

Multilateral Investment Guarantee Agency's Policy on Social & Environmental Sustainability

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Policy on Social and Environmental Sustainability

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Section 1: Purpose of this Policy

1. The Multilateral Investment Guarantee Agency (MIGA) strives for positive development outcomes in the private sector projects for which it provides guarantee support. An important component of positive development outcomes is the social and environmental sustainability of projects, which MIGA expects to achieve by applying a comprehensive set of social and environmental performance standards.

2. Through its *Policy on Social and Environmental Sustainability* (the Sustainability Policy), MIGA puts into practice its commitment to social and environmental sustainability. This commitment is based on MIGA's mission and mandate, as explained in Section 2 of this Policy. Translating this commitment into successful outcomes depends on the efforts of MIGA and its clients¹. Consistent with this commitment, MIGA carries out the actions described in Section 3 of this Policy, including its responsibility to review projects under consideration for political risk insurance from MIGA against the Performance Standards.

3. The Performance Standards consist of the following:

Performance Standard 1: Social and Environmental Assessment and Management System

Performance Standard 2: Labor and Working Conditions

Performance Standard 3: Pollution Prevention and Abatement

Performance Standard 4: Community Health, Safety and Security

Performance Standard 5: Land Acquisition and Involuntary Resettlement

Performance Standard 6: Biodiversity Conservation and Sustainable Natural Resource Management

Performance Standard 7: Indigenous Peoples

Performance Standard 8: Cultural Heritage

4. These Performance Standards are essential documents to help MIGA and its clients manage and improve their social and environment performance through an outcomes-based approach. The desired outcomes are described in the objectives of each Performance Standard, followed by specific requirements to help clients achieve these outcomes through means that are appropriate to the nature and scale of the project and commensurate with the level of social and environmental risks (likelihood of harm) and impacts. Central to these requirements is a consistent approach to avoid adverse impacts on workers, communities, and the environment, or if avoidance is not possible, to reduce, mitigate, or compensate for the impacts, as appropriate. The Performance Standards also provide a solid base from which clients may increase the sustainability of their business operations.

5. While managing social and environmental risks and impacts in a manner consistent with the Performance Standards is the responsibility of the client, MIGA seeks to ensure that the projects it supports through a guarantee are operated in a manner consistent with the requirements of the Performance Standards. As a result, MIGA's social and environmental review of a proposed project

¹ The term "client" is used throughout this Policy to refer to the Project Enterprise or the Guarantee Holder (as these terms are formally defined in MIGA's Contract of Guarantee), as is appropriate in the context. The Project Enterprise takes the actions necessary to implement the Performance Standards. Where the Guarantee Holder is the sole or majority shareholder of the Project Enterprise, the Guarantee Holder is fully responsible for the compliance of the Project Enterprise with the environmental and social standards, and MIGA can cancel the contract of guarantee for non-compliance. In the case of guarantees in favor of project lenders who do not control the Project Enterprise, MIGA requires such unaffiliated lenders: (i) to include covenants in their loan documents with the Project Enterprise that require compliance with MIGA's environmental and social standards; and (ii) to diligently enforce these covenants against the Project Enterprise. Equity investors with a minority interest are treated on a case by case basis in a manner similar to either majority shareholders or unaffiliated lenders, depending on the level of control they exercise over the Project Enterprise.

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is an important factor in its decision to provide a guarantee for an investment in the project or not, and will determine the scope of the social and environmental conditions of the MIGA guarantee. By adhering to this Policy, MIGA enhances the predictability, transparency, and accountability of its actions and decision-making, helps clients manage social and environmental risks and improve performance, and enhances positive development outcomes on the ground.

6. This Policy is effective for all new projects to be underwritten following July 1, 2007, and supersedes in its entirety MIGA's *Environmental Assessment Policy* of July, 1999, and MIGA's issue-specific *Safeguard Policies* adopted on an interim basis in May, 2002. This Policy is not an express or implied waiver of MIGA's privileges and immunities under its Articles of Agreement, international conventions, or any applicable law, nor does it provide any contractual or other rights to any party.

Section 2: MIGA's Commitment

7. MIGA's mission is to promote sustainable private sector foreign direct investment in developing countries, helping to reduce poverty and improve people's lives. MIGA believes that sound economic growth, grounded in sustainable private investment, is crucial to poverty reduction.

8. In order to accomplish its mission, MIGA seeks to base partnerships with clients on the understanding that the pursuit of social and environmental opportunities is an integral part of good business. Socially and environmentally responsible businesses can enhance clients' competitive advantage and create value for all parties involved. MIGA believes that this approach also helps to promote the long-term profitability of investments in emerging markets and to enable MIGA to fulfill its development mandate and strengthen the public's trust in MIGA.

9. Central to MIGA's development mission are its efforts to carry out its support to projects and advisory services in a manner that "do no harm" to people or the environment. Negative impacts should be avoided where possible, and if these impacts are unavoidable, they should be reduced, mitigated or compensated for appropriately. In particular, MIGA is committed to ensuring that the costs of economic development do not fall disproportionately on those who are poor or vulnerable, that the environment is not degraded in the process, and that natural resources are managed efficiently and sustainably. MIGA believes the client's regular engagement with local communities about matters that directly affect them plays an important role in avoiding or reducing harm to people and the environment. MIGA also recognizes that the roles and responsibilities of the private sector in respecting human rights are emerging as an important aspect of corporate social responsibility. The Performance Standards help private sector clients address environmental and social risks and opportunities, consistent with these emerging roles and responsibilities.

10. Accordingly, MIGA endeavors to support sustainable projects that identify and address economic, social and environmental risks with a view to continually improving their sustainability performance within their resources and consistent with their strategies. MIGA seeks business partners who share its vision and commitment to sustainable development, who wish to raise their capacity to manage their social and environmental risks, and who seek to improve their performance in this area.

Section 3: MIGA Roles and Responsibilities

11. In its operations, MIGA expects clients to manage the social and environmental risks and impacts of their projects. This entails the client's assessment of these risks and impacts, and

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implementation of measures to meet the requirements of the Performance Standards. An important component of the client's management of its social and environmental performance is the client's engagement with the affected communities through disclosure of relevant project information, consultation, and informed participation, as stated in Performance Standard 1.

12. MIGA's role is to review the client's assessment; to assist the client in developing measures to avoid, minimize, mitigate or compensate for social and environmental impacts consistent with the Performance Standards; to categorize the project in order to specify MIGA's institutional requirements to disclose to the public project-specific information; to help identify opportunities to improve social and environmental outcomes; and to monitor the project's social and environmental performance throughout the life of MIGA's guarantee. MIGA also discloses information relating to its own institutional and investment activities in accordance with its Policy on Disclosure of Information. MIGA implements these process requirements through its Environmental and Social Review Procedure.

13. The foregoing general approach applies to MIGA's direct support to projects. Guarantees in support of financial intermediaries and advisory work have separate procedures for applying the Performance Standards (see paragraphs 27 through 30 below). MIGA's internal procedure for the application of these Performance Standards are set out in the Environmental and Social Review Procedure.

Social and Environmental Review

Overall Approach

14. When an investment is proposed for a guarantee, MIGA conducts a social and environmental review of the project as part of its overall due diligence. This review is appropriate to the nature and scale of the project, and commensurate with the level of social and environmental risks and impacts. MIGA reviews any new business activity that is being considered for MIGA guarantee support, whether in the pre-construction, construction, or operational stage. Where there are significant historical social or environmental impacts associated with the project, including those caused by others, MIGA works with its client to determine possible remediation measures.

15. The effectiveness and efficiency of the social and environmental review depend partly on the timing of MIGA's involvement. When this involvement occurs in the early stages of project design, MIGA is able to support the client more effectively in anticipating and addressing specific risks, impacts and opportunities, and help build its capacity to manage these throughout the life of the project.

16. The social and environmental review includes three key components: (i) the social and environmental risks and impacts of the project as assessed by the client; (ii) the commitment and capacity of the client to manage these expected impacts, including the client's social and environmental management system; and (iii) the role of third parties in the project's compliance with the Performance Standards. Each of these components helps MIGA to ascertain whether the project can be expected to meet the Performance Standards. In the case of projects with significant adverse impacts on affected communities, MIGA also assures itself that there is broad community support for the project within the affected communities (see paragraphs 19 and 20 below). MIGA bases its review on the client's Social and Environmental Assessment. In cases where such Assessment does not meet the requirements of Performance Standard 1, MIGA requires the client to undertake additional Assessment or, where appropriate, to commission Assessment by external experts.

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17. MIGA's social and environmental review is integrated into MIGA's overall assessment of the project, including the assessment of political and reputational risks. MIGA also considers whether the investment can be expected to contribute to the development of the host country and to broadly benefit its relevant constituencies in economic, social, or environmental terms. Through weighing these costs and benefits, MIGA articulates its rationale and project-specific conditions for the proposed guarantee. These are provided to MIGA's Board of Directors when the proposed guarantee is presented for their review and concurrence.

18. MIGA does not provide guarantee support for projects that cannot be expected to meet the Performance Standards over a reasonable period of time. In addition, there are several types of activities that MIGA does not provide guarantee support. A list of these activities can be found in the Exclusion List in the Environmental and Social Review Procedure.

Categorization of Projects

19. As part of its review of a project's expected social and environmental impacts, MIGA uses a system of social and environmental categorization to: (i) reflect the magnitude of impacts understood as a result of the client's Social and Environmental Assessment; and (ii) specify MIGA's institutional requirements to disclose to the public project specific information prior to presenting projects to its Board of Directors for approval in accordance with Section 12 of the Disclosure Policy. These categories are:

- **Category A Projects:** Projects with potential significant adverse social or environmental impacts that are diverse, irreversible or unprecedented
- **Category B Projects:** Projects with potential limited adverse social or environmental impacts that are few in number, generally site-specific, largely reversible and readily addressed through mitigation measures
- **Category C Projects:** Projects with minimal or no adverse social or environmental impacts, including certain financial intermediary (FI) projects with minimal or no adverse risks
- **Category FI Projects:** All FI projects excluding those that are Category C projects (see paragraphs 27 through 29 below)

Community Engagement and Broad Community Support

20. Effective community engagement is central to the successful management of risks and impacts to the affected communities. Through the Performance Standards, MIGA requires project companies to engage with affected communities through disclosure of information, consultation, and informed participation, in a manner commensurate with the risks to and impacts on the affected communities.

21. MIGA is committed to working with the private sector to put into practice processes of community engagement that ensure the free, prior, and informed consultation of the affected communities. Building on this commitment, when clients are required to engage in a process of free, prior, and informed consultation, MIGA reviews the client's documentation of the engagement process. In addition, through its own investigation, MIGA assures itself that the client's community engagement is one that involves free, prior, and informed consultation and enables the informed participation of the affected communities, leading to broad community support for the project within the affected communities, before presenting the project for the concurrence of MIGA's Board of Directors. Broad community support is a collection of expressions by the affected communities, through individuals or their recognized representatives, in support of the project. There may be broad community support even if some individuals or groups object to the project. After the Board concurrence with MIGA's proposal to provide a guarantee in support of the project, MIGA continues to monitor the client's community engagement process as part of its portfolio supervision.

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Sector-Specific Initiatives on Governance and Disclosure

22. In the extractive industries and infrastructure sectors in particular, where a project can have potentially broader implications for the public at large, MIGA recognizes the importance of assessment of governance risks and disclosure of information as a means to manage governance risks. Accordingly, subject to applicable legal restrictions, MIGA has the following sector-specific initiatives on disclosure of project-related information, in addition to the disclosure requirements specified in Performance Standard 1.

Extractive Industry Projects

23. When MIGA insures investments in extractive industry projects (oil, gas and mining projects), MIGA assesses the governance risks to expected benefits from these projects. In the case of significant projects (those expected to account for ten percent or more of government revenues), risks are appropriately mitigated, and for smaller projects, the expected net benefits of projects and the risks to these from weak governance are reviewed. Where the balance of benefits and risks is not acceptable, MIGA does not support such projects. MIGA also promotes transparency of revenue payments from extractive industry projects to host governments. Accordingly, MIGA requires that: (i) for significant new extractive industries projects, clients publicly disclose the relevant terms of key agreements that are of public concern, such as host government agreements (HGAs) and intergovernmental agreements (IGAs); and (ii) in addition, clients of all MIGA-supported extractive industry projects publicly disclose their material payments (such as royalties, taxes, and profit sharing) from those projects to the host government(s).

Infrastructure Projects

24. When MIGA insures investments in projects involving the final delivery of essential services, such as the retail distribution of water, electricity, piped gas, and telecommunications, to the general public under monopoly conditions, MIGA encourages the public disclosure of information relating to household tariffs and tariff adjustment mechanisms, service standards, investment obligations, and the form and extent of any ongoing government support. If MIGA is providing guarantee support to the privatization of such distribution services, MIGA also encourages the public disclosure of concession fees or privatization proceeds. Such disclosures may be made by the responsible government entity (such as the relevant regulatory authority) or by the client.

Managing Third Party Performance

25. At times, the ability of the project company to achieve social or environmental outcomes consistent with the Performance Standards will be dependent on third party activities. A third party may be a government agency as a regulator or contract party, a principal contractor or supplier with whom the project has a substantial involvement, or an operator of an associated facility (as defined in Performance Standard 1).

26. MIGA seeks to ensure that the projects it supports through guarantees achieve outcomes consistent with the Performance Standards, even if the outcomes are dependent upon the performance of third parties. When the third party risk is high, and when the client has control or influence over the actions and behavior of the third party, MIGA requires the client to collaborate with the third party to achieve the outcomes consistent with the Performance Standards. Specific requirements and options will vary from case to case.

Project Monitoring

27. After MIGA issues a Contract of Guarantee, MIGA carries out the following actions to monitor the performance of the projects being supported:

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- Require the project to submit periodic Monitoring Reports on its social and environmental performance as agreed with MIGA
- Conduct site visits of certain projects with social and environmental risks and impacts
- Review project performance on the basis of the client's commitments in the Action Plan, as reported by the client's Monitoring Reports, and, where relevant, review with the client any performance improvement opportunities
- If changed project circumstances would result in adverse social or environmental impacts, work with the client to address them
- If the client fails to comply with its social and environmental commitments, as expressed in the Action Plan or legal agreement with MIGA, work with the client to bring it back into compliance to the extent feasible, and if the client fails to reestablish compliance, exercise remedies when appropriate
- Encourage the client to report publicly on its social, environmental and other non-financial aspects of performance, in addition to reporting on the Action Plan as required by Performance Standard 1
- Encourage the client to continue to meet the Performance Standards after the client has decided the MIGA guarantee is no longer necessary and has cancelled.

Guarantees in Support of Financial Intermediaries

28. MIGA is committed to supporting sustainable capital market development and has a significant program of support to investments in financial intermediaries (FIs). Through this program, MIGA helps strengthen domestic capital markets that support economic development at a scale of enterprise that is smaller than would be possible through direct MIGA guarantees. MIGA's FI clients are engaged in a diverse range of activities, including project finance, lending to large, medium and small businesses, microfinance, trade finance, housing finance, and private equity, each with its own social and environmental risk profile.

29. Through its Environmental and Social Review Procedure, MIGA reviews the business of its FI clients to identify activities where the FI could be exposed to social and environmental risk as a result of its investments. MIGA's requirements for the FI client will be proportional to the level of potential risk:

- FIs with business activities that have minimal or no adverse social or environmental risks will be considered Category C projects and need not apply any specific requirements
- FIs providing long-term corporate finance or project finance will require the recipient of such finance to:
 - (i) follow national laws where the activity financed presents limited social or environmental risks; and
 - (ii) apply the Performance Standards where the activity financed presents significant social or environmental risks

30. The FI will be required to establish and maintain a Social and Environmental Management System to ensure that its investments meet MIGA's requirements, and MIGA will monitor the FI's performance on the basis of the Management System.

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Advisory Services

31. MIGA provides a limited amount of advisory services to clients, but this may grow over time. MIGA funds some of these services directly, and in other cases leverages funds from donor-funded facilities. These donor-funded facilities have their own operating procedures, including how they manage social and environmental issues. When MIGA is providing advice for large-scale investment projects, the Performance Standards are used as a reference in addition to national laws. MIGA does not provide advice to support activities that are described in MIGA's Exclusion List, and encourages recipients of MIGA's advisory services to enhance opportunities to promote good social and environmental practices.

Section 4: Compliance Advisor/Ombudsman

32. MIGA supports its clients in addressing social and environmental issues arising from their projects by requiring clients to set up and administer appropriate mechanisms or procedures to address project-related grievances or complaints from people in the affected communities. In addition to these project-level mechanisms and procedures, the role of administrative or legal procedures available in the host country should be considered. Nonetheless, there may be cases where grievances and complaints from those affected by a MIGA-supported project are not fully resolved at the project level or through other established mechanisms.

33. Recognizing the importance of accountability and that the concerns and complaints of project-affected people should be addressed in a manner that is fair, objective, and constructive, a mechanism has been established through the Compliance Advisor/Ombudsman (CAO), a joint office of MIGA and IFC, to enable individuals and communities affected by MIGA supported projects to raise their concerns to an independent oversight authority.

34. The CAO is independent of MIGA management and reports directly to the President of the World Bank Group. The CAO responds to complaints from those affected by MIGA-supported projects and attempts to resolve them through a flexible problem-solving approach, and to enhance the social and environmental outcomes of projects. In addition, the CAO oversees audits of MIGA's social and environmental performance, particularly in relation to sensitive projects, to ascertain compliance with policies, guidelines, procedures, and systems.

35. Complaints may relate to any aspect of a MIGA-supported project that is within the mandate of the CAO. They can be made by any individual, group, community, entity, or other party affected or likely to be affected by the social or environmental impacts of a MIGA-supported project. Complaints should be submitted to the CAO in writing to the address below:

Compliance Advisor/Ombudsman
International Finance Corporation
2121 Pennsylvania Avenue NW
Room F11K-232
Washington, DC 20433 USA

Tel: 1 202 458 1973

Fax: 1 202 522 7400

E-mail: cao-compliance@ifc.org

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36. The CAO receives and addresses complaints in line with the criteria set out in the Operational Guidelines for the CAO. The CAO's Operational Guidelines are available at the CAO's web site:

www.cao-ombudsman.org

Section 5: Resources for Policy Implementation

MIGA Client Support for Social and Environmental Sustainability

37. MIGA can mobilize in-house capacity to provide hands-on support to clients that seek to improve their social and environmental performance, particularly those with limited capacity and resources, including small and medium enterprises. Where needed, MIGA is also prepared to work closely with international financial institutions and the private sector on project and policy issues related to sustainability..

Client Support Services

38. MIGA provides a limited amount of client support, capacity building, and value-adding services in the social and environmental area, subject to its assessment of the client's capacity and available resources. These services include assistance with Social and Environmental Assessment for small and medium-size clients; assistance with identifying opportunities to enhance social and environmental outcomes; discussion with national environmental protection agencies or other relevant regional, national or local agencies on project -specific issues at the request of the client; mobilization of MIGA's network of external consultants and experts; and advice on good practice to improve project performance.

Liaison with Public and Private Sector Institutions

39. MIGA's position as an arm of the World Bank Group focusing on foreign private investment, together with its extensive network among private sector and international financial institutions, enables MIGA to liaise with public and private sector stakeholders to promote a broader dialogue on sustainable private sector financing in emerging markets. The following are examples of MIGA's liaison role:

- Identification and dissemination of private sector best practices in the social and environmental area
- Promotion of sustainable financial markets in developing countries through support to the Equator Principles, and through engaging private equity managers and financial analysts, and using other financial market mechanisms
- Playing the role of the lead insurer on social and environmental matters in syndicated guarantees and joint projects with other international financial institutions, promoting close coordination and harmonization among the participating institutions
- Liaison and coordination with the World Bank on country systems, or the social or environmental aspects of national policy or enforcement or monitoring issues
- Liaison with relevant international financial institutions or national agencies on strategic, regional, or sectoral environmental assessment where appropriate for private sector projects with significant social or environmental issues
- Liaison and coordination with external partners and initiatives, such as the UN Global Compact, to enhance the social and environmental sustainability of private sector projects

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- Formal notification to countries potentially affected by the transboundary effects of proposed project activities, to help those countries determine whether the proposed project has the potential for causing adverse effects through air pollution or deprivation of water from or pollution of international waterways

Additional Supporting Documents for Policy Implementation

40. In addition to the Performance Standards, MIGA uses other policy, procedure, guidelines, and guidance materials to assist its staff and clients in achieving social and environmental sustainability in projects in emerging markets. For example:

- MIGA's institutional disclosure of information will be carried out pursuant to MIGA's Policy on Disclosure of Information
- MIGA's internal procedure to address social and environmental issues through different types of guarantee and advisory services can be found in the Environmental and Social Review Procedure
- IFC's Guidance Notes, corresponding to the Performance Standards, offer helpful guidance on the requirements contained in the Performance Standards, including reference materials, and on good sustainability practices to improve project performance
- The guidelines on sector and industry practices and performance levels consistent with Performance Standard 3 can be found in MIGA's Environmental, Health and Safety Guidelines
- Good practice notes and handbooks disseminate examples of good practice and reference information about these practices

The MIGA documents are available at: www.miga.org;

The IFC Guidance Notes and related materials are available at:
www.ifc.org/ifcext/enviro.nsf/Content/EnvSocStandards

In addition, while the eight Performance Standards are all unchanged, and hence will not be reproduced here, there will need to be some minor changes on the Introduction page to the Performance Standards. This is presented in the next page below, with the changes noted.

Introduction

1. The Multilateral Investment Guarantee Agency (MIGA) applies the Performance Standards to manage social and environmental risks and impacts and to enhance development opportunities in the projects that it supports through the provision of guarantees against political risks.¹ The Performance Standards may also be applied by other financial institutions electing to apply them to projects in emerging markets. Together, the eight Performance Standards establish standards that the client² is to meet throughout the life of an investment supported by a MIGA guarantee.

Performance Standard 1: Social and Environmental Assessment and Management System

Performance Standard 2: Labor and Working Conditions

Performance Standard 3: Pollution Prevention and Abatement

Performance Standard 4: Community Health, Safety and Security

Performance Standard 5: Land Acquisition and Involuntary Resettlement

Performance Standard 6: Biodiversity Conservation and Sustainable Natural Resource Management

Performance Standard 7: Indigenous Peoples

Performance Standard 8: Cultural Heritage

2. Performance Standard 1 establishes the importance of: (i) integrated assessment to identify the social and environmental impacts, risks, and opportunities of projects; (ii) effective community engagement through disclosure of project-related information and consultation with local communities on matters that directly affect them; and (iii) the client's management of social and environmental performance throughout the life of the project. Performance Standards 2 through 8 establish requirements to avoid, reduce, mitigate or compensate for impacts on people and the environment, and to improve conditions where appropriate. While all relevant social and environmental risks and potential impacts should be considered as part of the assessment, Performance Standards 2 through 8 describe potential social and environmental impacts that require particular attention in emerging markets. Where social or environmental impacts are anticipated, the client is required to manage them through its Social and Environmental Management System consistent with Performance Standard 1.

3. In addition to meeting the requirements under the Performance Standards, clients must comply with applicable national laws, including those laws implementing host country obligations under international law. The requirement to comply with all applicable national laws is incorporated in MIGA's Standard Contract of Guarantee.

4. A set of IFC Guidance Notes, corresponding to the Performance Standards, offers helpful guidance on the requirements contained in the Performance Standards, including reference materials, and on good sustainability practices to help clients improve project performance.

¹ MIGA will apply the Performance Standards to projects for which it provides guarantee support, consistent with the provisions in the accompanying MIGA *Policy on Social and Environmental Sustainability*. MIGA's institutional disclosure of information will be pursuant to MIGA's *Policy on Disclosure of Information*.

² The term "client" is used throughout this Policy to refer to the Project Enterprise or the Guarantee Holder (as these terms are formally defined in MIGA's Contract of Guarantee), as is appropriate in the context. The Project Enterprise takes the actions necessary to implement the Performance Standards. Where the Guarantee Holder is the sole or majority shareholder of the Project Enterprise, the Guarantee Holder is fully responsible for the compliance of the Project Enterprise with the environmental and social standards, and MIGA can cancel the contract of guarantee for non-compliance. In the case of guarantees in favor of project lenders who do not control the Project Enterprise, MIGA requires such unaffiliated lenders: (i) to include covenants in their loan documents with the Project Enterprise that require compliance with MIGA's environmental and social standards; and (ii) to diligently enforce these covenants against the Project Enterprise. Equity investors with a minority interest are treated on a case by case basis in a manner similar to either majority shareholders or unaffiliated lenders, depending on the level of control they exercise over the Project Enterprise. The term "project" is defined in Performance Standard 1.