworks (See Measure 4 and 5) and provide for or cooperate in remediation with respect to adverse impacts associated with their financing activities. (See Measure 6). In responding to these expectations, financial institutions need to likewise promote RBC due diligence processes amongst their clients/project sponsors.

Tables providing a comparison between the scope of coverage and recommendations of the IFC PS and EPs against the RBC due diligence approach are included in Annex C. Additionally, where relevant throughout this paper the relationship of RBC due diligence recommendations to the IFC Performance Standards and EPs are explained to facilitate implementation for practitioners which have adopted them. Readers may also consult additional resources which have sought to compare existing standards and frameworks to human rights due diligence approaches.¹¹ (OHCHR, 2022^[7])

Relationship to legal obligations

The approaches in this paper are without prejudice to legal obligations for financial institutions, which, in certain jurisdictions, may be more stringent than the standards set out in this paper. In some cases, the MNE Guidelines may extend beyond domestic law, however they are not intended to supersede or conflict with the legal obligations of financial institutions. In case of a conflict between national laws and the MNE Guidelines, financial institutions “should seek ways to honour [MNE Guidelines] principles and standards to the fullest extent which does not place them in violation of domestic law”.¹²

Financial institutions should first and foremost respect the laws of all the jurisdictions in which they operate, comply with all regulations and requirements imposed by their regulators including but not limited to their corporate governance obligations and duties to their clients, counterparties and shareholders. Furthermore, all recommendations in this guidance, which relate to the use of leverage should be considered within the parameters of what is legally permissible. For example, competition law issues should be considered with respect to collaborative due diligence approaches. (OECD, 2015^[8]) If in doubt, legal advice should be obtained to ensure compliance with the law and that duties to clients are respected while implementing the recommendations in this paper.

To the extent that host-country laws or regulatory guidance truly prevent implementation of the standards promoted in the MNE Guidelines and have bearing on the project or asset in question, the financial institution may reconsider providing support for projects or assets in that jurisdiction. However, this paper also recognizes that access to finance for infrastructure and other projects is often particularly needed in high risk contexts and financial institutions can also play a role in engaging in systematic issues and challenges in geographies they operate in. As such broad exclusionary policies are not generally recommended. This is further addressed in Section 3, Measure 3.

Structure

The introduction of this paper provides context on the purpose, target audience and scope. In addition, it addresses how this paper relates to existing standards and frameworks in the area of project and asset finance, legal obligations and related processes and instruments.

Section 2 explains some foundational concepts and provides a high-level overview of how “due diligence”, “adverse impacts” and a “risk-based” approach are conceptualised in the context of the MNE Guidelines.

Section 3, the main body of this paper, describes the core elements under each component of the RBC due diligence process. These are organised into distinct steps; though in practice the process of due diligence is ongoing, iterative and not necessarily sequential, as several steps may be carried out simultaneously with results feeding into each other. This section includes an overview of practical actions that illustrate how to implement or adapt as needed, supporting measures with respect to the due diligence process. Not every practical action will be appropriate for every situation. Likewise, financial institutions may find additional actions or implementation measures useful in some situations. This section also includes a discussion of key considerations and approaches to potential challenges financial institutions may face when carrying out RBC due diligence in the context of project and asset finance transactions.

Finally, the paper includes several annexes to provide additional background on: A) terminology used in the MNE Guidelines such as “due diligence” which may be associated with different meanings in different contexts; B) descriptions of the types of financing addressed by this paper, and a C) comparative overviews of the due diligence processes with the IFC Performance Standards and EPs.

Links to related processes and instruments

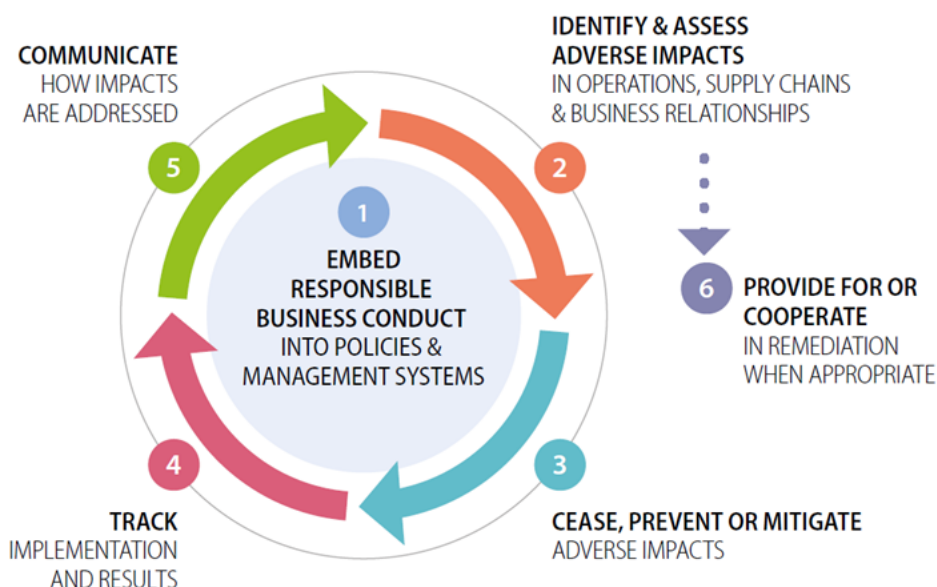
Other OECD instruments: The MNE Guidelines are referenced in a range of other OECD instruments that reinforce the interlinkages between RBC and other areas, including: the G20/OECD Principles of Corporate Governance (OECD, 2015^[9]); the Guidelines on Corporate Governance of State-Owned Enterprises (OECD, 2015^[10]); Recommendation of the Council on the Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence; (OECD, 2016^[6]) the Policy Framework for Investment; (OECD, 2015^[11]) the Recommendation of the Council on Public Procurement; (OECD, 2015^[12]) the Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions; (OECD, 2021^[13]) and the Recommendation of the Council on Bribery and Officially Supported Export Credits (OECD, 2019^[14]).

Other multilateral processes and instruments: In relation to human rights issues, including the human rights of workers, the recommendations in this paper seek to align with the UN Guiding Principles on Business and Human Rights (UNGPs), (OHCHR, 2011^[15]) the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work, (ILO, 1998^[16]) ILO conventions and recommendations referenced within the MNE Guidelines, and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (ILO, 2017^[17]).

2 Overview of due diligence for responsible business conduct (RBC)

What is RBC due diligence?

RBC due diligence is the process enterprises should carry out to identify, prevent, mitigate and account for how they address actual and potential adverse impacts on the environment and on people in their own operations, their supply chain and other business relationships. Effective due diligence should also involve embedding RBC into policies and management systems, and remediation of adverse impacts (see Figure 2.1).



Source: OECD Due Diligence Guidance for Responsible Business Conduct (2018)

The normative basis for RBC due diligence is the MNE Guidelines which call on enterprises to carry out due diligence.¹³ In 2018, the OECD published the Due Diligence Guidance for Responsible Business Conduct (“OECD Due Diligence Guidance”), which has been endorsed by 50 governments and sets out a

common framework for due diligence processes across all sectors, including the financial sector. (OECD, 2018^[3]) This guidance provides the foundation for the recommendations in this paper.

RBC due diligence may be different from and broader than how the term “due diligence” is commonly understood by financial institutions: transaction due diligence in the context of project or asset finance is often understood as a process of identifying and assessing actual or potential environmental and social impacts associated with a project or asset, conducted prior to deciding whether to provide financing or support and focuses on risks to the business. In addition to identification and assessment, RBC due diligence also includes expectations related to the development of the financial institutions RBC policies and management systems, tracking and communicating on RBC issues, and seeking to respond to adverse impacts which manifest through the operational life of/business activities of the project, including through engaging in or enabling remediation. Such actions will be carried out prior and subsequent to provision of financing.

Financial institutions often also undertake these types of activities in the context of project finance activity but they are commonly understood as processes separate or additional to “due diligence” (e.g. Environmental and Social Management Systems (ESMS) or in the case of remediation, financial institution accountability).

In addition to due diligence, other terms used in this paper may be associated with different understandings depending on the audience. Annex A provides an overview of this terminology to avoid confusion.

What are actual and potential adverse impacts under RBC due diligence?

RBC due diligence addresses actual adverse impacts or potential adverse impacts related to the topics covered in the MNE Guidelines (e.g. human rights, including workers’ rights, employment and industrial relations, or the environment) or “RBC issues”. A risk of adverse impact or “RBC risk” may exist when there is potential for behaviour that is inconsistent with the recommendations in the MNE Guidelines. (See Table 2.1 for examples).

Table 2.1. Examples of adverse impacts on matters covered by the MNE Guidelines

This list is illustrative and not exhaustive. Adverse impacts may be caused or contributed to by an enterprise, or be directly linked through a business relationship.

MNE Guidelines Topic	Examples of Adverse Impacts
Human Rights	<p>Forced Labour.</p> <p>Gender-based violence or harassment including sexual harassment.</p> <p>Failing to identify and appropriately engage with indigenous peoples where they are present and potentially impacted by the enterprise’s activities.</p> <p>Involvement in reprisals against civil society and human rights defenders who document, speak out about, or otherwise raise potential and actual human rights impacts associated with projects.</p> <p>Restriction on people’s access to clean water.</p> <p>Forced displacement of people.</p> <p>Privacy issues related to management of end-users data.</p> <p>Inadequate or inaccessible access to basic services for marginalised populations.</p> <p>Child labour, including worst forms of child labour.</p> <p>Human rights impacts of climate change</p>
Employment and Industrial Relations	<p>Forced Labour.</p> <p>Failing to respect the right of workers to establish or join trade unions or representative organisations of their own choosing and have trade unions and representative organisations of their own choosing recognised for the</p>

MNE Guidelines Topic	Examples of Adverse Impacts
	<p>purpose of collective bargaining.</p> <p>Failing to engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on terms and conditions of employment.</p> <p>Discrimination against workers with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, or other status.</p> <p>Failing to adapt machinery, equipment, working time, organisation of work and work processes to the physical and mental capacities of workers.</p> <p>Failing to replace hazardous substances by harmless or less hazardous substances for workers wherever possible.</p> <p>Wage discrimination for equal work or work of equal value.</p> <p>Payment of wages that do not meet the basic needs of workers and their families.</p> <p>Threatening to transfer the whole or part of an operation unit in order to hinder workers from forming or joining a trade union.</p>
Environment	<p>Ecosystem degradation through land degradation, water resource depletion, and/or destruction of pristine forests and biodiversity.</p> <p>Unsafe levels of biological, chemical or physical hazards in products or services.</p> <p>Water pollution, including marine environmental impacts (e.g. through discharging waste water without regard to adequate wastewater infrastructure).</p> <p>Air pollution and climate change impacts.</p>

Source: Adapted from OECD (2018)^[3] Due Diligence Guidance for Responsible Business Conduct, <https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>.

RBC due diligence is concerned with potential adverse and actual impacts on people, the environment and society that enterprises, including financial institutions, may cause, contribute to, or to which they are directly linked, independent of financial materiality. Throughout this paper reference to “risk” and “impact” refer to “RBC risks” (see also Annex A, for an overview of terminology).

In the context of financial institutions’ financing activities, the term Environmental and Social (E&S) or Environmental Social and Governance (ESG) risks is often used to describe how RBC issues (mainly those related to environmental, human rights and social aspects) may impact a project or asset and in some cases eventually the financial institution – e.g. the financial materiality of the impact.

Financial institutions have traditionally been more concerned about the credit-worthiness of a transaction and operating income used for repayment, their position in the market in relation to their competitors, their reputation and long-term existence. However, many financial institutions are placing increasing importance on environmental and social risks and impacts independent of their financial materiality. This is especially true where environmental, social or development objectives are part of a financial institution’s mandate or where a financial institution has committed to requiring certain environmental and social standards across the projects or assets it supports. Furthermore, in many instances, there is a strong correlation between the potential financial risk and RBC risk associated with a client and/or transaction, for example where RBC risks also pose reputational risks which influence market standing or in some cases legal risks. Nonetheless, many RBC issues persist precisely because they are not seen to be financially material.

What does “risk-based” due diligence mean?

The MNE Guidelines call on enterprises to carry out “risk-based” due diligence. This means that RBC due diligence 1) should be commensurate with the severity and likelihood of the risk to people, planet and society (as understood under the MNE Guidelines, see above) and 2) can involve prioritisation.

Financial institutions will handle a broad variety of transactions concurrently and may be exposed to a diverse range of actual or potential adverse impacts. Prioritisation will be necessary where it is not feasible for a financial institution to identify and respond to all adverse impacts associated with their activities and business relationships immediately. In these situations, financial institutions should prioritise the order in which they take action based on the severity and likelihood of the adverse impact. In the case of prioritising risks to human rights, the severity of a potential adverse impact, such as where a delayed response would make the impact irremediable, is the predominant factor in prioritising responses.¹⁴

Under RBC due diligence severity is measured by scale, scope and irremediable character:

- *Scale* refers to the gravity of the adverse impact.
- *Scope* concerns the reach of the impact, for example the number of individuals that are or will be affected or the extent of environmental damage.
- *Irremediable character*¹⁵ means any limits on the ability to restore the individuals or the environment affected to a situation equivalent to their situation before the adverse impact.

See Table 2.2 for examples.

Table 2.2. Examples of indicators of scale, scope and irremediable character

Adverse impact	Examples of scale	Examples of scope	Examples of the irremediable character
Environment (e.g. ecosystem degradation, water pollution, climate impacts, etc.).	<ul style="list-style-type: none"> • Extent of impact on human health • Extent of changes in species composition • Water use intensity (% use of total available resources) • Degree of waste and chemical generation (tons; % of generation) • Degree of GHG emission or carbon footprint 	<ul style="list-style-type: none"> • Geographic reach of the impact • Number of species impacted 	<ul style="list-style-type: none"> • Degree to which rehabilitation of the natural site is possible or practicable • The length of time remediation would take
Labour (e.g. workplace health and safety issues, forced labour, child labour, failure to respect labour rights, etc.)	<ul style="list-style-type: none"> • Extent of impact on worker health or safety • Whether the violation concerns a fundamental right at work (e.g. ILO Core Conventions) 	<ul style="list-style-type: none"> • Number of workers/employees impacted • Extent to which impacts are systemic (e.g. to a particular geography, industry or sub-sector) • Extent to which some groups disproportionately affected by the impacts (e.g. minorities, women, etc.) 	<ul style="list-style-type: none"> • Extent to which the impact can be rectified (e.g. through compensation, reinstatement, changing the working environment, etc.) • Whether the workers affected can be restored to the prior enjoyment of the right in question • The extent to which intimidation of workers for forming or joining a trade union will effectively deny workers the right to representation and collective bargaining.
Human Rights (E.g. forced displacement, gender based violence, infringements of civil or cultural rights, etc.).	<ul style="list-style-type: none"> • Extent of infringement of access to basic life necessities or freedoms (e.g. education, livelihood, etc.) 	<ul style="list-style-type: none"> • Number of people impacted • % of identifiable groups of people impacted • Extent to which certain target groups e.g. Indigenous Peoples, women, minorities etc. are disproportionately impacted 	<ul style="list-style-type: none"> • The extent to which the impact can be rectified (e.g. through compensation or restitution) • Whether the people affected can be restored to their exercise of the right in question

The process of prioritisation is ongoing, and in some instances new or emerging adverse impacts may arise and be prioritised before moving on to less significant impacts. Importantly, the RBC prioritisation framework is not defined by commercial considerations. Therefore, the most significant risks and impacts will not necessarily be those that are the most financially material.

In coordination with the client and/or project sponsor, consulting with stakeholders, including experts on environmental and social issues or representatives from potentially affected groups, on how to assess severity of actual and potential impacts and communicating on the prioritisation rationales and decisions publicly can ensure a range of perspectives on RBC risks are incorporated and strengthen the credibility of, and trust in, a financial institution's RBC due diligence.

The IFC Performance Standards include a system of prioritisation based on categorization of the magnitude of potential environmental and social risks and impacts associated with a business activity (see Box 2.1). This approach to risk-based categorization has been incorporated into other existing frameworks such as the EPs. This approach, which considers the significance of adverse impacts as well as whether they can be reversed or mitigated, broadly reflects the prioritization rationale proposed by RBC due diligence. However, there may be some substantive discrepancies across issues covered by the IFC Performance Standards and MNE Guidelines (see Annex C) as well as differences in how these approaches to prioritisation are implemented. In this respect, work by the Office of the High Commissioner for Human Rights ("OHCHR") has found that in implementing Development Finance Institution (DFI) safeguard standards, social issues are often under prioritised and the size or physical footprint of a project is more likely to inform prioritisation decisions rather than contextual factors that might enhance human rights or labour risks. As a result, smaller projects or sectors without a significant footprint (e.g. the ICT sector) associated with significant human rights risks may be overlooked and not treated according to the higher risks that they actually represent. (OHCHR, 2022^[7])

The categorization approach also tends to occur early in the investment lifecycle and is not systematically revisited whereas the RBC due diligence process is ongoing as in some instances new or emerging adverse impacts may arise.

Box 2.1. Risk-based categorization under the IFC Performance Standards

Category A: Business activities with potential significant adverse environmental or social risks and/or impacts that are diverse, irreversible, or unprecedented.

Category B: Business activities with potential limited adverse environmental or social risks and/or impacts that are few in number, generally site-specific, largely reversible, and readily addressed through mitigation measures.

Category C: Business activities with minimal or no adverse environmental or social risks and/or impacts.

Source: Environmental and Social Categorization,

https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/es-categorization

A risk based approach also means that the type of measures that an enterprise takes to conduct RBC due diligence should be commensurate to the severity and likelihood of the adverse impact. In this respect, transactions which are identified as higher risk (i.e. associated with more significant adverse impacts) are subject to more extensive due diligence expectations. For example, while a financial institution will require all clients to undertake specific activities in line with predefined standards, for situations deemed to be high-risk they may additionally assess and verify that the client's activities meet these standards (e.g. through engaging independent expert review and verification). An illustrative overview is provided in Table 2.3 below and due diligence recommendations throughout this paper reflect this approach.

Table 2.3. Overview of RBC due diligence measures for high-risk transactions

Due diligence measures and practical actions	All transactions	High-risk transactions
Identification (see also Measure 2)	<p>Requiring that clients/project sponsors undertake assessment of environmental and social risks associated with their activities in compliance with relevant legal and permitting obligations and in line with good international industry practice.</p> <p>For project finance, where appropriate, requiring more detailed or expansive assessment such as an Environmental or Social Impact Assessment (ESIA) and/or Human Rights Impact Assessment (HRIA) to be undertaken by the client/project sponsors.</p>	<p>Verifying quality of assessments and supplementing client/project sponsors assessments with additional efforts to identify real and potential adverse impacts associated with a project or asset.</p>
Prevention and Mitigation (see also Measure 3)	<p>For project finance, requiring or encouraging clients/project sponsors to undertake meaningful stakeholder engagement</p> <p>Including general RBC commitments and expectations in standard contractual templates.</p>	<p>For project finance, assessing the quality of stakeholder engagement conducted and where insufficient requiring clients/project sponsors address any shortcomings or supplement with engagement by the financial institution or through an independent expert.</p> <p>Including specific RBC expectations into covenants to build leverage on RBC issues.</p>
Tracking (see also Measure 4)	<p>For project finance, as relevant, monitoring how identified compliance gaps - including, when relevant by monitoring implementation of Environmental and Social Action Plan (ESAP) and RBC issues are being addressed.</p>	<p>For project finance, monitoring client/project sponsor RBC performance and implementation of ESAP on a regular basis.</p> <p>Ensuring such monitoring does not rely solely on self-reporting including through requiring third party review of client/project sponsor compliance with RBC expectations.</p>
Communicating (see also Measure 5)	<p>Publicly reporting RBC policies, including exclusionary policies and their implementation, areas of significant real and potential impacts, efforts to prevent, mitigate and remediate such impacts and RBC plans and targets at the level of client portfolios or business areas.</p>	<p>Publicly reporting information regarding high risk projects including project name, location and the details of additional information, where it is available (e.g. pointing to an ESIA report or summary published by a client/project sponsor).</p> <p>Within the limit of client's confidentiality obligations and requirements mandated by law, publicly reporting on efforts to prevent and mitigate actual or potential adverse RBC impacts or co-operation in remediation as relevant with respect to high risk projects/asset, including where possible the outcomes of those efforts.</p>
Remediation	<p>Where applicable, providing for or cooperating with legitimate remediation mechanisms through which impacted stakeholders and rightsholders can raise complaints to the financial institution and seek to have them addressed.</p> <p>For project finance, requiring that clients/project sponsors have legitimate grievance mechanisms in place (their own or ones they participate in).</p>	<p>For project finance in high risk contexts, assessing to what extent clients/project sponsor level grievance mechanism meet international standards and where insufficient requiring clients/project sponsors address any shortcomings</p> <p>Establishing mechanisms for ensuring that clients/project sponsors have financial resources and the capacity to provide for remediation in case harms arise.</p>

Furthermore, the objectives pursued and processes adopted across due diligence measures can also vary depending on the stage of development and/or operation of a particular asset/project. For example, in the development and construction phase of a project, more resources may be put towards assessing potential future impacts associated with the project and establishing prevention plans, whereas in the operational phase, the focus of due diligence efforts may be on monitoring to ensure compliance with environmental and social expectations or remediating impacts.

Why carry out RBC due diligence?

Effectively preventing and mitigating actual and potential adverse impacts may help financial institutions increase their positive contributions to society, improve stakeholder relationships and protect their reputation. RBC due diligence can also help financial institutions create more value for their clients, as well as for society. In some cases, carrying out RBC due diligence can also contribute towards identifying opportunities to reduce cost, improving understanding of markets, strengthening management of company-specific business and operational risks, decreasing the probability of default, and decreasing exposure to unforeseen or systemic risks.

Carrying out RBC due diligence can also help financial institutions meet legal requirements pertaining to specific RBC issues in the context of project and asset finance, such as local labour and environmental laws, reporting requirements and legal requirements mandating due diligence be carried out. This is important as financial institutions are subject to an increasing number of regulatory expectations regarding RBC issues. In this respect the amount of policy instruments that require or encourage integration of consideration of environmental, social or governance factors across the financial chain doubled between 2013 and 2016 – and has only increased since. (UN PRI, 2016^[18])

3 Key considerations for RBC due diligence in project and asset finance transactions

This section is divided into six measures, each of which corresponds to a step of the due diligence process:

1. Embedding RBC into policies and management systems
2. Identifying actual and potential adverse RBC impacts
3. The cessation, prevention, and mitigation of such impacts
4. Tracking implementation and results.
5. Communicating how impacts are addressed
6. Providing for or cooperating in remediation when appropriate

Each measure includes an overview of core measures and practical actions which illustrate how to implement or adapt, as needed those measures, as well as a discussion of key considerations which may be relevant to applying specific RBC due diligence steps in the context of project and asset finance transactions.

Measure 1: Embed RBC into policies and management systems

Strong RBC policies and management systems are an important foundation to enabling effective due diligence. RBC policies establish a financial institution's public commitments on RBC issues and define their processes for ensuring they respect those commitments. Management systems provide the necessary infrastructure needed for due diligence to be effectively carried out and ensure that it is integrated as a core aspect of business operations rather than a siloed or peripheral process. Practical actions associated to embed RBC into policies and management systems are provided in Table 3.1

Table 3.1. Practical actions for embedding RBC into policies and management systems

	Project and asset finance transactions
Practical actions for financial institutions	<p>Adopting a policy which includes commitment by the financial institution to observe relevant principles and standards on RBC issues (e.g. the OECD MNE Guidelines, the UNGPs, ILO Conventions, relevant international human rights and environmental conventions and agreements), as well as relevant frameworks used by the financial sector (e.g. IFC Performance Standards and the EPs):</p> <p>and:</p> <ul style="list-style-type: none"> • describes the financial institution's approach to due diligence and lays down principles and criteria informing risk identification, prevention and mitigation, communication, tracking and remediation and explains how the financial institution prioritises RBC issues; • describes the financial institutions approach to stakeholder engagement; • ensures a consistent approach to due diligence and decision-making across the entire financial institution (i.e. in the context of different transactions and departments); • clearly communicates the financial institution's expectations towards its clients and business relationships; • covers all types of client and business relationships and transactions across different geographies and industry sectors;¹⁶ • Is reviewed and updated as RBC risks emerge and evolve; and • Is approved at the most senior level of the financial institution. <p>Allocating sufficient resources to effectively carry out due diligence.</p> <p>Identifying and assigning roles and accountability to relevant business units for carrying out steps of the due diligence process (e.g. senior level management, risk or compliance teams, business development officers, clients and business relationship managers.).</p> <p>Maintaining management systems which enable financial institutions to consider RBC risks in business strategies and daily operations.</p> <p>Communicating RBC expectations with clients (e.g. by incorporating conditions and expectations on RBC issues in contracts or other forms of written agreements) and other business relationships (including co-financiers and intermediaries) (See also Measure 3)</p>

What is the purpose of policies on RBC?

Policies on RBC issues ("RBC policies") are used to articulate a financial institution's commitments to RBC and to inform stakeholders and the broader public about these commitments. They are also used to communicate on a financial institution's processes to embed RBC in the context of its activities. In this respect policies can describe how due diligence is carried out, including across different functions (see below). Financial institutions can use their policies to communicate the rationale or approach they use to prioritise specific high-risk issues.

The EPs and IFC Performance Standards focus on performance expectations of clients, rather than for financial institutions themselves. In this respect they do not provide recommendations on how to embed RBC into the policies, governance or management systems at the level of a financial institution itself. However, many financial institutions have separate policies and procedures which address these considerations. For example, the IFC E&S Sustainability Policy and E&S Review Procedure Manual provide an overview of commitments and management systems at the level of the financial institution. The EPs also note that the Equator Principles Financial Institutions ("EPFI") should determine the most appropriate system for its institution. They also include specific requirements directed to clients regarding management systems.

RBC policies should also outline what a financial institution expects from staff, clients, and other business relationships in relation to RBC issues. In this respect RBC policies should be used to describe minimum

standards of environmental and social conduct required with respect to projects and assets, such as those articulated in the MNE Guidelines, UNGPs, and IFC Performance Standards. Some RBC related standards specific to transport and other moveable assets are also often used in the context of asset finance.¹⁷ Many financial institutions already have such policies in place which are often referred to as Environmental and Social (“E&S”) policies, safeguard policies or sustainability policies.

Box 3.1. IFC Performance Standards Overview

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

Source: IFC (2012^[4]), Performance Standards on Environmental and Social Sustainability, https://www.ifc.org/wps/wcm/connect/c02c2e86-e6cd-4b55-95a2-b3395d204279/IFC_Performance_Standards.pdf?MOD=AJPERES&CVID=kTjHBzk

Which format can RBC policies have?

An RBC policy does not need to be a standalone or a single document. It can be a collection of policies and can be integrated into existing policies, statements or commitments of a financial institution. In addition to general policies financial institutions normally establish specific policies or statements addressing particular issues or industries (such as mining and agriculture) in which they explain how they address RBC issues at the levels of client, transaction and portfolio.

To ensure that clients, prospective clients and other stakeholders can easily understand and access RBC policies, it is important that they be widely accessible, clearly worded, and available in the most important languages spoken in the key markets the financial institution operates.

How can RBC policies be developed and revised?

Financial institutions can build on existing model policies, standards and frameworks in developing RBC policies. Model policies already exist for management of RBC risks with respect to specific issues or sectors.¹⁸ Furthermore, many financial institutions integrate the expectations of the IFC Performance Standards and EPs into their RBC policies for project and asset finance transactions. Aligning policies to existing standards and frameworks can facilitate collaboration on due diligence through ensuring that projects and assets are subject to the same minimum expectations across financial institutions. However financial institutions should consider whether it is necessary to adapt or expand their RBC policies beyond existing standards and frameworks based on their context and the risk profile of their portfolio.

Consultation with stakeholders including experts, regulators, trade unions, civil society organisations and peers in developing policies is also useful to ensuring they reflect a range of perspectives and maintain a best in class approach to RBC risks. Additionally, consulting with relevant units of the financial institution (see below) in the context of policy development can help identify realistic RBC objectives and policy

implementation approaches that are effective and can be integrated into a financial institution's regular operations.

Financial institutions should establish periodic updates to make sure that policies reflect changes in risks across portfolios, shifting societal expectations, regulatory obligations and lessons learned.

How can RBC be embedded across business processes and management systems?

Embedding policies on RBC across relevant business processes and management systems so that it is implemented as a part of regular business practices is a core expectation of the RBC due diligence process¹⁹ and ensures that RBC is an integral part of financial institutions' decision-making and risk management processes.

As an initial consideration, sufficient financial resources should be allocated and available for RBC due diligence activities to be carried out effectively (e.g. budget for the development and use of in-house impact identification tools, allowance for field travel when necessary; for staff responsible for responding to and tracking real and potential impacts, etc.).

Additionally, it will be important to assign roles, responsibilities and adequate human resources across all relevant units and departments of a financial institution for carrying out due diligence.

Relevant staff or business units of financial institutions include those:

- Making high-level decisions (e.g. boards, senior-level management, strategy departments).
- In charge of risk or compliance (e.g. legal, compliance, due diligence officers, credit officers, risk units, environmental and social risk units).
- Developing and managing client relationships (e.g. business development officers, client relationship managers, loan officers and investment managers);
- Analysing and verifying data on RBC aspects of activities of financial institution and ensuring public reporting of the institution;
- Marketing and development of financial products.²⁰

It may also include units from different business areas, such as commercial and investment banking, or those developing financial products with environmental and social objectives.

It is also important to establish and maintain appropriate and sound management systems that enable financial institutions to consider RBC issues in their business strategies and daily operations. For example:

- Processes and criteria for ensuring RBC issues are taken into account in financing decisions (i.e. establishing clear rules on standards and RBC criteria which must be taken into account in decisions to extend financing or support (see Measure 3).
- Aligning incentives across relevant businesses units (e.g. deal teams and investments/loan officers and underwriters) and developing systems to prevent conflict of interest and to avoid internal pressures to overlook RBC risks in favour of commercial outcomes. Measures may include:
 - Establishing internal risk controls in accordance with the three lines of defence model,²¹
 - internal audits
 - Strengthening internal whistle-blower protections where such controls are not successful
 - The integration of RBC objectives into performance assessments
 - The integration of RBC objectives into compensation incentives for relevant teams and final decision-making bodies.

What is the role of senior management in the context of RBC policies?

Senior management²² plays a crucial role in ensuring that policies on RBC issues are implemented coherently across the organisation²³ and that the appropriate management systems, processes and organisational structure are in place. RBC policies should be approved at the most senior level of the financial institution and having a board member or board committee with expertise on and responsibility for RBC issues is good practice. (OECD, 2018^[3])

The duty of senior management of public companies in overseeing issues relevant to RBC and stakeholders' consultation is also recognised in the *G20/OECD Principles for Corporate Governance* (OECD, 2015^[9]). Senior management members (in particular, directors of the legal entity) often owe specific company law duties to advance the company's best interests. In some jurisdictions, those obligations also include requirements to consider the impact of the company's conduct on society as a whole.

Box 3.2. G20/OECD Principles for Corporate Governance

According to the G20/OECD Principles for Corporate Governance, the senior management body, such as a committee, ideally including members from the executive board and/or the board of directors should:

- Oversee the risk management system and systems designed to ensure that the corporation obeys applicable laws, including tax, competition, labour, environmental, equal opportunity, health and safety laws.
- Take due regard of, and deal fairly with, other stakeholder interests including those of employees, creditors, customers, suppliers and local communities. Observance of environmental and social standards is relevant in this context.
- Have a key role in setting the ethical tone of a company, not only by its own actions, but also in appointing and overseeing key executives, and consequently, the management in general.
- Establish and ensure the effectiveness of internal controls, ethics and compliance programmes or measures to comply with applicable laws, regulations and standards. [...] Moreover, compliance must also relate to other laws and regulations such as those covering securities, competition and work and safety conditions. Other laws that may be applicable include those relating to taxation, human rights, the environment, fraud and money laundering.

How can RBC expectations be communicated to clients/project sponsors and other business relationships?

A first step in communicating RBC expectations is to ensure that the financial institution's RBC policies are publicly available and actively communicated to the client/project sponsor, business relationship and other external stakeholders. In addition to communicating general expectations on RBC, financial institutions may also tailor their communication based on specific risks associated with a project or asset finance transaction. Communicating RBC expectations and other key information should take place prior to forming a business relationship, during the client/business relationship on-boarding process. (See Measure 3).

In order to ensure the agreed common understanding of RBC expectations between the financial institution and its client and other business relationships, the expectations should be included where applicable in

contracts and other agreements, including with E&S consultants contracted to undertake E&S risk assessments (see Measure 3). This will be particularly important for high-risk projects or assets.

Additional tools (e.g. checklists, a set of RBC-related questions integrated into assessment tools), documentation (e.g. fact sheets, policy statements) and training on RBC issues for client relationships managers can also support a shared understanding of on RBC expectations.

Measure 2: Identify and assess actual and potential adverse impacts

Identification of actual and potential adverse impacts across existing and potential clients is a central aspect of the due diligence processes as it orients financial institutions as to where they need to take action to seek to prevent, mitigate or address risks and impacts. Table 3.2 outlines practical actions financial institutions can take to identify and assess adverse impacts related to project and asset finance transactions.

Table 3.2. Practical actions for identifying and assessing actual and potential adverse impacts

	Project finance transactions	Asset finance transactions
Practical action for financial institutions	Prior to committing to financing/support	
	Identify and assess actual and potential adverse impacts through:	
	High-level scoping (e.g. initial screening) to identify the transactions where RBC risks are most likely and severe.	High-level scoping (e.g. initial screening) to identify the transactions where RBC risks are most likely and severe (e.g. through use of questionnaires or red flag systems).
	Further risk-based assessment of specific transactions through: <ul style="list-style-type: none"> • Mapping and assessment of principal actors involved with the project/asset • RBC risk assessment of the project/asset, including with respect to contextual risks. 	
	For high-risk projects evaluate quality of environmental and social assessments and engagement with potentially affected groups undertaken by a client.	
	Establish early warning mechanisms through which stakeholders and other parties can report potential RBC risks to the financial institution and impacts and/or engage third party services to receive RBC controversy alerts.	
	Ensure a process is in place for assessing the financial institution's involvement with an adverse impact, e.g. whether it may have contributed to the impact via its actions or omissions, and determining the appropriate response to address the impact.	
	After committing to financing/support (see also Measure 4)	
	Engage in periodic monitoring/review to ensure real/potential adverse impacts are being managed and when relevant that ESAP are being implemented appropriately or to identify any additional real or potential impacts associated with the project or asset.	Engage in periodic monitoring/review to ensure actual/potential adverse impacts are being managed appropriately or to identify any additional real or potential impacts associated with the asset.
	Investigate any RBC risks reported through early warning mechanism.	
	Where severe impacts arise, assess the financial institutions involvement with the impact and determine the appropriate response to address the impact.	

At what stage should financial institutions identify and assess actual and potential adverse impacts related to project and asset finance?

Identification and assessment of potential and actual adverse impacts is an ongoing and iterative process. At the client on-boarding/pre-financing stage, financial institutions should identify actual or potential adverse RBC impacts and use their findings to inform their decision on whether and under what conditions it will provide financing to that client. A financial institution's ability to exert leverage over the client will likely

be greatest at this stage in the relationship and can be used to encourage the client to make positive changes and reduce actual or potential adverse RBC impacts.

Once financing is provided it is important that financial institutions continue to monitor and identify actual or potential adverse RBC impacts to the extent possible. For project finance, this may occur through requesting reporting on RBC performance from clients/project sponsor's or defining times for periodic reviews of existing clients' activities (e.g. annual or semi-annual reviews, on the basis of significant changes etc.). (Measure 4 for more detail). For high-risk transactions, financial institutions should not rely on self-reporting from clients alone for monitoring purposes and may require third party review of client/project sponsor compliance with RBC expectations.

For both project and asset finance this should also involve establishing early warning mechanisms through which stakeholders including affected rightsholders and their representatives can raise concerns related to RBC issues (see Box 3.3). Financial institutions can also use third party services such as market research services to provide information on significant controversies as they arise and, for higher-risk projects, environmental and social specialists to monitor and provide information on environmental and social compliance.

Box 3.3. Early Warning systems vs. remediation mechanisms

What is the difference between an early warning system and a process to enable remediation?

The objective of an early warning system is to identify risks (or actual impacts) related to an enterprise's own activities or its business relationships. Early warning systems should have visible and accessible communication channels, including contact details, specifically for raising RBC issues. For example, a financial institution might establish a hotline to provide an opportunity for stakeholders to raise concerns about issues affecting their rights, such as health and safety conditions.

The objective of a process to enable remediation, is to provide remedy to people who have been harmed. For example, a community may raise a complaint regarding a project financed by the financial institution which impacts their traditional lands. The representatives of the community and the financial institution and the client/project sponsor are brought together to determine an adequate remedy (e.g. compensation, mitigation of future harms etc.) Inputs and feedback from remediation processes can also help strengthen the financial institution's due diligence process by highlighting issues that may not have received sufficient attention, and by providing inputs on how to effectively respond to adverse impacts (See Measure 6 for further discussion on remediation).

A single system – such as a grievance mechanism – can operate as both an early warning system and provide processes to enable remediation if it is appropriately set up to do both.

In order to enable stakeholders to report RBC issues to financial institutions through such mechanisms, they first need to be aware of the financing relationship. This will often require financial institutions to obtain consent of their client or other business relationship before disclosing their connection with a project or asset (see Box 3.4 and Box 3.6).

Many financial institutions already integrate identification and assessment of actual or potential adverse RBC impacts into processes such as client/project sponsor on-boarding, transactional due diligence and periodic reviews, led by relationship managers, due diligence officers, credit officers and other functions.

Aspects of RBC due diligence can also be built into existing corruption risk management processes.²⁴ This may involve including basic questions on human rights and environmental issues in Know Your Client (“KYC”) processes for example “Does the client carry out RBC due diligence?” or “Has the client previously been associated with human rights or environmental controversies?”. The client's responses to such

questions can be used to provide an initial indication of the degree of due diligence that client relationship is likely to require. Corruption risks can also be an indicator of potential environmental and social issues. For example, corruption can undermine environmental protection (for example where bribes are paid to secure development permits in conservation areas) or represent an indicator of potential workplace health and safety issues (for example where bribes can be paid to pass safety inspections).

Box 3.4. Financial Institutions' Duty of Client Confidentiality

Many jurisdictions have legal frameworks, which recognise that a financial institution has a legal duty to keep its clients' affairs confidential. While the scope of the duty may differ considerably from one country to another, and will vary depending on the governing law of the financial institution and/or client relationship, it generally covers more than just financial information (for example the state of the client's account) and extends to all information received in the course of the relationship. It may also require the financial institution to keep the existence of the client relationship confidential. The duty also applies to information received about prospective clients and can continue after a client relationship has ended.

Client confidentiality is a significant legal duty that financial institutions must observe, and a breach can lead to serious consequences. In certain jurisdictions breach of the duty of confidentiality is a criminal offence. In the context of due diligence, client confidentiality duties are often cited as a challenge for financial institutions when collaborating with one another, identifying real and potential adverse impacts associated with projects or assets and applying leverage, engaging with stakeholders, communicating on their due diligence activities, and cooperating in processes to enable remediation.

The duty of confidentiality is owed by financial institutions to their clients and is intended to protect the client's interests. This means that a client or counterparty can waive the right to confidentiality with respect to their information. Accordingly, one way to overcome restrictions is to obtain, ideally at the outset of the relationship, the consent of the client or counterparty to disclose specific information including for example the fact of the client relationship; information relevant to the due diligence process; and the existence of the relationship of a financial institution to a project or asset. This approach has already been successfully applied by financial institutions in the context of reporting on environmental and social risks. For high-risk project finance transactions such consent may be required as a condition of financing.¹ In the context of syndicated or co-lending transactions such consent may need to be requested by the lead arranger. In cases where a financial institution has identified an adverse impact associated with one of its client's business activities during the course of the relationship, a financial institution should seek the client's consent to disclose further specific information as relevant.

When seeking consent from a client it will be important for the financial institution to be clear about exactly what information it is permitted to disclose, to whom and in what circumstances.

- For project finance, requests for consent to disclose information would ideally include names, locations and sectors of projects financed as well as key environmental and social (including human rights) information, including being able to refer to ESIA's and ESMPs disclosed by the client, related to the project. Financial institutions normally request that clients disclose this information in the context of project finance transactions and thus could make reference to client disclosures for the purposes of this reporting.
- For asset finance ideally this would include (where known) the name, potential locations (e.g. country and region) and sector of operations in which financed equipment / machinery will be used.

Information related to the financial terms of a loan may be sensitive and not necessary to disclose for the purpose of RBC due diligence.

It is also important to know exactly which legal entity is giving consent and whether it has the authority to give consent on behalf of other legal entities in a group.

It may be useful for a financial institution to formalise its processes for requesting client consent on these issues; for example through the inclusion of a provision in the standard language of loan covenants or having client relationship managers raise it with prospective clients as a matter of practice during the client on-boarding process (and then ensuring that any agreement is recorded in writing). Including such provisions in widely used template covenant agreements, such as that of the Loan Markets Association would also be useful to standardising this practice.

Securing client consent to disclose certain information is important as financial institutions may be unable to fulfil their RBC due diligence requirements if affected rightsholders are unable to ascertain the financial institution's involvement.

Note: ¹ See for example HSBC Agricultural Commodities Policy which "requires the consent of new customers, before any financial services are provided, to HSBC being able to disclose the relationship."

Source: HSBC (HSBC, 2017^[19]), Revised Agricultural Commodities Policy: Palm Oil, <https://www.hsbc.com/-/files/hsbc/media/media-release/2017/170220-new-statement-on-revised-agricultural-commodities-policy.pdf>

What should the scope of identification and assessment processes be?

Scoping

As an initial step financial institutions should carry out a broad or high-level scoping (e.g. an initial screening) to identify the transactions where RBC risks are most likely and severe. The scoping process will inform the degree of further assessment (see below) necessary based on significance (i.e. likelihood and severity) of RBC risks identified. Importantly, under the RBC due diligence process all transactions should undergo high-level scoping for RBC risks. This process is not triggered by financial thresholds or the duration of involvement of the financial institution with the transaction. Although, in some instances the size (or cost) of a project might be an indicator of real or potential impacts as it might indicate a larger footprint or more complex operation, which may in turn be associated with more environmental and social impacts.

This may differ from existing processes implemented by financial institutions. For example, the EPs and Common Approaches define certain monetary and/or temporal thresholds (i.e. the tenor of a loan),²⁵ which must be met in order for the framework to apply. However, a broader approach can help to capture smaller transactions which may be associated with significant adverse impacts (e.g. building of a factory or processing plant in a highly ecologically sensitive area or an increasingly wide range of digital services associated with human rights abuses).

Scoping should consider risks related to:

The project or asset in question (e.g. the RBC risks associated with the services, activities or products associated with the project or asset).

In this respect some types of project or assets are likely to be associated with RBC risks (e.g. projects with a large environmental and social footprint that involve a change in land use and assets manufactured using high-risk materials, projects associated with technology that may pose privacy and human rights issues).

The stage of a project may also be an indicator of RBC risk. For example new projects (in development, construction and early operational phase) might be exposed to more actual and potential environmental and social impacts than those which are in advanced stages of operations.

Geography (local, regional, and national) and context (e.g. governance and rule-of-law, conflict, and pervasive human rights or environmental issues associated with the location and broader context of a

project or location where an asset is developed or destined, population density and presence of indigenous peoples). Under the IFC Contextual Risk Definition for E&S, contextual risks are defined as risks in the external environment (at a country, sector, or subnational level) that the client does not control but which could negatively impact a project's or private sector client's ability to meet IFC's E&S requirements". (IFC, 2022^[20]) Contextual risks also looks at event-driven factors that emerge from structural vulnerabilities (e.g. rule of law, existence of conflict, lack of public services, etc.)

Enterprise and key entities-specific risk factors (e.g. known instances of corruption, misconduct, implementation of RBC standards, and a history of poor environmental or social conduct) related to the client and/or project sponsor.

Some existing standards and frameworks provide guidance on which types of projects and assets may pose elevated environmental and social risks and may serve as a useful resource to practitioners.²⁶ However much of this guidance focuses more strongly on environmental impacts so may need to be supplemented with additional analysis of social impacts.

Assessments

Scoping will help determine what level of further assessment is necessary with respect to a project or asset based on risk. In the context of project finance, financial institutions should always require that clients and project sponsors undertake assessment of environmental and social risks associated with their activities, in compliance with relevant legal and permitting obligations and in line with good international industry practice²⁷ and disclose them to the financial institution.

For higher risk projects and assets financial institutions may also require more detailed or expansive assessment such as requiring an Environmental or Social Impact Assessment (ESIA) and Human Rights Impact Assessment (HRIA) be undertaken. They may also supplement client information with additional sources.

Assessment should capture RBC risks and impacts associated both with the entities related to the asset or project (i.e. the financial institution's client/project sponsor and as relevant others) and the project, including surrounding context, or asset itself.

Entity-level risk assessment

Clients/project sponsors should always be assessed with respect to their RBC practices and track-record. Additionally, financial institutions may also map the principal actors involved with a project or asset such as key suppliers and contractors which may be associated with risks (see Table 3.3). Depending on the stage of operations such mapping may be incomplete as contractors or suppliers may not yet be identified.

The extent to which other key actors should be assessed with respect to their RBC practices, business model and track-record should be decided according to the risk associated with the entities. In this respect the IFC Performance Standards include specific expectations of clients in engaging with security personnel.²⁸

It will also be key to identify stakeholders that are or maybe impacted by the project or asset, this is addressed in the following section.

Table 3.3. Entity level identification and assessment

Entity level identification		
	Project finance	Asset Finance
Potential relevant entities	<ul style="list-style-type: none"> • Project sponsors • Project operators • Primary contractors, sub-contractors or suppliers • Security companies • Project offtakers • Project consultants • Agents and intermediaries • Other financial intermediaries and co-financiers 	<ul style="list-style-type: none"> • Asset producer or exporter • Entities receiving, processing, maintaining or utilizing asset (e.g. machinery or equipment)
Examples of information financial institutions can look at when identifying corporate entities related to the assets include:	<ul style="list-style-type: none"> • RBC policy and governance structure, including RBC policy(ies), management systems and implementation processes; and • RBC track-record and capacity to manage E&S risks (e.g. including previous RBC controversies associated with the project and responses as well as existing commitments, staffing and resources allocated) 	
Potentially relevant sources of information	<ul style="list-style-type: none"> • Client due diligence reports and sustainability reports where available. • Information from market research services regarding environmental, social and governance performance and controversies associated with the company. • Information from external stakeholders, including civil society organisations and research institutions. • Independent experts. 	

Project or asset level risk assessment

In addition to identification and assessment of entities associated with a project or asset, RBC risks associated with a project or asset itself should also be assessed. This will involve looking in more detail at the projected risks and impacts associated with the project or asset, identified for example, through an ESIA or HRIA. It will also involve identification of affected and potentially impacted stakeholders as well as factors which could increase their vulnerability or capacity to meaningfully engage. Finally, it could also involve looking in more detail and at contextual risks that may further exacerbate risks of adverse impacts. This may involve understanding whether the policy and legal framework in which the project is located supports or inhibits the exercise of human rights, to what extent the context enables stakeholder protection, power imbalances, political and conflict dynamics. Recent research by the OHCHR has found that often such information is not commonly analysed as part of routine project finance due diligence practice of development finance institutions, although such contextual factors are crucial to understanding potential risks to stakeholders associated with a project. (OHCHR, 2022^[7]) (see Table 3.4)

In the case of a project finance transaction at a development or construction phase, such assessment will likely focus on potential impacts that might occur in future. It may also involve looking at impacts which have already occurred such as issues related to relocation of local communities, socio-environmental conflicts, cumulative impacts on the environment and/or community or legacy issues.

In the case of asset finance, it may involve looking at impacts which have manifested in the production of the asset as well as any foreseeable impacts associated with the potential location and deployment of the asset.

For both project and asset finance transactions, the financial institution should seek to identify and assess any high-risk supply chain issues such as significant risks associated with key materials (e.g. large purchase of materials coming from conflict areas or known to be produced using forced labour). In this respect the IFC Performance Standards likewise call on clients to consider risks and impacts associated with primary supply chains in their risk identification process, however the scope of this expectation is limited to areas where they can reasonably exercise control.²⁹ The OECD Guidelines and RBC due

diligence process recognize that the degree of leverage a financial institution has over the company causing the adverse impact is useful in considering *what* it can do to persuade that entity to take action, but is not relevant to considering whether the financial institution should carry out RBC due diligence and effectively exercise any leverage it may have.³⁰ IFC Performance Standards further provide that supply chain risks associated with forced labour, child labour³¹ and significant negative impacts on conservation³² require special attention. Under an RBC due diligence approach, a risk-based approach should be taken to identify most significant impacts, which may vary based on the products, sectors or geographies in question.

Table 3.4. Project/asset identification and assessment

	Project Finance	Asset Finance
Potential relevant units of analysis	<ul style="list-style-type: none"> • Project (including continuing impacts from previous phases and possible expansion plans) • Associated facilities across a project's lifecycle.³³ • High risk products associated with the supply chain of project • Offtake chain of the project 	<ul style="list-style-type: none"> • Asset • And project (if asset(s) destined for a specific project) • Supply chain of asset. • Associated facilities across a project's lifecycle (if asset(s) destined for a specific project)
Examples of information financial institutions can look at when identifying RBC issues related to projects and assets:	<ul style="list-style-type: none"> • Geographic risks associated with the location of the project and associated facilities as well as adjacent areas (e.g. ecologically sensitive land, indigenous peoples' traditional territories etc.) • Broader contextual issues and operating context (e.g. weak governance and law enforcement, corruption issues, conflict-affected area, human rights context and potential threats to human rights defenders). • RBC issues related to the project itself (such as a power plant) or related to its extraction, maintenance, operationalisation, production and/or construction (such as irrigation technologies, textile manufacturing processes and traffic intensity or land intensiveness necessitating the relocation of local communities etc.) • Impacted and potentially impacts stakeholders and factors which can exacerbate risks to them or impact their ability to engage.³⁴ • Potential cumulative impacts on people and planet • RBC issues that can occur during different construction and operational stages (e.g. pre-building infrastructure, excavation, testing, machinery installation, operational and decommissioning stages etc.). 	<ul style="list-style-type: none"> • Risk related to the production of the product/asset • Risks related to the use, maintenance and security of an asset • Risks related to the project to which an asset is destined (if known) (see column to the left)
Potentially relevant sources of information	<ul style="list-style-type: none"> • E&S impact assessments (ESIA) and/or human rights impact assessments (HRIA). • Stakeholder engagement³⁵ • Credible external reports • Independent experts. 	<ul style="list-style-type: none"> • RBC knowledge management systems or monitoring lists • Red flag systems • Information related to the project to which an asset is destined (if known) (see column to the left)

How to undertake identification and assessment?

The RBC due diligence approach recognizes that how identification of impacts is undertaken in practice will vary according to the characteristics of an enterprise³⁶, transaction, potentially impacted communities and risks at issue. Processes for undertaking identification will vary for project and asset finance transactions.

Project finance

Project finance transactions will often include thorough assessment of environmental and social impacts and may require significant time. For example, the development of an ESIA typically takes between 12-18 months.

Clients/project sponsors will normally undertake an assessment of environmental and social risks associated with a project as required by law and as a condition of financing. Depending on the risk profile of the project, financial institutions can request more detailed assessments to the client/project sponsors (see above) and to the extent possible, should also evaluate or conduct gap analysis of client/project sponsor assessments to ensure they are accurate and in line with international good practice.

Under the RBC due diligence framework financial institutions should also supplement client/project sponsor assessment with their own identification efforts for high risk projects. This may involve consulting external sources and stakeholders (see Box 3.5) to understand potential risks and impacts as well as hiring independent experts to assess, verify or supplement client/project sponsor level assessments.

Box 3.5. Role of stakeholders in identifying risks and impacts

Under the RBC due diligence process, identification and assessment of real and potential impacts should also be informed by stakeholders.

This involves engagement *by the financial institution* with experts and stakeholders representatives to better understand and assess risks as well as how they should be prevented and mitigated.

It also involves requiring *clients/project sponsors* undertake meaningful engagement with actually or potentially impacted stakeholders to contribute to the identification and assessment of impacts.

In some cases, it should also involve *financial institutions* engaging with actually or potentially impacted stakeholders to verify risk assessment or monitoring information provided by the client/project sponsor or supplement it as necessary. Financial institutions can engage with stakeholders directly or through hiring an expert to undertake the consultation on behalf of a financial institution. This may be particularly important in the context of high-risk project finance transactions, for example where the potential impacts are serious or where projects are located in countries where free expression is not protected, and stakeholders and human rights defenders are at risk of reprisal.

Existing standards and frameworks including the IFC Performance Standards and EPs have outlined processes for environmental and social risk assessment for the transactions falling within their scope. These define requirements for client-led assessments based on the risk profile. The IFC Performance Standards and EPs provide a good benchmark for these processes. However, it is important that financial institutions applying these processes recognize that there are divergences in the scope of these existing standards and frameworks, the transactions they cover and the risk areas being assessed (OHCHR, 2022^[7]) as compared to an RBC due diligence approach. In coordination with the client/project sponsors, supplementary efforts may be undertaken by financial institutions applying these standards and frameworks to ensure RBC risks and impacts related to transactions falling outside their scope and thematic focus are captured.

Asset Finance

Some asset finance transactions (e.g. moveable machinery finance), may be very short and standardized and allow little time for risk identification. However, some of these may involve repeat transactions over time with a small group of actors which can allow for development of RBC knowledge management systems or monitoring lists on a client level.

For asset finance transactions, in scoping for RBC risks, simple questionnaires that can be completed by relationship managers or compliance/credit managers can be used to gather initial, preliminary information. The responses can be used to flag where further additional assessment is required. For example:

- Does the company have staff responsible for and/or agreements covering environmental and human rights risk management?
- Is the asset associated with a high level of greenhouse gas (GHG) emissions?
- Is the asset destined for a project near a protected/sensitive area (e.g. natural reserves, ground water capture zone, river, contaminated site)?
- Is the asset destined for a project that requires land acquisition, resettlement or expropriation that may affect existing land users?

For transactions which are not recurring, financial institutions may review historical trends associated with these type of transactions (e.g. what type of assets are being financed, in what geographies for which type of clients) to project trends in future transactions and develop, as necessary, a closely tailored list of red-flags related to product, sector and geographic risks. This can help facilitate quicker and more standardized identification. In these instances, financial institutions should be opened to modifying red-flag lists as necessary based on input from stakeholders or learnings through their own RBC due diligence process, including grievance mechanisms.

Where high risk transactions are identified, the financial institution should request additional information from the client and may wish to consult with external experts to better understand RBC risk areas and how they are being managed.

How can a financial institution assess its relationship to an adverse impact?

A financial institution may be involved with adverse impacts in three different ways:

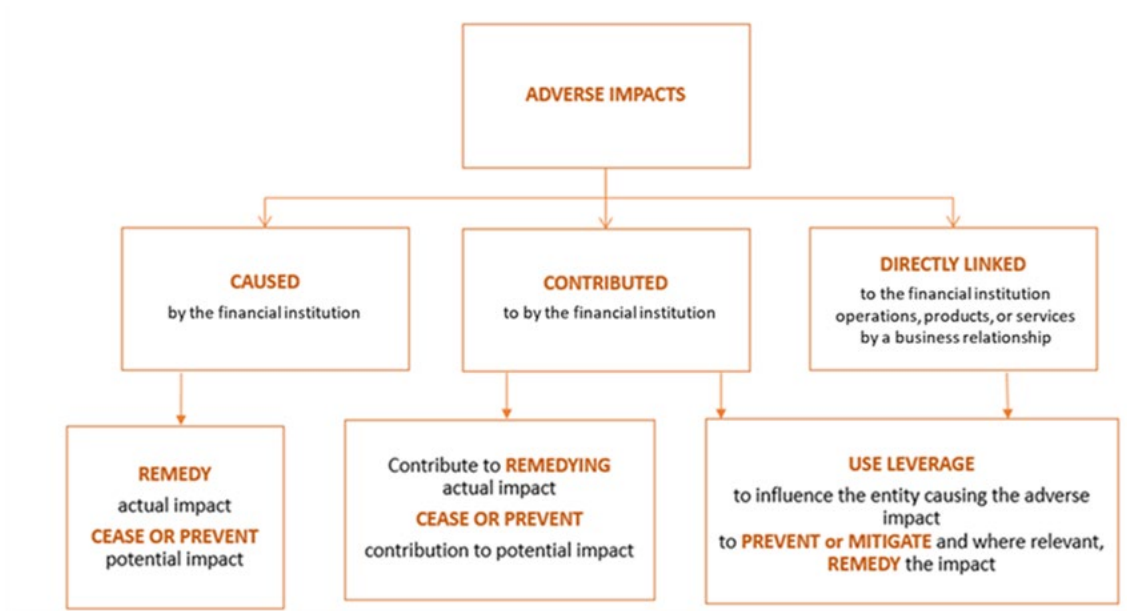
- A financial institution can cause an adverse impact where its activities (its actions or omissions) alone (without those of clients or other stakeholders) are sufficient to result in the adverse impact.
- A financial institution can contribute to an adverse impact through its own activities (actions or omissions) either directly alongside other entities, or through some outside entity, such as a client (this is described in more detail below).

An adverse impact may be directly linked to a financial institution's operations, products or services by its business relationship with another entity. A situation of 'direct linkage' may occur where a financial institution has provided finance to a client and the client, in the context of using this finance, acts in such a way that it causes (or is at risk of causing) an adverse impact. Providing a financial product or service create a business relationship between the financial institution and the client for the purposes of the MNE Guidelines. However, the mere existence of such a business relationship does not automatically mean that there is a direct link between an adverse impact and the financial institution's product or service; the link needs to be between the financial product or service provided by the financial institution and the adverse impact itself. (OHCHR, 2017^[21])

It is important to assess involvement with an adverse impact as it will inform how a financial institution should address it. When a financial institution is causing or contributing to an adverse impact, it is expected

to provide for or cooperate in its remediation, whereas if it is directly linked to an adverse impact and has not caused or contributed to, it is expect to encourage them to prevent, mitigate and/or remediate the impact as appropriate (see Figure 3.1 and Measure 3 and 6).

Figure 3.1. Relationship to impact under the OECD Guidelines for Multinational Enterprises



Determining whether a financial institution “contributes” to an adverse impact (i.e. the ‘relationship’ of contribution’) can be complex and as such is explored in more detail. A financial institution involved in project and asset finance may *contribute to* adverse impacts where its activities in combination with the activities of other entities cause the impact, or if the activities of the financial institution cause, facilitate or incentivise another entity (e.g. a client/project sponsor) to cause harm. (OECD, 2018^[3]) This contribution must be substantial, meaning that it does not include minor or trivial contributions. The mere existence of a business relationship or activities which create the general conditions in which it is possible for adverse impacts to occur does not necessarily represent a relationship of contribution. The activity in question should substantially increase the risk of adverse impact. In the context of project or asset finance transactions, this means there would have to be some action or omission by the financial institution that enabled or made it easier for a client/project sponsor to cause harm. In this regard, “providing a financial product or service, is not inherently problematic — it is in fact an important service to commerce.” (OHCHR, 2017^[21])

Assessing a financial institution’s relationship to an adverse impact will be based on context specific, fact-based analysis which often may not yield definitive and clear answers. The following factors should be taken into account in considering a relationship of contribution:

- The extent to which a financial institution facilitated, encouraged or motivated an adverse impact by a client/project sponsor or other business relationship, i.e. the degree to which the activity increased the risk of the impact occurring.
- The extent to which the financial institution could or should have known about the adverse impact or potential for adverse impact, i.e. the degree of foreseeability.
- The degree to which any of the financial institution’s activities actually mitigated the adverse impact or decreased the risk of the impact occurring. In the context of project or asset finance, this may include the financial institution’s attempts to ensure appropriate mitigation measures,

such as including environmental and social requirements aimed at addressing key risks into loan agreements and following up to make sure the requirements were being implemented (See Measure 3).

The OECD paper *Due diligence for Responsible Corporate Lending and Securities Underwriting* notes that “in the context of lending transactions a financial institution may contribute to an adverse impact by facilitating the impact where all of the following elements occur together:

- The adverse impact caused or contributed to by a client’s activities or projects was foreseeable
- The use of proceeds was known (or likely) to be used for those client’s high-risk activities or projects; or almost all the client’s activities were at high risk of causing or contributing to the type of adverse impact being considered
- The provision of the service occurred without adequate RBC due diligence. In this respect, the due diligence processes the financial institution had in place, and how they were implemented should be considered.” (OECD, 2019^[2])

For certain project and asset finance transactions, the first two factors are likely to be met more easily relative to general corporate lending transactions. For example, in the context of project finance transactions the use of proceeds and the risks of adverse impacts associated with them are likely to be identified prior to a commitment of support.

As such, assessing the adequacy of RBC due diligence with respect to these transactions becomes an especially important factor in determining relationship to impact. The adequacy of due diligence will be a function of the extent to which a financial institution is implementing the measures called for under an internationally-recognized due diligence framework (such as OECD Due Diligence Guidance) in good faith, which involves demonstrating effective results with respect to prevention, mitigation and remediation of adverse impacts, and which may be measured by demonstrating continuous improvement overtime or performance against established targets or commitments with respect to these issues (see also Measure 4). Continuing a business relationship with a client (e.g. through extending additional financing) in a situation where adverse impacts persist or remain unaddressed over a period of time would suggest RBC due diligence is inadequate. Likewise failing to make efforts to use leverage where significant adverse impacts are identified would also suggest RBC due diligence is inadequate.

In this respect a financial institution’s relationship to an adverse impact is not static. It may change between directly linked and contributing as situations evolve and depending upon the degree to which due diligence and other steps taken to address identified risks and impacts actually decrease the risk of the impacts occurring.

Illustrative examples of potential situations of contribution are provided for in Box 3.6

Box 3.6. Hypothetical examples on contribution in project and asset finance transactions

Example A: A financial institution has committed financing to an energy project. The revenues from the project are the sole source of repayment of the loans. Unforeseen issues require a re-design of aspects of the project. The financial institution, although aware that potential adverse impacts may arise from the changes to the project does not agree to modification of repayment terms to take into account additional costs or delays associated with engagement with stakeholders or undertaking of a new ESIA (and corresponding preventative or mitigating activities) related to the modifications. As such project sponsors or operators push through to the operational phase without sufficiently addressing all real and potential impacts, and foreseeable impacts manifest. In such a situation a financial institution is considered to have incentivized the impacts, and therefore contributed to them.

Example B: A financial institution is considering financing a project associated with potential social and environmental impacts. The client undertakes and provides to the bank an ESIA which does not conform to industry standards and does not accurately estimate the scale of impacts associated with the project. If the bank proceeds with provision of the financing without assessing the adequacy of the ESIA and requiring it be supplemented as necessary as a condition of financing, and an adverse impact occurs because it was insufficiently identified in the ESIA, the bank will have facilitated the impact and thereby contributed to it. However, if the client provided an ESIA which *did* conform to industry standards and the bank did not further investigate or supplement it based on a valid assessment of the likelihood and severity of risk of the client (which was credibly deemed to be low), it may demonstrate that its level of due diligence was adequate. Such an occurrence should trigger a bank to reassess its prioritisation decisions with respect to the client in future transactions. In addition, the bank should use whatever leverage it has over the client to seek to prevent and mitigate the impact, including by seeking to ensure that the client remediates the impact. If the bank continues to maintain a business relationship with the client (e.g. by providing new financing for a project expansion) in the absence of the impacts being remediated, then the bank may be considered to be facilitating an ongoing (unremediated) impact due to inadequate due diligence, and therefore contributing to it.

Example C: A financial institution provides finance to the renewal and expansion of a company's fleet of heavy mining equipment for mining operations in a country where the majority of the mining concessions are controlled by a military junta and associated with wide-spread health and safety and human rights issues. Governmental agencies and civil society organisations have issued reports documenting that industrial jade mining operations in the region are negatively impacting local communities and contributing towards conflict in the region. When assessing the financing request, the financial institution relies on an assessment of the company's sustainability rating provided by an external data provider and on controversies arising in the last 24 months related to the company's activities. The company has an above-industry-average sustainability rating and is not exposed more than its peers to controversies. Therefore, the financial institution decides to approve the transaction to provide finance to the renewal and expansion of the company's fleet of heavy mining equipment. In this situation, the financial institution provides finance without adequate due diligence. By relying on generic information about the company, it did not consider the risks associated with the assets being financed. This could represent an omission by which the financial institution facilitated and therefore contributed to the impacts in question.

Measure 3: Cease, prevent and mitigate adverse impacts

Once a financial institution has identified actual and potential adverse impacts associated with their project and asset finance activities, they can turn the information gathered into action to seek to prevent and mitigate those impacts. This is a crucial step of the RBC due diligence framework as it is meant to result in avoidance (and management) of potential and actual harm. Practical actions associated with this measure are outlined in Table 3.5 below.

Table 3.5. Practical actions for ceasing, preventing and mitigating adverse impacts

Practical actions for financial institutions at an institutional level	Project and asset finance	
	<ul style="list-style-type: none"> Defining exclusionary criteria that prohibit the provision of a financial service to certain type of projects/assets or entities. As practicable, defining conditions for the provision of financial services to projects/assets based on observation of well-established and recognised standards and/or good practice related to RBC issues (e.g. IFC performance standards, MNE Guidelines). Drawing from the findings of risk identification to strengthen management systems to better track RBC Information and identify potential adverse impacts before they occur. Providing training that is fit-for purpose for the financial institution's relevant staff and management (see also Measure 1) Assigning relevant senior responsibility to oversee implementation of preventive measures (see also Measure 1) Supporting the establishment of appropriate and effective grievance mechanisms at the level of a client/project sponsor (see also Measure 6) and/or establishing one at the level of the financial institution. Joining geographic or issue-specific initiatives that seek to prevent and mitigate adverse impacts in the areas identified (e.g. country, commodity or sector roundtables, multi-stakeholder initiatives), which may also include engagement with governments. 	
Prior to committing to financing/support at a transaction level	Project finance <ul style="list-style-type: none"> Establishing RBC expectations of clients/project sponsors (including in the ESAP and ESMP) Incorporating RBC expectations, including in relation to both pre-existing or legacy adverse impacts and risks of future impacts, into contractual documents or other written statements/commitments. Where possible, building leverage with respect to RBC risks into credit disbursement conditions of loan. Providing prospective clients with incentives to meet certain RBC related targets (e.g. to the extent possible, coupling the interest rate of the loan with the project's RBC performance). Ensure that impacted communities are aware of their rights under loan agreements 	Asset finance <ul style="list-style-type: none"> Establishing RBC expectations of clients/project sponsors. Where possible, incorporating RBC expectations into contractual documents or other written statements/commitments.
	<ul style="list-style-type: none"> Requesting or requiring client consent to disclose financial institution's relationship to the project (see Box 3.4). 	
Throughout a business relationship/investment lifecycle (including prior to providing financial support) at a transaction level:	Project finance <ul style="list-style-type: none"> Offering technical assistance and support to a client or project sponsors through building up or seeking out sectoral expertise on RBC issues and processes (i.e. connecting client to relevant training or substantive resources on environmental and social risk management). Providing access to financing necessary for preventative and mitigating activities, as well as to address pre-existing adverse impacts. Where relevant, assigning responsibility to staff for ensuring that the financial institution's activities that contribute to adverse impacts cease and contributing to remedy for those impacts. Collaborating with other financial institutions involved in the transaction or other stakeholders to exert leverage with respect to RBC matters, subject to legal obligations. 	

	<ul style="list-style-type: none"> Requiring clients/project sponsors develop a roadmap or corrective action plan and time bound actions with respect to real or potential adverse impacts. Ensuring stakeholder engagement is meaningfully undertaken to help identify and address real and potential adverse impacts including root causes of adverse impacts (e.g. informality, lack of adequately legal frameworks or enforcement). 	
After committing to financing/support where impacts arise:	Project finance <ul style="list-style-type: none"> Raising questions about responsible exit options with clients/project sponsors and stakeholders and terminating or suspending the provision of financial services, in accordance with contract clauses, or raising the credible prospect of doing so if adverse impacts are not remediated in a timely manner but not exiting and leaving behind unremediated harms without making provisions with the client or others to address the harms. 	Asset finance <ul style="list-style-type: none"> Repossession of the asset in severe situations where such impacts may be considered a situation of default.
	<ul style="list-style-type: none"> Considering not engaging in future business opportunities related to the project or asset, client/project sponsor (as an additional measure or as an alternative to terminating the business relationship when an immediate termination is not possible or would result in severe adverse impacts). 	

How are financial institutions expected to respond to actual or potential impacts?

Each enterprise in a business relationship has its own responsibilities to identify and address adverse impacts. The due diligence recommendations of the MNE Guidelines are not intended to shift responsibilities from governments to financial institutions, or from entities causing or contributing to adverse impacts to the financial institution which is providing financing towards activities to which the adverse impacts are directly linked. Instead, the MNE Guidelines recommend that each enterprise addresses its own responsibility with respect to adverse impacts.

Financial institutions are expected to take responsibility for remedying – or contributing to remedying adverse impacts when they cause or contribute to those impacts. Broadly, in cases where a financial institution is contributing to actual adverse impacts it should take necessary steps to cease or prevent its own contribution, provide for or cooperate in remediation of the impact through legitimate processes (See Measure 6) and use its leverage to seek to prevent and mitigate any remaining impacts.

Where the financial institution is found to be directly linked to actual or potential adverse impacts related to project or asset finance transaction, but has not contributed to the impact, it should also use its leverage with clients/project sponsors to seek to prevent and mitigate and encourage remediation of those impacts, understanding that the responsibility for actually ceasing, mitigating and remedying the impact remains with the client/project sponsor who is causing or contributing to the impacts. (See also Measure 6).

How can financial institutions prevent or mitigate actual or potential adverse impacts prior to committing to or providing financing or support?

The purpose of RBC due diligence is first and foremost to *avoid* impacts on people, the environment and society. When, despite efforts to prevent them, involvement in adverse impacts cannot be avoided, due diligence should enable enterprises to mitigate them, prevent their recurrence and, where relevant, remediate them.

Taking steps to prevent impacts before they occur is essential to RBC due diligence in the context of project and asset finance and often the focus of due diligence processes in practice. This will mean taking action and establishing expectations prior to committing financing. This is especially true for asset finance where often financing is associated with one single disbursement and a financial institution will normally not maintain oversight of the asset or how it is employed after the financing has been committed.

Taking preventative actions will primarily involve establishing RBC related conditions with respect to financing (informed by risk assessments) as well as having effective RBC policies and management and identification processes in place more generally.

RBC conditions

Financial institutions can make their support of a project or asset or disbursement of funding conditional on the client, project or asset meeting certain RBC expectations. These expectations can include:

- Meeting standards or benchmarks of environmental and social performance such as those outlined in the MNE Guidelines, the IFC Performance Standards and the EPs.
- Developing prevention and mitigation action plans (i.e. Environmental and Social Action or Management Plans (ESAPs or ESMPs)) in consultation with affected stakeholders to address any real or potential adverse impacts associated with a project including pre-existing ones. (See Box 3.8).
- Agreed processes to monitor compliance with performance expectations, including means and frequency, for example through inspections by independent auditors appointed by the financial institution at key project milestones. The monitoring processes conducted by third parties should include meaningful consultation with affected communities or impacted rightsholders where relevant.
- Requirement that clients/ project sponsors undertake meaningful stakeholder engagement (see Box 3.7).
- Requirement that clients provide for or cooperate in remediation processes where they cause or contribute to adverse impacts with a view to ensuring remedies are provided to victims of adverse impacts.
- Establishment of zero-tolerance policy for threats or reprisals against human rights defenders or local communities.
- Consent to disclose the financial institutions relationship to a project or asset. (See Box 3.4)

Establishment of contingency plans and remediation funds in the event that expected standards of RBC performance are not respected and/or adverse impacts occur.

Box 3.7. Requiring clients to undertake meaningful stakeholder engagement

Financial institutions should expect clients/project sponsors to engage in meaningful stakeholder engagement with rightsholders that are or may be impacted by their activities.³⁷

Stakeholder engagement is an important means of implementing due diligence. Stakeholders themselves can contribute important knowledge to help identify potential or actual impacts on themselves or their surroundings (see Box 3.5). The values and priorities of impacted stakeholders are vital considerations in evaluating impacts and identifying appropriate avoidance or mitigation steps. However, if stakeholder engagement activities are not properly supported, developed or executed, their due diligence function may not be realised, and adverse impacts may not be avoided or addressed. Furthermore, poor stakeholder engagement can in and of itself give rise to actual or perceived adverse impacts and jeopardise potential benefits to stakeholders.

Stakeholder engagement is already a key expectation of clients in the context of project finance transactions under the IFC Performance Standards and EPs. For example, the IFC Performance Standards call on clients to identify stakeholders, develop and implement a stakeholder engagement plan, provide affected communities with access to relevant information and engage in consultation.³⁸ Clients are expected to obtain the Free Prior Informed Consent of indigenous peoples (FPIC) with respect to project design, implementation, and expected outcomes related to impacts affecting indigenous peoples' communities,³⁹ as outlined in the UN Declaration on the Rights of Indigenous Peoples.

In high risk situations or where there is reason to believe engagement was insufficient or to question the information provided by a client/project sponsor, financial institutions should go further and assess the quality of stakeholder engagement conducted⁴⁰. This may include a review of the stakeholder mapping and records of engagement. In circumstances where the financial institution deems the stakeholder engagement process to be unsatisfactory or inappropriate it should work to identify actions that the client/project sponsor should take to address any shortcomings. It should also supplement the client/project sponsor's stakeholder engagement for example through engaging with stakeholders directly or having an independent expert do so. In instances where affected stakeholders or their legitimate representatives directly reach out to financial institutions in order to voice their concerns, financial institutions should consider this an indication that client/project sponsor stakeholder engagement may not have been effective, and financial institution should be receptive to this engagement.

Note: Meaningful stakeholder engagement is defined by the OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector (OECD, 2017^[22]) as an "ongoing engagement with stakeholders that is two-way, conducted in good faith and responsive. *Two-way engagement* means that parties freely express opinions, share perspectives and listen to alternative viewpoints to reach mutual understanding. Some sharing of decision-making power through moving away from the enterprise as a primary decision-maker to a more mutual process of decision-making between the interested and affected parties is important. It also means that stakeholders are actively involved in driving engagement activities themselves. *"Good faith" engagement* depends on the participants of both sides of engagement. It means that the parties engage with the genuine intention to understand how stakeholder interests are affected by enterprise activities. It means that the enterprise is prepared to address its adverse impacts and that stakeholders honestly represent their interests, intentions and concerns. *Responsive engagement* means that there is follow-through on outcomes of stakeholder engagement activities through implementation of commitments agreed to by the parties, ensuring that adverse impacts to stakeholders are appropriately addressed including through provision of remedies when enterprises have caused or contributed to the impact(s), and that stakeholder views are taken into account in project decisions. *Ongoing engagement* means that stakeholder engagement activities continue throughout the lifecycle of an operation and are not a one-off endeavour".

Existing standards and frameworks include detailed expectations in relation to specific environmental and social conduct that projects falling under their scope must meet in order to be eligible for financing. Some incorporate the expectations of the IFC Performance Standards for certain projects which provide expectations on client performance across a range of themes and also include the expectation that environmental and social management plans be developed to ensure that the business activity in question is in compliance with predefined environmental and social standards and that any risks or impacts are appropriately managed or remedied (OECD, 2017^[22]; 2015^[8]).

The IFC Performance Standards provide an important reference for standards of conduct to expect in the context of project finance activities. However, as no one standard can account for the specificities of all contexts it might be necessary to set out additional conditions or expectations specific to the characteristics of a project, which may not be covered by existing standards.

For example this might include expectations of clients/ project sponsors currently not covered in detail in the IFC Performance Standards such as access to water, consumer privacy, digital rights as well as where relevant expectations with respect to supply chains and other business relationships including financial intermediaries (see also Annex C).

Box 3.8. Environmental and Social Action Plans

Existing standards and frameworks call for the establishment of Environmental and Social Action Plans (ESAPs) to set out actions and measures required for the project to achieve compliance with the applicable environmental and social standards.¹ ESAPs will vary according to the project or asset in question but should normally include:

- A description of the corrective actions/measures/tasks
- An explanation of purpose/objective of the actions
- The source of the requirement (e.g. local law, international standards, agreed to performance in covenants)
- The resource needs and budget assigned related to each action and unit/role responsible for its execution
- Timelines
- Targets and evaluation criteria
- Status

Various templates and examples of ESAPs are available online and serve as references for financial institutions.

ESAPs are often crafted as compliance tools where compliance gaps have to be addressed and are therefore most commonly used in the beginning of the investment lifetime. ESAPs can also be used as a tool to incentivise clients/project sponsors to engage in further, continuous risk identification and management and document their efforts to ensure that sufficient due diligence actions are taken across the lifetime of the project. See also Measure 4.

Source:

IFC(2012), "Environmental and Social Categorization", https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/es-categorization.

Equator Principles (2020), "Equator Principles, EP4", https://equator-principles.com/app/uploads/The-Equator-Principles_EP4_July2020.pdf.

EBRD (2019), "Environmental and Social Policy", <https://www.ebrd.com/news/publications/policies/environmental-and-social-policy-esp.html>.

Integration of RBC expectations into contractual agreements

In order to ensure that RBC expectations are complied with and enforceable, it is important to include RBC expectations in contractual agreements. Such agreements should:

- Define RBC expectations (including, where relevant, references to international standards and specific performance targets which may be negotiated with clients, as well as compliance with prevention, mitigation or remediation plans (see Box 3.8).
- Include clear, actionable consequences where the expectations are not being met. For example:
 - Default / immediate repayment of loans
 - Delayed disbursement
 - Remediation requirements (OHCHR, 2022^[23])
- Define key legal terms in consultation with legal advisory to ensure due diligence objectives are met. In this respect, commonly used conditions currently do not normally consider adverse project or asset impacts related to the environment or to human rights. These can be adapted to integrate these considerations and expectations. For example:
 - ‘Material adverse effects’ clauses can be drafted and include abuses of international human rights and other relevant standards, regardless of financial or commercial considerations;
 - ‘No proceedings’ representations can be defined to include RBC related complaints and grievances filed with any complaints or grievance mechanism, including OECD National Contact Points or National Human Rights Institutions (NHRIs) – requiring contractual counterparties to disclose any related grievance proceeding initiated against them.

It is recommended that the financial institutions’ legal counsel team (either internal or external) consider the RBC issues in detail. In particular, the individuals responsible for developing contract templates, negotiating with contractual counterparties and involved in the governance and compliance of the financial institution (among others) would benefit from having a strong awareness of RBC issues and how they should be integrated into contractual agreements. There are a number of ways of incorporating or referring to the RBC standards in a contractual document, and the approach should be considered carefully by financial institutions and their legal counsel (this is particularly important in light of the fast-changing developments in the RBC space).

Integration of environmental and social expectations in lending covenants (i.e. loan agreements) is explicitly called for within the EPs.⁴¹ They also recognize that in if a client fails to re-establish compliance within an agreed grace period, the EPFI reserves the right to exercise contractual remedies, including calling an event of default as considered appropriate.⁴² The EP have also developed guidance on incorporating environmental and social considerations into loan documentation, which may be a useful resource for financial institutions.⁴³ Ultimately, it is for each financial institution to develop a contractual agreement that works for their lending practices, but it is recommended that RBC risks are considered thoroughly at the drafting stage. Financial institutions may also consider requiring proof from their project sponsors that they have met certain RBC standards.

In syndicated finance transactions, the lead arranger will play a key role in ensuring that appropriate contractual assurances are attained. (See Box 3.9) Financial institutions may also consider including general RBC commitments and expectations into standard contractual templates. They may also consider encouraging the revision of industry-wide standards/templates like those issued by the Loan Markets Association (LMA)⁴⁴ to include such clauses.

Exclusionary policies

Where RBC expectations are not likely to be met and adverse impacts are likely to occur, financial institutions should consider avoiding providing financial support. In this respect financial institutions can and already do have exclusionary policies. Exclusionary policies disallow provision of financing towards entities, sectors or activities which are deemed to be high-risk. Under an RBC due diligence approach, exclusionary policies should target projects which are at high risk of adverse impacts on people, the environment or society. In this respect they may also consider particular project or transaction structures or business models that, experience shows, may be particularly likely to cause serious, unpremeditated harms. These may include: (a) using underfunded special purpose vehicles or subsidiaries engaged in hazardous activities; (b) projects using tax havens; and (c) special economic zones that waive labour standards, taxation, social protection and other vital regulatory requirements. Depending on sector, maintaining public exclusion lists can also generate additional leverage for improvement with respect to certain sectors or actors.

There can be various drivers to a financial institution's decision not to provide services to a particular sector, such as ethical or normative concerns and regulatory limitations in certain contexts. Exclusionary policies may also reflect concerns about profitability; lack of specialist expertise in the sector; reputational risk; lower risk appetites of financial institutions; the costs related to the implementation of anti-money laundering and counter-terrorist financing laws; sanctions regimes; and increased capital requirements.

Importantly, the MNE Guidelines do not recommend categorical exclusion (or “de-risking”) by avoiding sectors or certain activities altogether, with some exceptions. Generally, rather than completely avoiding contexts that raise potential risks, financial institutions are encouraged to engage with clients to ensure that these risks can be/are responded to effectively.

However, in some circumstances exclusion can be appropriate, for example where risks are very severe or irremediable. In these cases the scope of the exclusion and how it will be assessed should be clearly defined. Additionally, the potential impacts of exclusionary practices should also be taken into account when making such a decision. For example, exclusion can limit access to finance for projects or assets associated in high-risk sectors, including those subjected to adequate due diligence. This may lead to alternative, less regulated, forms of financing and reduced transparency, thereby increasing exposure of projects or assets to risks such as financial crime. Blanket bans may also miss opportunities for potentially raising standards in high-risk sectors.

Financial institutions are encouraged to engage with prospective or existing clients, including project sponsors and operators and other relevant stakeholders related to high-risk contexts, in order to understand whether risks can be addressed before deciding to exclude certain sectors or categories of projects.

Building in leverage in design of transactions or products

Beyond outlining conditions and wherever possible integrating them into contracts and covenants, financial institutions can also design their financing in a manner that builds leverage. For example:

- Provide financing in tranches –rather than an upfront lump sum and tying disbursement to RBC expectations (see above) or upon the findings of monitoring reports (see also Measure 4).
- Providing innovative products to incentivise clients to implement RBC due diligence. In the context of commercial project finance linking interest rates and fee arrangements to achievement of RBC targets.

Box 3.9. Collaboration in carrying out RBC due diligence

Enterprises can collaborate across various departments at an industry or multi-industry level as well as with relevant stakeholders throughout the due diligence process. Collaboration may be pursued in order to pool knowledge, increase leverage and scale-up effective measures. Collaboration is also an effective way of lowering costs and time for RBC due diligence.

In the context of project and asset finance transactions due diligence processes can be streamlined in several ways through collaboration. For example:

- In the context of syndicated lending transactions or co-financing, when a syndicate has agents and lead arrangers with their own robust due diligence practices, RBC documentation obtained or prepared by lead arrangers should be made available across members of the syndicate to the extent possible.
- If a financial institution has clients/project sponsors that can demonstrate they have adequately identified RBC risks associated with a project or asset (i.e. through having conducted credible, independent ESAs and meaningfully engaged with stakeholders based on RBC standards), the financial institution may not need to require that additional assessments be carried out and can look to the results of these processes in identifying risks associated with the project. Importantly, financial institutions should take steps to assess and verify the adequacy of a client or project sponsor's approaches and avoid solely relying on self-reporting by a client for projects with higher RBC risks.
- Financiers of a project or asset who have effectively identified impacts associated with a project may share such information with financial intermediaries associated with a project recognising business confidentiality and applicable laws and regulations.

Existing frameworks likewise recognize several instances where financial institutions can collaborate on due diligence. For example:

- The EPs note that “[...] recognising business confidentiality and applicable laws and regulations [...] Mandated EPFIs will share, when appropriate, relevant environmental and social information with other Mandated Financial Institutions, strictly for the purpose of achieving consistent application of the EPs.
- The EPs recognise that any monitoring of a Category A or as appropriate B project performed by a multilateral or bilateral financial institution or an OECD Export Credit Agency may be taken into account additionally for the purpose of assessing compliance with the EPs (See EPs, Principle 9).
- Under the EPs it is also noted that for as appropriate Category B projects, any due diligence performed by a multilateral or bilateral financial institution or an OECD Export Credit Agency may be taken into account to determine whether an Independent Review is required. (See EPs, Principle 7).
- Relatedly, the World Bank Environmental and Social Framework¹ provides that “[w]here the Bank is jointly financing a project with other multilateral or bilateral funding agencies, the Borrower will cooperate with the Bank and such agencies in order to agree on a common approach for the assessment and management of environmental and social risks and impacts of the project.”

Where financial institutions collaborate on due diligence and rely on others due diligence they should still ensure they undertake their own independent assessment of the adequacy of due diligence done by others. They should also ensure that entities with which they are collaborating at applying the same standards and frameworks. For example, in the context of project finance activities where environmental

and social due diligence activities are undertaken on behalf of a financial institution by a third party, agreements with that third party should stipulate that that RBC expectations should be a benchmark for those activities.

Financial institutions can also collaborate to increase leverage.

- For example, in situations where a financial institution identifies a significant impact in the context of a project or asset finance transaction it may check to see whether the financial institution is also providing other types of financial services to the company (e.g. through corporate lending). The financial institution can then seek to build off or combine with the due diligence activities of teams in other departments, subject to restrictions on internal information sharing, including in applying leverage where options with respect to a specific transaction may be limited.
- Financial institutions involved in a syndicated finance transactions as well as intermediary financial institutions linked to a project or asset can collaborate to ensure that they are aligned in terms of the RBC expectations of that project or asset. In this respect many financial institutions already refer to the IFC Performance Standards as a benchmark of expectations.
- Where financial institutions are members of a syndicate, they can work with other member financial institutions to create joint leverage over borrowers for example through introducing RBC expectations in covenants. In these contexts, lead arrangers will be best positioned to ensure such expectations are introduced.
- Where impacts do arise, financial institutions linked to a project or asset can collaborate in applying leverage to ensure such impacts are remedied and any potential future impacts are prevented, for example through jointly communicating with project sponsors or operators.

While in many cases, enterprises can collaborate on due diligence without breaching competition law, enterprises, and the collaborative initiatives in which they are involved, are encouraged to take proactive steps to understand competition law issues in their jurisdiction and avoid activities which could constitute a breaches of competition law.

Note: ¹ World Bank, Environmental and Social Framework, paragraph 9.

Source: World Bank (2017^[24]), The World Bank Environmental and Social Framework, <https://thedocs.worldbank.org/en/doc/837721522762050108-0290022018/original/ESFFramework.pdf>.

Engagement and support

Financial institutions can also engage with clients/project sponsors or business relationships as relevant to raise concerns or provide support in addressing RBC issues. This may include:

- Offering or connecting a client or project sponsor to relevant technical support, for example through building up or seeking out expertise on:
 - RBC policies
 - Designing and implementing prevention and mitigation plans
 - Engaging in stakeholder engagement
 - Establishing effective grievance mechanisms
- Providing access to financing necessary for prevention and mitigation activities including providing support to affected communities or rightsholders.

- Raising concerns about RBC issues for example through discussing them with the client's leadership or board, persuading other financial institutions to join in raising the issue with the client/project sponsor.
- Engaging in collective action on RBC issues, for example advocacy in the context of public policy or industry initiatives which seek to raise minimum standards of conduct expected of financial institutions' due diligence processes.

Such support can be useful both prior to and after a financial institution commits to providing financial support.

Engagement may go beyond project sponsors or operators to other entities associated with a project or asset where such entities are associated with a high-risk aspect of the project. In this case, for example, where a client sub-contracts another company to implement aspects of an ESMP or to provide security to a project in a conflict affected area.

Provision of technical support will be especially useful in contexts and markets where there is limited knowledge and capacity on how to carry out RBC due diligence in line with international standards. Some existing frameworks recognize this role for financial institutions. For example, under the EPs, EPFIs commit to working with clients on remedial actions to bring clients into compliance environmental and social expectations included in covenants.⁴⁵

Financial institutions may also require the client/project sponsor to engage, or may seek to engage, third party advisors where they do not themselves have sufficient expertise on the implementation of the required standards.

Engagement may also extend beyond specific transactions to address systemic issues. Such approaches may be especially useful where leverage is lacking in the context of a specific transaction. (See below).

Box 3.10. Leverage limitations in RBC due diligence for project and asset finance transactions

The MNE Guidelines recognise that “there are practical limitations on the ability of enterprises to effect change in the behaviour of their suppliers”⁴⁶ and RBC due diligence recognizes that due diligence can be adapted to deal with the limitations of working with business relationships.

Likewise, financial institutions may face practical limitations in effecting change amongst entities causing impacts in the context of project and asset finance transactions.

The amount of leverage a financial institution might have will be significantly different depending on the type of transaction it is involved in (project or asset); its role (lead arranger, intermediary, etc.); the stage in which it becomes involved (e.g. for project finance - development phase or operational phase), the characteristics of clients/project sponsors (e.g. whether the client is a private company or a government), as well as the role played by the entity it is financing (e.g. project sponsor or supplier), among other factors⁴⁷. It will also be affected by the structure and content of loan contracts and covenants.

During the life of a loan the degree of leverage a financial institution has over the client or other business relationship causing an adverse impact is useful in considering *what it can do* to persuade that entity to take action.

However, it is not relevant to considering *whether* the financial institution should carry out due diligence and effectively exercise any leverage it may have or seek to build additional leverage – doing so is a key expectation of the MNE Guidelines.⁴⁸

Even where financial institutions leverage is limited, they can engage with the client/project sponsor to raise concerns and encourage them to take actions to prevent and mitigate impacts. In some cases, they can discontinue business relationships or avoid future transactions with those entities, and communicate publicly the reasons for doing so, as a way of exerting leverage.

Financial institutions can also seek to overcome leverage limitations through integrating RBC expectations into contractual arrangements and collaborative efforts to pool leverage with their peers or financial counterparties.

Going beyond bilateral engagement with a client to seek to contribute positively towards systemic issues (e.g. through advocacy, participating in industry and multi-stakeholder initiatives etc.) can also be a way of seeking to prevent and mitigate impacts more broadly where leverage is lacking in a particular transaction.

Box 3.11. Exerting leverage through advisory services

Financial institutions might advise clients on the potential financing of a project or asset. The provision of advice takes place at a very early stage as its key objectives include support to clients in defining their financial needs, the project's financial structure, finalizing the project's business plan, reaching out to potential lenders, and, in some cases, conducting due diligence.

When providing advisory services, financial institutions are often in an ideal position to exert leverage as they are supporting clients to shape and define a project's outlook. At this stage, financial institutions can play a major role in leading clients to identify and address actual or potential adverse RBC impacts. Moreover, when providing advisory services financial institutions can also encourage clients to observe sustainability-related standards.

For example, the EPs expects from its adhering financial institutions (EPFIs) to “make the client aware of the content, application, and benefits of applying the EPs to the anticipated Project. The EPFI will request that the client confirms its intention to adhere to the requirements of the EPs when subsequently seeking long term financing.”⁴⁹

Financial institutions are encouraged to adopt the same level of RBC expectations in the context of advisory services as when providing project finance.

Box 3.12. Applying RBC due diligence to real estate finance

Financial institutions can apply the due diligence recommendations of the MNE Guidelines and the OECD Due Diligence Guidance in the context of real estate finance – either when it is made directly by a financial institution or through a real estate (or property) fund.

In the pre-financing phase, adopting an RBC due diligence approach can support the identification of key RBC risks related to the land acquisition and resettlement, construction, design or renovation of the real asset (including in relation to climate change resilience), including in its supply chain. In legal contexts where customary rights to land may not be well identified and protected an RBC due diligence approach may be particularly important.

On the post-financing or ownership phase, financial institutions can exercise leverage when monitoring the asset under management, notably to address RBC risks and impacts identified in the due diligence process prior to the acquisition. Embedding RBC into sound management systems helps ensure that RBC risks are addressed and tracked, while providing data on the asset's environmental and social performance. During the ownership phase, the day-to-day management of the asset is often outsourced to an external property manager: including RBC in lease agreement can support sustainable and responsible management of the asset.

Managing RBC risks and impacts and improving the environmental and social performance can enhance the asset value, which is realised on the asset sale. For example, a 2015 study looked at the Global Real Estate Sustainability Benchmark (GRESB) scores on various Real Estate Investment Trusts (REIT) financial indicators in order to test the link between sustainability and financial performance. The study found that there was a positive relationship between sustainability score and the profitability of real estate companies. The study attributed these results through gains in operating performance, efficiency, and lowering risk exposures.

Source:

Fuerst, F. (2015), "The Financial Rewards of Sustainability: A Global Performance Study of Real Estate Investment Trusts", https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2619434.

UN PRI (2022), "AN introduction to responsible investment: Real estate", <https://www.unpri.org/an-introduction-to-responsible-investment/an-introduction-to-responsible-investment-real-estate/5628.article>.

When should a financial institution disengage from a client?

Disengagement may be an appropriate response to identified adverse impacts after financing or support has been committed in the following scenarios: where attempts at prevention or mitigation have been unsuccessful after an escalating period of engagement; where mitigation is unfeasible; where there is no reasonable prospect of change; or where severe risks are identified and immediate action is not taken.⁵⁰ In the case of loan disbursements or a revolving credit facility, short of full disengagement this may also involve suspending payments or access to credit until impacts are remedied. In addition to disengagement financial institutions should avoid providing support in the first place to clients that cannot meet outlined RBC expectations (see above). Additionally, financial institutions may practice escalation towards a disengagement decision as a way of exerting their leverage. In all situations where disengagement is being considered as a potential course of action, it is recommended to obtain independent legal advice as to the contractual (or other) consequences well in advance.

Some factors to consider when deciding if disengagement is an appropriate response include:

- The financial institution's leverage over its client or business relationships;

- The severity of impacts resulting from disengagement;
- The views and wishes of negatively impacted rights-holders, starting with those at greatest risk;
- Whether the financial institution itself has contributed to the adverse impact and whether it should contribute to remedy prior to disengagement; and
- Whether terminating the relationship with would result in further adverse impacts, including by making it harder for those adversely affected to obtain remedy.

Disengagement may be facilitated by establishing a policy and/or process for disengagement. It is recommended that any such policy and/or process be shared with the client before the relationship begins, so that they are aware of the scenarios in which disengagement will take place. Such policy and/or process could include the following:

- a) Principles guiding the evaluation and assessment of the situation including criteria that trigger the assessment of potential termination or suspension in a relationship
- b) Considerations when terminating a relationship, namely regarding the impact this might have, i.e. the priority being to avoid creating greater harm
- c) Management and operational processes to be followed internally, such as escalation of the issue to a committee
- d) A process for assessing whether the financial institution contributed to the adverse impacts and should contribute to remediation (regardless of its decision to disengage)
- e) Timelines to be observed when suspending or ending the relationship as well as for re-entry into a business relationship
- f) Approaches to remedy to impacted stakeholders (see Measure 6)
- g) Criteria and principles informing the assessment of re-entry into a business relationship
- h) Ensuring that adverse impacts are not left unremediated
- i) Consideration of additional necessary actions.

Once a decision to disengage has been taken a responsible exit action plan should be developed. The plan should include actions prevent or mitigate to the extent possible the negative impacts of exit, and contribute to or enable remediation as appropriate, developed through consultation with impacted stakeholders. (OHCHR, 2022^[7])

In the context of project and asset finance transactions, financial institutions cannot unilaterally stop disbursements or request an early prepayment of a loan unless this is expressly provided for in the financing documentation, making the integration of RBC issues into covenants essential to leverage (see above). Ultimately, any contractual relationship between the parties should also contain language setting out the circumstances in which disengagement can be triggered. In other cases, termination may not be possible due to the nature of a transaction, such as where transactions have a short maturity period or where the borrower is likely to go bankrupt as a result of calling event of default, or due to potential adverse impacts on communities or the environment that would arise as a result of suspending financing.

In cases where financial institutions decide to continue a business relationship with an entity that is causing or contributing to adverse impacts, they should report the situation internally as part of their efforts to track their RBC due diligence processes. They should also continue to monitor the entity, for example, through maintaining a knowledge database, and revisit their decision where circumstances change or as part of the financial institution's long-term strategy to respond to all of the recommendations of the MNE Guidelines.⁵¹ In these instances, and where legal obligations with respect to client confidentiality allow, it may be in the financial institutions interest to publicly explain their decision to maintain the business relationship, how this decision aligns with their RBC policy and priorities, what actions are being taken to attempt to apply leverage to mitigate the impacts and how the client or business relationship as well as its projects/assets will continue to be monitored in the future.

In circumstances where exiting an existing business relationship is not possible, disengagement in certain circumstances may involve avoiding additional provision of services to clients in the future.

Measure 4: Track implementation and results

A financial institution should account for how it has addressed adverse impacts throughout its operations and with its clients/project sponsors to know how effectively it is managing actual and potential impacts and to make modifications to its RBC due diligence process as necessary. This helps the financial institution to demonstrate progress against relevant targets and continuous improvement overtime with respect to RBC as well as to be able to identify and respond to potential shortcomings in RBC due diligence processes. Practical actions are outlined in Table 3.6 below.

Table 3.6. Practical actions for tracking implementation and results

	Project Finance	Asset Finance
Practical actions for financial institutions	Tracking clients' or business relationships' implementation of RBC commitments through: <ul style="list-style-type: none"> • Requesting and where possible requiring clients/project sponsors to report periodically and publicly on RBC commitments, implementation of ESAPs or specific RBC issues of concern (see also Measure 3). It is also best practice to report directly to affected communities and to involve them in the monitoring of the ESAP implementation. • In high-risk cases, requiring third party review of client/project sponsor compliance with RBC expectations. • Engaging with affected stakeholders (e.g. directly, through clients/project sponsors or through independent third parties) to ascertain whether adverse impacts have been addressed effectively. 	
	<ul style="list-style-type: none"> • As relevant, building on existing processes, such as annual reviews, inspections or maintenance events, to track RBC commitments related to assets. • Reviewing public sustainability reports of clients/project sponsors. • Using third party services such as market research agencies to provide information on environmental and social compliance and on significant controversies as they arise. • Establishing early warning mechanisms for stakeholders to alert the financial institution of any issues. (see also Measure 2) 	
	Tracking own performance against RBC policies or other commitments the financial institution has made on RBC issues based on a set of indicators or targets, for example through annual reviews or based on stakeholder input.	
	Responding to findings to improve due diligence processes (e.g. integrating overlooked real or potential impacts in identification activities, modifying engagement strategies based on outcomes, etc.).	

How can a financial institution track client/project sponsor's implementation of RBC commitments?

Tracking involves first and foremost assessing whether identified actual or potential adverse impacts have been responded to effectively.

Prior to committing financing or support financial institutions should identify and assess actual and potential impacts associated with a project or asset. Ideally, it should be comfortable that those impacts are sufficiently addressed before deciding to proceed with the transaction. (see Measure 2 and 3)

Additionally, for high risk project and assets, or low risk projects where compliance gaps or RBC issues are subsequently identified financial institutions may monitor how RBC impacts are being addressed *after* financing or support is committed.

This should involve monitoring the implementation of agreed to prevention and mitigation plans (e.g. ESAPs, ESMPs), general compliance with RBC expectations, or ensuring unforeseen adverse impacts or risks are identified and addressed. Monitoring processes should also generally continue to track RBC risks identified in the identification stage taking into account how contextual issues, such as local conflicts, may impact these risks.

In the context of project finance such monitoring is usually undertaken by requiring clients/project sponsors to report on implementation of agreed action plans with respect to RBC risks and impacts, including through an independent expert or consultant. This is often done on a quarterly/semi-annually for construction phase and semi-annually/annually for operation phase of a project. Periodic monitoring and reporting on RBC issues can be conducted by an independent expert through audits or onsite visits. Financial institutions should ensure independence of experts or auditors, for example by maintaining third party rights in contracts with auditors. Engaging with stakeholders (including affected communities) in the context of monitoring of performance against RBC expectations as well as evolving RBC issues will also be important to ensure such activities are credible and accurate. Additionally, in some circumstances, financial institutions should be prepared to conduct site visits directly.

EPs and IFC Performance Standards call for financial institutions to monitor high-risk project finance transactions via an independent consultant or external expert retained by the client. Additionally, any monitoring performed by a multilateral or bilateral financial institution or Export Credit Agency should be taken into consideration.⁵²

Establishing appropriate qualitative and quantitative indicators or targets help financial institutions to assess whether identified adverse impacts have been responded to effectively. These indicators may include:

- Percentage/number of agreed action points that have been implemented by the client/project sponsor according to planned timelines.
- Percentage/number of issues raised by stakeholders and through grievance mechanisms that have been addressed by the client/project sponsor and that have not been addressed or are on-going.
- Actual changes in adverse impacts (e.g. project-affected people receiving compensation for lost land or business relationships over time, decrease in number of contingent workers).

Indicators should also be adapted and made more detailed with respect to the impacts in question to ensure they adequately track effectiveness of responses to those impacts. In this respect they may also be designed with the input of stakeholders.

For both project and asset finance transactions, public non-financial or sustainability reporting of the project sponsor/operator or asset owner can also provide an additional source of information for monitoring. This reporting may outline material environmental, social and governance issues related to the project or asset in question. However sustainability reports may not provide sufficient detail and will often be done only on an annual basis and often do not address risks or impacts associated specific projects. More detailed and timely information on specific projects may be needed for certain transactions to supplement current reporting practices.

Financial institutions can also engage third party services, such as market research firms, to report on and track controversies that may arise as they are reported by media, government or civil society organisations' publications. This may be useful particularly for asset finance activities where direct monitoring of client activities after financing has been assigned is often not possible.

Monitoring can also be supported through establishing mechanisms through which stakeholders can raise unforeseen issues to the financial institution (these can include early warning mechanisms as well as grievance mechanisms, see Box 3.3). Obtaining the client/project sponsor's consent for disclosing their business relationship with the financial institution enables transparency and is a prerequisite for stakeholders to raise any concerns through such mechanisms. Such mechanisms may offer particular benefits for short term transactions where it is difficult to collect comprehensive information about a client/project sponsor before assigning finance.

How can a financial institution track the implementation and effectiveness of its RBC due diligence activities?

It is important that financial institutions track their own performance with respect to how identified adverse impacts have been addressed as well as the effectiveness of their own RBC due diligence processes. Such efforts should move beyond transaction-level monitoring to enable an organisation-level review of the effectiveness of due diligence.

This may be done through commissioning of third party reviews/evaluations of RBC due diligence practices for learning purposes.

It may also involve tracking conduct across relevant performance indicators or targets. Potential indicators to measure RBC due diligence performance may include:

- Percentage of clients and related projects and assets associated with actual or potential impacts with which the financial institution sought to apply leverage to prevent and/or mitigate RBC risks and impacts, and rate of successful outcomes with respect to leverage activities.
- Rate of reoccurrence of identified adverse risks and impacts based on a financial institution's RBC monitoring of clients and related project and asset financing transactions in its portfolio.
- Where the financial institution itself has established, or participates in, grievance mechanisms, the number and type of issues raised through grievance mechanisms, and the effectiveness of its response (noting that increases in number of complaints is not necessarily an indicator of a higher number of impacts but may be due to increased accessibility of the mechanism).
- Changes in adverse impacts (e.g. the extent to which adverse impacts have increased, been prevented, mitigated or remediated).

Additionally, measuring changes in practices or behaviours that are more likely to result in better outcomes with respect to RBC risk management can also be useful. For example, tracking the means by which RBC risks are taken into account in financing decisions of deal teams through the number of times deal teams proactively request the E&S risk team's advice.

How should financial institutions respond to the results of tracking activities?

The RBC due diligence process is not static, but ongoing, responsive and changing. In this respect, it is important for financial institutions to develop feedback loops so that they can learn what is working and how to adequately respond to potential changes in its risk profile as circumstances evolve (e.g. changes in a country's regulatory framework, emerging risks in the sector, the development of new products or new business relationships).

A dynamic approach to RBC due diligence may mean reviewing prioritisation approaches as new issues are identified or new operational phases are reached at the level of the project. Lessons learned from tracking may trigger a revision of the prioritisation decisions adopted by the financial institution in the context of this specific transaction, taking into account the feasibility of any prevention or mitigation measures in light of the status of project development.

Tracking provides the financial institution with an understanding of whether the systems it has put in place are enabling it to effectively avoid and address adverse impacts or whether systems could be modified to be made more effective. Where a financial institution's due diligence processes or approach are not effective, it may be helpful to conduct an internal assessment, which might involve consulting staff involved in the due diligence processes and relevant external stakeholders. Establishing senior oversight of tracking also helps to ensure that lessons learned are integrated and due diligence systems are continuously improved. (See Measure 1).

Measure 5: Communicate how impacts are addressed

As part of the RBC due diligence process, financial institutions should communicate information on due diligence processes, findings and plans. Good lines of communication should improve transparency and help the financial institution to build trust in its actions and decision-making and demonstrate good faith. Practical actions for communicating how impacts are addressed are outlined in Table 3.7 below.

Table 3.7. Practical actions for communicating how impacts are addressed

Practical actions for financial institutions in the context of project and asset finance	<p>Publicly communicating on:</p> <ul style="list-style-type: none"> • RBC policies, including a statement of policy that expresses the financial institution's commitment to RBC issues. • The implementation of policies including information on measures taken to embed RBC policies into management systems. • Areas of significant risks and the significant adverse impacts identified, prioritised and assessed, as well as the prioritisation criteria (at the level of client portfolios or business areas). For project finance this may also include: <ul style="list-style-type: none"> ○ Information regarding high risk projects including project name, location and the details of where additional information is available (e.g. ESIA report or summary). • For high-risk projects/asset efforts to prevent and mitigate actual or potential adverse RBC impacts or co-operation in remediation as relevant, including where possible the outcomes of those efforts. • Future RBC plans and targets (at the level of client portfolios or business areas). • Exclusionary policies or decisions not to provide support or financing due to RBC issues.
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How can a financial institution communicate publicly?

Public communication is important to allow stakeholders and investors to understand how a financial institution is implementing its own RBC commitments, and also to explain potential valid limitations to their efforts (e.g. where certain issues are excluded due to credible prioritisation decisions, where a financial institutions decides to stay engaged with a project or asset despite ongoing impacts because of negative implications of disengagement, or where limited leverage means the financial institution seeks to prevent or mitigate impacts through broader strategic initiatives).

Existing frameworks call on financial institutions to engage in some level of public reporting with respect to project finance activities. Under the EPs, financial institutions are asked to report on transactions that have reached financial close. This includes, broadly the total number of transactions falling under the EPs and their categorization, sector, region and country and for certain transactions, whether an independent review has been carried out.⁵³ The EPs also call on EPFIs to report broadly on how they implement the EPs recommendations.

Due diligence recommendations on public communication call for financial institutions to disclose the information outlined in the practical actions (Table 3.7) above. Some expectations of RBC due diligence reporting go beyond existing frameworks and the current practices of some financial institutions. For example, reporting as a component of RBC due diligence asks financial institutions to report on:

- How financial institutions themselves embed RBC into their policies and management systems. (See Measure 1).⁵⁴
- Thematic areas of significant risk across their portfolios (on an aggregate basis).
- The specific risks and impacts that they have prioritised and how they have reached those decisions.⁵⁵ In the context of project finance, financial institutions may report on the same projects that they would be asked to under the EPs (see above) but they would have to explain the significance of the risks and impacts associated with the project that made it a priority.
- How financing institutions themselves have responded to their priority risks and impacts, subject to client consent. This could include an explanation of:
 - Efforts financial institutions have taken to introduce strong RBC expectations and commitments into transactions
 - Efforts to bring projects into compliance with environmental and social standards through support in development or financing of prevention and mitigation plans, ideally reporting where plans have been agreed to, timeline for follow up and general outcomes
 - Engagement efforts and where relevant, escalation
 - Exclusion and disengagement decisions based on RBC issues.
- The outcomes of a financial institution's efforts to prevent, mitigate, and where relevant remediate impacts, to understand to what extent RBC issues have been resolved.

In addition to their own reporting financial institutions may also require client/project sponsor reporting as a condition of financing. For example, under the EPs clients related to high-risk projects are asked to report summaries of their ESAs as well as information related to GHG emissions⁵⁶ and biodiversity.⁵⁷

What format should public reporting take?

Financial institutions may choose the format in which they publicly communicate on due diligence, provided that the public can easily access the relevant information: for example, making available on the institution's website in the form of an annual report on sustainability or corporate responsibility, which includes a communication on due diligence. For high-risk project-finance transactions, more detailed and timely reporting or disclosure might be necessary than what annual reporting normally entails.

Public communication on RBC due diligence may also be folded into other forms of disclosure. Some jurisdictions, national supervisory authorities, stock exchanges or industry associations have specific reporting requirements with respect to RBC risks, issues or due diligence. As such, financial institutions should ensure they comply with these reporting requirements as well as and also seek to communicate on how impacts are addressed as described in this paper. This is likely to mean providing additional information beyond what is asked for under local regulations and industry standards. Additionally, in order to promote more standardised and comparable reporting, financial institutions may also seek to communicate publicly in line with widely recognised reporting frameworks).⁵⁸

How can a financial institution communicate with impacted stakeholders?

Financial institutions should encourage their clients/project sponsors to engage with stakeholders directly and in a culturally appropriate manner to communicate how they will address or have addressed impacts associated with their project or asset. (See also above and Box 3.7).

Additionally, under RBC due diligence, where a financial institution is causing⁵⁹ or contributing to adverse impacts it should also be prepared to communicate with impacted or potentially impacted rightsholders about how it will address or has addressed the impacts.⁶⁰

In these cases, such communications should occur in a timely, culturally sensitive and accessible manner. Accessibility of information means that it is not only physically accessible, but also understandable and disclosed at a time and in a format, language and location that will best ensure that the target audience will notice it and be able to use it effectively. Such information may be verbal communication rather than in writing as appropriate.

In deciding how to communicate with stakeholders, financial institutions should take into account the dynamics and realities on the ground associated with the relevant project or asset, including situations where stakeholders may not engage frankly with project sponsors or operators due to fear of reprisals or other concerns. Information communicated should be “sufficient to demonstrate the adequacy of an enterprise’s response to the particular human rights impact involved” and “in turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality.” (OHCHR, 2011^[15]) In this respect, financial institutions may find it useful to engage local expertise and advice to support them in communicating with impacted rightsholders in an appropriate manner. (OECD, 2017^[22])

How can client confidentiality concerns be addressed when communicating?

For high-risk projects and assets, financial institutions should ensure they are able to communicate transparently about the projects and assets and their relationship to them in line with the recommendations of this paper.

In certain jurisdictions however, legal obligations such as client confidentiality requirements may prohibit such communications and/or require informed client consent, such that financial institutions should at the minimum always seek to secure client/project sponsor’s consent to disclose the relationship (see Box 3.4 on client confidentiality). Where client/project sponsor consent to waive confidentiality is not secured, it may still be possible to disclose information in an aggregated or anonymised way, across projects and/or assets. For example, a financial institution may report at the level of client portfolios or business areas provided that they comply with relevant laws and exercise care to ensure they are not inadvertently revealing confidential client details.

Measure 6: Provide for or cooperate in remediation

The provision of a remedy is critical process to ensuring RBC due diligence is effective and meaningful. Grievance and remediation processes also serve to provide channels through which the financial institution can become aware of and respond to RBC impacts. In the context of project and asset finance transactions, financial institutions should provide for or cooperate in remediation by 1) using their leverage to encourage remediation by clients/project sponsors and 2) remediate adverse impacts the financial institution may be causing or contributing to itself. An overview of practical actions related to remedy and remediation is provided in Table 3.8 and discussed in the sections following below.

Table 3.8. Practical measures for providing for or cooperating in remediation

	Project Finance	Asset Finance
Practical actions for financial institutions (see also Measures 3 and 4)	<p>Seeking to use leverage to encourage client/project sponsor to provide for or cooperate in remediation when the client/project sponsor have caused or contributed to adverse impacts through:</p> <ul style="list-style-type: none"> • Including expectations regarding remediation as part of RBC commitments clients/project sponsors are required to agree to before accessing financing or support. • Engagement with clients/project sponsors to communicate expectations around remediation and to encourage they engage in remediation processes in good faith. 	
	<ul style="list-style-type: none"> • Ensuring that clients/project sponsors have legitimate grievance mechanisms in place (their own or ones they participate in) and in high risk contexts assessing to what extent client/project sponsor's operational-level grievance mechanism meet international standards. • Establishing mechanisms for ensuring the client/project sponsor has financial resources in case actual adverse impacts occur. • Requesting or requiring time-bound plans for the client/project sponsor for remediation and triggering potential penalties where such plans are not respected. • Provision of technical support and capacity-building to client/project sponsor where needed and possible, in establishing or cooperating in remediation mechanisms. • Monitoring the extent to which a client/project sponsor remediates impacts they cause or contribute to. Monitoring can be done through carrying out inspections and investigations. • Requiring clients/project sponsors to notify any severe incident. 	
		<ul style="list-style-type: none"> • Establishing grievance mechanisms at the financial institution or industry level and/or participating in grievance mechanisms established by clients/project sponsor industry initiatives or others. • Providing for or cooperating in remediation where the financial institution has caused or contributed to the impact including as relevant proving an apology, restitution, rehabilitation, financial or non-financial compensation, in addition to internal sanctions and taking measures to prevent future adverse impacts (such as improving due diligence processes)

What is meant by remediation and remedy?

“Remediation” and “remedy” refer to both 1) the *processes of providing remedy* for an adverse impact as well as to 2) the *substantive outcomes* (i.e. remedy) that can counteract, or “make good”, the adverse impact for example through seeking to restore the affected person or persons to the situation they would be in had the adverse impact not occurred (where possible). A right to remedy is also recognized in international human rights law⁶¹ and thus the corporate responsibility to respect human rights includes respecting the right to remedy.

Remediation mechanisms

Legitimate remediation mechanisms can encompass a variety of different processes, depending on the subject and substance of the risk and impact identified. These include State-based or non-State-based processes through which grievances concerning enterprise-related adverse impacts can be raised and remedy can be sought.⁶² (see Box 3.13) Additionally, non-judicial mechanisms, including operational level grievance mechanisms can also be tailored to provide remediation if they are credible and meet sufficient effectiveness criteria (see Table 3.9).

Box 3.13. Examples of potential legitimate remediation mechanisms

Legal processes such as prosecution, litigation and arbitration.

Non-judicial State-based mechanisms such as specialist government bodies, consumer protection agencies, regulatory oversight bodies and environmental protection agencies.

The National Contact Points to the MNE Guidelines, a State-based non-judicial mechanism through which issues can be raised about implementation of the MNE Guidelines in specific instances (See Box 3.14. NCP specific instances processes: What to expect).

Operational-level grievance mechanisms where they meet the core criteria of legitimacy, accessibility, predictability, equitability, compatibility with the MNE Guidelines, transparency and are dialogue-based. (See Table 3.9. Effectiveness criteria for non-judicial grievance mechanisms). This term can be understood broadly, to cover grievance mechanisms that are set up by a financial institution, alone or together with other stakeholders, as well as grievance mechanisms established by financial institutions' clients or financed projects.

Framework Agreements between companies and Global and National Trade Unions, multi-stakeholder grievance mechanisms, community grievance mechanisms, collective bargaining agreements and enterprise supply chain grievance mechanisms are all examples of non-State-based remediation processes.

Source: Adapted from OECD (2018^[3]), Due Diligence Guidance for Responsible Business Conduct, <https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>.

Box 3.14. NCP specific instances processes: What to expect

The MNE Guidelines have a built-in non-judicial grievance mechanism through the NCPs. NCPs are established by countries adhering to the OECD Investment Declaration. NCPs have the mandate of furthering the effectiveness of the MNE Guidelines by: undertaking promotional activities, handling enquiries and contributing to the resolution of issues that arise relating to the implementation of the MNE Guidelines in specific instances.¹

NCPs facilitate access to consensual and non-adversarial procedures, such as conciliation or mediation, to assist the parties in dealing with the issues. Any individual or organisation can bring a specific instance (case) against an enterprise to the NCP in the country in which the enterprise is operating or based regarding the enterprise's operations anywhere in the world. Each specific instance proceeding begins with an initial assessment of the submission. As part of this assessment the NCP may reach out to the enterprise(s) involved for their input or feedback on the issues raised. This gives the parties an opportunity to understand and respond to issues raised in the submission.

If a submission is accepted for further examination following the initial assessment, the NCP will offer to provide mediation to the parties through a confidential process aimed at reaching an agreement between the parties. Through this process, parties are given the chance to exchange and explain their views. This may involve one or more meetings between the parties, mediated by the NCP. Some NCPs use a professional mediator. The specific instance process concludes with a final statement or report by the NCP.

Note: ¹ *Specific instances is the term used in the MNE Guidelines to describe practical issues that may arise with their implementation*

Table 3.9. Effectiveness criteria for non-judicial grievance mechanisms

Legitimate	Trustworthy Accountable
Accessible	Known Variety of access points Assistance to overcome barriers
Predictable	Clear procedures Clear timeframes
Equitable	Fair access to information, advice and expertise Fair treatment
Transparent	Keeping parties informed about progress of cases Providing information about the process to build confidence
Rights-compatible	Outcomes and remedies must accord with internationally-recognised rights No prejudice to legal recourse
Continuous learning	Identification of lessons for (i) improving the mechanism and (ii) preventing future harm
Based on engagement and dialogue	Consulting affected stakeholders (including internal users) on design and performance

Source: UN Guiding Principles for Business and Human Rights, (2011) Section B, paragraph 31 (OHCHR, 2011^[15])

Remedy

Under the OECD MNE Guidelines where an enterprise has caused or contributed to actual adverse impacts, it should address such impacts by providing for or cooperating in their remediation in a manner proportionate to its involvement.⁶³ Whether the financial institution is directly responsible for providing remedy because it caused the adverse impact or should instead contribute to the remediation is dependent on the financial institution's role in the context and should be assessed on a case by case basis (see Measure 2).⁶⁴

Remedy may include a variety of different forms and often requires a combination of actions so that redress is actually delivered to those harmed including apology, restitution, rehabilitation, financial or non-financial compensation, sanctions in addition to taking measures to prevent future adverse impacts (such as improving due diligence processes).⁶⁵

The type of remedy or combination of remedies that will be appropriate will depend on a range of factors, including the nature and extent of the adverse impact and the rights and views of affected stakeholders. Financial compensation may not be, and is often not, effective in providing redress in all circumstances. For example, it may be more appropriate to restore access to land or natural resources relied on or provide rehabilitative services to those harmed. It may also be important to acknowledge the harm suffered and demonstrate efforts to improve internal processes to ensure that similar adverse impacts will not recur.⁶⁶ To ensure effective and appropriate remedy:

Where appropriate, efforts should focus on cessation of harm and bringing the project back into compliance with RBC policies and commitments while considering full and effective remedy for adverse impacts.

- A 'bouquet' of concurrent remedies should be offered as needed based on the context and preference of impacted stakeholders who should be consulted on what they consider the most appropriate recourse. In this respect, where harm has already occurred demonstrating efforts to improve internal processes to ensure that similar adverse impacts will not recur alone will rarely provide sufficient redress; it will often be important to combine this with other remedial steps, such as acknowledging and addressing the harm suffered.

The adequacy of remedy should be developed with and judged from the perspective of impacted stakeholders, with special consideration to the perspectives of vulnerable groups, who are well informed and have a full and complete understanding of their entitlements.

In order to be effective, remedies should be implemented in an effective and timely manner.

How should financial institutions enable remediation by clients/project sponsors?

Where a financial institution has not caused or contributed to the impact, but the impact is directly linked to its products or services through a business relationship (client/project sponsor), it is not responsible for providing remedy. That responsibility rests with the entity causing the adverse impact. However, in these circumstances the financial institution should still play an important role in using its leverage to ensure that the client/project sponsor provides for or cooperate in remediation of the impact through using its leverage.

This may involve the practical actions discussed under Measure 3 and 4. (OHCHR, 2022^[23]) Namely:

- Including RBC commitments and expectations regarding remediation as pre-conditions to clients/project sponsors accessing financing or support. For example, commitments by clients/project sponsors to:
 - provide remedy if they are causing or contributing to impacts
 - establish or participate in a grievance mechanism in line with good practice and international standards (see Table 3.9)
 - engage in remediation processes in good faith
- Engaging with clients/project sponsors to communicate expectations around remediation and to encourage them to engage in remediation processes in good faith.
- Monitoring the extent to which a client/project sponsor remediates impacts to which they cause or contribute to, including by consulting the impacted stakeholders as to adequacy of remedy and requesting that outcomes of cases handled by client/project sponsor level grievance mechanisms to be reported to the financial institution.
- Communicating consequences to clients/project sponsors of failing to remediate, i.e. impact on possible future engagements, potential penalties, etc.
- Provision of technical support, where possible, in establishing, participating or cooperating in remediation mechanism. For example:
 - Provision of shared toolkits around effective grievance mechanisms or remedy processes to clients/project sponsors
 - Reference clients/project sponsors to existing good practice guidance
 - Provision of a list of trusted external experts a client/project sponsor could turn to in order to strengthen their grievance mechanism(s)

In the context of higher risk projects, financial institutions can also establish means for ensuring that clients/project sponsors have financial resources for remediation in case harms arise. Such means can also protect against situations in which borrowers escape financial responsibility for remediation through dissolution or bankruptcy, or as a result of the financial institution exiting the relationship.

For example, this might involve:

- Defining penalty fees in financial agreements if conditions regarding RBC expectations are not respected, and directing the funds to remedial action
- Requiring clients/project sponsors to establish escrow funds or other contingent financing arrangements to be used in case of adverse impacts
- Requiring that clients to purchase liability insurance on environmental and social performance.

Some financial institutions already require clients/project sponsors to establish escrow funds for environmental rehabilitation related to high-risk environmental projects as a potential model in this respect.

When a remediation process is ongoing (including non-judicial complaints processes, such as NCP complaints or mediations facilitated by an Independent Accountability Mechanism of a development finance institution), financial institutions can also cooperate with those processes to support a positive outcome. Financial institutions should consider using leverage to encourage a client/project sponsor to participate in good faith and push for a positive outcome or providing information to support the process, recognising business confidentiality and applicable laws and regulations.

Financial institutions should also encourage or require clients/project sponsors to establish grievance mechanisms. In this respect, the EPs call on clients related to Category A and as appropriate, B projects to establish grievance mechanisms which are designed for use by affected communities and workers.⁶⁷ The IFC Performance Standards require grievance mechanisms be established by client where there are Affected Communities, scaled to the risks and adverse impacts of the project.⁶⁸

For high-risk projects financial institutions should take steps to assess and verify that client/project sponsor grievance mechanisms meet core criteria outlined in the MNE Guidelines and UNGPs through identification and assessment pre-investment and monitoring in the ownership phase. (See Table 3.9). Various resources exist regarding good practice for operational grievance mechanisms.⁶⁹ Additionally, there is guidance for financial institutions on how to assess the effectiveness the design and implementation of their grievance mechanisms.⁷⁰ Financial institutions are encouraged to consult existing resources and relevant rightsholders to ensure the above effectiveness criteria are adequately reflected. External experts can also be useful to engage in ensuring grievance mechanisms are well functioning and fit for purpose.

How can a financial institution provide for or cooperate in remediation of adverse impacts itself?

Providing for or cooperating in remediation of impacts

Where a financial institution has caused or contributed to an adverse impact through its client relationships or other business partners, it should provide for or cooperate in the remediation of that impact, in a manner proportionate to its involvement,⁷¹ in addition to using its leverage with clients/project sponsors to cooperate in remediation.⁷² This can involve various forms of remedy as discussed above. Various resources have been developed in recent years to support financial institutions in this context.⁷³

Engaging in processes to enable remediation

In addition to enabling remediation by clients/project sponsors (see section above), financial institutions themselves can engage in processes to enable remediation.

Legitimate grievance mechanisms can provide a venue for reaching a solution when a financial institution and stakeholder disagree about whether the financial institution has caused or contributed to an adverse impact through its client relationship or other business partners. They can also help identify appropriate remedy where financial institutions have contributed to adverse impacts.

Financial institutions may decide to participate in multiple grievance processes, depending upon the particular needs of the case at hand. Any particular grievance mechanism should not be viewed as a mutually exclusive option for accessing remedy. For example, stakeholders may seek various forms of remedy (i.e. financial compensation, sanction, apology or remediation activity (see below)) and as such may choose to seek different forms of remedies at the same time. Different types of grievance processes may also have different mandates and approaches. For example, some processes at Independent Accountability Mechanisms, DFIs may be targeted at assessing compliance with the DFI' safeguard standards rather than mediating disputes or considering broader RBC due diligence issues.

Establishing grievance mechanisms

Financial institutions are expected, under internationally recognised RBC standards (e.g. OECD Guidelines and UNGPs), to have grievance mechanisms in place (their own or one(s) they participate in) to respond effectively if or when grievances arise. In this respect, financial institutions can choose to establish their own grievance mechanisms (at the organisational level) or they may also participate in mechanisms collaboratively established with or by other entities (e.g. banking sector initiatives, mechanisms established by other sectors or organisations, or Independent Accountability Mechanisms established by public finance partners where they align with the RBC policies of the financial institution). At the moment, establishing or participating in grievance mechanism not an expectation of EPFI's under the EPs.

There are resources available on development of effective grievance mechanisms specifically for the financial sector.⁷⁴ While grievance mechanisms are not currently common amongst commercial banks, a growing number of DFIs, including all major development banks,⁷⁵ a growing number of bilateral development banks, Export Credit Agencies as well as a few private banks⁷⁶ have established grievance mechanisms or are currently in the process of doing so. See Table 3.10 for illustrative examples.

Table 3.10. Illustrative examples of grievance mechanisms of financial institutions

	ANZ Human Rights Grievance Mechanism Framework	FMO Independent Complaints Mechanism	IFC Compliance and Advisory Ombudsman (CAO)	Atradius Dutch State Business grievance mechanism
Transactions in scope	ANZ Institutional or Corporate lending transactions (during ANZ's lending relationship)	FMO-Financed Operation	IFC and/or MIGA projects	All supported transactions
Claimants	Any person or group (including civil society organisations)	Any person or group (including civil society organisations)	Any person or group (including civil society organisations)	Any person or group (including civil society organisations)
Language	Any language	Any language	Any language	English or Dutch
Confidentiality	Anonymous complaints can be filed but may impact ANZ ability to engage with affected stakeholders	Anonymous complaints are not accepted. A complainant has the right to request for confidential treatment of the Complaint.	Anonymous complaints are not accepted. A complainant has the right to request for confidential treatment of the Complaint.	Anonymous complaints can be filed.
Publicity of decisions	Annual Reporting	FMO website	CAO website	Annual reporting.
Type of procedure	Dispute resolution and compliance review	Dispute resolution and compliance review	Dispute resolution and compliance review	Dispute resolution

Where a client is either providing remediation and/or is being held to account through a legitimate mechanism, it will typically be appropriate for the financial institution to defer to that process. (OHCHR, 2017^[21]) This is particularly the case where a parallel remediation process could undermine other legitimate processes. Deferring to other remediation processes does not imply a limitation of the financial institution's responsibility. However, for reasons of accountability and reasonableness, the entity most directly involved with the adverse impact should have the primary responsibility to provide remediation. (OHCHR, 2017^[21])

It is important for financial institutions to have grievance mechanisms in place as stakeholders impacted by activities related to specific projects or assets may not have access to legitimate remediation mechanisms. This may be because they do not have the means to access legal processes or are located in contexts with weak rule of law. It may also be because client/project sponsor established operational level grievance mechanism do not meet internationally recognized legitimacy and effectiveness criteria or because stakeholders fear or are at risk of reprisals. As such, although it will often make sense to solve

issues closest to where they arise and with those directly responsible, providing alternative venues are important when local processes cannot be trusted to result in fair outcomes or protect users of the system.

Such mechanisms should be open and accessible to all groups and individuals potentially affected by the activities of the financial institution.

While a grievance mechanism should be able to deal with all types of concerns and complaints, it may not be equipped to provide full remedy for all types of issues. In this respect, some complaints may be referred to external processes due to, for example, their severity. A financial institution's grievance mechanism should however, at a minimum, have the independence and competency to:

- Assess a financial institution's involvement with respect to adverse impacts (causing, contributing or being directly linked to) and recommend remedial measures based on that assessment.
- Assess the client/project sponsor's level of compliance with RBC-related contractual requirements in the financing agreement and recommend follow up measures (including potential remedial measures) based on that assessment.
- Assess the adequacy of a financial institution's standards and due diligence and recommend measures to strengthen processes as appropriate.
- Offer independent mediation to facilitate remediation between the complainants and financial institution.

In order to be transparent and accessible, it is important that financial institutions disseminate information about the grievance mechanism they have established or participate in. They should encourage clients/project sponsors to do the same in order to inform impacted stakeholders about potential avenues of redress. As a pre-requisite this will require seeking client/project sponsor consent for disclosing the relationship of the financial institution to the project or asset (see Box 3.4).

4 Conclusion

Financial institutions play a key role in providing access to financing to key projects and assets that can have positive sustainability impacts. To contribute to sustainability goals, it is also important that financial institutions avoid and address environmental and social risks associated with projects or asset based financing transactions that may be associated with harm to workers, communities or the environment. In this respect, promoting responsible business conduct amongst their clients and carrying out risk-based due diligence is a key aspect which can ensure that financing flows to projects, assets and companies that behave responsibly and ultimately benefit people and the planet.

This paper has sought to provide guidance to financial institutions that wish to implement the MNE Guidelines in the context of project and asset finance transactions and to outline how RBC due diligence processes can be carried out. There are several recognised existing standards and frameworks which some financial institutions may already be applying in the context of project and asset finance transactions, including the IFC Performance Standards and EPs. This paper seeks to recognise existing recommendations and further build on them to provide robust frameworks to enable financial institutions to identify and respond to environmental and social risks or example through: developing robust policies and management systems at the level of the financial institution, expanding the scope of risk assessments, articulating a range of practical actions for seeking to prevent and mitigate impacts related to projects or assets, outlining best practice for public reporting at the level of financial institutions as well as clarifying their role in enabling remediation for adverse impacts related to client activities.

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Annex A. Terminology

The MNE Guidelines include terminology that is also commonly used in the context of project and asset finance transactions. However, the meaning and application of this shared terminology is different in the context of the MNE Guidelines than in the context of such transactions. Most particularly, the term ‘due diligence’, a central expectation under the MNE Guidelines, is a common ‘term of art’ in both the financial and other sectors, but the meaning differs from that in the MNE Guidelines. To facilitate understanding, this list shows the different meanings of relevant terms in the context of the MNE Guidelines and finance.

Table A A.1. Terminology: Risk

	Risk
Terms used under the OECD Guidelines for Multinational Enterprises	<p>❖ “Risk” within the meaning of the MNE Guidelines refers to the existence of real or potential ‘adverse impacts’ on all matters covered by the MNE Guidelines (e.g. disclosure, human rights, employment and industrial relations, environment, combatting bribery, bribe solicitation, extortion, consumer interests).¹</p> <p>It does not refer to financial risk, but rather to risks of adverse impacts when the recommendations of the MNE Guidelines are not respected (e.g. health and safety of workers or the public, adverse impacts on livelihoods, etc.).</p>
Terms commonly used by financial institutions	<p>❖ “Risk” for financial institutions refers to the potential damage which clients, or projects and financial institutions themselves face. These impacts are primarily financial and relate to how the capacity of the client or project to repay its debt would be affected. Risk may also relate to the risk of a financial institution’s non-compliance with regulations; however, such risks are generally linked to negative financial impacts to financial institutions.</p> <p>Risk categories that can typically be influenced by RBC issues:</p> <ul style="list-style-type: none"> – Credit risk: the risk of a loss deriving from the failure of a client to meet its contractual obligation. – Market risk: the risk of a loss which results when the value of an asset (i.e. an investment) decreases due to changes in market factors. – Compliance risk: the risk which results from not complying with rules, regulations, laws, accounting standards or local or international best practices, which can result in regulatory fines or penalties, including the restriction or suspension of businesses. – Liability risk: the risk which results when a financial institution, or someone acting on its behalf, faces legal claims when failing to fulfil the obligations, responsibilities or duties imposed by law or assumed under a contract. – Reputational risk: the risk to a financial institution’s standing which results from the controversial perception of the financial institution’s actions and business decisions by its stakeholders. – Environmental and social risk: the risk of a loss which results from poor environmental and social performance by a client/project sponsor. This can also be reflected in reputational risk or compliance risk.
Differences in terminology and application for this document	<p>The principal difference between these two understandings of risk is the nature of the impacts that they reference. Under the MNE Guidelines, it means broadly, risks external to the financial institution—risks of adverse impacts (e.g. risk of adverse human rights, labour, environmental impacts), independent of financial materiality. In the context of project and asset finance transactions, it refers to the risk of internal impacts to the financial institution or its client other business relationships.</p> <p>→ For the purposes of clarity, this paper refers to “risk” as understood under the MNE Guidelines. Such risks can also have financial implications (negative or positive) for the company concerned and thus sometimes “RBC risks” are also financial risks.</p>

Note: This paper focuses primarily on risks associated with the human rights, employment and environment chapters of the MNE Guidelines (see section on Scope).

Table A A.2. Terminology: Due diligence

	Due Diligence
Terms used under the OECD Guidelines for Multinational Enterprises	<p>❖ “Due diligence” is the process through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts as an integral part of business decision-making and risk management systems.</p> <p>Due diligence is an ongoing, both proactive and reactive, and process-oriented activity; it is to be conducted throughout the entire life cycle of operations, products and service because circumstances change and so will adverse impacts. This means that due diligence should not be limited to an initial investigation of a potential business relationship or transaction but should also be applied proactively through establishment of systematic measures to identify RBC risk and prevent or mitigate potential adverse impacts, as well as through on-going monitoring of business relationships and related operations.</p> <p>Due diligence is a key aspect of RBC as it is a process for enterprises to ensure that they can 'know and show' their actions in the context of adverse impacts.</p>
Terms commonly used by financial institutions	<p>❖ “Due diligence” for financial institutions is generally understood as a process that is conducted before a transaction is made to identify the risks which may result from it. For some transactions financial institutions also conduct ex-post monitoring to ensure that conditions are respected.</p>
Differences in terminology and application for this document	<p>The principal differences between the meaning of due diligence in the context of the MNE Guidelines and finance are: under the MNE Guidelines, due diligence is a continuous process, whereas in finance practice, it is often carried out prior to engaging in a specific transaction.</p> <p>Under the MNE Guidelines, it is not only the process of identifying issues but also actively managing and accounting for them; whereas in finance, it describes processes used to identify potential risk when considering a transaction or business relationship.</p> <p>Financial institutions may have other processes in place to monitor and manage potential impacts after finance has been committed but these are usually referred to by different terminology (e.g. Environmental and Social Management Systems, ex-post monitoring etc.)</p> <p>Under the MNE Guidelines, due diligence aims to avoid and respond to RBC risk; whereas in finance it aims to identify financial risk for the client/project and the financial institution.</p> <p>→ This paper only discusses due diligence as understood under the MNE Guidelines and all references made to due diligence should be understood within the meaning of the MNE Guidelines, applied in the context of project finance and asset transactions.</p>

Table A A.3. Terminology: Leverage

	Leverage
Terms used under the OECD Guidelines for Multinational Enterprises	<p>❖ “Leverage” is an advantage that gives power to influence. In the context of the MNE Guidelines it refers to the ability of an enterprise to effect change in the practices of another party that is causing or contributing to adverse impacts.</p> <p>Where a business enterprise is found to be directly linked to an adverse impact through a business relationship, there is an expectation under the MNE Guidelines that it use its leverage to influence the entity causing the adverse impact to prevent or mitigate that impact, acting alone or in co-operation with other entities, as appropriate.</p>
Terms commonly used by financial institutions	<p>❖ “Leverage” for financial institutions is a technical term used to describe: (i) the use of financial instruments or borrowed capital to increase the potential return on an investment, and (ii) the ratio of a company's debt to the value of its equity, which is a measure of risk.</p> <p>However, the word “leverage” is also used in a more colloquial sense to describe the ability to influence a person, a company or a situation.</p>
Differences in terminology and application for this document	<p>In the context of the MNE Guidelines, leverage is intended to effect change in the wrongful practices of a party causing or contributing to adverse impacts whereas in the context of finance, leverage is primarily a technical term.</p> <p>→ In the context of this paper, leverage should be understood within the meaning under the MNE Guidelines.</p>

Table A A.4. Terminology: Responsible Business Conduct

	Responsible Business Conduct (RBC)
Terms used under the OECD Guidelines for Multinational Enterprises	❖ Under the MNE Guidelines “responsible business conduct” (RBC) means that business should: i) make a positive contribution to economic, environmental, and social progress with a view to achieving sustainable development; and ii) should avoid and address adverse impacts through their own activities and seek to prevent or mitigate adverse impacts directly linked to their operations, products or services by a business relationship.
Terms commonly used by financial institutions	❖ “ <i>Environmental, social and governance</i> ” (ESG) criteria or “Environmental and social risk” (E&S risk/ESR) is the term normally used by financial institutions to describe the set of criteria they use when assessing the sustainability performance of a company. Environmental criteria look at how a company performs as a steward of the natural environment. Social criteria examine how a company manages relationships with its employees, suppliers, customers and the communities where it operates and often includes human rights and labour rights. Governance deals with a company’s corporate governance—its leadership, executive pay, audits and internal controls and shareholder rights.
Differences in terminology and application for this document	The scope of RBC and ESG/ESR criteria are related. Both relate to social and environmental considerations, however RBC is broader and specific to the standards and recommendations set out in the MNE Guidelines. ESG/ESR criteria may also be used primarily to identify financial risks rather than RBC risks (see above). → This paper discusses RBC as defined by the MNE Guidelines.

Table A A.5. Terminology: Business Relationship

	Business Relationship
Terms used under the OECD Guidelines for Multinational Enterprises	❖ Under the MNE Guidelines the term ‘business relationship’ includes relationships with business partners, entities in the supply chain and any other non-State or State entities directly linked to its business operations, products or services. This can include suppliers, franchisees, licensees, joint ventures, investors, clients, contractors, customers, consultants, financial, legal and other advisers that are covered by the RBC due diligence process.
Terms commonly used by financial institutions	❖ “Business relationships” is the term normally used by financial institutions and means any relationship which is directly connected with the commercial or professional activities of the obliged entities and which is expected, at the time when the contact is established, to have an element of duration.
Differences in terminology and application for this document	In the MNE Guidelines, ‘business relationship’ is used to define the scope and coverage of the due diligence process, whereas in the context of a financial transaction, it can be used to assess a legal obligations outside a contractual relationship or simply as the connections that exist between all entities that engage in commercial activities. → This paper used the term “business relationship” as defined by the MNE Guidelines.

Annex B. Overview of Project and Asset finance transactions considered in this paper

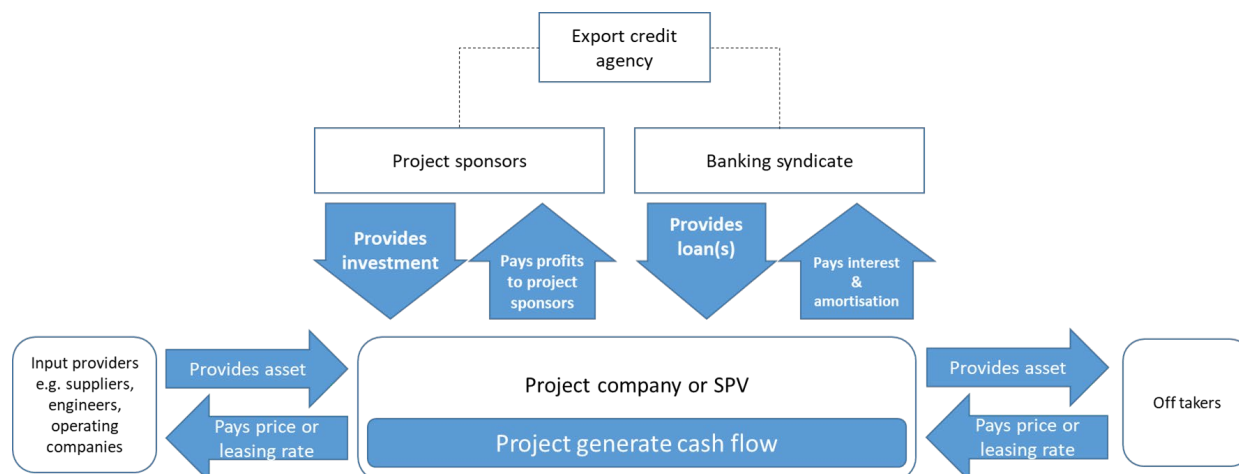
This paper covers select products and services that are commonly offered by financial institutions, which are divided into two categories:

- Project finance (including project related loans and bridge loans related to a specific project) and
- Asset finance, including:
 - Machinery and equipment finance
 - Transport finance

The above-mentioned transactions can be offered by a wide variety of financial institutions.

Project finance

Figure A B.1. Project finance



Project finance is used to finance infrastructure, industrial projects and public services, mainly in the power generation, oil and gas and transportation sectors. As a financial instrument, project finance combines debt and equity and makes it possible for financial institutions to: (a) provide long-term loans; and (b) wait until the loans can be paid back from the cash flow that the project will generate in the future. In such transactions, a new legal entity, known as a special-purpose vehicle (SPV), is founded. The SPV protects the assets of the participating entities should the project fail. A project finance transaction is initiated by the client—one or several equity investors, known as project sponsors—who will request loans from a syndicate of financial institutions. For particularly complex project finance transactions, governments' Export Credit Agencies may provide additional support, for example, by way of loans, insurance or guarantees to project sponsors or financial institutions.

Project-related loans are loans, made to business entities (either privately, publicly, or state-owned or controlled) related to a project, either a new development or expansion, where the known use of proceeds is related to a project in one of the following ways: a. The lender looks primarily to the revenues generated by the project as the source of repayment (as described in Project finance above) and where security exists in the form of a corporate or parent company guarantee; b. Documentation for the loan indicates that the majority of the proceeds of the total loan are directed to the project.

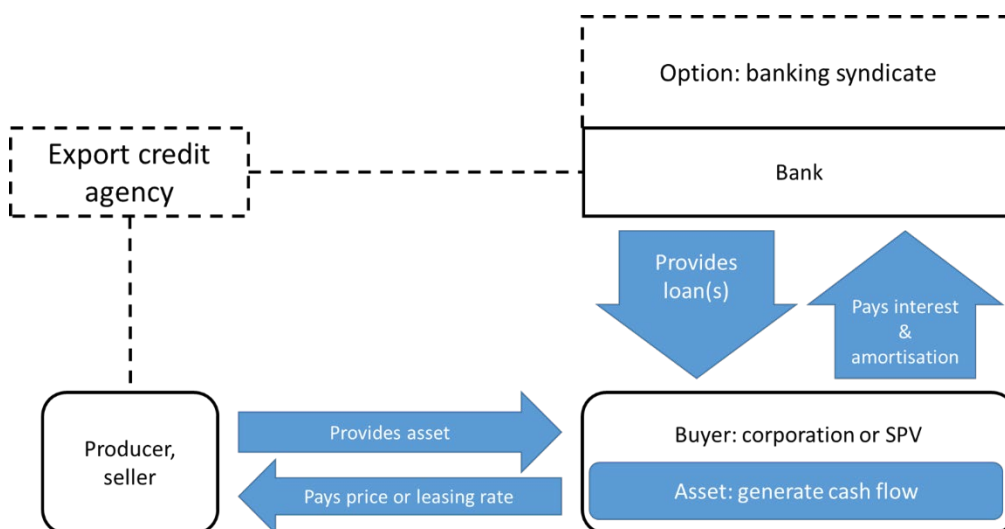
A bridge loan relating to a project is interim financing put in place until permanent financing or the next stage of financing is obtained. Money from the new financing is generally used to “take out” (i.e. pay back) the bridge loan, as well as to meet other capitalisation requirements of the SPV. Bridge financing typically takes place at an earlier stage of a project, when the exact project design may not be known and impact studies may not yet be completed.

Table A B.1. Characteristics to be considered in RBC due diligence related to project finance

<p>Characteristics of the business relationship:</p> <ul style="list-style-type: none"> • Project finance is provided by a relatively small group of large commercial and investment banks. Such transactions are complex. They require specific expertise and the appetite to provide long-term loans. The client/business relationship will choose the financial institution that it believes will provide the best advice and most favourable terms. • The financial institutions will work closely with the project sponsors on an individual transaction over a long period—often several months or, in case of longer construction phases, even years.
<p>Characteristics of the traditional due diligence process:</p> <ul style="list-style-type: none"> • Financial institutions have a strong interest in appropriately identifying and mitigating risk. The long-term nature of a loan exposes them to risk. The project must be successful for it to generate the forecast cash flows that are needed to repay the loans. • Financial institutions will often stipulate conditions for loans to mitigate risk and will closely monitor the project's progress.
<p>Current practice in RBC due diligence:</p> <ul style="list-style-type: none"> • Most RBC risks will be linked to the project itself (e.g. a thermal power plant) and to the location in which it is built (e.g. in close proximity to a sensitive wetland or in areas in which land rights are disputed). • Some financial institutions that offer project finance have adapted the EPs. • The methods used to identify and address RBC risks and their impact will usually be assessed by third-party subject matter experts.

Asset finance

Figure A B.2. Asset finance



Machinery and equipment finance

Machinery and equipment finance relates to a loan or lease used to purchase hard assets. This type of financing might be used to purchase or borrow any physical asset, such as a restaurant oven or a fleet of mining trucks. There is an enormous number of variations on equipment financing that cater to specific types of businesses and equipment. Unlike a working capital loan, in machinery and equipment finance the asset(s) a company is purchasing (e.g. hydraulic mining shovels) could serve as collateral. This means that, should the loan or lease default, the lender institution can repossess the asset(s). Consequently, equipment financing tends to be a more cost-effective and lower-risk way for companies to acquire equipment than other forms of financing. However, using machinery and equipment as collateral is an option but not a precondition for this type of finance. For example, in classical Export Credit Agency-covered finance for machinery, the machinery is usually not used as collateral as the process is too complex in emerging markets and/or the collateral rights are not enforceable. For particularly complex transactions, governments' Export Credit Agencies may provide additional support, for example, by way of loans, insurance or guarantees to exporters or financial institutions.

Table A B.2. Characteristics to be considered in RBC due diligence related to machinery and equipment finance

<p>Characteristics of the business relationship:</p> <ul style="list-style-type: none"> • This is a financing product offered by a wide range of financial institutions. Financings are usually one-off transactions, i.e. for the clients own use. • The financing is for a physical asset that may (but does not necessarily) serve as security for the loan. • The tenor of the financing will in part be determined by the expected productive life of the machinery or equipment.
<p>Characteristics of the traditional due diligence process:</p> <ul style="list-style-type: none"> • An understanding of the value of the underlying asset will be developed. • Financing for machinery and equipment is a highly standardised business. Financial institutions can spend only a limited amount of time on an individual transaction and will normally simply concentrate on assessing the market value of the machinery or equipment being financed.
<p>Current practice in RBC due diligence:</p> <ul style="list-style-type: none"> • RBC risks can be associated with the impact of using the equipment or machinery (e.g. air or water emissions). • The products or components associated with the production process using the machinery or equipment may inherently involve RBC risks (e.g. chemical products). • RBC-risks can be associated with the buyer or end user of the asset (e.g. RBC risks associated with a project see above).

Transport finance

Aircraft finance

Aircraft finance refers to financing for the purchase and operation of aircraft. Complex aircraft finance (such as those schemes employed by airlines) shares many characteristics with maritime finance, and to a lesser extent with project finance. Financial institutions lend money to airlines with the loan guaranteed by the aircraft. The airline then makes monthly lease payments and at the end of the lease it owns the aircraft. Finance leasing is just like hire purchase. Either a financial institution or the manufacturer underwrites a loan with the aircraft as collateral. This is similar to a mortgage on a house. Financial institutions typically lend 85% of the aircraft's value, with airlines paying 15%. The lease structure is like leasing a car: the airline pays a fee per month or year over a contract period. At the end, the airline either has a right to purchase the aircraft for a nominal price, or it reverts to the leasing company. Alternatively, the leasing period can be extended.

Ship finance

The structure of a ship financing lease deal is somewhat different, but analogous to that used in a ship financing purchase transaction. The typical arrangement during ship financing occurs at pre-delivery

phase. A financial institution often provides pre-delivery construction or refurbishment maritime loans in instalments to a shipyard. Ship financing loans receive backing from a corporate guarantor and a refund guarantor. The ship financing pre-delivery security package often includes: assignment of shipbuilding contract; assignment of refund; guarantee (from refund guarantor acceptable to lender); and corporate guarantee.

A financial institution may often provide ship financing post-delivery. In this context, the ship financing post-delivery security package often includes: maritime mortgage on vessel; assignment of charter; contract assignment of vessel earnings, insurance and requisition compensation; charge over bank account; pledge of shares of borrower; corporate guarantee; and ship manager's undertaking.

Rolling stock (i.e. railway carriages) finance

Cash flow in the haulage and transport industry can be difficult, with rising fuel prices and high operational costs. This can cause serious issues for a transport company when it wants to expand its operations by acquiring new vehicles or pitching for new business. Transport finance offers a way for businesses to release working capital, specifically from haulage and freight transactions, that might otherwise remain tied up in invoices for long periods, allowing them to grow. Transport finance comes in the form of asset-finance.

Table A B.3. Characteristics to be considered in RBC due diligence related to transport finance

<p>Characteristics of the business relationship:</p> <ul style="list-style-type: none"> • Transport finance is provided by a relatively small group of specialised financial institutions. While specialised, it is a highly standardised business. Financial institutions can spend only a relatively limited amount of time on an individual transaction, and will normally look primarily at the value of the vehicle, which serves as collateral, and only secondarily at the company itself.
<p>Characteristics of the traditional due diligence process:</p> <ul style="list-style-type: none"> • A valuation of the asset is developed.
<p>Current practice RBC due diligence:</p> <ul style="list-style-type: none"> • Any components/raw materials used in the production of the vehicle may inherently represent RBC risks.

Annex C. Comparison of RBC due diligence expectations and substantive scope across existing standards and frameworks

The MNE Guidelines and associated RBC due diligence recommendations, the IFC Sustainability Framework (including the IFC Sustainability Policy, IFC Performance Standards) and the EPs lay out expectations associated with the management of environmental and social risks and impacts.

The MNE Guidelines apply to all business, across all sectors including financial institutions providing finance as well as their clients and apply to their associated operations, products, and services. These RBC due diligence recommendations set out a framework and practical actions on how to operationalize the expectations of the MNE Guidelines in the context of project and asset finance. The IFC Sustainability Policy applies to IFC as a financial institution and sets out the steps it will take on environmental and social risk management when providing financing. The IFC Performance Standards in contrast, apply to IFC clients and define the environmental and social performance expectations of clients receiving financing from the IFC including how clients should assess and manage environmental and social risks and impacts. While the IFC Performance Standards only formally apply to financing provided by the IFC, they have been incorporated by reference in other operational frameworks used by financial institutions. The EPs, a voluntary risk management framework for determining, assessing and managing environmental and social risk in project-related finance which have been adopted by over 131 financial institutions at the time of writing. The EPs are intended to serve as common baseline and framework for financial institutions to identify, assess and manage E&S risks when financing projects and are applicable to the EPFIs as financial institutions and also set standards for their clients.

Table A C.1 below provides a high level comparison of the relationship of the IFC Sustainability Policy, the IFC Performance Standards and EPs to the process-oriented recommendations of OECD RBC due diligence in the context of project and asset finance transactions. While there are certain recommendations under RBC due diligence which are not explicitly included under the IFC Performance Standards nor EPs, financial institutions may have their own internal processes or policies to address these points.

Table A C.1. Comparison of RBC due diligence expectations across leading standards and frameworks

OECD Due diligence expectations	Equator Principles ¹	IFC Sustainability Framework ²	
		IFC Sustainability Policy	IFC Performance Standards
	Scope of application		
Applies to financial institutions in the context of two major types of financing: project finance (including includes bridge loans where they are associated with a specific project) and asset finance transactions (including machinery, equipment and transport finance).	Yes ³	Yes ⁴	Yes ⁵

OECD Due diligence expectations	Equator Principles ¹	IFC Sustainability Framework ²	
		IFC Sustainability Policy	IFC Performance Standards
Applies to all types of business relationships of the financial institution – suppliers, franchisees, licensees, joint ventures, investors, clients, contractors, customers, consultants, financial, legal and other advisers, and any other non-State or State entities linked to its business operations, products or services.	Not applicable	Not applicable	Not applicable
Applies to business relationships of clients where there may be adverse impacts.	Somewhat ⁶	Somewhat ⁷	Somewhat ⁸
Embedding RBC into policies and management systems.			
Adopting a policy which includes commitment to observe relevant principles and standards on RBC issues (e.g. the MNE Guidelines, the UNGPs, ILO Conventions), as well as relevant frameworks for the financial sector (the EPs, IFC Performance Standards).	Somewhat ⁹	Yes ¹⁰	Yes ¹¹
Identifying and assigning roles to relevant business units for carrying out steps of the due diligence process (e.g. boards and senior level management, risk or compliance teams, business development officers, client and business relationship managers).	Not covered	Yes ¹²	Yes ¹³
Allocating sufficient resources to effectively carry out due diligence, including for staff and third party independent experts.	Not covered	Not covered	Yes ¹⁴
Maintaining information and management systems which enable financial institutions to consider RBC risks (as defined in this paper) in business strategies and daily operations.	Not covered	Yes ¹⁵	Not explicitly covered ¹⁶
Communicating RBC expectations to clients and business relationships.	Yes ¹⁷	Yes ¹⁸	Not explicitly covered ¹⁹
Identifying actual and potential adverse RBC impacts.			
<i>Prior to committing to financing/support:</i>			
Identify and assess actual and potential adverse impacts related to the transaction (at a client/project sponsor and project or asset level).	Yes ²⁰	Somewhat ²¹	Somewhat ²²
For high-risk projects evaluate quality of environmental and social assessments and stakeholder engagement undertaken by a client.	Somewhat ²³	Somewhat ²⁴	Somewhat ²⁵
Establish early warning mechanisms where potential RBC risks and impacts can be reported by stakeholders and	Somewhat ²⁶	Somewhat ²⁷	Yes ²⁸

OECD Due diligence expectations	Equator Principles ¹	IFC Sustainability Framework ²	
		IFC Sustainability Policy	IFC Performance Standards
other parties and/or engage third party services to received RBC controversy alerts.			
Ensure a process is in place for assessing the financial institution's involvement with an adverse impact, e.g. whether it may have contributed to the impact via its actions or omissions, and determining the appropriate response.	Not covered	Not covered	Not covered
The cessation, prevention, and mitigation of impacts.			
<i>Prior to committing to financing/support:</i>			
Incorporating RBC expectations into contractual documents where possible or other written statements/commitments.	Yes ²⁹	Yes ³⁰	Not covered
Requesting or requiring client consent to disclose financial institution's relationship to the project /asset.	Yes ³¹	Yes ³²	Somewhat ³³
Building leverage into credit disbursement and providing prospective clients with incentives to meet certain RBC related targets (e.g. to the extent possible in the context of commercial project finance, coupling the interest rate of the loan with the company's sustainability performance).	Somewhat ³⁴	Somewhat ³⁵	Not covered
<i>After committing to financing/support:</i>			
Raising questions about disengagement options and terminating or suspending the provision of financial services, in accordance with contract clauses, or raising the credible prospect of doing so.	Yes ³⁶	Yes ³⁷	Not covered
Considering not engaging in future business opportunities related to the project or asset, client or business relationship (as an additional measure or as an alternative to terminating the client or business relationship when an immediate termination is not possible or would result in severe adverse impacts).	Not explicitly covered ³⁸	Not explicitly covered ³⁹	Not explicitly covered ⁴⁰
<i>Throughout a business relationship (including prior to providing financial support):</i>			
Offering technical assistance and support to a client/project sponsor through building up or seeking out sectoral expertise on RBC issues and processes (i.e. connecting client/project sponsor to relevant training or substantive resources on environmental and social risk management).	Somewhat ⁴¹	Somewhat ⁴²	Not covered
Providing financial support necessary for preventative and mitigating activities, as well as to address pre-existing adverse impacts	Not covered	Not covered	Not covered
Where relevant, assigning responsibility to staff for ensuring that the financial institution's activities that contribute to adverse impacts cease.	Not covered	Not covered	Not covered
Collaborating with other financial	Somewhat ⁴³	Somewhat ⁴⁴	Somewhat ⁴⁵

OECD Due diligence expectations	Equator Principles ¹	IFC Sustainability Framework ²	
		IFC Sustainability Policy	IFC Performance Standards
institutions involved in the transaction or other stakeholders to exert leverage on RBC matters, subject to legal obligations.			
Ensuring stakeholder engagement is meaningfully undertaken by clients/project sponsors to help identify and address real and potential adverse impacts including root causes of adverse impacts (e.g. informality, lack of adequately legal frameworks or enforcement).	Somewhat ⁴⁶	Not explicitly covered ⁴⁷	Yes ⁴⁸
Tracking implementation and results			
In high-risk cases, requiring third party review of compliance with RBC policies and/or requirements.	Yes ⁴⁹	Yes	Yes ⁵⁰
Establishing early warning mechanism for stakeholders to alert the financial institution of any issues. (see also Measure 2)	Not covered.	Not explicitly covered ⁵¹	Not covered
Tracking own performance against RBC policies or other commitments the financial institution has made on RBC issues based on a set of indicators, for example through annual reviews or based on stakeholder input.	Not explicitly covered ⁵²	Not covered	Not explicitly covered ⁵³
Engage in periodic monitoring/review to ensure real/potential adverse impacts are being managed appropriately or identify any real or potential impacts associated important changes to the project or asset.	Yes ⁵⁴	Yes ⁵⁵	Yes ⁵⁶
Responding to findings to improve due diligence processes (e.g. integrating overlooked real or potential impacts in identification activities, modifying engagement strategies based on outcomes, etc.).	Not covered	Not covered	Not covered
Communicating how impacts are addressed			
<i>Publicly communicating on:</i>			
Requesting and where possible requiring clients or business relationships to report periodically on RBC commitments or specific RBC issues of concern (see also Measure 3).	Yes ⁵⁷	Yes ⁵⁸	Yes ⁵⁹
The implementation of policies including information on measures taken to embed RBC policies into management systems.	Yes ⁶⁰	Yes ⁶¹	Yes ⁶²
Areas of significant risks and the significant adverse impacts identified, prioritised and assessed, as well as the prioritisation criteria (at the level of client portfolios or business areas). This may also include: Information regarding high risk projects including project name, location and the details of where additional information is available (e.g. ESIA report or summary).	Somewhat ⁶³	Somewhat ⁶⁴	Somewhat ⁶⁵
Efforts to prevent and mitigate actual or potential adverse RBC impacts) or co-	Not covered	Not explicitly covered ⁶⁶	Yes ⁶⁷

OECD Due diligence expectations	Equator Principles ¹	IFC Sustainability Framework ²	
		IFC Sustainability Policy	IFC Performance Standards
operation in remediation as relevant, including where possible the outcomes of those efforts.			
Future RBC plans and targets (at the level of client portfolios or business areas).	Not covered	Not covered	Not covered
Exclusionary policies or decisions not to provide support or financing due to RBC issues	Not covered	Yes ⁶⁸	Not covered
	Provide for or cooperate in remediation when appropriate		
Seek to use leverage to encourage clients to provide for or cooperate in remediation when they have caused or contributed to adverse impacts.	Yes ⁶⁹	Somewhat ⁷⁰	Somewhat ⁷¹
Establishing grievance mechanisms at the financial institution or industry level and/or participating in grievance mechanisms established by clients, industry initiatives or others.	Not covered	Yes ⁷²	Not applicable
Provide for or cooperate in remediation where the financial institution has caused or contributed to the impact.	Not covered	Not explicitly covered ⁷³	Not applicable

Notes:

¹ The EPs refer to the IFC Performance standards and thus may align with respect to some of the substantive expectations. The EPs apply the IFC Performance Standards to their clients in specific circumstances.

² The IFC internal commitments to manage E&S risks when providing financing are captured in the IFC Sustainability Policy and the IFC Access to Information Policy and apply to IFC. The IFC performance Standards apply to IFC clients. Together with the IFC Performance Standards, they constitute the IFC Sustainability Framework.

³ The EPs apply to specific financial products in which an EPFI is involved including project finance advisory services, project finance transactions, project-related corporate loans, bridge loans, project-related refinance and project-related acquisition finance, for which the financial transaction meets specific thresholds and criteria as set out in page 5 of the EP 4.

⁴ The IFC Sustainability Policy applies to the activities of the IFC, which include investments financed directly by IFC; investments implemented through financial intermediaries or managed by IFC's Asset Management Company or any other IFC subsidiary, as well as investments funded in part or in whole by donors; and advisory services.

⁵ The IFC Performance Standards apply to IFC's clients in relation to project-level business activities with social and environmental impacts.

⁶ The EPs aligned with the IFC Performance Standards, only cover impacts associated with project primary supply chains through which the client can reasonably exercise control.

⁷ The IFC Sustainability Policy considers third party actions to be limited to contract party, a contractor or primary supplier with whom the business activity has a substantial involvement, or an operator of an associated facility.

⁸ The IFC PS 2 (para. 27-29) and IFC PS 6 (para. 30) refer to the risks and impacts associated with the project primary supply chains and through which the client can reasonably exercise control. The IFC Performance Standards also refer to the notion of project's area of influence, which encompasses area likely to be affected, its associated facilities and cumulative impacts that result from the incremental impact, on areas or resources used or directly impacted by the project.

⁹ EP signatories commit to implementing the EPs through internal policies, procedures, and standards. However the main actor bearing an expectation to commit to observing international RBC standards under the EPs is not the EPFI.

¹⁰ The IFC internal commitments to manage E&S risks are captured in the IFC Sustainability Policy. IFC Sustainability Policy para. 14 recognizes the responsibility of business to respect human rights, (including the eight ILO core conventions and the International Bill of Human Rights) - independently of the state duties to respect, protect, and fulfil human rights. This responsibility means to avoid infringing on the human rights of others and to address adverse human rights impacts business may cause or contribute to.

¹¹ IFC PS 1, paragraph 6 includes that "clients may also subscribe to other internationally recognized standards, certification schemes, or codes of practice". IFC PS 2, footnote 2 also lists the eight ILO core conventions, as well as the UN Convention on the Rights of the Child and the UN Convention on the Protection of the Rights of all Migrant Workers and Members of their Families.

¹² See IFC Sustainability Policy, para 21 which notes that E&S due diligence is integrated into regular due diligence processes and the results of which are provided to IFC Board of Directors.

¹³IFC PS 1, para 17 requires that the client, “in collaboration with appropriate and relevant third parties, will establish, maintain, and strengthen as necessary an organizational structure that defines roles, responsibilities, and authority to implement the ESMS. Specific personnel, including management representative(s), with clear lines of responsibility and authority should be designated. Key environmental and social responsibilities should be well defined and communicated to the relevant personnel and to the rest of the client’s organization. Sufficient management sponsorship and human and financial resources will be provided on an ongoing basis to achieve effective and continuous environmental and social performance.”

¹⁴IFC PS 1 para. 17 states that “sufficient management sponsorship and human and financial resources will be provided on an ongoing basis to achieve effective and continuous environmental and social performance”

¹⁵Covered in the d Access to Information Policy

¹⁶While not mentioned explicitly this is implied through commitment on monitoring and supervisions in IFC Sustainability Policy.

¹⁷See generally EPs, Principle 8 on incorporating compliance requirement into covenants.

¹⁸IFC Sustainability Policy para. 14 defines IFC’s approach to disclosure of information stating that “IFC seeks to provide accurate and timely information regarding its investment and advisory activities as well as more general institutional information in accordance with its Access to Information Policy and recognizes the importance of disclosure of information, both for itself and its clients, as a means of managing environmental, social, and governance risks”. However, the Access to Information

¹⁹See generally IFC Performance Standards, including IFC PS 1 para. 34, which states that clients are encouraged to make publicly available periodic reports on their environmental and social sustainability.” Though this does not explicitly apply to clients and business relationships.

²⁰See EPs, Principles 1 –3

²¹See IFC Sustainability Policy, Section III. para 28 and 40. However, the risk identification process is limited in scope (i.e. supply chain coverage limited to primary suppliers).

²²IFC PS 1, para. 7 requires the client to establish and maintain a process for identifying the environmental and social risks and impacts of the project. However, the risk identification process is limited in scope (i.e. supply chain coverage limited to primary suppliers).

²³The EPs include an expectation that EP signatories require clients associated with high-risk projects to undertake an appropriate Environmental and Social Assessment which should be reviewed by the EPFI. (Principle 2) For high-risk (Category A) projects and as appropriate Category B projects, an Independent Review of Assessments should take place to determine compliance of a project with the expectations of the EPs or ability to bring it into the EPs. (Principle 7). However the scope of issues being considered for the purposes of compliance as well as process for undertaking the assessment (e.g. differences in Designated and Non-Designated Countries, identification of impacts in consultation with stakeholders) may not fully align with the OECD RBC due diligence framework.

²⁴See IFC Sustainability Policy, para. 12 states that IFC undertakes “due diligence of the level and quality of the risks and impacts identification process carried out by its clients against the requirements of the Performance Standards, informed by country, sector, and sponsor knowledge” and para. 28 further elaborates on this by defining the key components of IFC’s E&S due diligence, namely “(i) reviewing all available information, records, and documentation related to the environmental and social risks and impacts of the business activity. However the scope of issues being considered for the purposes of compliance as well as process for undertaking the assessment may not fully align with the OECD RBC due diligence framework

²⁵The IFC Performance Standards include an expectation that an Environmental and Social Assessment be undertaken for activities with environmental and social impacts (PS 1 para 7-12). For high-risk projects, external expertise may be required (see IFC PS 1, para 21). However the scope of issues being considered for the purposes of compliance as well as process for undertaking the assessment may not fully align with the OECD RBC due diligence framework

²⁶Stakeholder engagement is an expectation under the EPs for high-risk projects during which additional RBC risks not identified during screening processes can be raised. This is somewhat addressed through expectations of clients See EPs, Principle 5

²⁷IFC Sustainability Policy para. 12 notes that “Meeting this responsibility also means creating access to an effective grievance mechanism that can facilitate early indication of, and prompt remediation of various project-related grievances”

²⁸See IFC Performance Standards, PS 1 para 34-35 and expectations of stakeholder engagement (para 26-33). Para 34 notes that Clients will implement and maintain a procedure for external communications that includes methods to (i) receive and register external communications from the public; (ii) screen and assess the issues raised and determine how to address them; (iii) provide, track, and document responses, if any; and (iv) adjust the management program, as appropriate.

²⁹See EPs, Principle 8

³⁰See IFC sustainability policy, para 24: “IFC’s agreements pertaining to the financing of clients’ activities include specific provisions with which clients undertake to comply. These include complying with the applicable requirements of the Performance Standards and specific conditions included in action plans, as well as relevant provisions for environmental and social reporting, and supervision visits by IFC staff or representatives, as appropriate”

³¹See EPs: Approach: Information Sharing; Principle 10; Annex B

³²See IFC’s Access to Information Policy (AIP) para. 10 states that “[t]here is a presumption in favour of disclosure with respect to the information described in paragraph 8 above, absent a compelling reason not to disclose such information. AIP para. 11 lists the exceptions and considerations to the information disclosure policy.

³³IFC PS 1, para. 29 on Disclosure of Information: Disclosure of relevant project information helps Affected Communities and other stakeholders understand the risks, impacts and opportunities of the project. The client will provide Affected Communities with access to relevant information on: (i) the purpose, nature, and scale of the project; (ii) the duration of proposed project activities; (iii) any risks to and potential impacts on such communities and relevant mitigation measures; (iv) the envisaged stakeholder engagement process; and (v) the grievance mechanism.

³⁴Expectations to covenant RBC related issues in financing documentation are covered in EPs, Principle 8. Designing disbursement schedules to enhance leverage or tying RBC performance to interest rates is not explicitly covered.

³⁵Expectations to covenant RBC related issues in financing documentation are covered in the IFC Sustainability Policy, para 24. Designing disbursement schedules to enhance leverage or tying RBC performance to interest rates is not explicitly covered.

³⁶See EPs, Principle 8

³⁷See IFC Sustainability Policy, para 24 “If the client fails to comply with its environmental and social commitments as expressed in the legal agreements and associated documents, IFC will work with the client to bring it back into compliance , and if the client fails to re-establish compliance, IFC will exercise its rights and remedies, as appropriate”

³⁸This is not explicit but implied through expectations around compliance with EPs standards and commitments in covenants. See EPs, Principle 8

³⁹This is not explicit but implied through expectations around compliance with IFC Sustainability Policy and inclusion of such commitments in legal agreements

⁴⁰This is not explicit but implied through expectations around compliance with IFC Performance Standards and inclusion of such commitments in legal agreements.

⁴¹The EPs provide that where a client does not comply with expectations outlined under the EPs the EPFI will work with the client on remedial actions to bring the project back in compliance. The measures they will/can take to do so are not outlined. See EPs, Principle 8

⁴²The IFC sustainability policy states that where client is not in compliance with expectations outlined under the IFC PS, the IFC will work with the client on remedial actions to bring the project back in compliance and notes it will provide support to clients in meeting expectations. The measures it will/can take are not outlined. See IFC Sustainability Policy para 24.

⁴³Annex B of the EPs encourages collaboration in some areas and provide that “To promote consistency in project name reporting, EPFIs in a syndicate should coordinate for the mandated lead arranger or environmental agent to seek client consent on behalf of the syndicate”

⁴⁴See IFC Sustainability Policy, para 46: “IFC, as the private sector arm of the World Bank Group, collaborates with an extensive network of private and public sector stakeholders to promote a dialogue on sustainable private sector development in developing countries”

⁴⁵See IFC PS 1, para. 2 “the assessment and management of certain environmental and social risks and impacts may be the responsibility of the government or other third parties over which the client does not have control or influence” and explains that an “effective ESMS should identify the different entities involved and the roles they play, the corresponding risks they present to the client, and opportunities to collaborate with these third parties in order to help achieve environmental and social outcomes that are consistent with the Performance Standards” as well as para. 17 and 23 on managing the ESMP and corrective action plan.

⁴⁶Stakeholder engagement is an expectation under the EPs for high risk projects and is subject to independent review. See EPs, Principle 5 and 7

⁴⁷See IFC Sustainability Policy para. 9: “IFC believes that the client’s regular engagement with stakeholders about matters that directly affect them plays an important role in avoiding or minimizing risks and impacts to people and the environment.” The requirement does not specify addressing root causes of adverse impacts.

⁴⁸Stakeholder engagement is an expectation under the IFC PS. See IFC Performance Standards, PS 1 para 34-35 and expectations of stakeholder engagement (para 25-33). The requirement does not specify addressing root causes of adverse impacts.

⁴⁹See EPs, Principle 9

⁵⁰See IFC Performance Standards, PS 1, para 19: “For projects posing potentially significant adverse impacts or where technically complex issues are involved, clients may be required to involve external experts to assist in the risks and impacts identification process” and 22: “Where appropriate, clients will consider involving representatives from Affected Communities to participate in monitoring activities”.

⁵¹See IFC Sustainability policy, para. 12: “Meeting this responsibility also means creating access to an effective grievance mechanism that can facilitate early indication of, and prompt remediation of various project-related grievances” and Section IV

⁵²This is required of clients but not mentioned with respect to the EPFs s own due diligence processes

⁵³This is required of clients (IFC PS 1. Para. 22 – 24)

⁵⁴See EPs, Principle 4, 8 and 9

⁵⁵See IFC Sustainability Policy, para 45

⁵⁶IFC Performance Standards, PS 1 para 22-24 which provide expectations of clients with respect to Monitoring and Review.

⁵⁷See EPs, Principles 8-10 and Annex B

⁵⁸See IFC’s Access to Information Policy (AIP) para. 10 states that “[t]here is a presumption in favour of disclosure with respect to the information described in paragraph 8 above, absent a compelling reason not to disclose such information. AIP para. 11 lists the exceptions and considerations to the information disclosure policy

⁵⁹IFC PS 1 para 29 requires clients to disclose project information that helps affected communities and other stakeholders understand the risk of the project and para 34 encourages clients to make publicly available periodic reports on their environmental and social sustainability. IFC PS 1 para 24 also requires internal reporting to senior management on environmental and social issues of concern proving that “senior management in the client organization will receive periodic performance reviews of the effectiveness of the environmental and social management system, based on systematic data collection and analysis”.

⁶⁰See EPs, Annex B, Implementation Reporting which provides that financial institutions should report on implementation of the EPs (including mandate and roles of EP reviewers and how the EPs are integrated into credit risk management policies and procedures) as well as on the number of transactions subject to the EP framework.

⁶¹This is included broadly IFC sustainability Policy and IFC Access to Information Policy

⁶²See IFC PS 1 para 29-34 and IFC PS 4 para 11.

⁶³High-risk transactions need to be identified and the numbers of all Category A, B and C projects financed reported on but the risks (as associated mitigation measures) are not reported by the EPFI although clients associated with high-risk projects are asked to published ESIA's online. See EPs 10 and Annex B, (Transactions have to be names but not actual risks). EPFIs will further report, at least annually, on transactions that have reached Financial Close and on its EPs implementation processes and experience. Project name and high-level data will be submitted by the signatory to the EPs Association for publication on its website and the client will ensure that the ESIA (or its summary) is accessible and available online.

⁶⁴See IFC Access to Information Policy, para 31. However, the IFC Access to Information Policy refers to the requirements of the IFC PS.

⁶⁵See broadly in IFC PS 1 para 34: "In addition, clients are encouraged to make publicly available periodic reports on their environmental and social sustainability".

⁶⁶See IFC Sustainability Policy para. 54 – 57, which describe the presence and function of the Compliance Advisor/Ombudsman (CAO) as an independent body. However, the CAO does not operate as a routine risks and impacts disclosure process.

⁶⁷See IFC PS 1

⁶⁸See IFC Exclusion List referenced in Sustainability Policy para. 33

⁶⁹See EPs, Principle 4 and 6

⁷⁰See IFC Sustainability Policy para. 22 "IFC will only finance investment activities that are expected to meet the requirements of the Performance Standards within a reasonable period of time. Persistent delays in meeting these requirements can lead to loss of financial support from IFC" and 24: "IFC will work with the client to bring it back into compliance, and if the client fails to re-establish compliance, IFC will exercise its rights and remedies, as appropriate."

⁷¹See IFC Performance Standards, PS 1 para 13-16, which outline the management programs required of the client, including a mitigation hierarchy to address identified risks and impacts, which "will favour the avoidance of impacts over minimization, and, where residual impacts remain, compensate[e]/offset, wherever technically and financially feasible" In this respect, experts have noted that offsetting/compensation may not appropriate for human rights remedies. See OHCHR (2022), Remedy in Development Finance. See also PS 1 35-36. IFC PS 1, para. 35: Where there are Affected Communities, the client will establish a grievance mechanism to receive and facilitate resolution of Affected Communities' concerns and grievances about the client's environmental and social performance"

⁷²See IFC Sustainability Policy, Section IV. IFC Sustainability Policy para. 54 – 57 also describes the presence and function of the Compliance Advisor/Ombudsman (CAO) as an independent body to accept and address complaints directed to IFC by Affected Communities.

⁷³See IFC Sustainability Policy, Section IV. IFC Sustainability Policy para. 54 – 57 also describes the presence and function of the Compliance Advisor/Ombudsman as an independent body to accept and address complaints directed to IFC by Affected Communities. In response to the review carried out in 2020 at IFC and MIGA – the "External Review of IFC/ MIGA Environmental & Social (E&S) Accountability, including CAO's Role and Effectiveness (2020)," IFC is considering its role in remedy.

Table A C.2. provides a high level, non-exhaustive overview of convergences in thematic issues between the MNE Guidelines and the IFC Performance Standards (and indirectly for thematic coverage of the EPs Category A and B projects, which is based on compliance with the IFC Performance Standards). However, these thematic issues differ widely in term of scope of application and coverage. It is important that financial institutions applying these processes recognize that there are divergences in the scope of these existing standards and frameworks, the transactions they cover, and the risk areas being assessed as compared to an RBC due diligence approach.

The MNE Guidelines are non-binding recommendations addressed to multinational enterprises by governments on broad expectations on RBC. The Human Rights Chapter (Chapter IV) aligns with the UN “Protect, Respect and Remedy” Framework and the Guiding Principles on Business and Human Rights that operationalise that framework and the Employment and Industrial Relations Chapter (Chapter V) and promotes promote fundamental rights at work as recognised in the ILO 1998 Declaration on Fundamental Principles and Rights at Work.

The IFC Performance Standards provides a technical benchmark on how IFC’s clients can assess E&S risks and impacts associated with transactions falling within their scope. They address private sector impacts on a range of environmental and social issues many of which correspond to human rights protected under international law (i.e. land rights, freedom of expression, gender, Indigenous Peoples’ rights, etc.)

The below table provide a high level, non-exhaustive comparative mapping of thematic issues covered in both standards. The Office of the United Nations High Commissioner for Human Rights has conducted a similar and more detailed analysis and benchmarking exercise of social and environmental safeguards policies of DFIs, including the IFC Performance Standards – against the UNGPs that readers can refer to. The study is currently being updated and expected to be available in 2022 (OHCHR, 2022^[7]).

Table A C.2. Comparison of thematic issues across the OECD MNE Guidelines and the IFC Performance Standards

OECD MNE Guidelines	IFC Performance Standards
Chapter I. Concepts and Principles	Overview of Performance Standards on Environmental and Social Sustainability
Chapter II. General Policies	PS-1: Assessment and Management of Environmental and Social Risks and Impacts
Chapter III. Disclosure	PS-1: Assessment and Management of Environmental and Social Risks and Impacts
Chapter IV. Human Rights	PS-4: Community Health, Safety, and Security PS-5: Land Acquisition and Involuntary Resettlement PS-7: Indigenous People
Chapter V. Employment and Industrial Relations	PS-2: Labor and working conditions
Chapter VI. Environment	PS-3: Resource Efficiency and Pollution Prevention PS-6: Biodiversity Conservation and Sustainable Management of Living Natural Resources
Chapter VII. Combating Bribery, Bribe Solicitation and Extortion	N/A
Chapter VIII. Consumer Interests	N/A

Notes

¹ RBC Due diligence expectations have been formally endorsed by 51 governments and are supported by a commitment by OECD countries and other adherents to actively support and monitor their implementation. Recommendation of the Council on the OECD Due Diligence Guidance for Responsible Business Conduct, <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0443>

² In accordance with the Decision of the Council on the OECD Guidelines for Multinational Enterprises, as amended in 2011, NCPs are set up to further the effectiveness of the MNE Guidelines by undertaking promotional activities, handling enquiries and contributing to the resolution of issues that arise relating to the implementation of the MNE Guidelines in specific instances. This paper may be used by NCPs to promote the MNE Guidelines but is not intended to serve as a basis for the submission of specific instances. See also OECD (2011) MNE Guidelines, Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises, paragraph 25. See also Box 3.13.

³ In the context of this paper assets can include movable and immovable assets. *Immovable assets* are those that cannot be moved from one location to another without change in shape and substance, such as equipment specially built and/or designed to be used in a determined location. *Movable assets* are those that can be physically moved from one location to another without changes in shape and substance such as goods (e.g. a fleet of bulldozers). Annex B includes further description of the assets within the scope of this paper.

⁴ This paper use the term '**project sponsor**' to describe the owners, operators or sponsors of a project.

⁵ The term 'business relationship' under this paper is defined in Annex A. Table A.5

⁶ Three chapters of the MNE Guidelines are not subject to due diligence expectations, meaning enterprises do not need to identify and respond to themes treated under those chapters through due diligence. These are Science and Technology; Competition, Taxation.

⁷ Id. IFC Performance Standard 1

⁸ Although IFC Performance Standards are most prominently integrated in E&S risk management frameworks of financial institutions there are other standards which might be relevant for financial institutions.

⁹ All OECD Members have adhered to the Common Approaches and, as a result, its provisions are applied by Export Credit Agencies when they provide export credits or credit guarantees for or on behalf of OECD governments including when supporting exporters and financial institutions are involved in project and asset finance transactions.

¹⁰ These include for example the World Bank [Environmental and Social Framework](#), the European Bank for Reconstruction and Development [Environmental and Social Policy](#), the European Investment Bank [Environmental and Social Standards](#), the Asian Infrastructure Investment Bank [Environmental and Social Framework](#), the IDB Invest [Environmental and Social Sustainability Policy](#), the African Development Bank [Safeguards and Sustainability Series](#), or the Asian Development Bank [Safeguard Policy Statement](#).

¹¹ For example the OHCHR has undertaken a recent survey of the environmental and social safeguard policies of major development finance institutions and identified gaps in the thematic coverage of these safeguards, including as a result of recent adoptions of international human rights standards.

¹² OECD Guidelines for Multinational Enterprises (2011), Chapter I, paragraph 2.

¹³ OECD (2011), Guidelines for Multinational Enterprises, Chapter II: General Policies, paragraph 10

¹⁴ MNE Guidelines, Commentary on General Policies, paragraph 16. See also OHCHR, Response to request from BankTrack for advice regarding the application of the UNGPs in the context of the banking sector, page 4 – “where possible a bank would be expected to first develop an understanding of its overall risk picture, including areas which (e.g. activities/sectors/relationships/clients, countries) are likely to pose the most severe risk, and them to prioritize those areas for more detailed analysis”.

¹⁵ The UNGPs interpretative guide also notes that a “low probability of a severe human rights impact alone cannot justify reducing the priority of efforts to mitigate the risk. Instead, the [irremediable character] of the potential impact must be a key factor in determining the legitimacy of delaying such efforts” See Question 88, HR/PUB/12/02

¹⁶ Recognising that within the scope of this paper only project and asset finance transactions are considered.

¹⁷ A set of standards, conventions and certification schemes addresses specific RBC issues related to transport/movable asset (i.e. for shipping: the International Maritime Organization’s (IMO) [Convention for the Safety of Life at Sea](#) (SOLAS) (SOLAS, 1974^[27]), the ILO [Maritime Labour Convention](#) (ILO, 2006^[26]); the International Transport Workers’ Federation [Standard Agreements and Blue Certificate](#); (ITF, 2019^[28]) or the Responsible Ship Recycling Standards; and Standards and Recommended Practices of the ICAO for aviation).

¹⁸ For example, see “Model Supply Chain Policy for a Responsible Global Supply Chain of Minerals from Conflict-Affected and High-Risk Areas”, OECD Due Diligence Guidance for Minerals Sourced from Conflict Affected and High Risk Areas; See also “Model Enterprise Policy for Responsible Agriculture Supply Chains”, OECD-FAO (2018) Guidance on Responsible Agricultural Supply Chains.

¹⁹ See Step 1.2 OECD Due Diligence Guidance for Responsible Business Conduct (2018). Furthermore, a key characteristics of RBC due diligence is that it involves multiple processes and objectives and a bundle of interrelated processes.

²⁰ For example, the African Development Bank Group has developed guidance detailing due diligence processes of the bank as well as the roles and responsibilities of different departments and units throughout the process which may serve as a reference for other financial institutions. (African Development Bank, 2015^[29])

²¹ The three lines of defence model consists broadly of the first line (risk owners/managers), the second line (risk control and compliance), and the third line (risk assurance).

²² Some financial institutions deal with such issues at the executive board level, others at the board of directors’ level, others, again, have specific committees which may include members from the executive board and/or board of directors.

²³ The Thun Group of Banks first discussion paper highlights that the “[t]one from the top” is important in gaining buy-in from other parts of the organisation, especially when making explicit reference to human

rights in a range of policies and integrating a human rights “perspective” on decisions and processes. (Thun Group, 2013^[30])

²⁴ Corruption risk management processes may include “know your client” (KYC) processes or anti-money laundering and countering the financing of terrorism (AML/CFT) processes as outlined in Recommendations of the Financial Action Task Force (FATF, 2012^[31]) and normally required under domestic law.

²⁵ The EPs apply to transactions in all industries and sectors that meet the below thresholds:

- **Project Finance Advisory Services** where total Project capital costs are USD 10 million or more
- **Project Finance** with total Project Costs of USD 10 million or more
- **Project-Related Corporate Loans** where all the following three criteria are met:
 - The majority of the loan is related to a Project over which the client has Effective Operational Control (either direct or indirect).
 - The total aggregate loan amount and the EPFI’s individual commitment (before syndication or sell down) are each at least US\$50 million.
 - The loan tenor is at least two years.
- **Bridge Loans** with a tenor of less than two years that are intended to be refinanced by Project Finance or a Project-Related Corporate Loan that is anticipated to meet the relevant criteria described above.
- Project-Related Refinance and Project-Related Acquisition Finance, where all of the following three criteria are met:
 - The underlying Project was financed in accordance with the EPs framework.
 - There has been no material change in the scale or scope of the Project.
 - Project Completion has not yet occurred at the time of the signing of the facility or loan agreement.

²⁶ The Environmental and Social Policy of EBRD includes an Appendix of potential high-risk projects which may provide a useful starting point for financial institutions in identifying high risk transactions. See Appendix 2 (EBRD, 2019^[32])

²⁷ Defined by the IFC Performance Standards as the exercise of professional skill, diligence, prudence, and foresight that would reasonably be expected from skilled and experienced professionals engaged in the same type of undertaking under the same or similar circumstances globally or regionally. See IFC (2012) PS 1, paragraph 7.

²⁸ IFC (2012) PS 4, para 12-14

²⁹ IFC (2012) PS 1, para 10

³⁰ See OECD Guidelines for Multinational Enterprises (2011), Chapter II, Commentary, paragraph 21.

³¹ IFC (2012) PS, para 27

³² IFC (2012) PS 6, para 30

³³ Associated facilities may include railways, roads, captive power plants or transmission lines, pipelines, utilities, warehouses, and logistics terminals. See IFC PS 1. Para 8.

³⁴ See OECD (2017) Due diligence for meaningful stakeholder engagement, Table 2: Document-based resources for understanding context. (OECD, 2017^[22])

³⁵ (OECD, 2017^[22]), Table 2: Document-based resources for understanding context.

³⁶ OECD Due Diligence Guidance for Responsible Business Conduct, Annex Q 19

³⁷ See 3.9

³⁸ See IFC Performance Standards 2012, Performance Standard 1, para 25-31

³⁹ See IFC Performance Standards 2012, Performance Standard 7, para 11, Also reflected in EP4, Principle 5

⁴⁰ See for example OECD (2016c), OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector, <http://mneguidelines.oecd.org/stakeholder-engagement-extractiveindustries.htm>; and further guidance in OECD (2018) Due Diligence Guidance for Responsible Business Conduct, Annex q. 8-11

⁴¹ See Principle 8 which notes that “An important strength of the EPs is the incorporation of covenants linked to compliance” and which asks financial institutions to covenant in the financing documentation to comply with all relevant host country environmental and social laws, regulations and permits in all material respects as well as additional expectations for Category A and B projects.

⁴² See EPs, Principle 8

⁴³ See EP guidance for EPFIs on incorporating environmental and social considerations into loan documentation (Equator Principles, 2020^[33])

⁴⁴ The Loan Markets Association is a membership organisation comprising commercial and investment banks, institutional investors, law firms, service providers and rating agencies working on documentation, market practice and guidance, loan operations, education, and dialogue with legislators and regulators.

⁴⁵ See EPs, Principle 8

⁴⁶ See OECD Guidelines for Multinational Enterprises (2011), Chapter II, Commentary, paragraph 21.

⁴⁷ What is appropriate will vary according to the characteristics of the financial institution, the project or asset it is supporting, the risk or impact in question, the nature of the transaction and relevant regulatory obligations

⁴⁸ Ibid., see also Commentary, paragraph 20 and OECD (2014) Due diligence in the financial sector: adverse impacts directly linked to financial sector operations, products or services by a business relationship (OECD, 2014^[34]).

⁴⁹ See EPs, “Approach” - Project Finance Advisory Services and Bridge Loans

⁵⁰ OECD Guidelines for Multinational Enterprises, Chapter II, paragraph 22.

⁵¹ See United Nations Guiding Principles, Guiding Principle 19, Commentary. “For as long as the adverse impact continues and the enterprise remains in the relationship, it should be able to demonstrate its own ongoing efforts to mitigate the impact and be prepared to accept any consequences – reputational, financial or legal – of continuing the connection.”

⁵² EPs, Principle 9.

⁵³ See EPs, Principle 10 and Annex B

⁵⁴ In this respect some financial institutions disclose information regarding their overarching E&S management systems through other policies or documents. For example, the IFC E&S Sustainability Policy and E&S Review Procedure Manual provide an overview of how management systems or functional alignment should be structured internally, at the level of the financial institution.

⁵⁵ In this respect the IFC has a database with project level info indicating main impacts of projects.

⁵⁶ This is required for the project emits more than 100,000 tonnes of Co2 per year (Scope 1 and Scope 2 emissions combined).

⁵⁷ See EPs (2020), Principle 10 “EPFI encourage the client to share commercially non sensitive Project specific biodiversity data with data repositories.”

⁵⁸ In this respect the GRI recently revised disclosure framework to align with the recommendations of the OECD Due Diligence Guidance for Responsible Business Conduct.

⁵⁹ These situations are not the focus on this report.

⁶⁰ Engaging with stakeholders is an effective way to understand the situation and be able to support the client in addressing the situation and providing remedy and thus can be important beyond the aforementioned context.

⁶¹ The Universal Declaration of Human Rights (art. 8) states: “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.” This protection is repeated in many human rights treaties, including the International Covenant on Civil and Political Rights

⁶² The Accountability and Remedy Project (ARP) aims to strengthen implementation of the "Access to Remedy" pillar of the UNGPs. Since its official launch in 2014, three substantive phases have been completed, with each phase focusing on one of the three different categories of grievance mechanisms referred to in that pillar: (i) enhancing the effectiveness of judicial mechanisms, (ii) enhancing the effectiveness of non-state-based judicial mechanisms, and (iii) enhancing the effectiveness of non-state-based grievance mechanisms. A fourth phase is currently being implemented on enhancing the accessibility, dissemination and implementation of ARP findings.

⁶³ Attribution of responsibility, and thus responsibility for remedy, under the MNE Guidelines, is distinct from issues of legal liability and enforcement, which remain largely defined by domestic laws.

⁶⁴ See also Dutch Banking Sector Agreement (2019) Discussion paper: Working Group enabling remediation. This paper explores the role and responsibility of banks with regard to remedy, when connected to human rights impacts through client relationships. (IRBC, 2019^[37])

⁶⁵ OECD (2018) Due Diligence Guidance for Responsible Business Conduct, Section II, 6.1 (b) (OECD, 2018^[3])

⁶⁶ OHCHR (2017) OHCHR response to request from BankTrack for advice regarding the application of the UN Guiding Principles on Business and Human Rights in the context of the banking sector. (OHCHR, 2017^[21])

⁶⁷ EPs, Principles 6

⁶⁸ IFC Performance Standards, Performance Standard 1, para 35

⁶⁹; Shift: Remediation, Grievance Mechanisms and the Corporate Responsibility to Respect Human Rights, Workshop Report, May 2014. (Shift, 2014^[38]) For O&G-specific information, see: IFC, Good Practice Note: Addressing Grievances from Project-Affected Communities IIED, Dispute or Dialogue? Community Perspectives on Company-led Grievance Mechanisms IPIECA, Operational level grievance mechanisms: Good practice survey; OHCHR Accountability and Remedy Project: Meeting the UNGPs' Effectiveness Criteria Summary of ARP III Guidance, December 2021. (OHCHR, 2021^[39])

⁷⁰ See Dutch Banking Sector Agreement (2019), Discussion paper: enabling remediation, Annex I (IRBC, 2019^[37]) See also OHCHR (2022) Remedy in Development Finance, Section III. C (OHCHR, 2022^[23])

⁷¹ For an example of a financial institution contributing to remediation of impacts associated with client activities see *Statement of the Parties on an agreement reached between ANZ Bank, Inclusive Development International and Equitable Cambodia* in which the bank agreed to provide monetary payments to a community displaced from their land by its former client, following a specific instance process of the Australian National Contact Point.

⁷² Attribution of responsibility, and thus responsibility for remedy, under the MNE Guidelines, is distinct from issues of legal liability and enforcement, which remain largely defined by domestic laws.

⁷³ OHCHR Accountability and Remedy Project: Meeting the UNGPs' Effectiveness Criteria Summary of ARP III Guidance, December 2021 (OHCHR, 2021^[39]) and Dutch Banking Sector Agreement (2019), Discussion paper: enabling remediation, Annex I (IRBC, 2019^[37]) See also OHCHR (2022) Remedy in Development Finance, Section III. C (OHCHR, 2022^[23])

⁷⁴ See for example BankTrack and Oxfam Australia (2018), *Developing Effective Grievance Mechanisms In The Banking Sector* (BankTrack, Oxfam, 2018^[40])

⁷⁵ In the context of development banks such mechanism are normally known as Independent Accountability Mechanisms ("IAM").

⁷⁶ See for example ANZ Grievance Mechanism Framework (2021) (ANZ, 2021^[41])

