

ANNEX B

Mark up of Draft Policy and Performance Standards on Social and Environmental Sustainability

(Against April 30, 2006 Version)

Track Changes References:

Insertions: Underline

Deletions: ~~Strikethrough~~

Moved from: ~~Double-strikethrough~~

Moved to: Double underline

International Finance Corporation

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Introduction

1. Performance Standard 2 recognizes that the pursuit of economic growth through employment creation and income generation should be balanced with the protection of ~~for basic rights of~~ workers' rights. For any business, the workforce is a valuable asset, and a sound worker-management relationship is a key ingredient to the sustainability of ~~the a enterprise company~~. Failure to establish and foster a sound worker-management relationship can undermine worker commitment and retention, and can jeopardize a project. Conversely, through a constructive worker-management relationship, and by treating the workers fairly and providing them with safe and healthy working conditions, clients may create tangible benefits, such as enhancement of the efficiency and productivity of their operations.

2. The requirements set out in this Performance Standard have been in part guided by a number of international conventions and instruments, including those of ~~negotiated through~~ the International Labour Organization (ILO) and the United Nations (UN).¹

Objectives

- To protect workers' rights and to establish, maintain, and improve the worker-management relationship
- To promote ~~the fair treatment, non-discrimination and equal opportunity of workers, and~~ compliance with national employment and labor laws
- To promote due diligence in areas in which labor risks exist, such as migrant workers, workers procured by third parties, and workers in the client's supply chain
- To protect the workforce by addressing child labor and forced labor
- To promote safe and healthy working conditions, and to protect and promote the health of workers

Scope of Application

3. The applicability of this Performance Standard is established during the ~~S~~social and ~~e~~Environmental risks and impacts identification-Assessment process, while the implementation of the actions necessary to meet the requirements of this Performance Standard ~~are~~ managed through the client's ~~s~~Social and ~~e~~Environmental ~~m~~Management ~~S~~system. The assessment and management system requirements are outlined in Performance Standard 1.

4. This Performance Standard applies, ~~the term "" is used to refer to~~ ~~employees~~ workers² employed or directly contracted by ~~of the client, as well as to certain types of non-employee workers~~

¹ These conventions are:

ILO Convention 87 on Freedom of Association and Protection of the Right to Organize

ILO Convention 98 on the Right to Organize and Collective Bargaining

ILO Convention 29 on Forced Labor

ILO Convention 105 on the Abolition of Forced Labor

ILO Convention 138 on Minimum Age (of Employment)

ILO Convention 182 on the Worst Forms of Child Labor

ILO Convention 100 on Equal Remuneration

ILO Convention 111 on Discrimination (Employment and Occupation)

~~United Nations~~ Convention on the Rights of the Child, Article 32.1

² Throughout this Performance Standard the term "worker" is used to describe an individual providing work under an employment relationship with the client, contractor or subcontractor. Employment relationship can be either temporary or permanent.

~~described in paragraph 17. The application of this Performance Standard will vary depending on the type of workers, as follows: engaged~~

5. In respect of workers hired by third parties to work on the site or to support the project, the client will follow the steps outlined in paragraphs 22 and 23 of this Performance Standard.

~~4. Throughout **Employees**: All the requirements of this Performance Standard, except for the requirements under paragraphs 17 and 18, apply~~

~~**Non-Employee Workers**: The requirements of paragraph 17 apply~~

~~6. ⁵ Supply chain³ issues are addressed in paragraph 18.~~

6. For primary suppliers,⁴ the client will take the steps outlined in paragraph 24 of this Performance Standard.

Requirements

Working Conditions and Management of Worker Relationship

Human Resources Policies and Procedures

7. The client will adopt and implement a human resource policyies and procedures appropriate to its size and workforce that set out its approach to managing workers ~~employees~~ consistent with the requirements of this Performance Standard and national law.

8. ~~Under the policy,~~ Ithe client will provide workers ~~employees~~ with documented information regarding their rights under national labor and employment law and any applicable collective agreements, including their rights related to hours of work, wages, overtime, compensation, and benefits.

Working Relationship

~~The client will document and communicate to all employees and workers directly contracted by the client their working conditions and terms of employment, including their entitlement to wages and any benefits.~~

Working Conditions and Terms of Employment

9. Where the client is a party to a collective bargaining agreement with a workers' organization, such agreement will be respected. Where such agreements do not exist, or do not address working conditions and terms of employment,⁵ ~~(such as wages and benefits, , hours of work, overtime arrangements and overtime compensation, , and leave for illness, maternity, vacation or holiday)~~ the client will provide reasonable working conditions and terms of employment that, at a minimum, comply with national law.

10. Where migrant workers are engaged, they should be engaged on comparable terms and conditions to non-migrant workers when engaged in similar work.~~This policy will be clear and~~

³ ~~Supply chain refers to both labor and material inputs for the life-cycle of a good or service.~~

⁴ Primary suppliers are those first-tier suppliers who are providing goods or materials essential for the core business function.

⁵ Working conditions and terms of employment examples are wages and benefits; wage deductions; hours of work; overtime arrangements and overtime compensation; breaks; rest days; and leave for illness, maternity, vacation or holiday.

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~~understandable to employees and will be explained or made accessible to each employee upon taking employment.~~

11. Where the client or other third parties working on the project directly or indirectly provide accommodation to workers covered by the scope of this Performance Standard, the client will put in place and implement policies on the quality and management of the accommodation and provision of basic services including water, sanitation, and, in certain cases, availability of medical care. The services will be provided in a manner consistent with the principles of non-discrimination and equal opportunity.

Workers' Organizations

~~11.12.~~ 12.12. In countries where national law recognizes workers' rights to form and to join workers' organizations of their choosing without interference and to bargain collectively, the client will comply with national law. Where national law substantially restricts workers' organizations, the client will ~~enable alternative means for~~ not restrict workers from developing alternative means to express their grievances and protect their rights regarding working conditions and terms of employment. The client should not seek to unduly influence or control these means.

~~12.13.~~ 13.13. In either case described in paragraph ~~9~~12 of this Performance Standard, and where national law is silent, the client will not discourage workers from forming or joining workers' organizations of their choosing or from bargaining collectively, and will not discriminate or retaliate against workers who participate, or seek to participate, in such organizations and bargain collectively. In accordance with national law, the client will engage with such workers' representatives and workers' organizations and provide them with information needed for meaningful negotiation in a timely manner. Workers' organizations are expected to fairly represent the workers in the workforce.

Non-Discrimination and Equal Opportunity

14. The client will not make employment decisions on the basis of personal characteristics unrelated to inherent job requirements. The client will base the employment relationship on the principle of equal opportunity and fair treatment, and will not discriminate with respect to any aspects of the employment relationship, ~~including~~ such as recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training, promotion, termination of employment or retirement, and ~~discipline~~ disciplinary practices. The client will take measures to prevent and address harassment, intimidation, and/or exploitation, especially in regard to women. The principles of non-discrimination apply to migrant workers.

~~13.15.~~ 15.15. In countries where national law provides for non-discrimination in employment, the client will comply with national law. When national laws are silent on non-discrimination in employment, the client will meet this Performance Standard. In circumstances where national law is inconsistent with this Performance Standard, the client is encouraged to carry out their operations consistent with the intent of paragraph 13 above without contravening applicable laws. Special measures of protection or assistance to remedy past discrimination or selection for a particular job based on the inherent requirements of the job or promoting local employment, particularly those individuals or communities that are directly affected, will not be deemed discrimination, provided they are consistent with national law.

Retrenchment

~~14.16.~~ ⁶Where the client proposes to implement collective dismissals, an analysis for alternatives to retrenchment will be conducted. If the analysis does not identify alternatives to retrenchment, a ~~will develop a retrenchment plan~~ will be developed and implemented to mitigate the adverse impacts of retrenchment on ~~workers~~ employees, ~~if it anticipates the elimination of a significant number of jobs or a layoff of a significant number of employees.~~ The retrenchment plan will be based on the principle of non-discrimination and will reflect the client's consultation with ~~workers~~ employees, their organizations, and, where appropriate, the government. The client will comply with all legal and contractual requirements related to notification of public authorities, provision of information to and consultation with workers and their organization.

17. The client should ensure that all workers receive severance payments mandated by law and collective agreements in a timely manner, and that all outstanding back pay and social security benefits and pension contributions and benefits are paid to the workers on or before dismissal.

Grievance Mechanism

18. The client will provide a grievance mechanism for workers (and their organizations, where they exist) to raise reasonable workplace concerns. The client will inform the workers of the grievance mechanism at the time of recruitment~~hire~~, and make it easily accessible to them. The mechanism should involve an appropriate level of management and address concerns promptly, using an understandable and transparent process that provides timely feedback to those concerned, without any retribution. The mechanism should not impede access to other judicial or administrative remedies that might be available under the law or through existing arbitration procedures, or substitute for grievance mechanisms provided through collective agreements. The client should also ensure that workers procured by third parties, covered in paragraphs 22 and 23 of this Performance Standard, have access to an appropriate grievance mechanism.

Protecting the Work Force

Child Labor

~~15.19.~~ The client will not employ children in any manner that is economically exploitative, or is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development. Where national laws have provisions for the employment of minors, the client will follow those laws applicable to the client. Children ~~under below~~ the age of 18 ~~years~~ will not be employed in ~~dangerous~~ hazardous work. All work of persons under the age of 18 will be subject to an appropriate risk assessment and regular monitoring of health, working conditions, and hours of work.

Forced Labor

20. The client will not employ forced labor, which consists of any work or service not voluntarily performed that is exacted from an individual under threat of force or penalty. This covers any kind of involuntary or compulsory labor, such as indentured labor, bonded labor, or similar labor-contracting arrangements. The client will not knowingly employ trafficked persons.⁷ Women and children are particularly vulnerable to trafficking.

⁶ Collective dismissals cover all multiple dismissals that are a result of an economic, technical, or organizational reason; or other reasons that are not related to performance or other personal reasons.

⁷ Trafficking in persons is defined as the recruitment, transportation, transfer, harboring, or receipt of persons, by means of the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power, or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Occupational Health and Safety

~~16.21.~~ The client will provide ~~the~~ workers with a safe and healthy work environment, taking into account inherent risks in its particular sector and specific classes of hazards in the client's work areas, including physical, chemical, biological, ~~and~~ radiological hazards. The client will take steps to prevent accidents, injury, and disease arising from, associated with, or occurring in the course of work by minimizing, ~~seas~~ far as reasonably practicable, the causes of hazards. In a manner consistent with good international industry practice ~~(GHP)~~,⁸ (as reflected in various internationally recognized sources including the World Bank Group Environmental, Health and Safety Guidelines), the client will address areas ~~, including that include :~~ the (i) identification of potential hazards to workers, particularly those that may be life-threatening; (ii) provision of preventive and protective measures, including modification, substitution, or elimination of hazardous conditions or substances; (iii) training of workers; (iv) documentation and reporting of occupational accidents, diseases, and incidents; and (v) and emergency prevention, preparedness, and response arrangements. For additional information related to emergency preparedness and response refer to Performance Standard 1.

~~Non-Employee~~ Workers Procured by ~~Third~~ Parties

~~17.22.~~ In respect of workers procured by third parties to work directly on or to support the project, the client will ascertain that the contractors, subcontractors, or intermediaries who procure these workers are reputable and legitimate enterprises and have appropriate management systems to operate in a manner consistent with the requirements of this Performance Standard, except for paragraphs ~~15, 16, 17, 23,~~ and 24.

~~18.~~ ~~For purpose of this Performance Standard, "non-employee workers" refers to workers who are: (i) directly contracted by the client, or contracted through contractors or other intermediaries; and (ii) performing work directly related to core functions essential to the client's products or services for a substantial duration. When the client contracts non-employee workers directly, the client will use commercially reasonable efforts to apply the requirements of this Performance Standard, except for paragraphs 6, 12, and 18. With respect to contractors or other intermediaries procuring non-employee workers, the client will use commercially reasonable efforts to: (i) ascertain that these contractors or intermediaries are reputable and legitimate enterprises; and (ii) require that these contractors or intermediaries apply the requirements of this Performance Standard, except for paragraphs 6, 12, and 13.~~

~~19.23.~~ The client will establish policies and procedures for managing these contractors, subcontractors, and intermediaries, and monitor their performance in relation to the requirements of this Performance Standard. In addition, the client will incorporate these requirements in contractual agreements with its contractors, subcontractors, and intermediaries.

Supply Chain

~~24.~~ The adverse impacts associated with supply chains will be considered where there is a high risk of child labor, forced labor, or significant occupational, health, or safety issues, ~~low labor cost is a factor in the competitiveness of the item supplied.~~ The client will inquire about and address child labor and forced labor in its supply chain, consistent with paragraphs ~~149~~ and ~~1520~~ above.

⁸ Defined as the exercise of professional skill, diligence, prudence, and foresight that would reasonably be expected from skilled and experienced professionals engaged in the same type of undertaking under the same or similar circumstances globally.

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25. Additionally, the client will use reasonable efforts to ensure that primary suppliers are taking steps to prevent or to correct eminent danger of death or serious life-threatening harm to its workers.