

OPERATIONAL POLICY ON INTERNATIONAL RELATIONS

(March 21, 2017)

I. PURPOSE and CONTENTS

1.1. Purpose. Projects involving International Waterways, disputed areas, De Facto Governments, or United Nations (UN) Security Council Measures (as these terms are defined below) may raise a number of issues affecting relations between the Bank and its Members, or between the country in which the Project is carried out and one or more countries. The purpose of this Operational Policy (**Policy**) is to enable the Bank to make decisions relating to its Financings for such Projects in a transparent manner, consistent with its Articles of Agreement, and so as not to prejudice the position of the Bank or the positions and interests of the country or countries concerned.

1.2. Contents. The Policy's contents are organized as follows:

Section I:	Purpose and Contents
Section II:	Definitions and References
Section III:	International Waterways
Section IV:	Disputed Areas
Section V:	De Facto Governments
Section VI:	UN Security Council Measures
Section VII:	Permitted Deviations in Exceptional Cases
Section VIII:	Effective Date

II. DEFINITIONS and REFERENCES

2.1. Definitions. As used in this Policy, the capitalized terms have the meanings set forth in Section II of the Operational Policy on Financing, or set forth below:

- (a) **De Facto Government** means a government that comes into, or remains in, power by means not provided for in the Member's constitution or other applicable laws of the country, such as by a coup d'état, revolution, usurpation, abrogation or suspension of the constitution or other relevant laws.

- (b) **International Waterway** means:
- (i) a body of surface water that: (A) forms a boundary between, or flows through, two or more countries; (B) is recognized as a necessary channel of communication between the open sea and two or more countries; (C) is a tributary or component of any body of water described above in subparagraph 2.1(b)(i)(A) or (B); or (D) is a bay, gulf, strait, or channel and that is bounded by two or more countries; or
 - (ii) a body of trans-boundary groundwater.

The body of water may be a river, lake, canal, bay, gulf, strait, sea, aquifer or similar body of water.

- (c) **Material Adverse Effect** on a riparian means an effect that adversely impacts the riparian's reasonable access to, use of, or benefit from the water by changing the quantity or quality of the water, or the timing of water flows, so as to materially affect public health, economic productivity or the environment in the territory of the riparian.
- (d) **Project Documentation** means the Bank documentation required for approval of the Financing for the Project.¹
- (e) **UN Security Council Measure** means a measure decided by the UN Security Council under Chapter VII of the Charter of the UN.

2.2. References. References in this Policy to Sections, paragraphs and sub-paragraphs, refer to the Sections, paragraphs and sub-paragraphs of this Policy, unless otherwise specified.

2.3. Reliance on Third Party Assessments. If a Financing is co-financed by another multilateral development bank, the Bank may, instead of carrying out one or more of the assessments referred to throughout this Policy, rely on such assessment carried out by the co-financier, provided the Bank is satisfied with the assessment capacity and process of the co-financier, and with such assessment.

III. INTERNATIONAL WATERWAYS

3.1. Decision to Provide Financing. The Bank may provide Financing for a Project involving an International Waterway only if:

- (a) it is satisfied that the Project will not have a Material Adverse Effect on the other riparians; or

¹ For purposes of the Policy, the Project Documentation may consist of either the Memorandum of the President, which is not publicly disclosed, or the Project Document, which is publicly disclosed.

- (b) if all riparians provide their no objection to the Project.²

3.2. Assessment. If a Project proposed for Financing would involve an International Waterway, the Bank considers the nature of the potential effect of the Project on the riparians and addresses the issues associated with providing the Financing, at the earliest possible stage in the processing of the Financing. The Bank assesses the potential effect of other riparians' possible use of water from the International Waterway on the Project as part of its risk assessment of the Project under Section III of the Operational Policy on Financing.

3.3. Riparian Notification.

- (a) Except as provided in sub-paragraph 3.3(c) below, the Bank requires that all of the International Waterway's riparians³ be notified of the details of the Project and its potential effect on the riparians, as early as possible and in any event, at least sixty (60) days prior to the expected date of approval of the Financing. The details comprise all available technical data and information, including the results of any environmental and social assessment,⁴ in order to enable the riparians to evaluate the possible effects of the Project. The riparians are afforded at least thirty (30) days following the notification, in which to provide to the Member or the Bank their no-objection or objection to the proposed Financing.
- (b) If the Member or other beneficiary of the Financing has concluded an agreement or arrangement, or established an institutional framework with one or more of the riparians regarding the International Waterway, which provides for notification of activities involving the waterway, the Member or other beneficiary notifies these riparians in accordance with this agreement, arrangement or framework. If the Member or other beneficiary does not wish to notify one or more of the riparians itself, the Bank notifies each such riparian. If the Member or other beneficiary objects to the Bank providing this notification, the Bank does not provide the Financing.
- (c) The notification requirement in sub-paragraph 3.3(a) does not apply to:
- (i) Projects that are expected to have minimal or no effect on any of the other riparians; or
 - (ii) water resource surveys, feasibility studies or environmental and social assessments on or involving an International Waterway (however, in such cases, the proponent of such activities includes in the terms of reference for the activities an examination of any potential riparian issues).

² The term "riparian" refers to a riparian or littoral state. A Project involving an International Waterway may comprise a hydroelectric, irrigation, flood control, navigation, drainage, water and sewerage, industrial, energy, mining or similar project.

³ In the context of rivers, this includes both upstream and downstream riparians.

⁴ Such assessments are covered under the *Environmental and Social Policy* (including Standards).

3.4. Objections. If any riparian raises a technical objection to the Project within the time frame referred to above in sub-paragraph 3.3(a), the Bank reviews the objection as part of its assessment, referred to above in paragraph 3.2, of whether the Project would have a Material Adverse Effect on any riparian. If the Bank decides that the objection raises complex issues requiring further analysis, the Bank may appoint one or more independent international experts to assist the Bank in assessing such issues. The Bank, in its sole discretion, decides whether to take into account the assessment and recommendations made by these experts and whether, and on what conditions, to proceed further with processing the Financing.

3.5. Project Documentation. If the Bank decides to provide Financing for a Project involving an International Waterway, it includes in the Project Documentation the details of:

- (a) the Project's potential effect on the riparians;
- (b) the Bank's assessment that the Project will not have a Material Adverse Effect on the riparians; and
- (c) whether and how the riparians were notified of the Project's potential effect on them in accordance with paragraph 3.3 above, and any responses received from the riparians; and if they were not notified, the justification for this.

IV. DISPUTED AREAS

4.1. Decision to Provide Financing. The Bank provides Financing for a Project in a territorial area that is claimed by two or more countries only if it is satisfied that each of the governments concerned agrees that, pending the settlement of the dispute, the Financing proposed may proceed without prejudice to its claims to the disputed area.

4.2. Consideration of the Dispute. If the Project is in a disputed area, the Bank considers the nature of the dispute and the views of the concerned governments regarding the Financing, and addresses the issues associated with providing Financing for the Project, at the earliest possible stage in the processing of the Financing.

4.3. Project Documentation. If the Bank decides to finance a Project in a disputed area, it includes a description of the dispute in the Project Documentation and the views of the concerned governments regarding the Financing, together with a disclaimer stating that, by supporting the Project, the Bank does not make any judgment on the status of the disputed area or to prejudice the final determination of the parties' claims.

V. DE FACTO GOVERNMENTS

5.1. Assessment: General. If a De Facto Government of a Member comes into power when there are any existing Financings involving the Member, or when a Financing for a Project involving the Member is under preparation, the Bank assesses whether:

- (a) a proper legal framework exists: (i) to secure approval of any new Financing and any undertakings of the Member; (ii) to permit the Project to be carried out and allow its objectives to be achieved; and (iii) to allow any required payments to the Bank under the Financing to be made; and
- (b) (i) all parties to the Legal Agreements relating to the Project have taken or will be able to take all actions necessary to carry out their respective obligations under their respective Legal Agreements; and (ii) these obligations are or will be legally binding in accordance with their terms.

5.2. Assessment: Existing Financings. The mere existence of a De Facto Government does not necessarily give rise to legal grounds for the Bank to exercise its contractual remedies under existing Financings. The Bank may therefore exercise its contractual remedies under these Financings only if it determines that there are legal grounds for doing so, based on the relevant Legal Agreements and the specific circumstances of the Project concerned.

5.3. Assessment: New Financings. In considering whether to provide new Financing for a Project involving a Member with a De Facto Government, the Bank assesses, in addition to the matters referred to above in paragraph 5.1, the following:

- (a) whether the new Financing would expose the Bank to additional risks, given the government's De Facto nature;
- (b) whether the De Facto Government is in effective control of the Member's territory⁵ and enjoys a reasonable degree of stability and public acceptance;
- (c) whether the De Facto Government generally recognizes the Member's international obligations, in particular any past and existing obligations to the Bank;⁶
- (d) the number of countries (particularly neighboring) that have recognized the De Facto Government or dealt with it as the government of the Member; and
- (e) the position of other international organizations toward the De Facto Government.

5.4. Disclaimer. If the Bank decides to provide Financing for a Project involving a Member with a De Facto Government, it may include a disclaimer in the Project Documentation stating that, by supporting the Project, the Bank does not indicate its approval or disapproval of the De Facto Government.

⁵ The assessment of effective control requires particular attention when two or more political or military factions claim to be in control of the national government.

⁶ The Bank examines the Member's record; one indicator is whether its past governments have generally recognized the obligations incurred by any De Facto Governments that have preceded them.

VI. UN SECURITY COUNCIL MEASURES

6.1. General. The proceeds of a Financing may not be used for a payment to a person or entity or for any import of goods, if the payment or import is prohibited by a UN Security Council Measure. Consequently:

- (a) **Exclusion from Procurement Process:** If, by an act of compliance with a UN Security Council Measure, the Member in whose territory the Project is located prohibits any import of, or payment for, goods from a particular country, or payments to a particular person or entity, such goods, person, and entities are excluded from the procurement process under the *Procurement Policy*.⁷
- (b) **Ineligibility for Financing:** If a payment for an expenditure would be prohibited by a UN Security Council Measure, the expenditure is not eligible for financing out of the proceeds of the Financing.⁸

VII. PERMITTED DEVIATIONS IN EXCEPTIONAL CASES

7.1. Where, in the view of the President, the application of any provision of this Policy (other than in relation to paragraph 6.1), under a specific Financing, would likely lead to an outcome that is manifestly unwarranted or undesirable having regard to the purpose and functions of the Bank, the Board of Directors may authorize a deviation from this Policy to such extent as it thinks appropriate. Such authorization shall be confined to the specific case.

VIII. EFFECTIVE DATE

8.1. This Policy enters into force as of the date of the approval thereof by the Board of Directors.

⁷ See, also, *Interim Operational Directive on Procurement Instructions for Recipients*, sub-paragraph 4.9.2.

⁸ See, also, *General Conditions for Sovereign-backed Loans*, Section 2.04(b).