****

 **Notes on Asian Development Bank Safeguards**

**in the Context of the Asian Infrastructure Investment Bank’s**

**Draft Environmental and Social Framework**

Stephanie Fried, `Ulu Foundation

October 30, 2015

Stephanie@ulufoundation.org

The AIIB has pledged to develop “strong policies on governance, accountability, financial, procurement and environmental and social frameworks” on a level with those of other multilateral development banks.[[1]](#footnote-1)

Not only is it important for the AIIB to take a leadership role and develop safeguards that provide substantially **more robust protections than those of other multilateral development banks**, but it is also of vital importance to ensure that the proposed AIIB safeguards are **no weaker than those of other multilateral development banks.**

Unfortunately, the draft ESF appears to propose safeguards that are in many respects markedly weaker than those of other IFIs, including those of its regional “neighbor” the Asian Development Bank.

This document presents a brief overview of some of the existing best practices at the ADB that should be of use in comparison with the AIIB ESF. The current Draft AIIB ESF appears substantially weaker than the standards of the ADB safeguards below. Please note that, given the truncated period of “public consultation” on the Draft AIIB ESF, these comments are preliminary in nature.

**ADB Safeguards Update Process: 2005 - 2010**

In contrast to the brief “public consultation” held by the AIIB to develop environmental and social safeguards, the Asian Development Bank recently underwent a five-year long review of its safeguards in order to update them to best reflect regional needs. The overarching result of the ADB’s Safeguards Update was a re-emphasis of the importance of Bank responsibility for screening, categorization, review – the core of due diligence – the renewed commitment to meaningful public consultation – including the use of *local languages* to allow affected communities to participate, allowing 120 days for communities to provide input on projects which may impact their lives and livelihoods, as well as the monitoring of *compliance* with environmental and social standards.

The ADB underscored its commitment to supporting efforts to strengthen and improve implementation of borrower systems and developed robust “Country System Safeguards” to enable it to do so.

The ADB moved away from the delegation of its own due diligence responsibilities to corporate clients such as financial intermediaries, and re-affirmed the Bank’s own commitment to conducting robust due diligence.

**Asian Development Bank Safeguards Developed through Robust Public Consultation**

The following are now required by the ADB as described in the Bank’s 2010 Safeguard Policy Statement, developed after close to five years of public consultation and input:

* The **ADB maintains responsibility for conducting due diligence**, project categorization and oversight;
* The ADB **supports the strengthening and use of Country Systems** for ADB projects, with a **mandatory, clear and extensive review system** to determine the equivalency of Country Systems with ADB safeguards, prior to ADB agreement for their use. ADB **requires public input** into ADB determination of CSS equivalence, **bans the use of borrower systems for “highly complex and sensitive projects**,” underscores ADB responsibility for due diligence, and provides detailed requirements. (Note: World Bank also has detailed CSS Equivalency Requirements – See OP 4:00, especially 6-page Table A1 describing required CSS assessment methodology.)
* Mandatory **disclosure 120 days** prior to Board vote for environmental assessments for projects and subprojects likely to have significant impacts prior to approval. This was underscored by the input of affected communities across Asia, which emphasized their need for significant time to overcome the many barriers to enable them to process and respond to information on proposed projects which could dramatically impact their lives and livelihoods;
* The requirement that environmental assessments be conducted for **all components of all projects, regardless of funding sources**;
* The requirement that the Bank conducts due diligence and ensures **client compliance** with environmental and social requirements;
* A suite of relatively detailed rules for **Financial Intermediaries**, necessitating ADB management approval of category A subprojects, and full application of ADB safeguards, **including information disclosure and consultation**;
* Relatively detailed **gender-sensitive requirements**.
* Relatively robust definition of “**meaningful consultation**” procedures, with materials and consultations to be provided “**in a form and language(s) understandable to affected people** and other stakeholders. For illiterate people, other suitable communication methods will be used.” This is a sharp contrast to the AIIB’s “English only” and “videoconference” approach to consultation.
* The ADB’s **Prohibited Activities List** clearly states that “The following do not qualify for Asian Development Bank financing”, including “production of or trade in radioactive materials, including **nuclear reactors** and components thereof;” and “production or activities involving harmful or exploitative forms of forced labor or child labor.”[[2]](#footnote-2)

In addition, while the ADB Board votes to approve ADB projects, **the AIIB’s Articles of Agreement allow the AIIB Board to delegate to AIIB Management the ability to “self-approve” AIIB projects**, potentially removing projects from detailed Board scrutiny prior to approval, increasing risk, including to Board regarding fulfillment of fiduciary requirements and to communities and the environment.[[3]](#footnote-3)

**ADB Safeguard Requirements**

**1. ADB responsibility for conducting due diligence to ensure compliance with environmental and social requirements:**

The language below, from the ADB’s new SPS, mandates that the ADB is responsible for conducting due diligence, review and supervision in order to ensure that clients comply with the ADB’s environmental and social requirements. The AIIB should also explicitly require compliance and have explicit responsibility for due diligence.

*46. To achieve the policy objectives and deliver the policy principles, ADB carries out the actions described in the following subsection (“B. Policy Delivery Process”). To help borrowers/clients and their projects achieve the desired outcomes, ADB adopts a set of specific safeguard requirements that borrowers/clients are required to meet in addressing environmental and social impacts and risks. ADB staff, through their due diligence, review, and supervision, will ensure that borrowers/clients* ***comply*** *with these requirements during project preparation and implementation[[4]](#footnote-4).*

**2. Safeguards apply to all components of all projects**

Paragraph 48, below, defines the scope of ADB’s environmental and social policy. The policy applies to *all components* of private sector (and public sector) projects *regardless of the source of finance and underscores the need for “compliance”.*

*47. ADB will not finance projects that do not* ***comply*** *with its safeguard policy statement, nor will it finance projects that do not comply with the host country’s social and environmental laws and regulations****, including those laws implementing host country obligations under international law****. In addition, ADB will not finance activities on the prohibited investment activities list (Appendix 5).*

*48. This safeguard policy statement applies to all ADB-financed and/or ADB-administered sovereign and non-sovereign projects, and their components regardless of the source of financing, including investment projects funded by a loan; and/or a grant; and/or other means, such as equity and/or guarantees (hereafter broadly referred to as projects.)[[5]](#footnote-5)*

**3. Financial Intermediaries**

 The ADB will assist Financial Intermediaries with appraisal of any subprojects with potential for significant environmental or social impacts; must review due diligence information, determine additional information needed. Borrowers must submit EIA, resettlement plans and IPPs to ADB for management *clearance prior to subproject approval, etc.* The ADB’s standard safeguards apply, including the 120 day public comment requirement for projects with significant impacts.

*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 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 the 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[[6]](#footnote-6).*

  **ADB Requirements for Category A FI subprojects, 120 day requirement: [[7]](#footnote-7)**

*“Where the subprojects financed by the financial intermediary using ADB funds, through either credit-line, other loans, equity, guarantee, or other financing instrument, will likely be classified as category A for any of their environment, involuntary resettlement, or Indigenous Peoples impacts, the ESMS incorporates relevant provisions that such subprojects meet ADB’s requirements specified in Safeguard Requirements 1–3 in addition to national laws and standards. In such subprojects, the project team requires the financial intermediary to refer those subprojects to ADB early in its due diligence process. The operations department assists the financial intermediary in appraising these subprojects. ADB (i) reviews the environmental and social information collected by the financial intermediary, (ii) determines any additional information needed, (iii) assists with determining appropriate mitigation measures, and (iv) specifies conditions under which the subprojects may proceed. For such subprojects,* ***ADB clears the EIA, resettlement plan, and/or IPP before subproject approval, and the project team ensures that the following documents are made publicly available: (i) the draft EIA report at least 120 days before the approval of the subproject, and (ii) the draft resettlement plan and draft IPP before the approval of the subproject****.”*[[8]](#footnote-8)

**4. Gender considerations**

The ADB’s language on gender includes requirements for (1) the consideration of gender in terms of project impact and risk assessment; (2) the involvement of women and consideration of gender issues in consultation; and (3) a gender-sensitive, responsive and inclusive grievance mechanism. The ADB Safeguards insert gender requirements throughout most of the sections of the Safeguard Policy Statement.

1. **Consultation:**

The ADB’s definition of consultation:

54. **Consultation and Participation**

ADB is committed to working with borrowers/clients to put meaningful consultation processes into practice. For policy application, *meaningful consultation is a process that (i) begins early in the project preparation stage and is carried out on an ongoing basis throughout the project cycle; (ii) provides timely disclosure of relevant and adequate information that is understandable and readily accessible to affected people; (iii) is undertaken in an atmosphere free of intimidation or coercion; (iv) is gender inclusive and responsive, and tailored to the needs of disadvantaged and vulnerable groups; and (v) enables the incorporation of all relevant views of affected people and other stakeholders into decision making, such as project design, mitigation measures, the sharing of development benefits and opportunities, and implementation issues****[[9]](#footnote-9).***

1. **The ADB’s Due Diligence Requirements for the use of Client Systems (“Country Systems”),** excerpted from ADB Safeguard Policy Statement compared to AIIB ESF requirements for use of “Country and Corporate Systems.”

The AIIB dedicates a mere five paragraphs (below) to the body of its description of the use of client systems, including scope, due diligence requirements not only for “Country Systems” but also for “Corporate Systems” – a category to which the ADB does not delegate full authority. AIIB only requires an undefined type of “review” (components undisclosed) of a client’s “practices, capacity and commitment” to achieve “desired environmental and social outcomes” “in a manner broadly consistent with the ESSs”. There is no requirement for public consultation.

ADB Safeguard Policy Statement (SPS) dedicates five pages to the details of assessment of the use of Country Systems, alone (not including “Corporate Systems”), requires public consultation and review of equivalence assessments (and to “seek agreement” on any proposed gap-filling measures) and bans the use of client systems for “highly complex and sensitive projects. The SPS notes that “ADB will be responsible for assessing and determining the equivalence of the CSS and the acceptability of the borrower's implementation practice and capacity.”

The World Bank (OP 4.00, Table A1) has a six-page mandatory check list of due diligence requirements for assessment of borrower systems.

ADB safeguards, like those of the World Bank, include detailed requirements for the assessment methodology designed to ensure that a borrower system meets the ADB safeguard requirements, and stipulates that CSS may not be used until assessed and approved. The ADB clarifies that legal agreements will allow ADB to suspend the use of CSS and revert to its own if the borrower stops implementing the action plan” (gap filling measures). The ADB notes that “the use of CSS will not obviate ADB’s responsibilities for safeguard review before Board approval of proposed projects” and states that if the CSS is changed in a manner inconsistent with the legal agreement between the borrower and ADB, “ADB's contractual remedies apply.”

**Excerpts from Draft AIIB ESF pertaining to the use of client systems:**

**“G. Use of Country and Corporate Systems**

41. ***Client Systems.*** AIIB may, on the basis of a review of the Client’s existing environmental and social management system relevant to the Operation, and determination that this system is adequate to address the environmental and social risks and impacts of the Operation in a manner broadly consistent with the ESSs, afford the Client (whether public or private) the option to use said system for the Operation.

42. ***Review by AIIB.*** AIIB reviews the performance of the Client’s environmental and social management system proposed for use in the Operation to determine the ability of the Client to apply the system and the system’s capacity to enable the Operation to achieve the desired environmental and social outcomes. An element of this review is an assessment of the Client’s implementation practices, capacity and commitment. AIIB may conduct the review alone or with development partners. It may also rely on studies prepared by other development partners if it is satisfied with the quality of such studies.

43. ***Scope of Systems.*** The Client’s environmental and social management system includes those aspects of the policy, legal and institutional framework of the country in which the Operation is located, which are relevant to the environmental and social risks and impacts of the Operation. This includes its national, subnational, sectoral or corporate implementing institutions; applicable laws, regulations, rules and procedures; and implementation capacity; as well as the international agreements and conventions to which the Client is a party. The aspects of the Client’s existing system that are relevant may vary between the public and private sectors, from Operation to

Operation, depending on such factors as the type, scale, location and potential environmental and social risks and impacts of the Operation, and the role and authority of different institutions involved. AIIB may, on the basis of its review, determine that the Operation qualifies for the use of this approach for one or more of the ESSs.

44. ***Specific Measures.*** If AIIB determines that the Client may use all or part of the Client’s environmental and social management system for the Operation, AIIB, in consultation with the Client, identifies actions required to address gaps to ensure that the system is broadly consistent with the relevant ESSs, and that the Operation can achieve its objectives. The parts of the system to be used for the Operation are described in the ESMP. The actions to address any gaps, together with the time frames for their completion, the reporting requirements of the Client and the monitoring approach of AIIB, are all detailed in the ESMP, and reflected in the legal agreement between AIIB and the Client governing the Operation.

45. ***Notification of Changes.*** AIIB requires the Client to notify AIIB of any material change in its environmental and social management system that may adversely affect the Operation. In such a case, if AIIB determines that the change is inconsistent with the ESSs or the ESMP, AIIB may: (a) require revisions to the ESMP, as necessary to meet the requirements of the relevant ESSs; and (b) require the Client to take such other actions as AIIB deems appropriate to address any potential adverse impacts on the Operation. “

**ADB Safeguard Policy Statement:**

**STRENGTHENING AND USE OF COUNTRY SAFEGUARD SYSTEMS TO ADDRESS**

**ENVIRONMENTAL AND SOCIAL SAFEGUARD ISSUES**

**A. Introduction**

1. The Asian Development Bank’s (ADB’s) safeguard policy is central to achieving social

and environmental sustainability of projects and poverty reduction, which are major

development goals of ADB. ADB recognizes that its developing member countries (DMCs) have

their legal frameworks, institutional arrangements, and administrative procedures for delivering

safeguards, and that developing the capacity and track records of governments, project

sponsors, executing agencies, and other stakeholders is important for implementing such

policies and frameworks effectively. ADB also recognizes that further development of such

country safeguard systems (CSS) will promote socially and environmentally sustainable

development in the Asia and Pacific region.

**B. Terminology and Rationale**

2. Definition. Country safeguard systems means a country’s legal and institutional

framework, consisting of its national, subnational, or sectoral implementing institutions and

relevant laws, regulations, rules, and procedures that pertain to the policy areas of

environmental and social safeguards.1

3. Rationale. Operational experience, evaluations, and studies by both ADB and other

development agencies show that the effectiveness of development agencies’ safeguard policies

depends largely on the degree to which the safeguard policy principles and requirements are

rooted in DMCs’ culture and socioeconomic context of decision making. They also show that

development agencies can increase the impacts of their development assistance if they support

efforts to strengthen the DMCs’ legal frameworks, policies, and institutions that are already in

place and work more directly with them.

4. In the last decade, many DMCs have upgraded and/or adopted new national policies,

laws, and procedures on environmental assessment, involuntary resettlement, and Indigenous

Peoples. In some DMCs, the legal frameworks and procedures may well be equivalent to ADB’s

safeguard policy principles and requirements. In other DMCs, legal framework and institutional

capacities remain weak and require significant improvement and capacity development efforts.

The establishment of partnerships with DMCs for strengthening and using CSS can help

enhance their ownership of safeguards and scale up development impacts. When accompanied

by suitable capacity development measures, the use of CSS can reduce risks by improving the

quality and timeliness of project implementation.

5. The special evaluation studies of ADB’s three safeguard polices carried out by the

Operations Evaluation Department pointed out that ADB’s existing safeguard policies and

implementation procedures follow a one-size-fits-all approach and do not distinguish between

different legal and institutional frameworks, implementation capacities, and track records across

DMCs. The department recommended that the safeguard policy update explore opportunity to

develop a strategic approach for increasing the capacity of and reliance on CSS for

environmental and social safeguards.

1 This definition is largely consistent with the World Ban Bank’s definition of country system for environmental and social

safeguards.

6. The World Bank and the Inter-American Development Bank have already made efforts in

the direction of using CSS.2 Development of ADB’s strategic approach and methodology for

assessing CSS will facilitate harmonization with its development partners, streamline and speed

up procedures for improved investment services, and reduce transaction costs because

borrowers/clients would not need to operate parallel processes or duplicate work for projects.

7. ADB’s Experience with Assessment and Use of Country Safeguard Systems. ADB

has been assessing DMCs’ legal requirements and institutional capacities in the context of

project processing, but not in a rigorous manner. For example, for normal project preparation

and review processes, ADB undertakes due diligence to identify gaps between the DMC’s and

ADB’s safeguard requirements and assesses the implementation capacities of executing

agencies to prepare social and environmental plans, draft loan covenants, and develop targeted

capacity-building measures. However, such assessments are usually limited to the project level

and systematic and rigorous analysis of CSS is often lacking.

8. While this approach at the project level may provide useful experience for DMCs and

ADB, it has been carried out in an informal and inconsistent way. To respond to ongoing

developments in the region whereby DMCs have increasingly established their own systems of

environmental and social safeguards and are willing to further strengthen them, ADB needs to

develop rigorous and transparent methodologies for assessing CSS and to adopt a strategic

approach for strengthening and using CSS more systematically.

**C. Overall Approach to the Strengthening and Use of Country Safeguard Systems in**

**ADB-Supported Operations**

9. ADB is committed to supporting the strengthening and effective application of the DMCs'

country safeguard systems (CSS) with a focus on the capacity development of borrowers. At the

same time, ADB needs to ensure that application of country safeguard systems (CSS) in ADB

projects does not undermine the achievement of ADB’s policy objectives and principles. ADB

may consider using a borrower’s CSS to identify and manage the social and environmental

impacts and risks associated with ADB-supported projects at national, subnational, sector, or

agency level, provided that (i) the CSS is equivalent to ADB’s; and (ii) the borrower has

acceptable capacity and commitment to implement the applicable laws, regulations, rules, and

procedures.

2 In 2004, the World Bank launched a 2-year pilot program on the use of CSS for 20 projects in 14 countries. In

December 2007, the World Bank issued an evaluation report of this program and extended it for another 3 years. In

2006, the Inter-American Development Bank approved its environment and safeguards compliance policy, which

provides for consideration of the use of “in-country systems.

**10. Equivalence and Acceptability**. Equivalence and acceptability are two prerequisites for

deciding on the use of CSS. ADB would consider a borrower’s CSS to be equivalent to ADB’s if

the former’s system is designed to achieve the same objectives and adhere to the policy scope,

triggers, and applicable principles set out in ADB’s Safeguard Policy Statement (page 16-18).

ADB also assesses the acceptability of borrower’s implementation practice, track record, and

capacity, before deciding on the use of the borrower’s system. The following assessment

approach will be adopted:

**(i) National/subnational/sector/agency level assessment**. ADB is responsible for

assessing and determining the equivalence of the CSS and the adequacy of the

borrower's implementation capacity at the national, subnational, sector, or

agency level. If the assessments reveal that gaps can be addressed reasonably,

ADB and the borrower will agree on specific gap-filling measures to be included

in an action plan. Recent analytical work and assessments by other development

partners, updated as required, can be used for CSS assessments. Joint

assessments with other development partners will be encouraged. During this

phase, ADB will not consider application of CSS to any specific project financed

by ADB, and ADB’s safeguard requirements specified in the Safeguard Policy

Statement (SPS) will apply.

**(ii) Project level assessment**. Once ADB has determined that the CSS is

equivalent to ADB’s and borrower’s implementation practice and capacity is

acceptable at national, subnational, sector or agency level, it may consider the

application of CSS to ADB-financed projects in the country, subregion, sector, or

projects sponsored by the agency. For each project, ADB will also conduct an

acceptability assessment (including capacity, track record, and practice of

executing and implementing agencies) before actually introducing use of the

CSS into the project. The assessment will be done as part of the project design

process during project preparation. ADB will also help the borrower develop a

program for capacity building and integrated it into project design as required.

The results of acceptability assessment will be documented and reflected in the

ADB's report and recommendation of the President.

**11. Addressing Gaps to Strengthen Country Safeguard Systems.** Where the borrower

has to strengthen its CSS to meet the objectives and adhere to the policy scope, triggers, and

applicable principles set out in the ADB's SPS (page 16-18) and commits to doing so, ADB may,

when determining equivalence, take measures to strengthen CSS into account. Similarly, if the

borrower needs to strengthen its implementation practice and capacity to be ready for effectively

delivering safeguards and commits to doing so, ADB may, when determining acceptability, take

measures to strengthen the borrower's implementation capacity and practices into account.

Such measures are to be carried out before the borrower undertakes implementation of the

relevant project activities, and may include ADB-supported efforts. The borrower will prepare

action plans with such measures in an agreed time frame with the assistance of ADB and other

partners. The action plan for equivalence will focus on how to enhance the alignment of CSS

with ADB’s safeguard policy objectives, scope, triggers and principles through necessary

improvements to the legal and regulatory framework. The action plan for capacity building will

address relevant capacity development issues pertaining to the borrower and across key

institutions.

**12. Levels of Country Safeguard Systems.** ADB may consider the application of CSS to

various levels, such as the national, subnational, sector, or agency level, based on (i)

discussions and dialogue with the borrower on ADB’s current knowledge of specific CSS, the

country, sector, or agency context, and the expected operations of ADB in the DMC; (ii)

outcomes of the assessments of equivalence and acceptability; and (iii) the borrower’s

commitment to implement the gap-filling action plans.

**13. Scope of Country Safeguard Systems Application.** As the extent of equivalence and

acceptability is safeguard-specific, a country, sector, or agency may qualify a CSS approach for

one, two, or all three safeguard areas (the environment, involuntary resettlement, and

Indigenous Peoples), depending on the result of the CSS assessments.

**14. Disclosure and Consultation.** To the extent possible, the proposal for the

strengthening and use of CSS, together with its justification, is presented in the country

partnership strategy or in country partnership strategy progress reports.3 Documents pertaining

to the country partnership strategy are disclosed in conformity with the requirements of ADB’s

Public Communications Policy (2005). On completion, draft equivalence and acceptability

assessments at the national, subnational, sector, or agency level will be documented and

disclosed on ADB’s website for public comment. ADB will organize in-country consultation

workshops to solicit comments and feedbacks from stakeholders, including governments and

NGOs. Final equivalence and acceptability assessment reports will be disclosed on ADB’s

website on completion. Updated assessments to reflect changes in CSS, if any, will be also

disclosed on ADB’s website on completion. Issues related to acceptability assessments at the

project level will be an element of the normal safeguard disclosure and consultation process

undertaken for project preparation.

3 Examples are country partnership strategies, country operations business plans and midterm review reports.

**15. Exclusion of CSS. CSS will not be applied to highly complex and sensitive projects.**

These types of projects will be considered under ADB’s normal project processing

requirements.

**16. A Phased Approach.** Use of CSS will include a limited number of countries with a focus

on subnational, sector or agency level during the first three years after the policy becomes

effective. An interim review of the effectiveness of the application and use of CSS will be

undertaken three years after the policy becomes effective.

**17. Changes in Country Safeguard Systems.** If, during CSS application, there are

changes in applicable legislation, regulation, rules or procedures at national, subnational, sector,

or agency level, ADB assesses the effect of those changes and discusses them with the

borrower. If, in the judgement of the ADB, the changes reflect a further improvement in the CSS,

and if the borrower so requests, ADB may agree (i) to revise the legal agreement applicable to

the operation to reflect these improvements, and to amend the legal agreement as necessary;

and (ii) to update the equivalence and acceptability assessments. Management documents,

explains, and justifies any changes to such agreement, and submits them for Board approval

(normally on a no-objection basis). If the CSS is changed in a manner inconsistent with the legal

agreement between the borrower and ADB, ADB's contractual remedies apply.

**D. ADB’s Responsibility and Accountability**

**18. Equivalence Assessment and Acceptability Assessment.** ADB will be responsible for

assessing and determining the equivalence of the CSS and the acceptability of the borrower's

implementation practice and capacity. ADB will undertake the following actions:

(i) Assess the equivalence of CSS with ADB’s safeguard policy objectives, scope,

triggers and principles and acceptability of the borrower's implementation

practice, track record, and capacity, including identifying the measures and

actions needed for strengthening CSS in collaboration with the borrower.

(ii) Help the borrower prepare the action plans based on the results of the

assessments and incorporate the action plan’s provisions into the legal

agreements for using CSS. The legal agreements would allow ADB to suspend

the use of CSS and revert to its own if the borrower stops implementing the

action plan.

(iii) Conduct consultations, along with DMC representatives, with stakeholders to

discuss and validate the findings of the equivalence assessments and to seek

agreement on the proposed measures outlined in the action plan.

(iv) Provide the necessary technical and financial support to develop and implement

the action plan through program loans and technical assistance and supervise

implementation of the action plan.

**19. Project-Level Document Review and Supervision**. The use of CSS will not obviate

ADB’s responsibilities for safeguard review before Board approval of proposed projects. The

only difference is that the review will be based on requirements under the CSS and on the

agreed action plan. After the Board approves a project that uses CSS, ADB supervision will

follow the same procedures as for any other investment project.

**20. Accountability Mechanism**. The use of CSS will not alter the role and function of ADB's

accountability mechanism, including the role of ADB’s Office of the Special Project Facilitator,

and Compliance Review Panel. In the event of a claim, the Compliance Review Panel could

examine ADB's assessment of the equivalence between ADB's policy scope, triggers, and

applicable principles with the CSS (and any additional measures agreed upon to achieve

equivalence) in materially achieving the objectives of the SPS, as well as ADB's project

supervision. The use of CSS will not alter the role of ADB Independent Evaluation Department.

**E. Borrower's Responsibility**

21. **Country Safeguard Systems Assessment and Action Plan Development.** The

borrower will support and participate in the equivalence and acceptability assessments. The

borrower/client will

(i) facilitate the sharing of all relevant documents, data, and information with the

ADB assessment team and the conduct of seminars and/or workshops, as

necessary;

(ii) assist in organizing and conducting consultations with stakeholders to discuss

and validate the findings of the assessments; and

(iii) develop action plans outlining measures to address needed changes.

**22. Implementation.** The borrower is responsible for achieving and maintaining equivalence

as well as developing acceptable implementation practices, track record, and capacity, in

accordance with ADB's assessment, including the implementation of the action plans. For each

project that uses CSS, the borrower identifies those provisions of the CSS that are necessary to

ensure that the policy principles set out in this SPS are met. These provisions may vary from

project to project, depending on such factors as the structure of the CSS and the type of

operation. In all cases, these provisions and any additional measures that the borrower needs to

undertake to achieve and maintain equivalence and acceptable implementation become part of

the borrower's contractual obligations to ADB's normal contractual remedies.

**F. Resource Implications**

23. Although the processes involved in strengthening and using CSS will be resource

intensive 4 during upstream national-, subnational- or sector-level assessments and project

preparation, cost savings are expected in the medium and long term. This is because in the long

run, the equivalence and acceptability assessments are likely to be incremental. Application of

CSS to ADB projects will entail costs for (i) undertaking equivalence and acceptability

assessments, including the consultations to be held after the assessments; (ii) organizing

medium- to long-term capacity development activities to strengthen CSS; (iii) training ADB staff;

and (iv) monitoring and supervising the CSS portfolio.

24. In the medium term, there will be incremental costs associated with CSS. Additional

professional staff weeks may be required each year for conducting equivalence assessment of

CSS on a demand-driven basis. This may include 5–12 staff weeks for each equivalence

assessment, and additional staff-weeks for acceptability assessment. The potential increased

resources requirements can be partially met by engaging staff consultancy on a need basis. In

addition, the World Bank is playing a significant role in developing and applying methodologies

for CSS diagnostics and there is strong interest in joint work in this area. Working with partner

institutions such as the World Bank will also allow improved effectiveness and ensure additional

resource efficiencies.

4 World Bank experience indicates a need for high levels of staff inputs and consultants’ time to conduct the

assessments and public consultations and to prepare the assessment reports.

1. **Prohibited Activities List:**

ADB Prohibited Activities List clearly states that “The following do not qualify for Asian Development Bank financing”, including “production of or trade in radioactive materials, including nuclear reactors and

components thereof;” and “production or activities involving harmful or exploitative forms of forced labor or

child labor.”

On the other hand, AIIB states: “AIIB does not **knowingly** finance Operations involving the following.” This is a weaker formulation of exclusion than that of the ADB and other multilateral banks. AIIB Exclusion List does not exclude “production of or trade in radioactive materials, including nuclear reactors and components thereof;” or “production or activities involving harmful or exploitative forms of forced labor or child labor.” There is some language pertaining to labor, however, in the body of the AIIB ESF. (See comments by International Trade Union Confederation.)

1. <http://www.aiib.org/html/aboutus/AIIB/>, accessed 29 November, 2015 [↑](#footnote-ref-1)
2. For a comparison of AIIB Exclusion List with those of the World Bank, IFC and ADB, see also, Concerns about the AIIB Exclusion List and a Comparison with the ADB Prohibited Investment List, IFC Project Exclusion List, and Investments Prohibited under World Bank Safeguards, Ulu Foundation, October 2015 [↑](#footnote-ref-2)
3. For insights into the problems of self-assessment and self-review, see [Financial Times, Time to Bolster Safeguards, Not Dilute Them.](file://8885b957a9cadd0e98aa36b8b2dc8de3:BBECBE2DB5DCCE90DECA) Critique of World Bank and AIIB draft safeguards co-authored by Director of ADB's IED. October 2015; Ecological Justice, Ulu Foundation, Urgewald. From Volkswagen to Infrastructure Finance, You Get What You Inspect, Not What You Expect: The [Risks of Client Self-Assessment, Self-Monitoring and Self-Regulation at the World Bank and AIIB](file://73f82dc7e6728433f42476b15aff9a0b:BBECBE2DB5DCCE90DECA), September 2015. [↑](#footnote-ref-3)
4. ADB. Safeguard Policy Update, June 2009, para 46, p.14 at: at <http://www.adb.org/Documents/Policies/Safeguards/Safeguard-Policy-Statement-June2009.pdf#page=6> [↑](#footnote-ref-4)
5. ibid, para 47-48, p. 15 [↑](#footnote-ref-5)
6. ibid, Appendix 4, para 15, p.68 [↑](#footnote-ref-6)
7. For ADB Category A FI sub-projects, environment and resettlement planning documents and frameworks are available: [http://www.adb.org/Projects/summaries.asp?query=&browse=1&ctry=ALL&type=5&year=ALL](http://webmail.bicusa.org/exchweb/bin/redir.asp?URL=http://www.adb.org/Projects/summaries.asp?query=%26browse=1%26ctry=ALL%26type=5%26year=ALL" \t "_blank) [↑](#footnote-ref-7)
8. See, “Top Four Minimum Disclosure Requirements for Financial Intermediaries and Associated Subprojects”, `Ulu Foundation and NGO Forum, July 8, 2010 and “IFC’s draft revised Sustainability Policy and Performance Standard: Comments on Financial Intermediaries”, Bank Information Center – CIEL – ‘Ulu Foundation, June 17, 2010 [↑](#footnote-ref-8)
9. ADB. Safeguard Policy Statement, June 2009, para 54, p. 20 at <http://www.adb.org/Documents/Policies/Safeguards/Safeguard-Policy-Statement-June2009.pdf#page=6> [↑](#footnote-ref-9)