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The Equator principles (2020)

3rd March 2020

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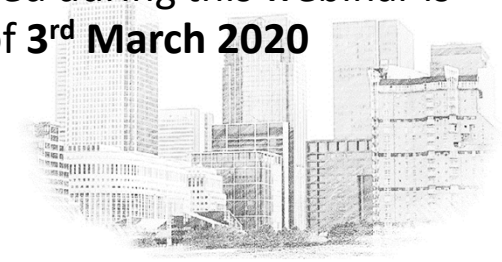
The Equator principles (2020)

The law as stated during this webinar is up to date as of **3rd March 2020**



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Introduction

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Equator Principles

Changes to Equator Principles introduce new requirements in relation to human rights, climate change and Indigenous Peoples for project debt

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Equator Principles: What we will cover

- Update to the Equator Principles and the wider business context around Sustainability and ESG
- New substantive requirements relating to human rights, climate change and Indigenous Peoples
- What these changes will mean for project sponsors and lenders
- Practical tips for meeting the new requirements

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Equator Principles context: Sustainability and ESG

- What do we mean by Sustainability and ESG?
  - from externalities to core business issue
  - managing sustainability risks and seizing opportunities for sustainable growth is becoming a time-critical priority
- Not just about the "E" – "S" and "G" critical too
- Response from international and domestic policy makers, regulators, financial markets and other key business stakeholders
  - Increased regulation and hardening of voluntary requirements
  - Market leadership and financial actors
  - Disputes and crisis management

Equator Principles update: version 4

- Application to a broader range of financial products
  - Application to project-related refinancing and acquisition financing
  - Removal of aggregate loan amount threshold for project-related corporate loans
  - Lifting of exemption for project-related corporate loans to sovereign borrowers
  - Inclusion of expansions and upgrades
  - Voluntary application to other financial products
- Greater consistency between high income OECD countries and other jurisdictions
  - No deemed compliance in Designated Countries
- Collaborative approach to non-compliance
  - Mandated grace period for remedial actions

New requirements in relation to Climate Change

- **Climate change risk assessment – aligned with TCFD**
  - Category A and B – relevant physical risks
  - Projects with more than (scope 1 and 2) 100,000 tonnes of CO_2 equivalent per year must consider Physical and Transitional Risks and an Alternatives Analysis
- **Quantification and Reporting**
  - In line with GHG Protocol (100,000 tonnes per year during the operation of the project, and encouraged for operations emitting 25,000 tonnes per year)

New requirements in relation to Human Rights

- **UNGP-aligned assessment of human rights impacts**
  - Risks to people against int. human rights standards
  - Based on engagement with stakeholders
  - Process is context specific but contains certain elements
- Inclusion of **workers**
- Global standard for Indigenous engagement
  - **FPIC as global standard** – assessment against IFC PS 7
  - Flexibility for lender to determine **deviation** from IFC PS 7
  - **Collaboration with gov't** to achieve positive outcomes
- Grievance Mechanism **aligned with UNGP**

What do the changes mean for project sponsors?

- Impact where material divergence between host country laws and EP4
  - Legal gap analysis
- Evolution of impact assessments
- Indigenous people
  - Engagement framed by IFC PS7 and FPIC
  - Host country law compliance not necessarily sufficient

What do the changes mean for lenders?

- Update internal procedures and documentation
- Consider discretionary elements:
  - Application to products outside of scope
  - Level of assessment documentation for wide range of projects with limited environmental and social risks
  - Approach where sponsor is unable to demonstrate FPIC
- Timing
- Gap analysis
  - communication of expectations where divergence exists

How to manage climate-related risk

- TCFD provides a structure that relates to how business operates:
  - Governance, strategy, risk management, metrics and targets
- Need to assess exposure and opportunities in line with the life of assets – strategy and resilience.
  - (e.g. asset write-downs, operational loses/increased costs, need of new equity to meet investment needs)
- Investors will be looking at CAPEX and OPEX in light of climate-related risks

How to manage human rights risks

- Consistency of approach in relation to social risks in ESIA
  - UNGP and international human rights standards + engagement
- Effective implementation into project documents and assessments
  - Effective use of Early Contractor Involvement
  - Pre-Qualification criteria for suppliers
  - Inclusion of specific provision to promote labour welfare
  - Supply chain controls
  - Use of Key Personnel provisions
  - Use of KPIs to drive positive outcomes
- Engagement with Indigenous Peoples
  - Adopt a consistent and structured approach to FPIC (ongoing)
  - Engage early and document properly
- Grievance mechanisms and corrective actions to drive continuous improvement

Final thoughts

- Relationships with other green/sustainability finance initiatives
- Timing
- Visibility of climate impacts
- Soft-standards with hard consequences
- Legal innovation, collaboration and engagement for more effective remediation
- Yardstick is not what the regulator says, what the community says

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