

2017 Workshop

of Overseas Environmental & Social Risk Management by Chinese Financial Institutions

-- Establishing Independent Compliance Mechanism

2017.11.21

Beijing

Note: This handbook is edited and translated by Greenovation Hub, only for this workshop's use. Materials are selected from existing literature, any quotation requirement please contact the authors.

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2017 Workshop of Overseas Environmental & Social Risk Management by Chinese Financial Institutions — Establishing Independent Compliance Mechanism

Date: 2017, November 21st, 9:00 - 17:00

Venue: Beijing, China

Number of Participants: 30 – 35

Language: English & Chinese (with simultaneous interpreting)

Organizer: Greenovation Hub

Co-organizer: China Banking Association

Supported by: Green Finance Committee of China Society for Finance & Banking; Heinrich Böll Foundation

Background:

“The Belt and Road” Initiative (BRI) is to deepen cooperation and share prosperity among China and all countries along the route. It is also an essential opportunity for China to help achieve global green transformation and low carbon development. Since “The Belt and Road” Initiative has been introduced, the “going out” process of Chinese enterprises has been accelerated. Chinese enterprises actively explore and develop overseas business that in turn promotes China's economic development and employment. However, the investing and financing process of international projects would usually involve a series of complicated issues. Any mishandled issue, for instance, a lack of understanding on social and environmental regulations and cultures of host countries, insufficient communication or information disclosure could lead to controversy or dispute and even finally affect progress of the project. At the end it will cause economic loss and reputational damage of both the financial Institution and the country it belongs to.

Especially the Chinese financial institutions that support investments and financing of “The Belt and Road”, series of complex challenges and problems have to be faced, including environmental resources exploitation, land acquisition, resettlement and compensation, and cultural heritage. If they fail to effectively identify and manage their clients and the potential environmental and social risks, then it will inevitably lead to related financial and investment risk. How to avoid and properly resolve environmental and social disputes in projects financed overseas, in especial how to avoid the judicial litigation caused by controversial issues, has become a question closely concerned by governments, financial institutions, local communities of project-based region and civil societies.

In recent years, Chinese government has realized risks and challenges in oversea Investment, and has formulated corresponding policies and guidance in succession, such as “Green Credit Guidelines” and “Guiding Opinion on Regulating Banking and Service Enterprises ‘Going-out’ and Strengthening Risk Prevention and Control” issued by CBRC in 2012 and 2017. It requires Chinese financial institutions to enhance environmental and social risk management of overseas projects before issuing credit, in order to ensure that the implementers of those projects abide by national or regional laws and regulations in environmental protection, land, healthcare, and security. In 2016, seven ministries issued “Guidelines for Establishing the Green Financial System”. This guideline proposed to strengthen environmental and social risk management as well as improve information disclosure in implementing China's overseas investments.

Besides the efforts made in policy level as mentioned above, improving environmental and social risk management also requires Chinese banks and investors to transfer those guidance into practices by enhancing related knowledge and capacity. By learning the internationally-widely-accepted international norms, practices and case analysis of current investments and financing projects' dispute resettlement and

accountability mechanisms, this training is devoted to help Chinese banks and investors enhance their internal framework establishment and capability of environmental and social risk management, thus contributing to the greening of China's investments in "The Belt and Road" Initiative, and accumulating experiences and opportunities to the nationalization of Chinese financial institutions.

Agenda

2017/11/21 All day		
9:00 ~ 9:30	Registration	
Morning Section		
Host	BAI Yunwen, Director of Greenovation Hub	
9:30 ~ 9:40	Opening Speech	YE Yanfei Inspector of Policy Research Bureau, China Banking Regulatory Commission
9:40 ~ 9:50	Self-Introduction	
9:50 ~ 10:10	Greening Overseas Investment and Environmental & Social Risk Management by Banks	MA Jun Co-Chairman, The G20 Green Finance Working Group Chairman, The China Green Finance Committee
10:10 ~ 10:35	The Inspection Panel: Accountability for Better Development Outcomes	Gonzalo Castro de la Mata Chairman, The Inspection Panel World Bank
10:35 ~ 11:00	ADB's Accountability Mechanism	TANG Dingding Chair, Compliance Review Panel Asian Development Bank
11:00 ~ 11:05	Q&A	
11:05 ~ 11:15	Tea Break	
11:15 ~ 11:35	ICBC Environmental and Social Risk Management Practice	ZHOU Yueqiu Director Urban Finance Research Institute, Industrial and Commercial Bank of China
11:35 ~ 11:55	Aligning Policy and Practice: What are Pre-Conditions for Successful Outcomes in Chinese Overseas Investments?	Katharine LU Senior China Sustainable Finance Coordinator Friends of the Earth
11:55 ~ 12:00	Q & A	

12:00 ~ 13:30	Lunch	
Afternoon Section		
13:30 ~ 13:55	Office of the Compliance Advisor Ombudsman (CAO): Independent Accountability Mechanism for IFC and MIGA, World Bank Group	Oswaldo Gratacós Vice President & Compliance Advisor Ombudsman International Finance Corporation
13:55 ~ 14:10	Intention of Establishing Complaints Handling Mechanism of AIIB	Hamid Sharif Director General, the Compliance, Effectiveness and Integrity Unit Asian Infrastructure Investment Bank
14:10 ~ 14:15	Q & A	
14:15 ~ 14:35	Lessons in Development and Use of Independent Accountability Mechanisms	Natalie Bridgeman Fields Executive Director Accountability Council
14:35 ~ 14:55	Legal Practice of Dispute Resolution for Overseas Investment Projects	JIA Hui Partner/Attorney at Law DeHeng Law Offices
14:55 ~ 15:00	Q & A	
15:00 ~ 15:10	Tea break	
15:10 ~ 16:40	Discussion	Guest speakers and Participants
16:40 ~ 17:00	Conclusion	YE Yanfei Inspector of Policy Research Bureau China Banking Regulatory Commission

Training Notes

1. Please feel free to reach our staff for any questions during the training; you can identify them as they are wearing name cards in pink lace.
2. Buffet Lunch is provided, please remember to take the lunch ticket on your desk to enjoy your lunch at Tang Palace Restaurant on the first floor of Minzu Hotel.
3. Please return the interpreting receiver back to the registration desk after the meeting, thank you for your cooperation.

Introduction of the organizers

Organizer: Greenovation Hub (G:HUB) is a Chinese environmental Think-tank organization with a global outlook. G:HUB promotes the development and implementation of sound climate and environmental friendly policies through conducting in-depth analysis and research, and fostering dialogues among stakeholders, in order to drive China's green transition towards a sustainable, equitable and climate resilient future, contributing to the reduction of global ecological footprint.

Co- Organizer: China Banking Association (CBA) was founded in May 2000, approved by the People's Bank of China and the Ministry of Civil Affairs. CBA is a national non-profit social organizations and Chinese banking sector self-regulatory organization. Since 2003, with the establishment of the China Banking Regulatory Commission (CBRC), the CBA started to report to CBRC instead of People's Bank of China.

Introduction of guest speakers (in speech order)

YE Yanfei

Inspector of Policy Research Bureau, China Banking Regulatory Commission



Mr. YE Yanfei, graduated respectively from Hefei Polytechnic University in 1983, from Peking University in 1988 and from Japan Policy Study Graduate School in 2001, obtaining degrees respectively in Bachelor of Mechanical Engineering, in Master of Economics and in Master of Public Policies. He worked respectively in Luoyang Bearing Research Institute in 1983-1985, National Bureau of Statistics of China in 1988-2003 and in IFC-China Project Development Facility in 2003-2006. He now works in China Banking Regulatory Commission, especially in charge of green credit.

Ma Jun

Co-Chairman, The G20 Green Finance Working Group / Chairman, The China Green Finance Committee



Doctor Ma Jun currently serves as Co-Chairman for the G20 Green Finance Working Group, Chair of Green Finance Committee of China Society For Finance and Banking. During the period from 2000 to early 2014, Mr. Ma worked at Deutsche Bank as Chief Investment Strategist and Managing Director. Before joining in Deutsche Bank, he ever worked as Economist and Senior Economist at the World Bank and International Monetary Fund from 1992 to 2000. Between 1988 and 1990, he was an Economist Research Fellow at the Development Research Center of China's State Council. Ma received his Ph.D. in Economics from Georgetown University in 1994. His main research interests include macroeconomic, currency and exchange rate, financial market, and environmental economy. He has released hundreds of theses and 11 books. Ma has been rated as No.1 Asian economist for four consecutive years and No.1 Chinese analyst for five consecutive years by the influential magazine of the international investment community - Institutional Investor. Now he is a member of China Finance-40 Forum, member of World Economic Forum's Agenda Council on International Monetary System, member of International Finance Forum, and Adjunct Professor and Doctoral Supervisor at Fudan University. Additionally, he also served as Vice Chairman of Hong Kong Finance Association.

Gonzalo Castro de la Mata

Chairman, The Inspection Panel of World Bank



Dr. Gonzalo Castro de la Mata was appointed to the Inspection Panel on December 16, 2013, and became its chairman on November 1, 2014. He is a U.S. and Peruvian national with close to 3 decades of international development experience. His career includes key roles across the private and public sectors and in multiple areas of development work, including biodiversity, climate change, accountability, and ecosystem management. He has been involved in highly visible and complex international projects, including as chair of an independent panel for the U.S. Export-Import Bank for the Camisea project in Peru, and as a member of a UN review panel of the Barro Blanco Dam in Panama. He earned a Ph.D. in ecology and population biology from the University of Pennsylvania and received his M.A. and B.A. from Cayetano Heredia University in Lima, Peru. He has served on numerous international private and non-profit boards.

TANG Dingding

Chair, Compliance Review Panel, Asian Development Bank



Dingding Tang is currently serve as the chair of Compliance Review Panel in Asian Development Bank. Previous to that, Mr Tang was Director General of the Department of International Cooperation, Ministry of Environment Protection where he is responsible as a national focal point for developing cooperation programs with International Finance Institutions. He had worked as Director General for Environmental Development Center, Ministry of Environmental Protection, China. He has a Master's degree in Business Economics from University of Asia and the Pacific, and a Bachelor's degree in Water Supply and Sewage Treatment from Harbin Industry University. He started his professional career in public service of the PRC in 1984. During his service, he was assigned to United Nations Environment Program in 1996 and also to ADB as Environment Specialist in the former Environment and Social Development Department and Mekong Region Department in 2000-2003. He specializes in environmental protection, specifically in implementing environmental safeguards, and conducting assessment and investigation.

ZHOU Yueqiu

Director, The ICBC Urban Finance Research Institute



Mr. ZHOU Yueqiu, Chinese Han nationality, was born in Hunan Province in 1963. He was joined the Communist Party of China. As a doctorate in economics and research fellow, he has been engaged in finance for 24 years. During the period from 1983 and 1990, he worked at Henan College of Financial Management Cadres as Deputy Director of Teaching and Research Office and Director of Scientific Research Office successively. Leaving the college, he read for a doctor's degree at Shaanxi University of Finance and Economics between 1990 and 1993. After graduation, Zhou joined ICBC where he was held a host of positions listed as below: Deputy Division Chief of the Finance Planning Department from 1993 to 1997; Deputy General Manager at Anhui Hefei Branch from 1997 to 1998; Division Chief of the Capital Operation Department from 1998 to 2000; Deputy General Manager of the Capital Operation Department in 2001; Deputy General Manager of the Fund Custody Department (taking overall charge of the department) in 2002; and General Manager of the Asset Custody Department from 2003 to June 2014; and Director of the Urban Finance Research Institute since June 2014.

Katharine Lu

Senior Sustainable Finance Manager, Friends of the Earth US



Katharine Lu is the Senior Sustainable Finance Manager at Friends of the Earth US. She leads the organization's research on new models of sustainable finance and development, primarily those from China and other emerging markets. Her analysis and work on the environmental and social impacts of Chinese investments have informed and been featured in publications in the South China Morning Post, Financial Times, among others. Today, she is a leading advocate for strengthening sustainability and governance practices in the international and Chinese banking sector. Katharine originally comes from the private sector, having started her career at Google. At Google, she helped the company expand and develop their foothold in Asian markets, and served as team lead for identifying and developing long term relationships with Asian business partners. Since transitioning to the non-profit sector, she has developed nearly ten years experience working on Chinese environmental issues.

Oswaldo Gratacós

Vice President & Compliance Advisor Ombudsman, International Finance Corporation



Oswaldo L. Gratacós was appointed as Vice President, Compliance Advisor Ombudsman by World Bank Group President, Jim Kim, following an independent selection process led by civil society, industry and academia. He assumed his post in July 2014. Prior to joining the World Bank Group, Mr. Gratacós was appointed by President Barack Obama as the Inspector General for the Export-Import Bank of the United States (Ex-Im Bank). As the Inspector General, Mr. Gratacós was responsible for inspections of transactions, audits, compliance reviews and fraud investigations relating to Ex-Im Bank's US\$100+ billion credit program portfolio involving over 150 countries. Formerly, Mr. Gratacós was a commercial counsel at Motorola, Inc. and was an attorney advisor and then Acting Legal Counsel to the Inspector General for the U.S. Agency for International Development, Office of Inspector General (USAID/OIG). Mr. Gratacós holds a Bachelors degree from the Inter-American University of Puerto Rico, a Professional MBA from the University of Massachusetts (Amherst), a Juris Doctor from the University of Florida, and a Masters in International Policy and Practice from The George Washington University.

Hamid Sharif

Director General, the Compliance, Effectiveness and Integrity Unit, Asian Infrastructure Investment Bank



Hamid Sharif is Managing Director of the Compliance, Effectiveness and Integrity Unit of the Asian Infrastructure Investment Bank. He has more than 23 years of experience in international development with extensive experience in developing Asia across major sectors. He has experience in sovereign and non-sovereign lending. Governance has been a major area of focus of Mr. Sharif's work. This includes work on anticorruption, accountability mechanism and governance policies of the Asian Development Bank as well as operations with substantial governance focus. Mr. Sharif supervised more than 70 technical assistance projects on legal and policy reform and led one of the largest policy loans in the sector. Mr. Sharif has served in various capacities in ADB including as Assistant General Counsel, Head of Procurement, and Country Director of People's Republic of China Resident Mission where he managed a portfolio of more than \$10 billion. He has also worked with a major international non-governmental organization as a country representative. Mr. Sharif is a U.K. qualified Barrister.

Natalie Bridgeman Fields

Founder & Executive Director, Accountability Counsel



Natalie Bridgeman Fields is the Founder and Executive Director of Accountability Counsel. She leads the organization of community-driven lawyers, policy advocates, and researchers working to amplify the voices of people to defend their environmental and human rights. She lectures and has published on the topics of accountability in development finance, international law, and global governance. Previously, she served as a consultant on accountability for the European Bank for Reconstruction and Development and the World Bank Inspection Panel. Earlier in her career, as a lawyer at a large law firm, and through her own law office, Natalie litigated corporate, human rights, and environmental cases in U.S. courts. Natalie is an Echoing Green Fellow and Draper Richards Kaplan Foundation Entrepreneur. She is a graduate of Cornell University and received her law degree from UCLA School of Law.

JIA Hui

Partner/Attorney at Law, DeHeng Law Offices



Mr. Jia Hui practices mainly in the fields of M&A and insurance. Mr. Jia is a Master of Law of both NYU and CUPL, and qualified to practice in the New York State and China. Mr. Jia is an admitted lawyer in the field of international investment legal affairs by MOFCOM. He is also the Chairman Assistant of BNRSC, Deputy Secretary of New Energy International Development Federation, Member of the Insurance Committee of Beijing Lawyer Association, Representative of Chief Lawyer Counsel of China Insurance Association, Member of Legal and Compliance Committee of China Insurance Asset Management Association.

BAI Yunwen

Director, Greenovation Hub



Yunwen is the Co-Founder and Director of Greenovation Hub. Her expertise focuses on international financial flows, and climate and energy governance, and led several research projects. Prior to GHUB, she worked with international environmental organizations and Chinese foundations over 10 years. Yunwen has been a visiting research fellow at the Smith School of Enterprise and the Environment, Oxford University from 2013 to 2014. She also serves on the board of the China Climate Action Network. Yunwen holds a Master degree in Environmental Science from the University of Manchester, as well as a Master degree in Environmental Policy and Management from International Institute for Industrial Environmental Economics at Lund University.

Reading Materials

1.A General Overview of Compliance and Monitoring Mechanism¹

1.1 What are Compliance and Monitoring Mechanisms/ Accountability Mechanisms (AM)?

An accountability mechanism is an independent process for addressing complaints and resolving disputes about the negative social and environmental impacts of a project. Accountability mechanisms serve as a means to formally collect, evaluate, and resolve community complaints related to an IFI's investments and projects. They consist of a set of well-known, established procedures to resolve grievances, review compliance with internal social and environmental rules, and provide remedy when investments and projects cause harm. Although the structure and approach vary, accountability mechanisms often take the form of a formal complaint office within an IFI or government agency and outside the judicial system. The office has specialized personnel who independently administer the functions of the mechanism and provide a culturally appropriate, neutral forum for communities to raise grievances and seek remedy. Most major IFIs and several national development finance institutions rely on accountability mechanisms as a tool to identify and respond to adverse project impacts, foster respect for the institution's rules, and ensure the successful completion of projects without unnecessary costs and delays.

1.2 What are the Benefits of Compliance and Monitoring Mechanisms/ AM?

Accountability mechanisms can bring value and lasting benefits to IFIs in a variety of ways. For example, accountability mechanisms provide an opportunity to efficiently address complaints and settle disputes at an early stage in a project's life cycle. Through accountability mechanisms, IFIs can resolve relatively small disputes before they escalate into widespread grievances that require expensive, time-consuming remediation measures. In addition, accountability mechanisms are sources of knowledge and learning that translate into better projects, cost savings, and sustainable investments. Through the complaint process, IFIs can detect problems in a project's design, implementation, or viability, correct them at the outset, and prevent them from occurring in future projects. They also help the IFI to diagnose weaknesses in its operations, management, or systems and determine how to improve them. Accountability mechanisms enhance the ability of IFIs to address concerns about a project in a just and fair manner. Given that many large-scale investments and development projects bring substantial risk and change to communities, accountability mechanisms give communities a neutral forum through which they can express their concerns without fear of retaliation or reprisal and seek remedy for harm that the project has caused. Through a complaint process that reduces power imbalances between the parties, IFIs can demonstrate their interest in the wellbeing of the community and build trust and respect with its members. When IFIs engage with communities to develop solutions, they foster dialogue and more cooperative relationships that ultimately increase project success and reduce the risk of community discontent and broader instability. Furthermore, accountability mechanisms provide a more accessible, flexible, and collaborative approach to dispute resolution than formal court proceedings. They are less costly for all parties and have the potential to deliver more timely resolutions to community grievances that may otherwise lead to litigation or further harm. Accountability mechanisms offer a reliable, alternative venue that can achieve impartial and transparent outcomes. In addition, by resolving complaints through accountability mechanisms, IFIs can also avoid high-profile allegations of abuses that lead to severe reputational damage. Because of their role in promoting responsible development practices and providing remedy for adverse impacts, accountability mechanisms enhance the reputation and legitimacy of IFIs that use them. They demonstrate that the IFI is committed to sustainable project outcomes for shareholders as well as for the communities that are affected by their development projects.

¹ Green Watershed, 2015. *Accountability Mechanisms: Benefits and Best Practices for International Financial Institutions*

2.The Practice of Compliance and Monitoring Mechanism of Financial Institutions

2.1 World Bank- the Inspection Panel

Source: The World Bank Inspection Panel- Where your concerns are heard

2.2 Asian Development Bank- Accountability Mechanism

Source: Accountability Mechanism Policy 2012

2.3 International Finance Corporation- Compliance Advisor Ombudsman

Source: CAO's Operational Guidelines

2.4 KfW Bankengruppe- Independent Complaints Mechanism DEG

Source: Independent Complaints Mechanism DEG

3. Case Study in Overseas Investment

3.1 Mes Aynak Copper Mine, Afghanistan

Planning	Design	Agreement	Construction	Operation	Closure	Decommission
			Stalled			

Background

Mes Aynak is a copper mine located in Logar province. Approximately 40 km southeast of Kabul, the mine is the largest copper reserve in Afghanistan and estimated to be the second largest copper deposit in the world². It contains 11-17 million metric tons of copper, 7,700 metric tons of silver, 600,000 metric tons of cobalt, and an unidentified amount of gold³. The project is the largest private sector investment in the country and was widely seen as a bellwether for catalyzing future foreign investments following the US War in Afghanistan⁴.

In 2007, the Mes Aynak project was awarded to Metallurgical Corporation of China (MCC) and Jiangxi Copper Company Ltd (JXCC), both state owned enterprises. In 2008, the companies established a joint venture called MCC-JCL Aynak Minerals Company to explore and exploit Mes Aynak, in addition to another mining concession in western Afghanistan. MCC holds 75% of the shares, and JXCC owns 25%. MCC-JCL purchased a 30-year lease on the entire Mes Aynak site for \$2.9 billion USD⁵.

Project Financing

Chinese foreign aid and bank loans have partially financed the project. According to MCC's 2015 prospectus, a portion of China's \$ 2 billion USD foreign aid to Afghanistan from 2014 – 2017 was used to promote the Mes Aynak project⁶. Chinese media have also reported that China Development Bank and China Exim bank provided bank loans to the project⁷. According to the Aynak Mining Contract, MCC was required to produce a full bankable feasibility study, which at the time of this writing did not appear to be publicly available⁸.

According to the mining contract, the project must comply with World Bank Environmental and Social Safeguard Policy, the Equator Principles, and Voluntary Principles on Security and Human Rights⁹.

Summary of Environmental and Social Impacts

Cultural Heritage and Archaeological Ruins	The copper reserve sits atop a major archaeological site known for its ruins of Buddhist temples and stupas with influences from ancient Greece, India, China, Southeast Asia, and Uyghur cultures. During the fifth and seventh century AD, Mes Aynak was a stop along the ancient Silk Road, being located midway between Rome to China ¹⁰ . Spanning across 100 –
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² "Mess Aynak Copper Project [sic]", Ministry of Mines and Petroleum. <http://mom.gov.af/en/page/mes-aynak-project>

³ "Copper Reserves in Afghanistan", <http://mines.pajhwok.com/content/copper-reserves-afghanistan>

⁴ "Copper Bottomed? Bolstering the Aynak Contract: Afghanistan's first major mining deal", Global Witness, November 2012. <https://www.globalwitness.org/en/campaigns/afghanistan/copper-bottomed/>

⁵ Ward Warmerdam, "Financing of Mes Aynak copper mine", Profundo, December 23, 2016.

⁶ Ibid.

⁷ Ward Warmerdam, "Financing of Mes Aynak copper mine", Profundo, December 23, 2016; "中冶收购阿富汗艾娜克铜矿", 人民日报社, June 6, 2008. http://paper.people.com.cn/rmrbhwb/html/2008-06/10/content_48727882.htm

⁸ "Agreement between the Government of Afghanistan and MCC-Jiangxi Copper consortium Concerning other minerals for the Aynak copper project", June 28, 2009. http://mom.gov.af/Content/files/MCC_Afghan_Gover_Mineral_Contract_English.pdf

⁹ Ibid.

¹⁰ William Dalrymple, "Mes Aynak: Afghanistan's Buddhist buried treasure faces destruction", The Guardian, May 31, 2013. <https://www.theguardian.com/books/2013/may/31/mes-aynak-afghanistan-buddhist-treasure>

	<p>400 hectares, the Buddhist ruins of the Mes Aynak project was first documented in the 1960s¹¹. Given the site’s cultural and historical importance, archeologists and the general public have repeatedly tried to register Mes Aynak as a UNESCO World Heritage site¹². Since the mining contract was awarded to the Chinese companies, a small team of dedicated archaeologists have scrambled to excavate and preserve artifacts; so far, only ten percent of the site has been excavated¹³.</p>
Security	<p>Security is one of the main reasons preventing the project from moving forward, as the region is long known for terrorist activity. Al-Qaeda once used Mes Aynak as a training base, and it is believed that Osama bin Laden planned the September 11, 2011, attacks on the United States there¹⁴. More recently, Taliban insurgents have taken control of the area, threatening both archaeologists and company workers¹⁵.</p> <p>Fifteen hundred Afghan police were assigned to protect the MCC mining compound from the Taliban¹⁶. However, police protection appears to have been inadequate. According to one account, “In 2011, an SUV full of MCC workers hit a land mine on one of the winding gravel roads, killing all passengers in the vehicle. The compound itself is often a target for rockets fired from the surrounding mountains”¹⁷. With the increasing number of abductions and death threats, rocket attacks, and land mines, the security situation deteriorated so badly that by 2014 MCC was forced to evacuate all its workers¹⁸.</p>
Water, Pollution, and By-products	<p>Copper mining is highly water intensive, and even the process of conducting initial studies have impacted the fragile environment by lowering the water table¹⁹. If the project moves forward, the project will consume approximately 548,000 cubic meters of water per day²⁰. There are also concerns that since Kabul and Mes Aynak share the same water supply, chemicals used in the mining process may expose not only local villagers but also Kabul residents to water contamination²¹. Copper mining produces toxic waste known as tailings, which are a slurry of pulverized rocks, chemical additives, and heavy metals. Tailings are typically disposed of in massive pits, or tailings dams, and pose an inherent environmental and health risk due to its toxicity. Improper management can also cause leaks either above or underground and impact the already stressed local water supply²². Furthermore, heavy rains, winds, or flooding can rupture a tailings dam, thus allowing toxic waste to leak into nearby soil or water table. The original tailings dam site was found to have a high possibility of breach. However, although the site was moved to the Tobagia Desert, copper has also been found there, raising uncertainty regarding the ultimate placement of the tailings dam²³.</p>
Indigenous	<p>The concession is located on land traditionally used by indigenous nomadic tribes. Some</p>

11 Javed Noorani, “Aynak: A Concession for ‘Change’”, Integrity Watch Afghanistan, November 2013. https://iwaweb.org/wp-content/uploads/2014/12/aynak_a_concession_for_change_english.pdf

12 “Saving Mes Aynak”, Indiegogo Fundraiser page. <https://www.indiegogo.com/projects/saving-mes-aynak-2#/>

13 Brent Huffman, “Saving Mes Aynak”, Al Jazeera, July 1, 2015. <http://www.aljazeera.com/programmes/witness/2015/06/saving-mes-aynak-150630122727625.html>

14 Ibid.

15 Hannah Bloch, “Mega Copper Deal in Afghanistan Fuels Rush to Save Ancient Treasures”, National Geographic, September 2015. <http://ngm.nationalgeographic.com/2015/09/mes-aynak/bloch-text>

16 “Saving Mes Aynak”, Directed by Brent E. Huffman, Initially Released on November 21, 2014. www.savingmesaynak.com

17 Brent E. Huffman, “Are Chinese Miners Destroying a 2,000-Year-Old Buddhist Site in Afghanistan?”, Asia Society, May 17, 2012. <http://asiasociety.org/blog/asia/are-chinese-miners-destroying-2000-year-old-buddhist-site-afghanistan-images>

18 Javed Noorani, “Aynak: A Concession for ‘Change’”, Integrity Watch Afghanistan, November 2013. https://iwaweb.org/wp-content/uploads/2014/12/aynak_a_concession_for_change_english.pdf

19 Hannah Bloch, “Mega Copper Deal in Afghanistan Fuels Rush to Save Ancient Treasures”, National Geographic, September 2015. <http://ngm.nationalgeographic.com/2015/09/mes-aynak/bloch-text>

20 Javed Noorani, “Aynak: A Concession for ‘Change’”, Integrity Watch Afghanistan, November 2013. https://iwaweb.org/wp-content/uploads/2014/12/aynak_a_concession_for_change_english.pdf

21 Interview with Hannah Bloch conducted by National Public Radio on August 30, 2015, “Goats and Soda Blog”. <http://www.npr.org/sections/goatsandsoda/2015/08/30/435570591/whats-better-for-afghanistans-future-buddha-tours-or-a-copper-mine>

22 Javed Noorani, “Aynak: A Concession for ‘Change’”, Integrity Watch Afghanistan, November 2013. https://iwaweb.org/wp-content/uploads/2014/12/aynak_a_concession_for_change_english.pdf

23 Ibid.

Peoples, Involuntary Resettlement, and Land Acquisition	land also belongs to those who fled the area due to the recent wars and conflicts, but are now slowly moving back to their ancestral homes ²⁴ . Five villages located in the concession area have already been resettled, and if the project moves forward, more villages will be involuntarily displaced ²⁵ . Because there was no community consultation process, the Afghan NGO Integrity Watch Afghanistan reported an increasing number of disputes regarding what constitutes adequate compensation and the validity of land titles ²⁶ . In fact, no public consultation took place, and no mechanism allowing for regular consultations have been established ²⁷ . Furthermore, the project developers did not develop an environmental and social impact assessment, and although a grievance mechanism exists on paper, it was never implemented on the ground ²⁸ . There have also been recurring concerns of the local government intimidating dislocated communities who opposed the project ²⁹ .
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Assessing compliance

Violations of Host Country Law
Article 19 of the Environmental Law requires that affected communities must be meaningfully consulted at each stage of a project, and that the National Environmental Protection Agency (NEPA) cannot “reach a decision on any application for a permit” until there is demonstrable proof that project developers have informed the public ³⁰ . However, in the Mes Aynak case, the project developer did not conduct public consultations with communities ³¹ .
International Norms and Best Practices
According to the Mes Aynak mining contract, the project must comply with the World Bank Environmental and Social Safeguard Policy, the Equator Principles, and Voluntary Principles on Security and Human Rights.
The project failed to comply with World Bank Environmental and Social Safeguard Policies due to failures in conducting a proper Resettlement Action Plan and Resettlement Policy Framework (OP4.12). The World Bank has also documented problems in the resettlement process and safeguard compliance ³² .
The failures to conduct a proper resettlement process and develop a functional grievance mechanism violates Principles 5 and 6 of the Equator Principles , respectively.
Mes Aynak’s mining contract calls for the application of the Voluntary Principles on Security and Human Rights . The document is broad and does not offer specific guidance, but it does call for companies to “consult regularly with...civil society to discuss security and human rights” ³³ . However, the longstanding secrecy surrounding the project caused by the government’s failure to disclose the mining contract, in addition to the failure to hold regular consultations with civil society and the public, reflects an inconsistency with these principles.
The resettlement process did not incorporate the principles of free, prior, informed consent , as no consultation took place ³⁴ .

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

³⁰ “Environmental Law”, Islamic Republic of Afghanistan, Official Gazette No. 912, January 25, 2007. http://www.afghan-web.com/environment/afghan_environ_law.pdf

³¹ Javed Noorani, “Aynak: A Concession for ‘Change’”, Integrity Watch Afghanistan, November 2013. https://iwaweb.org/wp-content/uploads/2014/12/aynak_a_concession_for_change_english.pdf

³² “Implementation Status and Results: Afghanistan – Sustainable Development of Natural Resources Project II (P118925)”, World Bank Group, May 17, 2014. <http://documents.worldbank.org/curated/en/803051467989968308/pdf/ISR-Disclosable-P118925-05-17-2014-1400361585698.pdf>

³³ “Voluntary Principles on Security and Human Rights”, Secretariat for the Voluntary Principles on Security and Human Rights, 2000. <http://www.voluntaryprinciples.org/what-are-the-voluntary-principles/>

³⁴ Javed Noorani, “Aynak: A Concession for ‘Change’”, Integrity Watch Afghanistan, November 2013. https://iwaweb.org/wp-content/uploads/2014/12/aynak_a_concession_for_change_english.pdf

Although the Afghan government has increasingly published many mining contracts, with the mining minister claiming in 2012 that “from now on....no contract shall be kept secret”³⁵, the Mes Aynak contract was not published until 2015³⁶. In fact, much of the controversy surrounding the Mes Aynak case stems from the lack of transparency, which was compounded by the long standing failure of the government to disclose the mining contract until several years later³⁷. The lack of contract transparency in turn fueled other concerns regarding the disclosure of Chinese payments to the Afghan government³⁸. Today, there is an **increasing international trend towards requiring project sponsors to disclose and publish mining contracts**. Host country governments, companies, and other stakeholders are increasingly encouraging and recognizing the value of contract disclosure, with 27 governments now legally requiring contract transparency, and the IFC and European Bank for Reconstruction and Development requiring contract disclosure as a condition for project finance³⁹. According to industry experts, “the trend is clear: natural resource contracts are increasingly being disclosed and the sky isn’t falling. Rather, there is emerging evidence that contact disclosure improves trust and lays the groundwork for collaboration that benefits governments, companies and communities”⁴⁰.

Current Situation

As of 2017, the Mes Aynak project has stalled primarily due to security risks caused by the Taliban. MCC has alleged that the Afghan government did not provide sufficient protection for its workers, and has most recently sought to renege on its promise to build infrastructure including the railway, power plant, and phosphate processing facility⁴¹. At the same time, the international reputational damage caused by the project’s location atop ancient Buddhist temples from the Silk Road era, in addition to local outcry regarding the lack of consultations and corruption and secrecy surrounding the project, has created a no-win situation for the Chinese project developers. If the mining was somehow able to continue, the archaeological site will be destroyed, thus negatively impacting China’s reputation internationally; if it does not, MCC is still bound to honor the terms of the original deal unless their attempts to renege on the original terms succeeds, a process which may carry significant legal and political impacts.

³⁵ Ibid.

³⁶ “Publication of largest ever Afghan mining contract ‘a victory for transparency’”, Integrity Watch Afghanistan, May 31, 2015. <https://iwaweb.org/publication-of-largest-ever-afghan-mining-contract-a-victory-for-transparency/>

³⁷ Javed Noorani, “Aynak: A Concession for ‘Change’”, Integrity Watch Afghanistan, November 2013. https://iwaweb.org/wp-content/uploads/2014/12/aynak_a_concession_for_change_english.pdf; “Copper Bottomed? Bolstering the Aynak Contract: Afghanistan’s first major mining deal”, Global Witness, November 2012. <https://www.globalwitness.org/en/campaigns/afghanistan/copper-bottomed/>

³⁸ Graham Bowley and Matthew Rosenberg, “Mining Contract Details Disclosed in Afghanistan”, The New York Times, October 14, 2012. <http://www.nytimes.com/2012/10/15/world/asia/afghan-minister-discloses-details-of-mining-contracts.html>

³⁹ Paulo Cunha, Gavin Hayman, Rob Pitman, “Takeaways from EITI 2016: Contract Transparency Is Becoming Norm”, Natural Resource Governance Institute, March 9, 2016. <http://www.resourcegovernance.org/blog/takeaways-eiti-2016-contract-transparency-becoming-norm>

⁴⁰ Ibid.

⁴¹ Lynne O’Donnell, “China’s MCC turns back on US\$3b Mes Aynak Afghanistan mine deal”, South China Morning Post, March 21, 2014. <http://www.scmp.com/news/world/article/1453375/chinas-mcc-turns-back-us3b-mes-aynak-afghanistan-mine-deal>

3.2 Lamu Coal Power Plant, Kenya

Planning	Design	Agreement	Construction	Operation	Closure	Decommission
		Stalled				

Background

The 981.5 MW Lamu coal power plant is a proposed \$2 billion USD project developed by Amu Power, a joint venture between Centum Investment, Gulf Energy, China Huadian Corporation Power Operation Company, Sichuan Electric Power Design and Consulting Company, and Sichuan No. 3 Power Construction Company⁴². If built, the plant would be the first coal plant in the country^{43,44}.

The Lamu coal plant is designed to include 3 x 350 MW units and use super-critical coal technology. It would entail the construction of a large coal terminal, as coal currently cannot be sourced locally. Approximately 3,600,000 tons of coal from South Africa, Mozambique, Indonesia, or Australia, would have to be shipped to Lamu until domestic Kenyan coal deposits in Kitui are developed⁴⁵, which according to the project's environmental social impact assessment (ESIA), "may or may not happen" in the next 5 – 10 years⁴⁶. The project will also require the construction of a 15 km coal conveyer belt at the port, a coal stock yard, ash yard, desalination facilities, and a permanent worker compound⁴⁷.

The ESIA describes the coal plant as part of the Lamu Port, South Sudan, Ethiopia (LAPSSET) transport corridor, a massive infrastructure initiative which aims to connect Kenya, Ethiopia, and South Sudan via railways, highways, gas pipelines, airports, and a port based in Lamu⁴⁸. In contrast, according to local organizations such as Save Lamu and Natural Justice, Amu Power has described the power plant as a means to meet domestic electricity demand. However, Kenyan and international experts have argued that the coal plant may in fact "create unnecessary capacity" by the time it becomes operational⁴⁹.

Currently, the project has stalled due to ongoing two lawsuits being filed against the project at the National Environmental Tribunal and High Court of Kenya.

Project Financing

Industrial and Commercial Bank of China (ICBC) is arranging 900 million USD in export credit financing to two Chinese contractors, Power Construction Corporation of China (PowerChina) and Sichuan No. 3 Power Design & Consulting Company, for the construction of the Lamu coal plant⁵⁰. ICBC will also serve as lead

42 George Obulutsa, "Kenya coal power plant construction delayed," Reuters, September 14, 2015. <http://www.reuters.com/article/kenya-electricity-idUSL5N11K0XP20150914>; "Kenyan regulator delays licence for new coal-fired power plant-report", Reuters, November 10, 2016. <http://af.reuters.com/article/investingNews/idAFKBN135171>; "Lamu Power Project", Sourcewatch, May 27, 2017. http://www.sourcewatch.org/index.php/Lamu_Power_Project

43 "About Amu power", Amu Power. <https://www.amupower.co.ke/about.html>

44 Anthony Langat, "Locals oppose plans to build first coal-fired power plant in Kenya", The Guardian, March 3, 2016. <https://www.theguardian.com/global-development-professionals-network/2016/mar/03/locals-oppose-plans-to-build-first-coal-fired-power-plant-in-kenya>

45 "Executive Summary for ESIA Study for 1050 MW Coal Fired Power Plant, Lamu County, Kenya", Kurrent Technologies Ltd., July 10, 2016. <https://s3-ap-southeast-1.amazonaws.com/amupower/ESIA/01Executive+Summary.pdf>

46 Ibid.

47 Ibid.

48 "LAPSSET Projects", LAPSSET Corridor Development Authority. <http://www.lapsset.go.ke/#1461328856794-2dee9bba-e774>

49 Eunice Kilonzo and Kalume Kazungu, "Expert says coal plant bad for health", Daily Nation, July 12, 2015. <http://www.nation.co.ke/counties/Expert-says-coal-plant-bad-for-health/1107872-2786930-7nik32z/index.html>; Hindpal S Jabbal, "We can't blame others for high cost of electricity if we fail to plan properly", Standard Digital, August 9, 2016.

<https://www.standardmedia.co.ke/business/article/2000211395/we-can-t-blame-others-for-high-cost-of-electricity-if-we-fail-to-plan-properly>; Hindpal S Jabbal, "Creating unnecessary capacity: A special report on Kenya's power sector", Kenya Engineer, November/December 2014. https://issuu.com/kenyaengineer/docs/kenya_engineer_nov-dec_2014

50 "ICBC Arranges Financing for the Largest Power Plant Project in Eastern Africa", ICBC News, July 3, 2015. <http://www.icbc.com.cn/icbc/newsupdates/icbc%20news/ICBC%20Arranges%20Financing%20for%20the%20Largest%20Power%20Plant%20Project%20in%20Eastern%20Africa.htm>; "ICBC to provide USD 9 mln export credit finance for Kenya's project", Xinhua Finance, June 10, 2015. <http://en.xfafinance.com/html/Companies/2015/103603.shtml>

financial advisor to the project. The agreement was made in June 2015. African Development Bank (AfDB) may also provide a \$100 million USD partial risk guarantee⁵¹.

Summary of Environmental and Social Impacts

<p>Preservation of UNESCO Heritage Site Lamu Old Town</p>	<p>Construction of the coal plant has raised concerns regarding the impacts of dust, pollution, and increased activity on the UNESCO Heritage site. Lamu Old Town is the oldest and best preserved Swahili town in East Africa, spanning sixteen hectares. Built of coral, lime, and mangrove poles, Lamu Old Town was once the most important trade center in Eastern Africa, and is known as the “cradle of Swahili civilization”⁵². Its unique architecture reflects a mix of Swahili, Arabic, Persian, Indian and European influences. According to the UNESCO Mission report in 2015, the coal plant will have negative impacts on the preservation of the site⁵³.</p>
<p>Impacts on Mangroves and Marine Life</p>	<p>The project is located on Kwasasi, public land known for robust mangrove forests and marine life. Mangroves are one of the most carbon rich ecosystems in the world and serve an important role in regulating climate change impacts since they are able to store roughly 1000 tons of carbon per hectare. The coal plant would likely degrade the mangroves, as warm water that is discharged by the coal plant would disrupt the delicate balance of mangrove swamps⁵⁴; according to the project’s ESIA, “dredging activities during the construction phase are projected to cause significant and serious damage to the neighboring mangroves, sea grasses and coral reefs habitats”⁵⁵.</p>
<p>Resettlement Free, Prior, and Informed Consent</p>	<p>Contrary to international best practice⁵⁶, a resettlement action plan (RAP) was not completed with the submission of the ESIA. Since the project site is located on public land, it would have to be leased to Amu Power from the Kenya Ports Authority. Moreover, local communities have established strong generational ties with the land, using it for seasonal farming of fruit, grains, and other crops⁵⁷. Furthermore, the region contains traditional fishing areas that are used by over 3000 indigenous fisher folk from the nearby Pate Island, Lamu Island, and Lamu mainland. These communities generally lack formal titles to the land, and concerns regarding whether a resettlement process will account only for residents who can prove spiritual or ancestral ties to the land, and not those who will be economically displaced due to their customary use of the land, remain unaddressed⁵⁸.</p> <p>Although some local residents and farmers have received compensation⁵⁹, fishing communities were not properly consulted and were allegedly coerced into signing compensation forms⁶⁰. Kenya-based NGO Save Lamu also have concerns that planned compensation for fisherman may only include fishing nets, which is clearly inadequate⁶¹.</p>

51 “Lamu Coal Power Plant Partial Risk Guarantee”, African Development Bank Group. <https://www.afdb.org/en/projects-and-operations/project-portfolio/p-ke-f00-006/>

52 “Lamu Old Town”, UNESCO World Heritage Centre. <http://whc.unesco.org/en/list/1055>

53 “Report on the reactive monitoring mission to Lamu Old Town (Kenya)”, World Heritage Centre, April 10, 2015. <http://whc.unesco.org/document/135436>

54 Lou Del Bello, “Mangrove loss threatens Kenyan coastal communities and the climate”, Climate Change News, September 22, 2016. <http://www.climatechangenews.com/2016/09/22/mangrove-loss-threatens-kenyan-coastal-communities-and-the-climate/>

55 Lou Del Bello, “Chinese-backed coal plant jeopardises Kenya climate target”, Climate Change News, April 11, 2016. <http://www.climatechangenews.com/2016/11/04/chinese-backed-coal-plant-jeopardises-kenya-climate-target/>

56 “Handbook for Preparing a Resettlement Action Plan”, International Finance Corporation Environment and Social Development Department, 2002. <https://commdev.org/userfiles/ResettlementHandbook.pdf>

57 Letter from Accountability Counsel to Mr. Gabrielle Negatu at African Development Bank Group, Sent via email on October 1, 2015. <http://www.accountabilitycounsel.org/wp-content/uploads/2013/02/10.1.15-Save-Lamu-Letter-to-AfDB.pdf>

58 Ibid.

59 Kalume Kazungu, “Residents to be paid Sh800m for Lamu coal plant land”, Daily Nation, February 20, 2017. <http://www.nation.co.ke/counties/lamu/Resident-paid-Sh800m-for-Lamu-coal-plant-land/3444912-3819390-view-asAMP-5f0y7y/index.html>

60 Raymond Obare, “KNCHR meets with Save Lamu on Lamu Coal Plant”, Save Lamu, March 20, 2017. <http://www.savelamu.org/knchr-meets-with-save-lamu-on-lamu-coal-plant/>

61 Letter from Accountability Counsel to Mr. Gabrielle Negatu at African Development Bank Group, Sent via email on October 1, 2015. <http://www.accountabilitycounsel.org/wp-content/uploads/2013/02/10.1.15-Save-Lamu-Letter-to-AfDB.pdf>

Pollution and Environmental Health Impacts	The plant will create significant air, water, and soil pollution – well known impacts of coal power plants ⁶² . In addition to the negative impacts on marine biodiversity, the Lamu coal plant will likely lead to significant environmental health impacts. According to the project’s EIA, about one third of the project site will be used to dispose of dry ash across 100 hectares. Dry ash causes air pollution and exposes humans to a variety of toxic particulate matter and heavy metals such as mercury, lead, and cadmium ⁶³ . Even if fly ash is instead disposed of as wet ash, it still carries significant environmental health impacts, as toxins may then leach into the water system ⁶⁴ .
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Assessing Compliance

Host Country Law and regulations
The Land Act (Section 12) ⁶⁵ prohibits the government from allocating public lands located on environmentally sensitive areas. Due to the project’s negative impacts on mangroves, fishing areas, and watersheds, this law establishes the government’s duty to refrain from allocating land to a development projects with inherent environmental and social impacts.
According to the Environmental (Impact Assessment and Audit) Regulations (per section 17.1), project sponsors must seek the views of affected communities when conducting an EIA ⁶⁶ . According to Save Lamu and Natural Justice, public meetings were not conducted according to these regulations ⁶⁷ .
In terms of climate change impacts, the Lamu coal plant may potentially violate Kenya’s National Climate Change Plan and its Intended Nationally Determined Contribution (INDC) under the United Nations Framework Convention on Climate Change (UNFCCC). According to Save Lamu and Natural Justice’s analysis, “Although the EIA approximates the amount of CO2 emission, there is no analysis, either in the ESIA or in the Climate Change and GHG Specialist Study, of whether the proposed project, which would add 8.8 million tons of CO2eq per year in 2030, is consistent with Kenya’s commitment under the UNFCCC.” ⁶⁸
International Norms and Best Practices
If AfDB’s was to provide a risk guarantee for the project, the Lamu coal plant would be required to observe African Development Bank Safeguards. Receiving a risk guarantee from the AfDB would also require that the project comply with the IFC Performance Standards ⁶⁹ .
According to Save Lamu and Natural Justice, the project is in violation of AfDB’s Safeguards 1, 2, and 4 based on client’s failure to submit a resettlement action plan with submission of the ESIA, the failure to conduct meaningful consultations under free, prior, informed consent standards, in addition to the omission of key analysis in the ESIA, such as pollution prevention and control in relation to the UNESCO World Heritage site ⁷⁰ .
Furthermore, based on the project’s improper EIA process and violation of local laws, the project would not

62 “Environmental Impacts of Coal”, Sourcewatch, March 16, 2015. http://www.sourcewatch.org/index.php/Environmental_impacts_of_coal

63 Steven G. Gilbert, “Coal Ash: Not good for anyone’s backyard”, Physicians for Social Responsibility, March 2, 2012. <http://www.psr.org/environment-and-health/environmental-health-policy-institute/responses/coal-ash-not-good-for-anyones-backyard.html>

64 Ibid.

65 “Policy, Legal and Institutional Framework for ESIA Study for 1050 MW Coal Fired Power Plant, Lamu County, Kenya”, Kurrent Technologies Ltd., July 10, 2016. <https://s3-ap-southeast-1.amazonaws.com/amupower/ESIA/02Policy+Legal+and+Institutional+Framework.pdf>

66 “The Environmental (Impact Assessment and Audit) Regulations 2003, Legal Notice No. 101”, Ministry for Environment and Mineral Resources of the Republic of Kenya, February 11, 2009. <http://www.nema.go.ke/images/Docs/EIA%20Regulations/Revised%20EIA%20Regulations.pdf>

67 Letter from Save Lamu to the Director Compliance and Enforcement of the National Environmental and Management Authority of the Republic of Kenya, Sent via Email on November 12, 2015. <http://www.accountabilitycounsel.org/wp-content/uploads/2015/12/11.12.15-EPR-Comments-and-Cover-Letter.pdf>

68 Save Lamu and Natural Justice Comments on “RE: Submission of Comments for the ESIA Study for the 1050 MW Coal Fired Power Plant in Lamu County”, submitted to Prof. Geoffrey Wahungu - Director General of the National Environment Management Authority of the Republic of Kenya, sent via email on August 29, 2016.

69 AfDB requires that all its clients comply with the International Finance Corporation’s Performance Standards. <https://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/ENVIRONMENTAL%20AND%20SOCIAL%20ASSESSMENT%20PROCEDURES.pdf>

70 “African Development Bank Group’s Integrated Safeguards System: Policy Statement and Operational Safeguards”, Compliance and Safeguards Division of the African Development Bank Group, December 2013. https://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/December_2013_-_AfDB'S_Integrated_Safeguards_System_-_Policy_Statement_and_Operational_Safeguards.pdf

currently comply with **IFC Performance Standard 1** regarding the assessment and management of environmental and social risk impacts (section 8), **Performance Standard 5** regarding land acquisition and involuntary resettlement (section 9-29), and **Performance Standard 7** regarding indigenous peoples (section 12). Due to the project's destruction of mangrove forests, the project would not comply with **Performance Standard 6** on biodiversity conservation. The project's adverse impacts would also violate **Performance Standard 8** because of the inherent damage that will be caused to the cultural heritage and integrity of the UNESCO site (section 14).

The ESIA does not follow international best practice as it does not provide **site alternatives**. The proposed alternative locations for the coal plant also fall within the UNESCO World Heritage site⁷¹. Save Lamu has critiqued the ESIA for failing to conduct all necessary marine surveys, evaluate impacts on bird life, and failure to assess cumulative impacts outside the immediate vicinity of the project. The ESIA also did not fully conduct and incorporate public feedback, as required by local law⁷². According to international best practices, EIAs should be cumulative, participatory, and include project alternatives⁷³.

An increasing number of multilateral and private banks are **shifting financing away from coal activities**. The World Bank, the US Export Import Bank, European Investment Bank, the European Bank for Reconstruction and Development, and OECD export credit agencies all have now established policies which restrict coal financing or require the use of best and cleanest technologies. This is not the case in the Lamu coal plant, as it calls for super critical coal technology, which is not the most clean or efficient of coal technologies⁷⁴. Private banks such as J.P. Morgan Chase and Wells Fargo have also pledged to restrict support to coal projects, and the Brazilian National Development Bank has committed to no longer finance coal and oil projects⁷⁵. As such, ICBC's decision to finance a coal plant starkly contrasts the increasing international trend away from coal financing.

Current Situation

Currently, the Lamu Coal Plant has effectively stalled due to ongoing lawsuits against the project at the National Environmental Tribunal and High Court of Kenya. Furthermore, the project has yet to receive a required license from Kenya's Energy Regulatory Commission⁷⁶. Since the project was proposed, the coal plant has drawn international controversy for its negative impacts on the UNESCO Heritage site, Lamu Old Town, in addition to its potential impact on Kenya's ability to meet its Intended Nationally Determined Contributions (INDCs) under the Paris Agreement.

⁷¹ "Save Lamu Comments on ESIA Study Report of the Construction of the First Three Berths", Save Lamu, April 15, 2013. <https://www.savelamu.org/save-lamu-comments-on-esia-study-report-of-the-construction-of-the-first-three-berths/>

⁷² Ibid.

⁷³ "EIA 'Best Practice': Topic 1 – Introduction and Overview of EIA", UNEP Environmental Impact Assessment Training Resource Manual, June 2002. http://unep.ch/etu/publications/eia_2ed/eia_e_top1_hd.pdf
http://unep.ch/etu/publications/eia_2ed/eia_e_top1_hd.pdf

⁷⁴ "Description of the Project for ESIA Study for 1050 MW Coal Fired Power Plant, Lamu County, Kenya", Kurrent Technologies Ltd., July 10, 2016. <https://s3-ap-southeast-1.amazonaws.com/amupower/ESIA/04Description+of+the+Project.pdf>

⁷⁵ Glenn Meyers, "NDES, Brazil's Largest Bank, Will Stop Financing Coal- & Oil-Fired Power Plants", Clean Technica, October 10, 2016. <https://cleantechnica.com/2016/10/10/bndes-brazils-largest-bank-will-cut-financing-coal-oil-fired-power-plants/>

⁷⁶ "The Pursuit of Coal in Kenya", De-COALanize, May 4, 2017. <https://medium.com/@deCOAL/extractive-infrastructure-projects-in-lamu-6552e149731>

3.3 Jakarta-Bandung High Speed Rail Project, Indonesia

Planning	Design	Agreement	Construction	Operation	Closure	Decommission

Background

The Jakarta-Bandung High Speed Rail (Bandung HSR) is a \$5.5 billion USD project that will construct a 142 km bullet train between the cities of Jakarta and Bandung. Although Japan had pursued the concept of a high speed rail in Java since 2008, the contract for the project was eventually awarded to China in 2015 after an intense bidding process⁷⁷.

The project is being developed by the Indonesian-Chinese consortium PT Kereta Cepat Indonesia China (KCIC). The consortium was created by state-owned China Railway International Co. Ltd (CRIC) and PT Pilar Sinergi BUMN Indonesia (PT PSBI), which is a separate joint venture led by the Indonesian construction firm, Wijaya Karya (WIKA)⁷⁸. CRIC holds 40% ownership in the consortium.

The project is touted as a “landmark in the implementation of the One Belt One Road Initiative”⁷⁹, but over the past year, it has stalled due to the failure of the project sponsors delivering a spatial plan and acquiring 100% of needed land⁸⁰. According to one academic analysis, “China is doing more projects overseas, some of which have encountered massive problems. China now needs a model that runs smoothly and develops well. And President Xi wants the high-speed rail project to serve as this model”⁸¹.

In 2016, WALHI West Java, which is part of the largest environmental network in Indonesia, called on the project financier China Development Bank to cancel financing to the project due to the project’s failure to comply with local laws and international standards. In a letter, WALHI West Java stated that: “The HSR project will cause environmental and social problems for the people of Indonesia, and will in turn cause Indonesians to question the ‘win win’ relationship the Chinese government so often seeks to cultivate in foreign countries”⁸². In June 2017, a second letter from WALHI was sent to China Development Bank reiterating local concerns⁸³. However, despite confirming receipt of the letters, CDB has not responded to these concerns.

Project Financing

China Development Bank (CDB) is financing 75% of the project, which is estimated to cost a total of \$5.5 billion USD. CDB provided a \$3.94 billion USD⁸⁴ loan, with the remaining financing to be raised via equity by

77 “Indonesia Plans ‘Beauty Contest’ Between China and Japan for High-Speed Train”, Jakarta Globe, July 14, 2015. <http://jakartaglobe.id/news/indonesia-plans-beauty-contest-china-japan-high-speed-train/>; <https://www.rsis.edu.sg/rsis-publication/rsis/co15269-indonesias-high-speed-rail-a-china-japan-scramble-for-influence/>;

78 “Creating Promising Future: Annual Report 2015 [sic]”, WIKA, 2015. http://www.wika.co.id/po-content/po-upload/AR%20WIKAWIKA%20TB%202015_LOW%208%20MB.pdf

79 Liu Yang, “China builds \$5.5 bln high-speed railway in Indonesia”, CCTV English, February 25, 2016. <http://english.cntv.cn/2016/02/25/VIDE1Ja0E4z4M4RGRvUil65ID160225.shtml>

80 Fedina S. Sundaryani, “High-speed railway financier wants clarity on spatial plan”, The Jakarta Post, March 22, 2017. <http://www.thejakartapost.com/news/2017/03/22/high-speed-railway-financier-wants-clarity-on-spatial-plan.html>

81 Laura Zhou, “Xi urges Widodo to help keep Sino-Indonesian rail project rolling”, South China Morning Post, September 2, 2016. <http://www.scmp.com/news/china/diplomacy-defence/article/2013190/xi-urges-widodo-help-keep-sino-indonesian-rail-project>

82 Letter from WALHI West Java to China Development Bank, Sent via fax August 15, 2016.

83 Ibid.

84 Anton Hermansyah, “Jakarta-Bandung high speed railway to get Chinese loan”, Jakarta Post, November 10, 2016. <http://www.thejakartapost.com/news/2016/11/10/jakarta-bandung-high-speed-railway-to-get-chinese-loan.html>

Indonesian consortium partners^{85, 86}. China did not require a sovereign loan guarantee from the Indonesian government⁸⁷.

Summary of Environmental and Social Impacts

Water, Geologic, and Agricultural Impacts	Much of the region between Jakarta and Bandung consists of community farms and rice fields. The rail line would dramatically alter land use in the region, as the project calls for the creation of a large rubber plantation in a water catchment area ⁸⁸ . The cultivation of monoculture crops like rubber ⁸⁹ will likely lead to overexploitation of local water resources, and the proposed corresponding development for cities, residential housing, or industries along the rail line will further stress local water resources by driving up demand ⁹⁰ . The project would disrupt the water supply of the region, affecting irrigation to rice paddies in West Java; it may also lead to a rise in earthquakes and landslides, as the rail line will pass through Purwakarta, an area with numerous geological faults ⁹¹ .
Resettlement	The HSR project will adversely impact local communities currently living along the rail route. According to the West Java chapter of WALHI, 727 farming households and 113 non-farming households currently live in the region, and with the construction of the rail line, they will likely lose their homes and farming based livelihoods. Research conducted by WALHI West Java further found that the project sponsor did not host a public consultation under FPIC (free, prior, informed consent) standards; furthermore, the majority of local communities did not wish to resettle ⁹² . Purchasing land rights from the community has already proved to be a major barrier to the project, as CDB repeatedly delayed loan disbursement due to the slow land acquisition process ⁹³ . According to media accounts, CDB required 100% of necessary land to be acquired prior to loan disbursement ⁹⁴ .

Assessing Compliance

Host Country Law and Regulations
Country Law No. 32/2009 regarding environment management and control requires that an EIA of a project this size should take at least 1-1.5 years. However, the EIA was conducted in just seven days. As a result, the EIA contains inaccurate and flawed data analysis regarding the project’s actual environmental impacts. For instance, the EIA did not include analysis on cross province/district impacts, or cumulative, long term impacts on the region ⁹⁵ . Furthermore, adequate analysis could not possibly have been conducted in such a short period.
The Government Regulation 27 of 2012 regarding environmental permits requires public participation in the drafting of an environmental impact assessment (EIA). The law requires project sponsors to incorporate public

85 “Chinese-funded consortium to build Jakarta – Bandung fast line”, Railway Gazette, October 21, 2015. <http://www.railwaygazette.com/news/news/asia/single-view/view/chinese-funded-consortium-to-build-jakarta-bandung-fast-line.html>

86 Anton Hermansyah, “Jakarta-Bandung high speed railway to get Chinese loan”, Jakarta Post, November 10, 2016. <http://www.thejakartapost.com/news/2016/11/10/jakarta-bandung-high-speed-railway-to-get-chinese-loan.html>

87 Wilmar Salim and Siwage Dharma Negara, “Why is the High-Speed Rail Project so Important to Indonesia”, ISEAS Yusof Ishak Institute Perspective, Issue No. 16, April 7, 2016. https://www.iseas.edu.sg/images/pdf/ISEAS_Perspective_2016_16.pdf

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89 Ibid.

90 Letter from WALHI West Java to China Development Bank, Sent via fax August 15, 2016.

91 “High-Speed Railway Surrounded by Four Quake Sources”, Kompas, January 27, 2016. <http://print.kompas.com/baca/english/2016/01/27/High-Speed-Train-Surrounded-by-Four-Quake-Sources>; Amy Chew, “Discontent in Indonesia over high-speed rail project jointly developed with China may turn the current impasse into a more protracted one”, South China Morning Post, February 19, 2016. <http://www.scmp.com/news/asia/southeast-asia/article/1913995/discontent-indonesia-over-high-speed-rail-project-jointly>

92 Letter from WALHI West Java to China Development Bank, Sent via fax August 15, 2016.

93 “Slow land acquisition hampers disbursement of loans for high-speed railway”, Jakarta Post, February 1, 2017. <http://www.thejakartapost.com/news/2017/02/01/slow-land-acquisition-hampers-disbursement-of-loans-for-high-speed-railway.html>

94 Ibid.

95 Letter from WALHI West Java to China Development Bank, Sent via fax August 15, 2016.

participation and concerns in the EIA, and that EIA documents be completed in no less than 75 days. However, this did not occur. WALHI West Java has documented that public participation and concerns were not integrated into the EIA⁹⁶. The regulation also requires that the environmental permitting process take at least 100 days so environmental authorities have adequate time to review the EIA. Although the EIA was approximately 300 pages, the environmental permit was approved in just one day, which is insufficient time to have credibly reviewed such a complex document⁹⁷.

Law 26 of 2007 regarding spatial arrangement stipulates that spatial plans can only be updated or changed every five to twenty years, depending on the local government, or only in times of extraordinary circumstances such as a natural disaster. Once the project was awarded to China, however, the central Indonesian government reportedly pressured provincial and regional governments to immediately adjust their spatial plans to accommodate the Bandung HSR, overriding local authorities and rushing the local approvals process⁹⁸.

Similarly, by ordering provincial, district, and municipal areas to change their spatial plans, the national government violated **Government Regulation No.15/2010 regarding spatial planning management**, as only provinces, districts, and municipalities, not national government, have the authority to arrange, control, and manage local spatial planning.

According to the **Transportation Ministerial regulation No. 43/2011 regarding the masterplan of national railways system**, development of the high speed train should begin in the year 2030. However, the central government ignored this regulation and accelerated the timetable so that construction could begin in 2016⁹⁹.

The HSR project consortium has demanded exclusive rail rights¹⁰⁰, which would create a rail monopoly and thus violate **Country Law No.5/1999 about monopoly practical and unfair business dispute**¹⁰¹.

International Norms and Best Practices

According to the International Association for Impact Assessment, **EIAs should be credible, integrative, participative, and systemic**¹⁰². Conducting an EIA of this size and scale cannot be credibly completed within seven days. The extremely expedited process in this case clearly falls short of international best practices for preparing a valid, high quality EIA.

Affected communities were not consulted under **free, prior, informed consent**, which is codified under the **United Nations Declaration on the Rights of Indigenous Peoples**. Free, prior, informed consent (FPIC) aims to ensure that affected communities are provided all relevant project information in order to freely (without threat or coercion) agree or disagree to an activity before it commences. It also frames consultations with affected communities as a *process* rather than an *objective* in it of itself. In this case, local communities did not consent to the project¹⁰³.

Current Situation

Although the rail project officially broke ground in January 2016, the project effectively stalled shortly thereafter due to land acquisition and permitting problems involving both locally impacted communities and local governments. As a result, the project is significantly behind schedule, though construction appears to have re-commenced as of July 2017¹⁰⁴. The chronic delays, in addition to changes in project design, have led to concerns of a potential cost overrun of \$5.5 billion USD to \$5.9 billion USD¹⁰⁵.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Hans Nicholas and Farida Susanty, "Walhi to launch moves against Jakarta-Bandung high speed rail", Jakarta Post, April 6, 2016. <https://www.pressreader.com/indonesia/the-jakarta-post/20160406/281608124582294>; Arya Dipa, "Thousands of households to be evicted", Jakarta Post, January 25, 2016. <https://www.pressreader.com/indonesia/the-jakarta-post/20160125/282475707843652>

⁹⁹ Letter from WALHI West Java to China Development Bank, Sent via fax August 15, 2016.

¹⁰⁰ Farid Susanty, "Tug of war in China-led rail project", Jakarta Post, February 5, 2016. <http://www.thejakartapost.com/news/2016/02/05/tug-war-china-led-rail-project.html>

¹⁰¹ Letter from WALHI West Java to China Development Bank, Sent via fax August 15, 2016.

¹⁰² Principles of Environmental Impact Assessment Best Practice", International Association for Impact Assessment in cooperation with Institute of Environmental Assessment, UK, January 1999. http://www.iaia.org/uploads/pdf/principlesEA_1.pdf

¹⁰³ Letter from WALHI West Java to China Development Bank, Sent via fax August 15, 2016.

¹⁰⁴ "First tunnel project of Indonesia's Jakarta-Bandung high-speed railway launched", Xinhua, July 16, 2017. http://news.xinhuanet.com/english/2017-07/16/c_136447483.htm

¹⁰⁵ Dylan Amirio, "Indonesia might see high-speed rail costs swell amid changes", The Jakarta Post, April 15, 2017. <http://www.thejakartapost.com/news/2017/04/15/indonesia-to-see-high-speed-rail-costs-swell-amid-changes.html>

4. Domestic police and initiative related to enhancing overseas environmental and social risk management by Chinese Banks

4.1 Environmental Risk Management Initiative for China's Overseas Investment

Green Finance Committee (GFC) of China Society for Finance and Banking, Investment Association of China (IAC), China Banking Association (CBA), Asset Management Association of China (AMAC), Insurance Asset Management Association of China (IAMAC), China Trustee Association (CTA), Foreign Economic Cooperation Office (FECO) of Ministry of Environment Protection

September 5, 2017

By improving the environmental risk management of their overseas investments and by adopting responsible investment principles, Chinese financial institutions and enterprises can significantly accelerate progress towards key sustainability goals, such as the 'greening' of the Belt and Road (B&R) Initiative, the fulfillment the 2030 Agenda for Sustainable Development and the Paris Agreement on climate change, and the implementation of the 'Guidelines for Establishing the Green Financial System' enacted by the seven state ministries. To encourage and guide this effort by Chinese financial institutions and enterprises, the following Environmental Risk Management Initiative for China's Overseas Investment has now been jointly launched, by the Green Finance Committee (GFC) of China Society for Finance and Banking, Investment Association of China (IAC), China Banking Association (CBA), Asset Management Association of China (AMAC), Insurance Asset Management Association of China (IAMAC), China Trustee Association (CTA), and the Foreign Economic Cooperation Office (FECO) of the Ministry of Environment Protection.

- i. **Financial institutions and enterprises engaged in overseas investment should fully understand the environmental laws, regulations and standards of the host countries, as well as the key environmental risks for their projects.** Financial institutions and enterprises are encouraged to understand and analyze the host countries' environmental laws, regulations, policies and standards, and to identify, assess, mitigate and manage environmental risks for their business activities within host countries. They should also urge their partners to improve environmental performance.
- ii. **Entities engaged in overseas investment should understand the environmental laws, regulations and standards for the specific sectors of their projects, as well as the sector-specific environmental risks and mitigation approaches.** Financial institutions and enterprises are encouraged to fully understand relevant environmental standards both in China and in host countries, as well as the prevailing international standards, and adopt the highest standard where feasible. They should conduct in-depth environmental due diligence, and maintain a high level of vigilance for potential environmental impacts from industries such as mining, coal-fired power, infrastructure, steel, cement, building materials, chemicals, and textile and dyeing. In addition, they should use environmental risk analysis tools to fully identify and assess potential impacts on air, water, soil and forestry, and take steps to effectively manage such risks.
- iii. **In making overseas investments, banks should refer to relevant international sustainability standards, and institutional investors should refer to the UN Principles for Responsible Investment.** These institutions should take full account of ESG (environmental, social and governance) factors during the investment decision-making process, as well as during project implementation. They will also need to establish a sound internal process for environmental risk management. This calls for categorizing and managing environmental risks according to appropriate risk levels, and conducting environmental and social due diligence needed to support credit and investment decision-making. They should also jointly develop action plans with investees based on risks identified during due diligence, and continuously monitor the implementation of action plans and client environmental performance after disbursement of funding.
- iv. **Entities engaged in overseas investment are encouraged to take steps to improve the disclosure of ESG information.** Such steps could include actively engaging with environmental protection

organizations, and using information disclosure as a tool for improving project review and internal management procedures. In keeping with relevant laws and regulations, financial institutions are encouraged to disclose information on proposed project profiles, the size of financing and the environmental impact summary before the investment is made. Companies are encouraged to disclose environmental impact assessment reports in English or the local language prior to project construction. Financial institutions and enterprises are also encouraged to disclose ESG information annually with reference to the standards of the Global Reporting Initiative (GRI). Investment entities should clarify where the responsibility for environmental information disclosure sits within their organization. Material information of projects that may involve major environmental and social risks should be disclosed to investors, shareholders and regulatory agencies. Financial institutions and enterprises are also encouraged to strengthen communications with key stakeholders.

- v. Financial institutions should make full use of resources and support available from their headquarters, as well as from international capital market and third-party institutions, with a view to improving their internal procedures and capacity for environmental risk management in overseas branches.** Financial institutions should have consistent approaches towards environmental risk management, and clearly defined roles and responsibilities for their headquarters and overseas branches. Headquarters need to guide overseas branches in: improving their lending practices and other business operations guidelines with respect to environmental risk assessment; designing specific risk categorization and covenants; improving environmental risk categorization; and defining investee responsibilities. Headquarters of financial institutions should also provide regular training programs to build the capacity of their overseas branches for green lending and investment.
- vi. Entities engaged in overseas investment should improve the use of quantitative analysis of the environmental costs and benefits as part of the investment decision-making process.** Financial institutions and enterprises are encouraged to quantify the environmental costs and benefits of overseas investment projects, including different types of pollutant discharge, energy consumption and water use, as a basis for decision-making. For different types of projects, appropriate evaluation indicators and assessment methods should be used. To ensure the applicability of the quantitative analysis, the calculation of environmental costs and benefits should take into consideration such factors as the host country's level of technology development and environmental situation, while international standards should be used as benchmarks where appropriate.
- vii. Entities engaged in overseas investment are encouraged to use third-party service providers for assessing and managing environmental and social risks for major projects.** During overseas investment activities, Chinese financial institutions and enterprises are encouraged to make full use of lawyers, environmental consultants, non-governmental organizations (NGOs), think tanks, and other professional service providers to understand the host countries' environmental laws and regulations. They should also carry out environmental impact assessments in accordance with local provisions and sector best practices, as well as identify and prevent environmental risks at the project, local and international level, and establish communication platforms with stakeholders. Enterprises are encouraged to adopt multiple means of conflict management, including mediation, for settling environment-related disputes.
- viii. Investment entities are encouraged to use green finance instruments for overseas projects, especially medium- and long-term infrastructure projects.** Institutions investing overseas should actively apply green finance instruments such as green bonds, green ABS, YieldCo, and emission rights-based financing tools, as well as financing from green investment funds, to mobilize capital for green projects, support the development of green finance market and green finance products, and strengthen environmental information disclosure and internal processes as required by the use of green finance instruments. They should also engage third party institutions (such as green rating, green index, and green certification agencies) to help strengthen project environmental risk management.

- ix. Enterprises engaged in overseas investment are encouraged to use environmental liability insurance as a risk management tool for projects with high environmental risk.** Enterprises should seek to leverage insurance companies' capacity for mitigating environmental risks and reducing the probability of environmental accidents. They should also abide by the insurance requirements of host countries on environmental pollution liability in high environmental risk sectors (such as mining, petroleum, chemicals, and transportation of hazardous materials), and actively use environmental liability insurance provided by international insurers to manage potential legal and financial risks caused by environmental accidents. China's insurance institutions should actively participate in the "Belt and Road" initiative by developing environmental liability insurance products for overseas investment projects, and play an active role in monitoring and encouraging enterprises to reduce environmental risks in overseas investment.
- x. Green supply chain management should be adopted in project design and initiation, project bidding, and in the procurement of raw materials and equipment procurement for large overseas infrastructure projects.** This will help promote green operations for suppliers of raw materials, equipment and services. Under the green procurement principles, a green bidding process should be explored for contractors for project management, engineering contracts, project operations and maintenance, as well as raw materials and equipment, and green procurement of office suppliers should be implemented. Voluntary initiatives on green supply chain are also encouraged in areas such as the development of 'white lists' for green supply chain materials and equipment, the release of green supply chain performance indices, and the improvement of transparency and information connectivity in relation to the green supply chain.
- xi. Financial institutions should take steps to 'green' trade finance and supply chain finance.** This can help reduce financing costs and improving access to finance for green suppliers. Financial institutions should carry out their risk management efforts based on 'green features' of suppliers, with a view to supporting and encouraging green suppliers. They can guide customers to strengthen their environment and social risk management with respect to supply chain management, which will in turn help promote a green transformation of their businesses. Financial institutions can also actively develop innovative financial products and services that will facilitate the greening of all steps in the process: the supply chain, production, procurement and consumption.
- xii. The Green Finance Committee (GFC) of China Society for Finance and Banking and Investment Association of China (IAC), together with China Banking Association (CBA), Asset Management Association of China (AMAC), Insurance Asset Management Association of China (IAMAC), China Trustee Association (CTA), the Foreign Economic Cooperation Office (FECO) of the Ministry of Environment Protection and other industrial associations and institutions will provide more capacity building services in the area of environmental risk management for financial institutions and enterprises investing overseas.** The green finance service platform, supported by relevant industry associations, will carry out many activities to facilitate these efforts, such as: organizing training programs on green investment and financing; developing case studies on greening overseas investment and environmental risk management manuals; developing a website for the "Belt & Road" environmental risk management; and improving information sharing among investors. Industry associations should also provide guidance on engagement with the international community, NGOs and stakeholders, and to establish quality communication channels for China's financial institutions and enterprises.

4.2 Notice of China Banking Regulatory Commission on Further Strengthening Risk Management of Banking Financial Institutions in Overseas Operation

China Banking Regulatory Commission, March, 24, 2016

All banking regulatory bureaus, all policy banks, state-owned commercial banks and joint-stock commercial banks, the Postal Savings Bank of China, foreign banks, asset management companies, and China Banking Association:

To further promote the healthy development of the overseas business by banking financial institutions, effectively prevent risks in overseas business and further enhance the capability and level of serving the real economy, we hereby notify you of the relevant issues as follows:

Implementing the regulatory rules conscientiously. The overseas operations refers to loan granting business including loans, loan at call, trade financing, acceptance and discount of loans, overdrafts, factoring, guarantees, loan commitments, letters of credit, financial leasing, and trading business of gold, foreign exchange and derivatives, and investment business through debt and equity that are carried out by banking financial institutions for foreign customers or counterparties, or for domestic customers or counterparties with overseas risk exposures. When carrying out overseas business, banking financial institutions should strictly implement relevant regulations including “Guidelines on Due Diligence in the Credit Extension Work of Commercial Banks”(No. 51 [2004] of China Banking Regulatory Commission), “Guidelines on the Management of Country Risk by Banking Financial Institutions”(No. 45 [2010] of China Banking Regulatory Commission), and “Guidelines for the Internal Controls of Commercial Banks”(No. 40 [2014] of the China Banking Regulatory Commission), and “Guidelines for the Consolidated Management and Supervision of Commercial Banks”(No. 54 [2014] of the China Banking Regulatory Commission), effectively prevent risks in overseas business operation.

Strengthen ability to identify risks. The banking financial institutions should strengthen the analysis and assessment of overseas business development environment and risk situation, fully understand the complexity and particularity of overseas businesses, and strengthen research efforts in tracking political and economic situations, financial market trends and financial regulatory environment in the countries or regions where the business is located. Banking financial institutions should identify and find out losses that have been caused and looming risks timely, and adopt risk mitigation and control measures decisively.

Improve management for decision-making. The speed and scale of overseas business development of banking financial institutions should match their own operation and management capabilities. Banking financial institutions should formulate medium and long-term development plans of overseas businesses based on their own business characteristics, comparative advantages and risk management capabilities, establish and improve management system covering all kinds of overseas business processes with consideration of the particularity of overseas business compared to domestic business. The management system should be reviewed and approved by the board of directors or senior management and should be implemented by the entire bank group.

Clarify oversea operational responsibility. When carrying out overseas business, overseas branches of banking financial institutions shall bear the main responsibility for operation in countries or regions where such an overseas branch has been set up, and overseas branches shall pay more attention to meeting the overseas regulatory requirements on the basis of satisfying the domestic regulatory requirements. In countries or regions where banking financial institutions have not set up overseas branches, banking financial institutions should conduct their business prudently and the parent company should bear the major operational responsibilities. Business compliance should be centered on meeting domestic regulatory requirements while meeting the requirements of overseas regulatory requirements.

Implement checks through the whole loan granting process. Banking financial institutions should strictly follow "know your customer" requirements and strengthen on-the-spot due diligence on overseas borrowers, and should not fully depend on third-party or borrowers to provide information, banking

financial institutions should enhance prudence in credit granting approval and fully assess compliance and operability of the pledges product and formalities, conduct regular post-loan checks and monitor capital flows and uses, stop follow-up loan granting credit once projects do not meet the credit conditions and loan requirements, and strengthen simultaneous checks on debt and debtor .

Strengthen unified management on credit granting. Banking financial institutions should implement unified domestic and overseas credit granting to the same client or group client; strengthen construction of a unified customer credit rating system; strengthen centralized control on large credit grants and encourage effective collaboration with domestic and foreign counterparts through syndication and distribution to spread concentration risks in country, industry and customer.

Conduct proprietary investment business prudently. Banking financial institutions should prudently carry out self-operated offshore investment businesses based on their own business characteristics, scale and complexity, and overall business development strategies, management capabilities and the level of risk they can bear, and give full consideration to investment targets and project risks and potential risks caused by economic and financial situation changes and market fluctuations in countries and regions where the project is located.

Lending investments cannot be completely dependent on external ratings, and lending investments should be integrated into the unified risk management system of the whole bank. Equity investments under consolidation should be reviewed by the board of directors and a comprehensive assessment of the possible impact of investment losses on the banking group should be conducted.

Strengthen country risk prevention and control. The national risk management system for banking financial institutions should cover overseas credit granting, investment, agency transactions, establishment of overseas branches and outsourcing services by overseas service providers; banking financial institutions should strengthen quota management and monitoring of country risk and reasonably identify country risk change and transfer caused by different types of guarantee and guarantee institutions , and ensure that the country risk reserve is sufficient. Country risk should be included in the stress test of the bank and emergency response plan should be prepared based on the stress test results.

Reinforce internal control compliance management. Banking financial institutions should strengthen the compliance management of overseas businesses; strengthen management of authorization on overseas businesses to ensure that all overseas businesses are carried out within the scope of their authorization; strengthen management on credits, operational standards and checks for third-party outsourced service providers involved in overseas businesses ; Strictly conduct cross-border legal review to prevent risks of conflict of laws at home and abroad, and earnestly strengthen management of intermediaries such as foreign lawyers engaged in overseas business.

Improve management and information system. Banking financial institutions should improve automation of overseas business information systems and realize the automatic management of overseas business processes and real-time synchronization and integration of overseas and domestic information systems, and timely submission of overseas business data and related information to the headquarters to meet the development and management needs of overseas business . where overseas information cannot be synchronized in real time with the domestic systems, the business should be conducted cautiously.

Strengthen staff supervision. Banking financial institutions should strengthen rotation system for key positions and senior management of overseas institutions , and clarify rotation time and specific arrangements; strengthen audits on staffs in important positions when they leave or rotate to other positions, strictly hold the staff accountable if problems are identified in audit

Strengthen internal audit corrections. Banking financial institutions should strengthen internal audits of overseas business management and risk control, enhance the independence and frequency of internal auditing, expand the coverage of internal auditing, enrich the auditors of overseas operations, and conduct sound management on outsourced auditing.

Intensify accountability and punishment. Banking financial institutions should intensifying correction, accountability and punishment for the problems found in overseas businesses; establish accountability system for major losses in overseas business; formulate standards for defining responsibility; assign responsibilities to staffs, and strengthen responsibilities restraint.

Strengthen the management on overseas branches. Banking financial institutions should strengthen the management on overseas branches and require overseas branches to strictly abide by the laws, regulations, regulatory rules, taxation, anti-money laundering and environmental protection requirements in countries and regions the branch is located, and pay attention to possible business impacts resulting from overseas resources, labor and employment, religions and cultural practices.

Emphasize talent cultivation and team building. Banking financial institutions should break the barriers among internal departments and give full play to expertise of professional teams in their overseas operations. They should also raise their awareness on management of talents, strengthen the cultivation of qualified overseas personnel, enrich the team of overseas operations, and enhance cross-regional and cross-department talent allocation efficiency.

Improve integrated financial services. Banking financial institutions should make use of their professional advantages, provide the necessary financial advisory services with client orientation, help enterprises to improve their project management, capital planning and risk control and reduce risk of default. Strengthen cooperation with the insurance industry, make use of policy-related insurance such as export credit insurance based on client and project risks and actively introduce commercial insurance at home and abroad to enhance the comprehensive financial service in "going global".

Promote business exchange and cooperation. Banking association should establish a mechanism for research and exchange of country risks among banks, promote complementary advantages and business collaboration among banks, enhance sharing of overseas laws and regulations, business environment, business experience and risk information, strictly carry out internal information and public opinion management, Actively explore new ideas and methods, enrich and improve management measures on overseas business, and ensure the healthy, orderly and sustainable development of overseas businesses.

Strengthen market access regulation. Regulatory authorities at all levels shall, in accordance with their legal responsibilities, further improve their market access supervision over overseas businesses. Where a bank's overseas business caused risks many times and seriously endanger the stable operation, such overseas business shall be suspended according to law and other appropriate regulatory measures should also be taken in accordance with law..

Conduct off-site supervision contentiously. Regulatory authorities at all levels should, in accordance with their legal responsibilities, further improve off-site supervision of overseas operations and regard overseas businesses as an important part in executive meetings, board meetings, supervisory board meetings and external audit meetings, and urge banking financial institutions to continuously improve quality of overseas operations data submitted to regulators.

Strengthen supervision and inspection. Regulatory authorities at all levels shall, in accordance with their legal responsibilities, further strengthen supervision and inspection of overseas operations by banking financial institutions, urge them to rectify problems identified and punish institutions that violate regulations in accordance with law.

Strengthen cross-border regulatory cooperation. Banking financial institutions should strengthen communication and exchange with relevant overseas regulatory authorities, and also strengthen cross-border regulatory cooperation by signing regulatory cooperation agreements, conducting bilateral regulatory consultation and joint supervising meetings. All banking regulatory bureaus should report to the China Banking Regulatory Commission in time if major risks are identified.

5. Summary and Evaluation of Compliance and Monitoring Mechanism¹⁰⁶

To maximize the benefits that an accountability mechanism can provide, the IFI should ensure that the mechanism is based on best practices. An accountability mechanism that is poorly designed or implemented not only diminishes its value to the IFI, but it also risks compounding grievances among affected people and overlooking project deficiencies. The UN Guiding Principles on Business and Human Rights set forth criteria for best practices among accountability mechanisms:

- **Legitimacy:** An accountability mechanism should have an independent governance structure to ensure that the process is fair and has the trust of the affected people. The mechanism should be able to function independently of political influence or pressure from the IFI's management, whose actions may be the source of grievances. The mechanism should also have sufficient authority to handle grievances and make redress decisions objectively.

- **Accessibility:** In order to serve as a reliable forum for providing access to remedy, a mechanism should be well known to all potentially affected people and provide adequate assistance to help them overcome barriers to accessing it, including "language, literacy, costs, physical location and fears of reprisal." The IFI should ensure that affected people have access to the mechanism, including a requirement that project management inform people of the existence of the mechanism and its functions. In addition, the mechanism should not impede access to remedy through other means, whether non-judicial or judicial, or require people to use the mechanism before pursuing other avenues for remedy.

- **Predictability:** The accountability mechanism should have clear and known procedures with time frames for each stage of the process. The time frames should be explicit and clearly communicated to potentially affected people, and the mechanism should have a way to monitor that the process and parties are respecting those time lines.

- **Equitability:** To ensure that people can engage in a process on fair and equitable terms, they must receive non-biased information and advice. Affected people are often not well informed of their rights or options for recourse, and may be severely disadvantaged in their access to resources and information compared to IFIs. In order to facilitate an equitable and fair process and maintain trust, the mechanism should provide information on the process and inform people of their right to consult with and be accompanied by counsel and/or advisors at any time during the process.

- **Transparency:** Transparency can be key to building and maintaining confidence in the mechanism within affected communities, as well as with shareholders and the general public. This includes keeping parties to a complaint process informed about its progress and reporting to the public regarding the mechanism's activities. The mechanism should maintain a publicly available case register, including an online version, in addition to any other culturally appropriate means of disseminating this information. The mechanism should not require parties to agree to a blanket confidentiality agreement as a prerequisite to participate in the complaint process. However, it should protect the identity of any party that requests confidentiality.

¹⁰⁶ Adapted from Accountability Mechanisms: Benefits and Best Practices for International Financial Institutions

- **Rights-compatibility:** In order to be considered effective and legitimate, accountability mechanisms must provide outcomes and remedies that align with internationally recognized rights. Outcomes and remedies should respect applicable rights under national and international law. Any monitoring and evaluation efforts of the mechanism should also include a review of these outcomes and remedies for their rights compatibility.
- **A source of continuous learning:** In addition to resolving individual grievances, effective accountability mechanisms can serve a valuable role by providing feedback for the project cycle and the IFI's operations in general. The IFI should incorporate a process for identifying lessons learned from the accountability mechanism, implementing improvements, and monitoring progress to avoid future harm and unsustainable projects. There should also be a monitoring and evaluation process of the mechanism itself to verify that it is fully carrying out best practices.
- **Based on engagement and dialogue:** The IFI should hold public consultations about the design, performance, and monitoring and evaluation of the accountability mechanism. This will ensure that it maximizes value to the IFI in the form of useful feedback and that it meets the needs of communities. The participation of potentially affected communities and the public is critical to the development of a culturally appropriate mechanism that can respond effectively to their concerns and address harm caused by a project.

