

Recommendations EBRD's Public Information Policy based on comparative analysis of IFC and other disclosure policies

Dushanbe, May 30, 2011

With the reviewed of the public information policy, EBRD has an opportunity to adopt further improvements to its information policy based on latest policy changes in similar institutions, accumulated experience and stakeholder input. EBRD Draft Public Information Policy (PIP) closely dovetails IFC's Policy on Disclosure of Information (DP), and is based on other international best practices. However, the current draft of the EBRD's PIP lacks several provisions and innovations which should be considered the latest best practice in information disclosure in multilateral development banks.

I. Review of the draft change to the Public Information Policy

In its current form (April 2011), the draft of EBRD Public Information Policy represents a short departure from its original version adopted in 2008. Key changes proposed by the EBRD management include:

1. Translation of draft Country strategies (2.1.2);
2. Changes to the translation procedures of safeguard and grievance policies (2.3.4)
3. Updated limitations to the disclosure of the Project Summary Document (PSD), and translation of PSD (3.1.1-3.1.9, 3.4)
4. Update to the debarment and anti-corruption reports (4.1);
5. Update to the PCM from IRM (4.1.3, 7);

Most of the changes in the draft are updates and revisions of the text with few substantial changes to the policy. Moreover, several of the revisions are intended to *limit* rather than expand access to information. For instance, the policy uses the word "endeavor to provide translations..." of safeguard policies instead of "will provide translations..." and limitations to the PSD disclosure were introduced in 3.1.2 and 3.1.3 and access to some board related documentation.

Paragraph 1.8 bars disclosure of "all contractual documentation related to a project...", which contradicts current best practice in terms of disclosure of key terms of contracts of extractive industry projects¹.

Most disappointing, is the fact that the true presumption of disclosure is not reflected in the current draft Public Information Policy because the policy prescribes *which specific documents* EBRD will release to the public, whereas information considered confidential incorporates *broad*

¹ Disclosure of key contracts of significant extractive industry projects was mandated by IFC's Social and Environmental Policy since 2007. In May 2011, IFC further extended contract disclosure requirements to all extractive projects it finances which will come into force in 2013. Historically, agreements for significant projects such as the BTC pipeline and Oyu Tolgoi mine were disclosed by projects sponsors, and industry tendency leans towards greater disclosure.

categories of information or scenarios where information would be considered confidential². Presumption of disclosure and departure from a prescriptive disclosure list constitutes exactly the opposite of what remains in the policy. The wording of Section E is decidedly contrary to the presumption of disclosure and best practice.

II. Need for upwards harmonization based on IFC's DP

In its review of its Public Information Policy, EBRD is advised to ensure maximum harmonization with the latest disclosure regimes adopted in comparable institutions. EBRD's participation in the policy benchmarking exercise with the other IFIs should help the Bank incorporate international best practice to the full extent. At a minimum, the EBRD should incorporate into its PIP policy advances adopted by the IFC in its I Policy on Disclosure of Information, as the last policy revised.

Key improvements to the IFC's access to Information Policy include:

1. Continuous update on the project related outcomes;
2. Disclosure of Financial Intermediary portfolio risks and high-risk sub-projects, and advisory services;
3. Further improvements to the governance-related disclosure requirements;
4. Broad Community Support determination;

² The policy uses the broadest and most encompassing language when referring to the potentially confidential information and uses the word "any" 14 times in the section E referring to information, investments, documents or actors.

Table 1 Key requirements of IFC and EBRD disclosure requirements in their respective policies:

Core principles & requirements adopted in 2006 (IFC) and EBRD (2008)	<ul style="list-style-type: none"> • EBRD and IFC disclose similar information about structure of the organization, core operating procedures, policies and strategies. • Both policies declare presumption of disclosure, limited with an extensive list of exception to disclosure; • Categories of exceptions in both policies are similar; • Both policies include provisions stipulating delay of disclosure; • Both policies also include identical, but limited harm test – disclosure of confidential information in public interest; • Both policies disclose identical project level information • EBRD and IFC disclosure country and sectoral strategies, however in a different manner; • Both institutions provide information about grievance mechanisms. Information disclosure about the Project Complaint Mechanism as part of its Public Information Policy. CAO has its own Disclosure Policy. • EBRD provides more guidance on the transitions of documents, including of the project level information and country strategies.
IFC's updates approved in May 2011	<ul style="list-style-type: none"> • Double-tier Appeals Mechanism; • Stakeholder engagement based on project risks, including for FI investments (regardless of client type); • Continuous update of project-level information throughout life of the project; • Reporting of development and transition impacts and update throughout project lifecycle; • Disclosure of portfolio risk assessments for Financial Intermediary investments; • Periodic disclosure of high-risk (category A)FI sub-project, including name, location and sector of sub-investments; • Explicit disclosure requirements for Technical Assistance / Advisory investments; • Determination of Broad Community Support for risky projects and clients' mitigation measures; • Industry specific requirements on governance and disclosure: including extractive industry contract transparency (summaries of key terms) and key terms of delivery of essential services;

III. Resource implications

The value of the Public Information Policy will depend on its effective implementation, which in turn depends on the appropriate resource allocation. However, important changes in the policy can be achieved without substantially increasing implementation costs:

1. Cost implications of a more robust PIP are relatively modest. A comparable estimate to implement IFC's Access to Information Policy was a one-time \$500,000 technology cost, and incremental annual costs of \$400,000³. EBRD can expect *lower costs* due to smaller portfolio, staff and generally higher client capacity.
2. Key project-related information is *already made available* to EBRD by the project sponsors, in accordance with the Performance Requirements; In addition, EBRD's site visit missions reports, as well as third party or community monitoring reports are also already produced in accordance with the current requirements;

3. Addition staff time and resources are well justified as part of investments in Category A, as well as high-risk Category B projects. Greater disclosure of project results should reduce the incidence of expensive and time consuming compliance reviews by the PCM.

³ 2010 Progress report on IFC'S policy and performance Standards on Social and Environmental Sustainability, and AIP Review and Update Process Para. 75, 79
[http://www.ifc.org/ifcext/policyreview.nsf/AttachmentsByTitle/Phase3_FINAL_CODE+PACKAGE/\\$FILE/Phase3_FINAL_CODE+PACKAG E.pdf](http://www.ifc.org/ifcext/policyreview.nsf/AttachmentsByTitle/Phase3_FINAL_CODE+PACKAGE/$FILE/Phase3_FINAL_CODE+PACKAG E.pdf)

IV. Recommendations to harmonize EBRD PIP with the existing best practices

(1) **EBRD should disclosure clients' community engagement documents, affected community support for sensitive projects and proposed mitigation measures.**

EBRD relies on the client supplied information regarding its community engagement and results of its consultation process. To demonstrate that EBRD supports sensitive projects only if stakeholders at large agree with the proposed mitigation and compensation measures and to ensure accountability to affected communities – EBRD should demonstrate evidence of community support for sensitive projects⁴.

(2) **Stakeholder engagement should be commensurate with project impacts, not client type.** The Public Information Policy prescribes different disclosure timeframes for private (30 days prior Board date) and public sector projects (60 days prior board date). The provision falls short of common practice of allocating disclosure based on *potential project risks*.

(3) **PIP should incorporate the concept of continuous disclosure of project related information.** One of the more significant advancements in the disclosure practices recently adopted by the IFC is reporting on project throughout its life-cycle, with an emphasis on the project-level outcomes. Asian Development Bank similarly required *quarterly* updates of the PID on the status of project implementation since 2005⁵.

The fundamental weakness of the current EBRD policy is the lack of public accountability on investments, private and public, after their initial approval by the Board of Directors. Experience with IFC project sponsors suggest that improved project-level reporting can help ensure that clients are accountable to the affected stakeholders⁶.

⁴ Apart from the existing due diligence procedures used by EBRD to judge clients' engagement with the affected communities, such evidence may include: minutes and results of consultations; quality and frequency of such consultations; feedback from the affected communities, implementation of the action plans, and evidence indicating that affected peoples do not accept measures proposed by the client, etc.

⁵ "ADB shall update the PID quarterly to reflect activities, status of development objectives, and material changes, if any, regarding the project." ADB Public Communications Policy, paragraphs 71 and 73.

⁶ A recent review of IFC portfolio by the CAO found that clients are not always reporting action plans (or implementation results) and other project related information to the affected communities, and up to a third of annual monitoring reports provide inadequate information about project. CAO recommends to strengthen project level reporting by both clients and the IFC. *Advisory Note on the Review of IFC's Policy and Performance Standards on Social and Environmental Sustainability* <http://www.cao->

The periodic update of the PSD should include, when applicable:

- a) Client annual monitoring reports and additional impact assessments conducted by the client or the EBRD;
- b) Status of implementation of Action Plans;
- c) Information on the benefit sharing and community development activities, where applicable;
- d) Relevant independent assessments and reports;
- e) Any significant changes to the project.

(4) **Tracking and reporting on transition impact and EBRD's value addition.** Consistent with paragraphs 4 and 5 of the Sustainability Policy, the PIP should require project-level disclosure of projects' transition impact. In certain high-risk projects such as in agribusiness, infrastructure, extractive and energy projects – the EBRD should be able to demonstrate, on a project-level, Bank's added value more effectively.

EBRD is advised to consider the following principles while designing a system for transition impacts assessment:

- a) Transition impacts should be tracked and reported at the project level. Such practice increases accountability of project sponsor to all stakeholders.
- b) EBRD should be able to capture both positive as well as negative impacts⁷;
- c) EBRD should be able to demonstrate its added-value vis-à-vis other clients, particularly for high-impact and public sector projects;
- d) Stakeholders should be able to jointly identify transition impacts indicators to track⁸. This can be achieved during stakeholder consultations by the project sponsor.

Among IFIs, IFC plans to track development outcomes based on its Development Outcome Tracking System as well as Strategic Development Goals. MIGA's policy also requires disclosure of development impacts for high-risk projects for which it issues guarantees⁹. EBRD can similarly incorporate periodic review of transition impacts as part of a routine updates to the PSD.

(5) **Disclosure of financial Intermediary portfolio assessments, risky sub-projects.** An effective way to ensure that a financial

ombudsman.org/documents/CAOAdvisoryNoteforIFCPolicyReview_May2010.pdf

⁷ e.g. improved road maintenance due to tall roads, but disproportionate burden for local, short-trip commuters.

⁸ Communities and governments may have concerns and expectations different from those of project sponsor. e.g. communities maybe concerned with the influx of migrant workers and attach lower priority to business success of the project.

⁹ IFC Access to Information Policy, updated on May 11 2011 (not yet available online); MIGA's Policy on Disclosure of Information, para. 7 http://www.miga.org/documents/enviro_social_disclosure_policy_0215_07.pdf

intermediary will apply Performance Requirements to high impact sub-projects is to ensure transparency of FI risky investments. IFC is expected to implement such disclosure starting in 2012. The EBRD's PIP should similarly require disclosure of:

- a) FI portfolio risk assessment;
- b) Adequacy of FI social and environmental management system, when FI portfolio includes risky sub-projects;
- c) Disclosure of high-risk sub-projects on EBRD website.

(6) Accountability and governance related disclosure. The EBRD mandate places a special responsibility on the Bank to promote good governance, transparency and accountability in economies where it operates. To that extent, the PIP should update its accountability and governance section (4.1) to include the following:

- Require disclosure of the extractive and energy project contracts, in the view of recent requirements by the IFC, and long standing recommendation by the Extractive Industry Review¹⁰;
- Reiterate the requirement of resource revenue disclosure in the spirit of Publish What You Pay principles and the EITI;
- Require disclosure of terms of proposed projects that affect delivery of essential services, including pricing, accessibility, quality and other terms;
- For private sector projects, require disclosure of audited financial and procurement reports.

The EBRD already proactively discloses information in support of transparency and good governance in specific sectors, but these requirements are not fully unified in the PIP¹¹. By placing governance related disclosure requirements, the Bank can unite related disclosure requirements in the extractive, energy and infrastructure investments, such as the resource revenue transparency or GHG accounting;

Placing governance disclosure requirements into one policy would allow public to engage in periodic updates of such disclosure requirements¹². In addition, the PIP is more explicit in what is required of EBRD and better communicates EBRD's disclosure expectations to the clients.

Application of policy to potential sensitive projects: the case of potential investment in Oyu Tolgoi and Tavan Tolgoi mines in Mongolia:

Investments in Mongolia's largest mines would be a test for EBRD's approach doing business and its comparative advantages compared to other investors. The two deposits are expected to remain in operation for generations and profoundly transform the Mongolian economy. The projects will also have unprecedented impacts on the local environment.

- An equivalent of *Broad Community Support*, or FPIC needs to be determined for the proposed compensation, mitigation measures associated with the impacts on water and pastures, land acquisition;
- *Continuous project updates are needed* to monitor further E&S impacts, status of water availability, impacts on health; availability of development opportunities and employment opportunities for the local population;
- Entire range of *governance related disclosure specific to the extractive industry* would need to be triggered – transparency of contracts and due implementation of its stipulations; reporting of resource revenues, transparency of procurement process during the construction phase; long-term transition impact and value added by the EBRD;

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¹⁰ *IFC Policy on Social and Environmental Sustainability Policy*, and *IMF Guide on Resource Revenue Transparency*
<http://www.imf.org/external/np/pp/2007/eng/101907g.pdf>

¹¹ For instance, extractive industry revenue transparency requirement is part of the Energy Operations Policy, which does not include investments in metals mining or other resource extraction. Similarly, the policy does not explicitly require disclosure of key terms of service when EBRD invests in public utilities even if such disclosure takes places in practice.

¹² e.g. if EBRD official endorses other initiatives such as the Construction Sector Transparency Initiative;

Table 2: Comparison of EBRD and IFC disclosure policies (differences marked in bold):

Draft IFC Access to Information Policy	Draft EBRD Public Information Policy
Limited presumption of disclosure	Limited presumption of disclosure
Exceptions	
Disclosure exceptions - categories of information	Disclosure exceptions - categories of information
Commercially sensitive info	internal purposes
Personal information	Personal information
Communications with / between Board members	Board documents (unless disclosed by board or for public investments)
Attorney-client privilege	Attorney-client privilege
Security	Deliberative and Board related information
separate disclosure regimes/national law conflict	National law conflict
Corporate matters	3 rd party information, requested to be confidential
Deliberative information	Procurement information
Internal financial information	Internal corporate, donor and financial information
Investigative information	
Restricted & delayed disclosure	Restricted & delayed disclosure
Disclosure in public interest (harm test) – restricted disclosure to regulators only	Disclosure in public interest (harm test) – restricted disclosure to regulators only
Appeals	
2-tier access to info appeals mechanism (not completely independent);	Single-tier appeals mechanism (Secretary general), and PCM
Project level disclosure	
SII Pre-approval disclosure (timing based on categories)	PSD pre-approval disclosure (timing based on client type)
On-going disclosure and updates to SII	-
New / additional impact assessments	
Supplementation Action Plans	
Development Impact (based on indicators), goals	
Third-party monitoring reports	
Explicit reference to FI investment environmental and social information	- no explicit reference or disclosure requirements for FIs
FI portfolio risks & impacts	
Mitigation of impacts / measures by FI	
Separate categorization for FI investments	
Periodic disclosure of name, location and sector of high risk sub-projects	
Explicit reference to disclosure rules for Advisory Services	- no explicit, separate reference to TA, AS investments
Grievance mechanisms	
Reference to PS and CAO in ESRS (English only)	- no reference about PCM in PSD
No reference to CAO in the Performance Standards Evaluations	- no reference to PCM in Performance Requirements
- (regulated by EIG internal regulations)	Explicit reference to disclosure of EvD publications
Sector and country strategies	
Joined with WBG strategies:	Explicit disclosure and translation requirements:
Consultations, translations of ESSP, PS, and AIP	Consultations, translations of ESP, PR and PIP
General reference to disclosure of sector and country assistance strategies	Consultations on country strategies
	Translations of draft strategies to local languages

Public comments and staff response

Other disclosure requirements

Sector specific governance disclosure (Sustainability Policy):
Extractive industry revenue, **contract disclosure**
Key terms of essential end services delivery
Determination of Broad Community Support

Broad Community Support determination

Accountability and governance related information (PIP):
Anti-corruption reports
Barred entities
Extractive industry revenue disclosure, financial flows from
energy projects (Energy Operations Policy)

Translation

Translation of the Policy and Performance Standards, Access
to Information Policy and Guidance Notes into five official
language of the WBG

Translation of the Sustainability Policy, Performance
Requirements and Guidance Notes into local languages;
Translation of draft country strategies upon request;
Translation of Project Summary Documents;