

CLIENT SUPPLEMENT: CONSIDERATIONS GOING FORWARD

EPFI's and their clients should be reviewing and adapting their legal and governance risk management approaches to address the following key issues:

Phase	Key issues to consider
Salience and scope of due diligence	<p>Scope potential and actual salient risks – project / situation specific¹ and informed by sectoral context such as: Land use – acquisition and management, Indigenous Peoples, Security and Force, Environmental and climate impacts, Labour rights, Economic and Social, and Aggregated impacts</p>
Align and integrate into project documentation and management approaches	<p>Review, clarify differences and enhance current corporate legal due diligence approaches - human rights due diligence focuses on “risks to people” (and a climate perspective may identify further indirect risks) and is on-going:</p> <ul style="list-style-type: none"> • Ensure salient potential and actual human rights risks are assessed and integrate findings into the transaction structure, documentation and on-going management • Challenges include, accessing specialist expertise and necessary local information/ stakeholders / engagement within a transaction timetable, confidentiality constraints and managing an on-going obligation
Review project documentation and clauses	<p>Identify where and how international human rights and climate standards, laws, sectoral guidance are used – review, update, ensure coherence, assess social accountability and legal liability implications:</p> <ul style="list-style-type: none"> • Ensure relevant standards and content are clearly defined, including appropriate obligations, performance standards and attainment/measurement, where relevant • Conscious alignment of commercial structure / incentives with achieving human rights / environmental risk performance and management – milestones, reporting, management structures, breach • Identify and review and/or include specific Free Prior and Informed Consent clauses – are they consistent with international best practice and/or at least the two consultation options and able to be enhanced?
Breach and termination	<p>Options to manage situations of breach – identify where phased and co-operative approaches are more effective and better able to preserve fragile human rights and/or environmental or climate-related situations on the ground? What types of</p>

¹ The EPFI's due diligence will include for all Category A and B Projects globally, review and confirmation how the project and transaction meet each of the Principles, pursuant to Principle 3.

Other issues

approaches will best respect human rights and manage / incentivise contractual and legal compliance?

Consider **aligning cascading default provisions** and the **design and information from project based effective local grievance mechanisms** to provide early warning systems to identify, monitor and track of potential and adverse human rights risk information and access to appropriate remedy.

Balancing on-going communication about management of human rights and environmental risks concerning:

- Project performance;
- Client / company level disclosure and reporting,

and **confidentiality, accuracy, reliable internal processes and data coherence** across company statements and materials, clarity concerning **potential legal liability and social accountability** risks.

Options: consider reporting approaches that provide perspectives on an aggregated sectoral, risk trends and/or anonymised/generic experience and “lessons learnt” basis, and integrate this into tailored engagement and due diligence processes to maximise impact.