Draft for Consultation

Summary of the Analytical Study for the Safeguard Policy Review and Update: Safeguards in Different Financing Modalities
February 2023
I. INTRODUCTION

1. The Asian Development Bank (ADB) is undertaking a comprehensive review and update of its Safeguard Policy Statement, 2009 (SPS).\(^1\) The update process has been initiated by ADB Management following a Corporate Evaluation of the SPS by ADB’s Independent Evaluation Department (IED), completed in May 2020 (IED Report).\(^2\) The update will build on the findings and recommendations of the IED Report, which ADB Management endorsed. The update will seek to modernize the policy, considering the changing development context and evolving developing member country (DMC) and client needs and capacities; as well as opportunities for greater harmonization with the policy principles and standards of other multilateral financial institutions (MFI).

2. The update will consider the diversity of ADB lending modalities and operations, including the private sector, as well as requirements for different contexts such as fragile and conflict affected situations (FCAS), small island developing states (SIDS), and emergency assistance. Overall, the update brings an opportunity to address environmental and social issues that have emerged since the SPS was produced as well as strengthening safeguard implementation, effectiveness, and efficiency, in ways that will enhance beneficial safeguards outcomes for the environment and affected people. The revised safeguard policy is expected for ADB Board for consideration in early 2024, following a process of further review, policy development and meaningful stakeholder engagement.

3. The Asian Development Bank has a number of financing modalities and financial instruments to assist its development member countries (DMCs) in promoting inclusive growth and sustainable development. In addition to standard project loans, ADB provides a variety of investment instruments, including program loans, sector finance, multitranche financing facilities (MFFs), emergency assistance loans, and instruments such as financial intermediary support and corporate finance. Since 2009, a number of new financing modalities have also emerged including the results-based lending and project preparation modalities such as the Project Readiness Facility (PRF) and Small Expenditure Financing Facility (SEFF). Some multilateral financial institutions (MFIs) have stand-alone policies for the other lending modalities which have their own safeguard requirements.\(^3\) Appendix A provides a description and policy references of the different financing modalities and Appendix B contains the safeguard requirements for these modalities.

4. The study considers the key financing modalities where ADB has experienced challenges in safeguards implementation. These challenges and issues encountered may be considered in the policy update.

---


\(^3\) For example, other MFIs that have financing modalities similar to the MFF are the WB’s multiphase programmatic approach (MPA) and IDB’s multiphase loan (MPL) and conditional credit line for investment projects (CCLIP). ADB’s Results-based Lending or RBL is similar to the World Bank’s Program-for-Results (PforR), the African Development Bank’s Result-based Lending, and the IADB’s Performance Driven Loan
II. METHODOLOGY FOR THE FRAMING STUDY

5. The study is based on a desk review of the different financing modalities that were carried out by ADB based on IED evaluation studies of the financing modality where available; benchmarking with some MFIs who had similar financing modalities focusing on the safeguards requirements of these modalities and implementation experiences and lessons to considered in the ongoing policy update; and stocktaking implementation experience of ADB staff. Studies on financial intermediaries (FI) and general corporate finance (GCF) were also carried out as part of the safeguard policy update. Findings from the IED evaluation of the SPS is also discussed where available and appropriate.

III. SAFEGUARDS ISSUES AND CHALLENGES IN THE USE OF THE DIFFERENT FINANCING MODALITIES

6. Investments that used standard project loan modality comprised about 60% of total approvals in terms of number of projects from 2010-2021. SPS Safeguard Requirements 4 provides the safeguard requirements for sector lending, MFFs, program lending or policy-based loans, emergency assistance loans, existing facilities and general corporate. While these are not part of SR 4, the SPS applies to results based lending and the project preparation modalities PRF and SEFF; and related Operations Manual (OM) specify the safeguard requirements for these newer financing modalities. The next paragraphs briefly describe these financing modalities, the safeguards issues and challenges in their implementation, and considerations for the safeguards policy review and update process.

A. Sector Loan

7. This modality is applicable when ADB supports the development of a sector through financing part of it through subprojects, and when a large number of subprojects are likely but the details of each are not completely known at the time, nor are they likely to be identified before board approval. In such cases, one or more sample subprojects are appraised for safeguards before board approval of the project. The borrower/client is required to agree with ADB on an environmental assessment and review framework (EARF), a resettlement framework (RF), or an Indigenous Peoples Planning Framework (IPPF) for the entire sector loan. The sector loan as a whole is screened and categorized

---

4 The study covers the following financing modalities: Sector Loan, Multi-Tranche Financing Facility, Policy-base Lending, Financial Intermediaries, General Corporate Finance and Corporate Finance, Emergency Assistance Loan, Results-based Lending, and Technical Assistance and Project Preparation Modalities.

5 In the same period from 2010-2021, 246 (5%) policy-based loans, 218 (9%) multitranche financing facility subprojects, 107 (5%) sector loans, 74 (3%) financial intermediaries, and 36 (2%) results-based lending projects were also approved.

6 See footnote 1, Appendix 4

7 The Operations Manual includes Operational Procedures that spell out procedural requirements and guidance on the implementation of policies.

8 The environmental assessment and review framework, resettlement framework, and Indigenous Peoples Planning Framework will (i) describe the project and its subprojects and/or components; (ii) explain the general anticipated environmental and/or social impacts of the components or subprojects to be financed under the proposed project; (iii) specify the requirements that will be followed in relation to subproject screening and categorization, assessment, and planning, including arrangements for meaningful consultation with affected people and other stakeholders and information disclosure requirements and, where applicable, safeguard criteria that are to be used in selecting subprojects and/or components; (iv) assess the adequacy of the borrower's/client’s capacity to implement national requirements.
as to its environment, involuntary resettlement (IR), or Indigenous Peoples (IP) impact based on the components or subprojects with the most sensitive safeguard issues. During implementation, the borrower/client prepares the safeguards assessments according to SR 1-3.

8. **Issues for consideration.** The IED Report found that ADB’s efforts on safeguard compliance was more balanced between project preparation and implementation for sector loans compared to other modalities which were found to be front loaded with more efforts being made for safeguards assessment preparation and less for safeguards implementation.

9. Given the nature of sector loans with multiple subprojects often spread across large areas focusing on a sector or subsector, they are ideal for conducting strategic safeguard assessments (SSA) covering both social and environment safeguards that can look at broader safeguards implications within the confines of the sector loan. However, such strategic assessments were limited due to minimal guidance provided in the SPS specifically during risk screening and categorization.

10. The additional tasks on screening for eligibility of subprojects, conduct of safeguards assessments for multiple subprojects during implementation of sector loans exerted an extra burden and stretched the already weak capacity of implementing agencies. Given that sector loans have a large number of subprojects, client and ADB project teams faced challenges in keeping track of all the safeguards assessment reports prepared for subprojects during project implementation. For subprojects with civil works components, coordination between procurement and safeguards was critical to ensure proper incorporation of safeguard requirements in the bidding documents.

11. The longer time commitments of sector loans could have provided an incentive to strengthen safeguard capacity, but because the SPS is not clear on the scope of safeguards capacity development in such long-term programs, systematic capacity building of borrower/clients was limited. In addition, while the SPS has a provision for preparing SEAs for sector loans, specific guidance on when and how SEAs are done is limited.

12. Based on the above, the following are some factors to be considered under the revised policy:

   (i) In the case of sector loans, the risk classification process required under the E&S Framework should factor in the scale of the entire loan, rather than only the sub project under consideration.
   (ii) At the scoping stage this will provide better guidance to the borrower in selecting the appropriate environmental and social assessment tool as required in ESS1.
   (iii) Through the requirements in ESS9 proportionate to the risk of the overall investment, clear guidance and capacity building measures for the borrower/client should be prepared and put in place.

---

laws and ADB’s requirements and identify needs for capacity building; (v) specify implementation procedures, including the budget, institutional arrangements, and capacity development requirements; (vi) specify monitoring and reporting requirements; and (vii) describe the responsibilities of the borrower/client and of ADB in relation to the preparation, implementation, and progress review of safeguard documents of subprojects.
B. Multitranche Financing Facility (MFF)

13. A multi-tranche financing facility (MFF) is also a long-term investment instrument with an implementation duration limit of 10 years. Multiple components, projects or subprojects can be financed through different tranches under the overall facility. The difference between a sector loan and an MFF is that the components, projects or subprojects can be under a single sector or can be from multiple sectors, or can be stand-alone projects or inter-linked projects. In MFFs with tranches covering different components, projects or subprojects the scope can vary from one tranche to another. Accordingly, separate safeguards due diligence documents are prepared on a tranche-by-tranche basis. The positive performance of safeguards in the previous tranche is seen as a go ahead for processing the subsequent tranche. Time slice MFFs finance sections of long-term contract packages in large, stand-alone investment programs. The scope of the entire MFF and all tranches is identified during the preparation of the facility, and the safeguards due diligence documents prepared at that time and remain valid for subsequent tranches.

14. For MFFs with potential environmental or involuntary resettlement impacts or impacts on Indigenous Peoples, the borrower/client will agree with ADB on safeguard frameworks before ADB approves the MFF. These frameworks will clarify safeguard principles and requirements governing screening and categorization, social and environmental assessment, and preparation and implementation of safeguard plans of components, projects, and subprojects to be prepared after MFF approval. ADB requirements specified in Safeguard Requirements 1–3 apply to all components, projects, and subprojects identified during preparation and implementation of an MFF.

15. The MFF as a whole is not screened and categorized. Instead, each tranche of the MFF is screened and categorized according to the significance of anticipated impacts from the components, projects or subprojects under the tranche. Further for environment safeguards the components, projects or subprojects with the highest category must be included under the first tranche. Projects categorized as A for environment safeguards in a subsequent tranche will be submitted to the Board for its decision to authorize the President of ADB to approve the tranche. The tranche report is disclosed on the ADB website as well. During preparation of subsequent tranches due diligence on the safeguards performance of the previous tranche/s will be conducted and corrective action plans prepared if necessary.

16. According to the 2020 IED SPS review safeguards performance of MFFs for project preparation were at par with that of stand-alone investment projects. This is consistent with the findings of the IED 2019 corporate evaluation (CE) of MFFs which covered MFF projects during 2005 – 2018. For projects under implementation, safeguards performance was found to be the highest for MFFs with 78% being found to be satisfactory. Support for strengthening client capacity for safeguards management was also found to be highest for MFFs. Consistent with the 2019 Corporate Evaluation of MFFs, the IED Report found that there was improved awareness on safeguards amongst

---

9 Example: Different sections of a road project
10 See footnote 7 on the use of frameworks.
staff of executing agencies (EA) and implementing agencies (IA) from the DMCs. This led to faster approval and better implementation of subsequent tranches.

17. The longer time commitments of MFFs have sometimes provided an incentive to strengthen safeguard capacity. For example, when complex social and environmental issues were encountered and could not be resolved on time, the MFF format allowed for more time to resolve the issues. However, at the same time, because the SPS and guidelines assume that tranches under MFFs are a series of standalone investment projects, the prescribed processes and procedures are similar to those of stand-alone investment projects. Guidance on linking different tranches and combining efforts to address safeguard issues including capacity building, across tranches with a view to enhance safeguards implementation under the MFF as a whole was limited under the SPS. In a similar vein, strategic safeguards assessments (SSA) covering both social and environment safeguards could have been beneficial for some MFFs involving subprojects spread across a large geographic area and/or focused on specific sectors. However, SSA’s were rarely conducted for MFFs.

18. Though SPS requirements for MFFs have not been revised, internal guidance in the form of OM for MFFs have evolved to require tighter oversight and control on safeguards. One such procedure is the requirement for environment category A tranches to be submitted for Board review as mentioned in paragraph 15. For time-sliced MFF’s, the scope of the entire MFF is usually known during preparation of the first tranche. Accordingly safeguards assessment reports are prepared for the entire MFFs. Hence, safeguard frameworks which are meant to guide preparation and monitoring of safeguards in subsequent tranches with different scope, were found to be redundant and a duplication of the safeguard assessment and recommendations.

19. **Issues for consideration.** The MFF format with a longer time frame provides opportunities for addressing challenging safeguard issues beyond individual MFF tranches systematic capacity building of the borrowers, and for institutional strengthening measures to address gaps and weaknesses in the sector’s policy and regulatory systems. The following issues can be taken forward in the development of the revised safeguards policy:

   (i) The risk classification process required under the E&S Framework should factor in the scale of the entire loan, rather than only the sub project under consideration. Specific criteria may be developed to help identify the sector or modality specific risks.

   (ii) At the scoping stage this will provide better guidance to the borrower in selecting the appropriate environmental and social assessment tool as required in ESS1.

   (iii) Through the requirements in ESS9, proportionate to the risk of the overall investment, capacity building measures for the borrower/client covering the implementation period of the MFF should be put in place to build the capacity not only for individual tranches but for the MFF as a whole and future projects anticipated to be implemented by the same client agency.

---

C. Policy Based Lending (PBL)

20. PBL is a form of sovereign budget support or sovereign guarantee that supports policy reforms and development expenditure programs of a DMC and may also be used to provide balance of payments (BOP) assistance or countercyclical fiscal support. SR 4 of the SPS requires that potential direct and indirect impacts of policy actions to be supported will be evaluated, and appropriate mitigation measures to address these impacts are integrated in program design. It requires a safeguards matrix of potential impacts of each policy action along with mitigation measures.\(^\text{12}\) The OM on PBL also endorses similar requirements\(^\text{13}\). However, there is very little information on how and when this provision will be implemented.

21. Given the nature of PBLs, the loan money cannot be tracked and the geographical spread of the PBL is often vast. In such case how the SPS requirements should be implemented and monitored remains a big challenge. Therefore, the IED evaluation has rightly concluded that the SPS is better suited to stand alone projects rather than to other modalities that were available at the time of SPS effectiveness or were adopted later. The SPS also states that strategic environmental assessment may be applied to PBLs where appropriate.

22. \textit{Benchmarking with MFIs PBLs.} ADB, AfDB, IDB and WB have similar objectives for PBLs to provide fast-disbursing, low transaction cost budget support to national budgets for sustained growth, help finance ongoing deficits, play a countercyclical role in times of crisis, and carry out policy dialogue with the member countries. However, their approaches to safeguards are different. AfDB and WB require assessment of poverty and social impact, and whether the specific country policies to be supported by the proposed PBL will have significant implications on environment and climate change and there is no explicit reference to safeguards as such. WB sees a major role for country safeguard systems to address any adverse impacts on people and the environment. AfDB Group’s Information Disclosure Policy requires consulting with stakeholders on the actions it supports and providing them with relevant analytical work conducted, particularly on poverty and social impacts and on environmental aspects, as part of the consultation process. In the case of IDB, the objective of PBL is similar to other comparator banks. From an administrative perspective, PBL transaction costs are smaller.

23. PBLs are prepared with most of the policy actions already completed. Screening, assessment and categorization under the SPS can strengthened with specific guidance on their application to PBLs. Often the assessment remains confined to direct impacts, and as a result some PBLs are categorized as C when they should be category B due to the indirect impacts. Assessing indirect impacts are especially important for IPs since these impacts could have significant impacts on their land rights, identity, livelihood, and way of life. ADB’s revised safeguards policy should have clear provisions and guidance for the use of strategic environmental assessment in PBLs where it is merited. Other SPS requirements such as on stakeholder consultations particularly of environmental and social impacts of policy actions is not required as part of due diligence nor is this part of the required analytical work from the borrower.

---

\(^{12}\) See footnote 1, Appendix 4

24. The nature of PBL is such that ADB funds become part of the government’s larger budget for a policy or sectoral reform and cannot be ring-fenced. Therefore, potential negative impacts should be addressed through the country’s national rules and regulations. In cases where there are potential impacts, ADB’s role should be to assess the adequacy of the country’s safeguard systems to deal with the potential impacts of a given PBL, and if gaps exist, provide assistance to address the gaps. For example, similar to the WB practice, assessment of poverty and social impact, and whether the specific country policies to be supported by the proposed PBL will have significant implications on environment and climate change can be made part of the due diligence for PBLs. The 2020 IED review of the SPS recommended linking PBLs to country safeguard system reforms to build CSS capacity.

25. **Issues for consideration.** Given the nature of PBLs, the SPS requirements and OMs which are more suited to project financing, need to be strengthened in terms of their application to PBLs. The following issues can be considered in the revised policy as well as in the ensuing technical guidance relevant to PBLs.

   (i) The risk classification process required under the E&S Framework should identify the likely E&S risks at the policy level. Specific criteria may be developed to help identify the high level and contextual risks that may affect the risk classification of the investment. Include specific guidance for risk screening of policy actions, identifying policy actions that would have direct impacts on people and the environment.

   (ii) The factors identified in the previous step, and appropriate risk classification will guide ADB in undertaking accurate screening for E&S impacts and risks of the policy actions and in selecting the appropriate environmental and social assessment tool as required in ESS1.

D. Financial Intermediary (FI)

26. Financial intermediary (FI) financing provides funding to financial intermediaries for ADB’s sovereign and private sector borrowers and clients that include banks and non-banking institutions. The FI financing modality is also used by the private sector for private equity funds (PEF) and trade and supply chain finance program (TSCFP). ADB financing support to FIs includes loans, equity, credit lines and guarantees.

27. Sovereign borrowers use the FI financing modality to on-lend ADB funds to eligible partner financial intermediaries (PFIs), such as local banks or other financial institutions. These PFIs provide smaller loans at their own credit risk to sub-borrowers. Private sector financing for FIs may involve direct lending and financing through equity investments to FIs such as banks and nonbank institutions and private equity funds. FIs may target certain types of sub-borrower beneficiaries such as micro, small- and medium-sized enterprises, women entrepreneurs, and low-income groups, venture capital funds, microfinance institutions, specialized government funds and institutions, leasing and insurance companies. The TSCFP fills market gaps in this area by providing guarantees and loans to banks to support trade.

---

14 ADB investment in PEFs involves long-term commitments of capital as a shareholder or limited partner in funds usually having terms of 10-12 years. ADB’s TSCFP works with over 200 partner financing institutions (PFIs) to provide companies with the financial support they need to engage in import and export activities in Asia’s most challenging markets.
28. Under the SPS 2009, projects are classified as category FI to include support for category A, and B subprojects. FI-treated as C is for subprojects with minimal or no adverse environmental and social risks. Category C FIs do not have any post approval safeguards requirements. All other FIs are required to establish an appropriate environmental and social management system (ESMS) proportionate to the nature and risks of the FI’s existing and planned portfolio. ADB will assess the adequacy of the FI’s capacity and commitment to manage environment and social impacts and risks, and where there are gaps in the FI’s capacity, ADB and the FI will establish a time-bound plan to address identified gaps.

29. FI subprojects that are categorized as A for environmental or social impacts require FIs to ensure that such subprojects meet ADB’s requirements specified in SR 1–3, including information disclosure and consultation in line with ADB’s Access to Information Policy 2018 (AIP 2018). For Category A subprojects, the borrower/clients will submit the EIA, resettlement plan and/or IPP to ADB for clearance before the FI invests or lends to the subproject. ADB will monitor the FI’s performance on the basis of its environment and social management system. Except for FIs whose subprojects have minimal or no adverse environmental and social impacts or risks, the FI will prepare and submit periodic reports at least annually.

30. The review of the FI modality is based on the (i) key findings of the IED evaluation studies covering FIs completed in 2014, 2019 and the 2020 SPS Evaluation study; and the (ii) benchmarking study on FIs done as part of the SPS update. The next paragraphs discuss the summary of these findings.

31. IED finds that ADB policy requirements with regards to FIs are narrow, and are mainly focused on categorization, screening and higher risk subprojects, with limited guidance on implementation oversight and therefore, would benefit from a more holistic approach that focuses on risk management and verification of ESMS effectiveness during implementation. Compared with the other MFIs, the SPS lacks clarity on roles and responsibilities of both ADB and the borrower/client during the FI due diligence at project processing stage, and even more importantly during subproject implementation by the FI.

---

15 The ESMS will incorporate the following elements: (i) environmental and social policies; (ii) screening, categorization, and review procedure; (iii) organizational structure and staffing including skills and competencies in environmental and social areas; (iv) training requirements; and (v) monitoring and reporting. The system is documented and agreed upon by ADB and the FI during processing and before project approval. In some limited cases, completion of some elements of the ESMS and other safeguards actions are linked to disbursement conditions following approval of the project.

16 See footnote 1, Appendix.


18 IED. 2019. Synthesis Note No.1. Safeguard Assessment of NSO Projects. Manila: ADB. The XARR includes an evaluation of the implementation of safeguard plans and the degree of compliance with safeguard-related covenants. These XARRs are validated by IED through either desk-based review of XARR validation reports (XVRs), or in-depth evaluation project performance evaluation reports (PPERs) which are based on field visits.

19 A benchmarking study on the FI modality was undertaken to compare ADB’s current policy, strategy and practices against the safeguards frameworks and policies of select peer MFIs. The study considered five MFIs in addition to ADB including the: European Bank for Reconstruction and Development (EBRD), European Investment Bank (EIB), International Finance Corporation (IFC), Inter-American Development Bank (IDB) and the World Bank (WB).
32. Compared to other types of financing by ADB, projects implemented through FIs have remained the weakest performers on safeguards (IED, 2020). Sovereign FI projects significantly underperformed nonsovereign FI projects as much of the sovereign FI lending was to small financial institutions with limited experience with ADB’s safeguards framework and limited in-house capacity and this translated into weak performance overall.

33. The use of FI as a safeguard category is inadequate as it only identifies the borrower or client and not the significance of the environmental and social risk. Projects categorized as FI are assumed to support subprojects with category A and B environmental, IR and IP impacts unless exclusively stated to be excluded in project documents. There is a clear trend among comparator MFIs towards an integrated approach to the management of safeguards on the FI financing modality. ADB needs to review its current three separate categorization system for FI to align with its comparator MFIs.

34. The SPS is silent on the applicable environmental and social standards for category B subprojects which forms the largest proportion of the ADB FI portfolio. Subprojects with category B impacts have been assumed to require compliance with national requirements and standards. The practice for compliance against only national requirements and standards for such category B subprojects could be challenging especially for environmental and social impacts and risks and not aligned with comparator MFIs.

35. Guidance is required on disclosure of safeguards information at both FI level and activity/subproject levels in line with the requirements of ADB’s AIP 2018. At FI level, disclosure of redacted summary of the ESMS audit report/ ESDD report – allowing redaction to remove commercially sensitive information which may give undue advantage to competitors of ADB clients and borrowers – need to be considered where feasible. At subproject or portfolio level, there’s need for harmonization with other global reporting frameworks to minimize duplication of effort by FIs.20

36. ADB is aligned with all MFIs in terms of delegating the responsibility for application of their social and environmental safeguards to the FI if they are the recipient of MFI investment and on lending. The requirements for an ESMS are similar to those outlined in IFC standard 1 (such as Performance Standard 1) of the comparator MFIs. The SPS PIAL largely aligns with the exclusion list of ADB’s comparator MFIs but ADB needs to review the applicability of “Substantially Involved Test”21 requirements to its PIAL which is present in some of its comparator MFIs.

37. Most MFIs apply provisions within their labor and working conditions and occupational health and safety standards to that of the FI’s own workforce and any investments and/or on lending. ADB addresses some elements (core labor standards) of the required labor and working conditions via its Social Protection Strategy. ADB is aligned with other MFIs on the development GRM for FI with category A subprojects however silent on FI with

---

20 SPS 2009, Appendix 4
21 The IFC Exclusion List at [http://www.ifc.org/exclusionlist](http://www.ifc.org/exclusionlist) defines the types of projects that IFC does not normally finance or support only in limited circumstances. It refers to “substantially involved” test applied to Production or trade in weapons and munitions; production or trade in alcoholic beverages (excluding beer and wine); production or trade in tobacco; gambling, casinos and equivalent enterprises.
category B subprojects. There are no requirements within the SPS for development of an stakeholder engagement plans (SEP).

38. **Issues for consideration.** The following key issues and recommendations are proposed for consideration in the SPS update:

(i) Clearer guidance for staff and borrower/client on the scope of application and include specific guidance for risk screening of existing and planned portfolio, investment activities and subprojects and to determine the level of safeguards assessment, planning, and extent of monitoring, reporting and disclosure requirements at the level of the sub-projects.

(ii) Need for greater clarity on disclosure requirements, incorporating for situations where sensitive corporate information of a client may need to be kept confidential.

(iii) Need to develop good practice guidance and training toolkits to strengthen the capacity of FIs (clients) at the subproject level to better assess and manage risks and impacts arising during implementation and adequately monitor and report on safeguards performance.

(iv) Better harmonization with the requirements of other MFIs for smoother implementation when co-financing.

E. **General Corporate Finance and Corporate Finance**

39. The requirements apply where clients (that are not financial intermediaries) having operations at multiple sites (e.g., holding companies with many subsidiaries) are seeking debt and/or equity financing that is not earmarked for implementing specific subprojects either at the time of processing or during implementation. Given the distinction between financing “earmarked” and not “earmarked” for these purposes, a practice has emerged (for SPS purposes only) of distinguishing between “General Corporate Finance” and “Corporate Finance”, the latter referring to ADB projects where the borrower/client is seeking loans and/or investments which are earmarked for specific subproject(s) or activities. Subprojects using ADB proceeds may be identified at any stage of the project and are required to comply with SR 1-3.

40. **General Corporate Finance.** For projects financed by ADB treated as “general corporate finance”, the ADB requires the borrower/client to commission qualified and experienced external expert(s) to conduct a corporate audit of the existing or current Environmental and Social Management System (ESMS) of the borrower/client and the company’s past and current performance against ADB requirements. ADB reviews the adequacy of the existing or current ESMS of the borrower/client to enable compliance with ADB’s requirements through site visits and the corporate audit report submitted by the

---

22 SPS 2009, Appendix 4, footnote 1.
23 The client and ADB agree on the scope of the corporate audit on a case-by-case basis, but in general the audit will: (i) assess the client’s ability to manage and address all relevant social and environmental risks and impacts of its business activities and operations; (ii) assess the client’s compliance record with applicable laws and regulations of the jurisdictions in which the project operates that pertain to environmental and social matters, including those laws implementing host country obligations under international law; and (iii) identify the company’s main stakeholder groups and current stakeholder engagement activities.
borrower/client. If any noncompliance is identified through ADB’s due diligence and review, ADB reaches an agreement with the borrower/client on a corrective action plan (CAP) by specifying time-bound measures to achieve safeguard compliance in accordance with ADB’s SPS requirements. ADB requires the borrower/client to incorporate the CAP in its corporate ESMS.

41. **Corporate Finance.** The safeguards requirements applicable to “corporate finance” are those applicable to GCF but in relation to the specific subprojects to be financed. Safeguard Requirements 1–3 apply to such subprojects, in addition to establishing and maintaining an ESMS satisfactory to ADB. Safeguards Requirements 1–3 comprise detailed provisions applicable to the identification and mitigation of E&S impacts (including the preparation of applicable ADB cleared plans). A corrective action plan will address any issues identified during the corporate audit by specifying time-bound measures to achieve and maintain compliance requirements of ADB’s SPS within a reasonable time frame. The action plan is incorporated into the client’s corporate ESMS.

42. If the investment includes rehabilitation, modernization, or expansion of existing facilities, the requirements for existing activities specified in SR1 para. 10 on environmental audit and SR 4 para. 12 on existing facilities of the SPS will also apply to the transaction.\(^{24}\)

43. For projects involving facilities and/or business activities that already exist or are under construction, the borrower/client will undertake an environment and/or social compliance audit, including on-site assessment, to identify past or present concerns related to impacts on the environment, involuntary resettlement, and Indigenous Peoples. Where land acquisition is ongoing or has been completed and site clearing and construction activities have yet to start, a social compliance audit (land acquisition audit) is also required.

44. The objective of the compliance audit is to determine whether actions/activities of the borrower are in accordance with ADB’s safeguard principles and requirements and to identify and plan appropriate measures to address outstanding compliance issues. Where noncompliance is identified, an agreed CAP by ADB and the borrower/client will be prepared. The plan will define necessary remedial actions, budget and the time frame to bring back the project into compliance. The audit report (including corrective action plan, if any) will be made available to the public in accordance with the information disclosure requirements of the Safeguard Requirements 1–3 of the SPS and AIP 2018. For environment category A projects involving facilities and/or business activities that already exist or are under construction, the borrower/client will submit the audit report to ADB to disclose on ADB’s website at least 120 days prior to ADB Board approval.

45. A review of the implementation experience of with specific reference to GCF and CF was carried out as part of the SPU and has the following findings:

   (i) The definition and application of safeguards requirements for GCF in the SPS is restrictive and needs to be expanded to reflect the broad range of transactions to

\(^{24}\) SPS 2009, Appendix 1 on SR1 and Appendix 4 on SR4.
which the provisions are applied. ADB should consider developing safeguard provisions and procedures that are suited for corporate finance which covers all forms of debt, guarantee and equity transactions for corporate clients and borrowers. ADB should also consider to develop suitable safeguards provisions and procedures for corporate finance given that there is no explicit definition for Corporate Finance in SR4.

(ii) The concept of **earmarking or “ring fencing”** a client’s use of ADB financing proceeds is regarded as appropriate in some circumstances for a proposed transaction to restrict the use of ADB proceeds only to client/borrower’s business activities and operations which comply with ADB requirements. Earmarking also offers great flexibility and opportunity for ADB to leverage on the use of its funds to incrementally assist enterprise conglomerates achieve full compliance with the SPS over time when some of their lines of business activities and operations do not meet SPS requirements at the initial engagement of business with ADB. This can be the case in particular for larger corporate clients with operations spanning a number of different businesses, sectors and geographies. For instance, earmarking the proceeds from a green bond for specific projects with environmental benefits, such as a wind park or a water treatment plant.

(iii) **Capital Markets Transactions**. With the heightened awareness of global environmental and climate challenges, new approaches and innovative financing structures are increasingly seen as a tool that could allow the private sector to take an active part in raising the funds needed to put our society on a more environmentally sustainable footing. The bond market is one such area and green, blue and social bonds are increasingly available. ADB should develop dynamic and adaptive requirements to leverage on the impacts from these transactions.

(iv) **Disclosure and Monitoring Requirements.** ADB maintains regular contact with management of its corporate clients and borrowers during project implementation and require periodic reports on the progress of projects based on safeguard risk category, operating performance, financial condition of the enterprise, and economic value added. ADB also requires reports on specific indicators for development outputs and outcomes, and monitors continued compliance with its environmental and social safeguards.

46. **Issues for consideration.** The following key issues and recommendations are proposed for consideration in the SPS update:

(i) **Corporate Finance.** ADB needs to develop safeguards requirements for such transactions that cover all corporate financing transactions making a distinction for the business activities being financed by ADB where appropriate.

(ii) **ESMS.** The exact scope of the clients ESMS should be determined on a case-by-case basis proportionate to the risk as identified through the risk classification process, it will take into account the use of ADB’s financing proceeds, be appropriate to the

---

nature and scale of the business activities and proportionate to the environmental and social risks and impacts. The scope of the ESMS should encompass not only the client’s approach to business activity appraisal but also allow for inclusion of their broader ESG commitments.

(iii) **Capital Markets Transactions**\(^{26}\). Capital market transactions are subject to specific rules and regulations that govern the information that can legally be made available to prospective investors and when information in relation to a prospective ADB financing can and should be disclosed to the market. Due to the nature of capital markets transactions, environmental and social appraisal needs to be risk based, guided by publicly available information to assess the client’s capacity and commitment to manage the environmental and/or social risks associated with its business activities (and with the investment projects to be financed with proceeds raised through such capital market transactions) in accordance with relevant national laws, GIP, and the new policy. The appraisal will identify whether the available information is sufficient to determine the environmental and social risks of the project and compliance with ADB policy upon investment.

(iv) **Monitoring and Disclosure of Information.** Monitoring and reporting requirements during project implementation should be commensurate with the overall safeguard risk.

**F. Emergency Assistance Loan (EAL)**

47. The EAL is intended to rebuild high-priority physical assets and restore economic, social, and governance activities after disasters and emergencies, focusing on immediate short-term requirements that can be completed within a fixed maximum implementation period. This includes early recovery activities such as rehabilitating critical infrastructure and meeting basic needs, as identified by a post-disaster needs assessment. The EAL also supports countries in building back better, improving resilience to future emergencies. ADB may also be requested to support long-term reconstruction activities that may not necessarily be completed within the fixed implementation period. In such cases, additional financing to the EAL shall be used. EALs may involve policy dialogue, particularly in post-conflict situations.

48. For EALs, the completion of standard environmental assessments, environmental management plans, resettlement plans, and Indigenous Peoples plans may not be possible before Board approval. In such cases, safeguards frameworks an environmental assessment and review framework, a resettlement framework, and an Indigenous Peoples planning framework will be prepared, following the 2009 SPS. ADB works with the borrower/client to prepare the safeguards frameworks before Board circulation, and these are provided in appendixes to the recommendation to the President (RRP). ADB’s Disaster and Emergency Policy allows this procedural flexibility in the application of the safeguard requirements. The report and RRP justifies any deviation from the general procedures specified in this OM section, regarding the specific circumstances of the project and the

---

\(^{26}\) Capital market transactions refer to transactions in equity or debt securities (e.g., bonds) which are publicly traded on a securities exchange or about to become publicly traded (as in the case of an Initial Public Offering).
emergency loan processing schedule.

49. A desk review of the existing Project Completion Reports and Independent Evaluation Report of previous EALs did not identify any major non-compliance of the SPS. Some minor issues related mostly to negative impacts of construction activities were highlighted.

50. **MFIs Approach to Emergency Financing.** Many Multilateral development banks (MDB) have financial instruments in place designed to provide immediate assistance in case of emergency such as natural disasters or economic shocks. The World Bank has no true emergency lending mechanisms, other than the reallocation of undisbursed loan proceeds under ongoing loans. The existing measures in place are equivalent to ADB’s project lending and policy-based lending (PBL). With the introduction of the World Bank’s new Environmental and Social Framework in 2019, exceptional approval for the deferral of social and environmental requirements until after project approval is no longer required.

51. **Challenges and Issues in the Implementation of EAL.** The ADB’s 2019 Disaster and Emergency Assistance Policy (DEAP) review found that abbreviated processing steps under EALs had supported faster approval timelines, although not all EALs were processed within the specified processing time. The 2004 DEAP required that the processing of an EAL should not exceed 12 weeks, but the 2019 review found that setting rigid time limitations for processing EALs was not adding value to the response. The 2019 review also noted delays in project start-up of EALs, mostly in the mobilization of consultants, which affected preparatory and design studies. Frequent changes also occurred in the project design after approval.

52. Speed in EAL project preparation is key but it should not sacrifice project quality at entry, which requires sufficiently robust information on the nature of the damage and related needs, confirmation of projects’ institutional arrangements, and other key parameters to be in place, including safeguards requirements. An independent review of ADB and World Bank’s emergency responses also highlighted that “disbursement speed is much faster where instruments have advanced-design elements and policy actions that are already completed prior to approval”.

53. **Issues for consideration.** The revised safeguards policy should provide adequate provisions, guidance to achieve compliance and strengthen supervision and monitoring of EAL projects.

**G. Results Based Lending (RBL)**

54. RBL programs finance a share of a government’s national or subnational, sector or subsector level development program. Government systems and institutions are used for implementation and risk management, and the disbursement of funds is linked with the achievement results. The results to be achieved, can be intermediate or final and are

---

27 WB: Investment Project Financing Modality, Development Policy Lending; IADB: Contingent Credit Facility; AfDB: Emergency Liquidity Facility


30 ADB.2019. *Mainstreaming the Results-Based Lending for Programs*, Manila
agreed with the borrower at the time of project design. For safeguard purposes, RBL programs follow the same policy objectives and principles in the SPS, but not its policy delivery process or operational procedures. Activities that are assessed to have likely significant adverse impacts that are sensitive, diverse, or unprecedented on the environment and/or affected people are excluded from the RBL program.

55. Following the screening process, a program safeguards system assessment (PSSA) is undertaken which is a study of the DMCs applicable national legal safeguards framework, the additional programmatic, institutional, and contextual risks that could affect the ability of the government to effectively implement the safeguards for the RBL program, an assessment of DMC safeguards implementation capacity, and a study of the gaps between ADB’s SPS and borrowers’ systems. Gap filling measures are included in the program action plan (PAP) or as disbursement linked indicators, where appropriate.

56. Following the IED evaluation of the RBL in 2017, ADB revisited the issues of how best to classify risks associated with involuntary resettlement in RBL programs. ADB undertook a review of appropriate approaches and the practices of other MDBs, including African Development Bank, Inter-American Development Bank and the World Bank. The review highlighted the following:

(i) all other MDBs have integrated safeguard classification systems that jointly consider the impacts on the environment and affected people;
(ii) no other MDB has a separate safeguard classification for involuntary resettlement and Indigenous Peoples;
(iii) other MDBs exclude activities with potential for significant adverse impacts and risks on the environment and affected people through their RBL-type lending instruments; and
(iv) none of the MDBs use numerical thresholds to exclude activities from RBL programs.

57. **Key Findings and Challenges in Implementing RBLs Programs.**

(i) Among the challenges during the preparation of RBL programs were the (i) insufficient knowledge of DMCs of the nature of RBL operations and its requirements; (ii) limited guidance on the new RBL for both staff and DMCs; and (iii) defining appropriate program systems for the RBL and actions to address gaps. DMCs also need to understand the SPS principles, and identify the relevant country regulations, policies and procedures that correspond to the SPS principles that are triggered by the program. Additional guidance is also needed to prepare the assessments, identify gaps and measures to address those gaps including defining appropriate program systems for safeguards.

(ii) RBL programs under implementation report that PAPs are being implemented as scheduled. Loan covenants that were due as of the reporting period were also

---

31 To mitigate safeguard risks for RBL programs, the pilot phase of the RBL policy required the exclusion of activities that would be classified as Environment category A under the SPS. Subsequently, ADB’s policy paper of 2018 proposed to refrain from including activities classified as category A for involuntary resettlement during the remaining RBL pilot. The 2019 RBL policy paper, revisited the classification of involuntary resettlement impacts in RBLs and removed the threshold of 200 or more persons for determining the significance of impact.

32 ADB has a numerical threshold for Category A of 200 people with major impacts.
implemented. Missions focused on the review of the implementation of PAPs and DLIs including those that were safeguards related. Safeguard monitoring reports were submitted either as individual reports or included as part of the program semi-annual reports and disclosed. No complaint was received on the RBLs except for minor works related complaints on a subproject.

(iii) Based on a review of the project completion reports of RBL programs, the project teams confirmed that safeguard categorizations were appropriate for the RBL programs. Safeguard screening criteria and checklists were used to ensure that the programs excluded ineligible activities. For those RBLs rated as partly satisfactory, issues were encountered in the implementation of the environment management plan (EMP) (e.g., lack of basic safety equipment, low institutional capacity, no specific budget allocations, and lack of focal point in the implementing units with low priority given to safeguards as some of the key challenges).

58. **Issues for consideration.** The experience during the RBL pilot phase suggests that the PSSA and PAP are appropriate as safeguards risk management tools. This is consistent with the IED evaluation which found the safeguards systems assessment to be the most thorough. Subsequent improvements have been made to the safeguards approach in the 2019 RBL policy in terms of clarifying the eligibility requirements and the processes to determine the eligibility of activities and strengthening the PSSA through additional consideration of programmatic, institutional and contextual risks of the program as a whole, as well as the capacity and commitment of the borrower to manage impacts and risks. ADB’s internal process for safeguard categorization was in line with the requirements set in the 2019 RBL policy.

59. ADB’s approach to safeguards for RBLs is consistent with other MDBs with comparable financing instruments. ADB has also aligned the definition of the activities that are eligible for RBL financing. ADB should follow-through with the operationalization of the agreed program safeguard system during implementation.

60. The readiness of DMCs for RBL implementation is still low and considerable support is needed from ADB in terms of training and TA resources. ADB should also strengthen monitoring to include the implementation and outcomes of the agreed program safeguard system of the governments. In terms of the implications for RBLs, if ADB is shifting to performance standards (PS), additional guidance will need to be prepared on the requirements for RBL programs in the context of the PS.

H. Technical Assistance and other Project Preparation Modalities (PRF and SEFF)

61. **Technical Assistance.** ADB provides technical assistance for the preparation, financing, and execution of development projects and programs, including the formulation of specific project proposals. ADB may also provide TA resources to assist its Developing Member

---

33 Completion Reports of Sri Lanka: Education Sector Development Program; Indonesia: Electricity Grid Strengthening—Sumatra Program; and India: Supporting National Urban Health Mission.

Countries (DMCs) in the coordination of their development policies and plans, as well as to enhance technical, managerial, and administrative capabilities of entities within DMCs.

62. Overall, there are two types of TAs provided by ADB: TAs for capacity building, policy advice and knowledge solutions (i.e., Knowledge and Support Technical Assistance or KSTA) and TA for project preparation and implementation support (i.e., Transactional Technical Assistance or TRTA). Both TA categories may adopt pilot testing to test a project approach, with such pilot testing not normally exceeding 30% of ADB financing. Pilot testing is permitted as a component of TA operations to facilitate innovative project design, implementation approaches, and measures. Pilot testing may involve procurement of civil works as part of testing the project approach.

63. The 2009 SPS does not contain a direct reference to technical assistance or clarify its applicability to TA operations. However, as a matter of practice, ADB has treated TAs as activities not triggering the application of safeguards and not requiring safeguards screening, categorization and due diligence. The only exceptions are TAs containing pilot testing activities involving civil works. Such TAs are considered complex and are required to be screened for safeguards purposes to ensure that the TA’s pilot testing component does not have safeguards impacts above category C as defined under SPS and OM F1. To achieve that and confirm the level of safeguards impacts, pilot activities are to be screened and categorized for environmental and social safeguards.

64. Project Readiness Facility (PRF) and Small Expenditure Financing Facility (SEFF). Both PRF and SEFF were introduced by ADB recently to promote project readiness by the project approval time. While TRTAs mainly focus on financing feasibility studies for ensuing projects, PRFs also finance detailed designs, some advance procurement as well as pilot testing. PRFs can be used for preparation of a single project or a cluster of standalone projects. Importantly, PRFs are expected to target preparation of implementation-ready safeguards planning instruments and make them aligned with project’s detailed engineering design. SEFF provide quick support to DMCs to cover small financing needs, with each activity not exceeding $15 million. Activities may be related to project preparation, implementation, pilot testing, and post-completion. Both PRF and SEFF are loan modalities, although they do have some functionalities similar to those of TAs.

65. The current application of the SPS to TA operations will be further reviewed in terms of the risks and impacts of TA projects, and where needed, additional guidance will be prepared.

66. Project Readiness Facility and Small Expenditure Financing Facility no specific policy recommendations are provided for PRFs and SEFFs at this point. More emphasis is needed on improved implementation and communication with the client on the level of readiness of safeguards planning instruments commissioned under PRFs and SEFFs.

35 SPS 2009 does apply to Technical Assistance Loans. Technical Assistance Loans are screened for environmental and social safeguard risks and impacts and are subject to both OM D11 and OM F1.
IV. NEXT STEPS

67. ADB will undertake consultation with all relevant stakeholders on the initial findings of the analytical study and other relevant safeguards issues pertaining to the GCF provisions which require consideration in the update of the SPS. Further study and analyses shall be undertaken on specific issues arising from the analytical study and consultation with relevant stakeholders to assess the scope of their application and practicality of their implementation as new standards and/or guidelines of the future policy updates. Stakeholder inputs and recommendations on the analysis will be solicited to enhance the analysis.
## Appendix 1: Description of the selected finance modalities

<table>
<thead>
<tr>
<th>Finance Modality</th>
<th>Description</th>
<th>ADB Operations Manual</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sector Lending</td>
<td>Sector lending is a form of ADB assistance to a developing member country (DMC) for project-related investments based on considerations relating to a sector or subsector of the DMC as a whole. The purpose of a sector loan is to assist in the development of a specific sector or subsector by financing a part of the investment in the sector planned by the DMC. Such lending is particularly appropriate when a large number of subprojects in the sector or subsector are to be financed. A sector loan is expected to improve sector policies and strengthen institutional capacity.</td>
<td>OM D3</td>
</tr>
<tr>
<td>Policy-based Lending or Program Lending (PBL)</td>
<td>PBL supports sector and inter-sector reform programs in a DMC. This may include introduction or revisions to laws, regulations, and policies to address structural bottlenecks; and measures to strengthen the capacity of institutions. The reform program addresses underlying constraints that are sector-wide or inter-sector or have a bearing on links between sectors and the macroeconomy. In general, PBL (i) is linked to the implementation of policy reforms and is disbursed quickly, and (ii) has sector-wide and economy-wide impacts.</td>
<td>OM D4</td>
</tr>
<tr>
<td>Multitranche Financing Facilities (MFF)</td>
<td>An MFF establishes a longer-term partnership between the ADB and a client in a sector(s) under sovereign operations and enables ADB to provide a series of tranches (loans or guarantees) as and when the investments for such sector(s) are ready and the client requests financing. MFF can finance (i) multiple projects under an investment program in a sector or in various sectors and (ii) large stand-alone projects with substantial and related individual components with long-term implementation. The MFF may also finance slices of long-term contract packages in such large stand-alone projects or investment programs.</td>
<td>OM D14</td>
</tr>
<tr>
<td>Emergency Assistance Loans (EAL)</td>
<td>EAL can provide rapidly approved funding following an emergency to help rebuild high-priority physical assets and restore economic, social, and governance activities after emergencies. It is an instrument for emergency support approved in the aftermath of disasters, health emergencies, food insecurity, technological and industrial accidents, and post-conflict situations. The focus of the EAL is on immediate short-term requirements that can be completed within a maximum implementation period.</td>
<td>OM D7</td>
</tr>
<tr>
<td>Financial</td>
<td>Under FILs, ADB provides funds to eligible participating</td>
<td>OM D6</td>
</tr>
<tr>
<td>Finance Modality</td>
<td>Description</td>
<td>ADB Operations Manual</td>
</tr>
<tr>
<td>------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>-----------------------</td>
</tr>
<tr>
<td>Intermediation Loan (FIL)</td>
<td>Financial intermediaries for onlending, at the financial intermediary’s credit risk, to final borrowers (subborrowers) for eligible subprojects. “Financial intermediaries” are usually financial institutions that provide finance as their principal or subsidiary function. A “subloan” is a loan made by a financial intermediary to a subborrower out of the proceeds of an ADB-financed FIL. A “subproject” is the subborrower’s investment or economic activity, for which a subloan is provided.</td>
<td>OM D18</td>
</tr>
<tr>
<td>Results-based Lending (RBL)</td>
<td>Results-based lending (RBL) supports government-owned programs of a developing member country (DMC) of the Asian Development Bank (ADB) by linking disbursements directly to achievement of results. RBL aims to enhance the accountability, efficiency, and effectiveness of government-owned programs; create incentives for delivering and sustaining results; promote institutional development; and support development coordination.</td>
<td>OM D12</td>
</tr>
<tr>
<td>Technical Assistance (TA) and other Project Preparation Modalities (PRF and SEPF)</td>
<td>ADB provides technical assistance for preparing, financing, and executing development projects and programs, including formulating specific project proposals. It may also provide TA to members for coordinating their development policies and plans to achieve better use of their resources, make their economies more complementary, and promote the orderly expansion of their foreign trade, particularly intra-regional trade. TA may be prepared as a TA cluster (package of TA subprojects) to address related constraints in a sector and/or subsector in a DMC through a comprehensive and holistic approach with a longer-term perspective and partnership between ADB and the DMC concerned. TA may also adopt pilot testing of a project approach (normally not exceeding 30% of ADB financing of an individual TA). Project readiness financing (PRF), in the form of a loan, finances project preparation and design activities for investments that are expected to be financed under one or more ensuing ADB financed projects. Eligible expenditures include: (i) Consulting services for project preparation, such as detailed engineering design, feasibility study, and capacity building for future projects, and limited project start-up activities; and (ii) Pilot testing of project designs, including the cost of equipment and works. The small expenditure financing facility (SEFF) assists ADB in responding quickly and responsively to the small financing needs of its developing member countries (DMCs). Once the</td>
<td>OM D16</td>
</tr>
<tr>
<td></td>
<td></td>
<td>OM D17</td>
</tr>
<tr>
<td>Finance Modality</td>
<td>Description</td>
<td>ADB Operations Manual</td>
</tr>
<tr>
<td>------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>-----------------------</td>
</tr>
<tr>
<td></td>
<td>facility has been established, the borrower can propose eligible activities for financing under the facility, and ADB can fund them, as and when needed, through a simplified business process.</td>
<td></td>
</tr>
</tbody>
</table>
Appendix 2:

SAFEGUARD REQUIREMENTS 4: SPECIAL REQUIREMENTS FOR DIFFERENT FINANCE MODALITIES

A. Introduction

1. Various lending modalities and financial products are key instruments for ADB to promote inclusive growth and sustainable development in its developing member countries. In addition to standard project loans, ADB provides a variety of investment instruments, including program loans, sector finance, multitranche financing facilities (MFFs), emergency assistance loans, financial intermediaries and corporate finance. Safeguard Requirements 4 outlines the special requirements for different finance modalities that borrowers/clients are requested to meet. Technical assistance is not covered by the SPS.

B. Program Lending or Policy-based Loan

2. The borrower/client will evaluate potential direct or indirect environmental or involuntary resettlement impacts or impacts on Indigenous Peoples associated with policy actions to be supported by program loans, identify appropriate mitigation measures to address these impacts, and integrate the mitigation measures into the program's design. A matrix of potential impacts of each policy action, together with appropriate mitigation measures, will be prepared, with a qualitative indication of the likely order of magnitude of each impact, and brief reasons for the judgment. Strategic environmental assessment (SEA) may be usefully applied where appropriate.

C. Sector Lending

3. For sector investments with potential environmental or involuntary resettlement impacts or impacts on Indigenous Peoples, before project approval by the Asian Development Bank (ADB), the borrower/client will agree with ADB on an environmental assessment and review framework, a resettlement framework, or an Indigenous Peoples planning framework (IPPF) to guide subproject selection, screening and categorization, social and environmental assessment, and preparation and implementation of safeguard plans of subprojects and to facilitate compliance with the requirements specified in Safeguard Requirements 1–3.

4. The environmental assessment and review framework, resettlement framework, and IPPF will (i) describe the project and its subprojects and/or components; (ii) explain the general anticipated environmental and/or social impacts of the components or subprojects to be financed under the proposed project; (iii) specify the requirements that will be followed in relation to subproject screening and categorization, assessment, and planning, including arrangements for meaningful consultation with affected people and other stakeholders and information disclosure requirements and, where applicable, safeguard criteria that are to be used in selecting subprojects and/or components; (iv) assess the adequacy of the borrower's/client's capacity to implement national laws and ADB's requirements and identify needs for capacity building; (v) specify implementation procedures, including the

36 SPS 2009, Appendix 4
Appendix 2

budget, institutional arrangements, and capacity development requirements; (vi) specify monitoring and reporting requirements; and (vii) describe the responsibilities of the borrower/client and of ADB in relation to the preparation, implementation, and progress review of safeguard documents of subprojects.

5. In addition to the elements listed in para. 4, the resettlement framework will outline the social impact assessment and census methodologies. Where applicable, the IPPF will specify the process and documentation requirements for ascertaining broad support from the affected communities for the project activities specified in Section E (2) of Safeguard Requirements 3. The level of effort, the amount of analysis, the comprehensiveness, and the level of detail will depend on the nature of the project and the magnitude of the potential impacts and risks.

6. One or more sample subprojects will be identified and appraised prior to the approval of the sector investment project. For these subprojects, the borrower/client will prepare relevant documentation, including environmental and social impact assessment reports, environmental management plans, resettlement plans, and Indigenous Peoples plans.

7. The requirements specified in Safeguard Requirements 1–3 apply to all subprojects and components identified during project implementation.

8. If the sector investment involves development of or changes to sector policies, plans, or programs that are likely to have significant environmental and involuntary resettlement impacts or effects on Indigenous Peoples, the requirements specified in para. 2 will apply.

D. Multitranche Financing Facilities

9. For MFFs with potential environmental or involuntary resettlement impacts or impacts on Indigenous Peoples, the borrower/client will agree with ADB on an environmental assessment and review framework, a resettlement framework, or IPPF before ADB approves the MFF. These frameworks will clarify safeguard principles and requirements governing screening and categorization, social and environmental assessment, and preparation and implementation of safeguard plans of components, projects, and subprojects to be prepared after MFF approval. These frameworks will be prepared following the requirements specified in paras. 4 and 5.

10. ADB requirements specified in Safeguard Requirements 1–3 apply to all components, projects, and subprojects identified during preparation and implementation of an MFF.

E. Emergency Assistance Loans

11. For emergency assistance loans, the completion of standard environmental assessments, environmental management plans, resettlement plans, and Indigenous Peoples plans may not be possible before Board approval. In such cases, an environmental assessment and review framework, a resettlement framework, and an IPPF as specified in paras. 4 and 5 will be prepared. Components and subprojects identified during project implementation will follow the requirements specified in Safeguard Requirements 1–3. For projects in conflict areas where the completion of standard environmental assessments, environmental management plans, resettlement plans, and IPPs may not be possible before Board approval, the safeguard frameworks may also be considered for application.
F. **Existing Facilities**

12. For projects involving facilities and/or business activities that already exist or are under construction, the borrower/client will undertake an environment and/or social compliance audit, including on-site assessment, to identify past or present concerns related to impacts on the environment, involuntary resettlement, and Indigenous Peoples. The objective of the compliance audit is to determine whether actions were in accordance with ADB’s safeguard principles and requirements for borrowers/clients and to identify and plan appropriate measures to address outstanding compliance issues. Where noncompliance is identified, a corrective action plan agreed on by ADB and the borrower/client will be prepared. The plan will define necessary remedial actions, the budget for such actions, and the timeframe for resolution of noncompliance. The audit report (including corrective action plan, if any) will be made available to the public in accordance with the information disclosure requirements of the Safeguard Requirements 1–3. For environment category A projects involving facilities and/or business activities that already exist or are under construction, the borrower/client will submit the audit report to ADB to disclose on ADB’s website at least 120 days prior to ADB Board approval. If a project involves an upgrade or expansion of existing facilities that has potential impacts on the environment, involuntary resettlement, and/or Indigenous Peoples, the requirements for environmental and social impact assessments and planning specified in Safeguard Requirements 1-3 will apply in addition to compliance audit.

G. **Financial Intermediaries**

13. Where investments of the financial intermediary (FI) have minimal or no adverse social or environmental risks, the FI project will be treated as category C project and need not apply any other specific requirements. All other FIs will be required to have in place or establish an appropriate environmental and social management system (ESMS) to be maintained as part of their overall management system to meet national laws and/or ADB’s requirements for FI projects. The ESMS will incorporate the following elements: (i) environmental and social policies; (ii) screening, categorization, and review procedure; (iii) organizational structure and staffing including skills and competencies in environmental and social areas; (iv) training requirements; and (v) monitoring and reporting. The ESMS will be documented and agreed on by ADB and the FI.

14. The screening procedure established under the ESMS will ensure that all subprojects are screened against the prohibited investment activities list (Appendix 5). Subprojects involving business activities included in the prohibited investment activities list do not qualify for FI support using ADB funds and applications involving such activities will be rejected. Depending on the size of the FI and its business activities, the FI should appoint a member of its management or one or more staff responsible for day-to-day implementation of the ESMS to have overall responsibility for environmental and social matters.

15. Where the subprojects financed by the FI using ADB funds, through either credit-line, other loans, equity, guarantee, or other financing instruments, have potential for significant environmental or social impacts, the FI will be required to ensure that such subprojects meet ADB’s requirements specified in Safeguard Requirements 1–3, including information
Appendix 2

disclosure and consultation. In such cases, the FI will refer these subprojects to ADB early in its due diligence process. ADB will assist the FI with the appraisal of these subprojects. ADB will review the due diligence information collected by the FI, determine any additional information needed, assist with determining appropriate mitigation measures, and specify conditions under which the subprojects may proceed. For such subprojects, the borrower/clients will submit EIA, resettlement plan and/or IPP to ADB for clearance before subproject approval. ADB may also set additional requirements for the FI’s activities more generally depending on its portfolio and the host country’s safeguard systems. ADB will monitor the FI’s performance on the basis of its environment and social management system.

16. Except for FIs whose subprojects have minimal or no adverse environmental and social impacts or risks, the FI will prepare and submit periodic reports at least annually on the implementation status of its ESMS. If the reports or ADB’s reviews conclude that the ESMS is not functioning, the FI will prepare and submit a corrective action plan agreed to with ADB and implement it.

H. General Corporate Finance

17. Where clients with multisite operations are seeking general corporate finance, working capital, or equity financing from ADB, the borrower/client will commission qualified and experienced external experts to conduct a corporate audit of its current ESMS and the company’s past and current performance against the objectives, principles, and requirements of ADB’s safeguard policy statement. The audit will:

(i) assess the client’s ability to manage and address all relevant social and environmental risks and impacts of its business and operations, in particular, the issues identified in the Safeguard Requirements 1–3;

(ii) assess the client’s compliance record with applicable laws and regulations of the jurisdictions in which the project operates that pertain to environmental and social matters, including those laws implementing host country obligations under international law; and

(iii) identify the company’s main stakeholder groups and current stakeholder engagement activities.

18. The exact scope of the corporate audit will be agreed on with ADB on a case-by-case basis.

19. A corrective action plan will address any issues identified during the corporate audit by specifying time-bound measures to achieve and maintain compliance with the objectives, principles, and requirements of ADB’s safeguard policy statement within a reasonable time frame. This action plan will be incorporated into the client’s corporate ESMS.

37 For the purpose of these requirements, general corporate finance refers to loans and/or investments to a corporate entity that are not earmarked for implementing specific subprojects. For corporate finance related to the implementation of specific subprojects, the Safeguard Requirements 1–3 apply, in addition to establishing and maintaining ESMS.
20. If the investment includes rehabilitation, modernization, or expansion of existing facilities, the requirements for existing activities specified in para. 12.