

Guidance Note: The Development Dimensions of Investment Contracts

The CONNEX Support Unit provides support to governments in securing ‘better deals’ in state-investor negotiations. International and regional Experts assist local negotiation teams and authorities when they face, or consider, the (re-)negotiation of a complex investment contract or similar legally binding documents.¹

This document is intended solely to provide non-binding, advisory guidance to the Experts on the broader developmental considerations that may influence the (pre-negotiation) processes and the broader success of the project.

Background

CONNEX understands that better contracts ensure the best possible developmental outcome for the host government while respecting the legitimate interest of the investor in a viable project and thus provide the **basis for long-lasting cooperation**. Better contracts define mutual rights and responsibilities in accordance with the country’s rules and regulations and in **alignment with international standards**. They are negotiated in a **transparent** and accountable manner in accordance with the country’s procedural provisions. Better contracts take into account and reflect the **development dimension of a large-scale investment project** and contribute to (and in no way undermine) overall development efforts and priorities in the country. As a common denominator, better contracts **positively impact the achievement of the Sustainable Development Goals (SDG)** of the United Nation’s Agenda 2030. This concerns the need for domestic resource mobilization (SDG 17). Most large-scale investment projects in mining and mining-related infrastructure bring the potential for inclusive economic growth (SDG 8). Better contracts also strengthen effective and accountable institutions (SDG 16). The involvement of CONNEX Experts enables partner governments to take informed and prudent decisions about avoiding harmful consequences of the investments, e.g. on SDG 3 (Health), 6 (Clean Water), 8.8 (Labor, occupational health and security), 13 (Climate Change), 15 (Life on Land) as well as 16.7 (responsive, inclusive, participatory and representative decision-making).

Recommended Approach

To operationalize these goals in their work, CONNEX Experts are encouraged to incorporate **international rules, standards and good/best practices** in their advisory work. While CONNEX does encourage the use of independent standards and guidance, it does not prescribe or endorse any specific standards. It is therefore **up to the Expert to base their advice on those international rules, standards and good/best practices that are the most applicable** in the context of the given negotiation/project.

Therefore, beyond outstanding technical knowledge and experience in their specific field of expertise, the CONNEX Experts are recommended the following:

¹ CONNEX support can be requested by eligible client governments for a variety of state-investor negotiation instances. The end-product may be a “typical” investment contract (e.g. a mining agreement), but other legally binding documents such as a mine closure plan or tendering documents for a licensing process can be outputs as well. In order to make the reading of this expert brief easier, “contract” will be used as a broader category for these options.

- CONNEX Experts should not look at the project in isolation but also understand its contribution to the **economic, environmental, social and cultural dimensions of the development of a country**. CONNEX Experts should consider these dimensions in their advice to exploit the various possible developmental benefits a project can offer (e.g. infrastructure, access to transport, job creation) and think beyond the boundaries of their own field of expertise. Due to contract periods which often last for decades, disregarding social and environmental issues can have severe and long-lasting consequences for generations.
- CONNEX Experts should particularly consider possible adverse developmental impacts of the project as a whole in order to **mitigate potential risks and to avoid doing harm**. If not managed responsibly, mining, infrastructure and renewable energy projects can have serious consequences for the environment and affected communities and their development prospects.
- Particularly when advising on the strategic level, Experts should make themselves familiar with the recent **political dynamics** and discourse as well as the government's strategy on environmental and social issues, public communication and citizen participation in decision-making and take this into account when providing advice. Large-scale projects can become the object of political contestation. Opposition from political or societal actors can lead to the failure of negotiations, even if the government and the investor reach an agreement. Often, opposition is sparked by a (perceived) disregard for social and environmental issues in the contract, or a lack of participation in decision making by interested parties.
- **Transparency and accountability** should be considered in every aspect of the Expert's work and the project. The Experts should work at the highest integrity standards as enshrined in the CONNEX Code of Conduct and remain sensitive to any potential risks of corruption in the negotiation process. In case the issue emerges during the negotiation processes, the Experts should highlight the benefits of contract transparency and the public disclosure of financial flows. Attention can, for example, be drawn to the EITI (Extractive Industries Transparency Initiative) process.
- CONNEX Experts should ensure their advisory work is **gender-sensitive and inclusive**, recognizing the distinct impacts that large-scale investment projects, particularly in the mining sector, can have on women and marginalized groups. Women and marginalized groups play a critical role in achieving a more equitable and sustainable development. Therefore, CONNEX Experts should promote gender-sensitive practices where possible and advocate for policies that ensure women benefit equally from project outcomes. For instance, Experts should consider gender-related issues of the project and its potentials, such as unequal access to employment opportunities and the exclusion from decision-making processes and benefit-sharing mechanisms.

In case the CONNEX Expert / Expert team wants to equip themselves with further information, including international standards and agreements and established guiding documents, the CONNEX Secretariat can provide a list with reference documents and links on demand.

ANNEX

Proposed Guiding Questions / Checklist for CONNEX- Experts (Environmental – Social – Governance Dimensions)²

Disclaimer and Limitations: The questions set out in this annex are provided for informative purposes only and do not constitute an exhaustive list. They are intended to serve as a non-binding orientation aid for Experts and may be adapted or supplemented as considered necessary by the Expert, depending on the specific context and requirements of each individual project.

Environmental Management

- Does the contract clearly define who is responsible and accountable for mitigating the risks of adverse environmental impacts, as well as for financing mitigation efforts?
- Does the contract specify exact requirements for environmental management or if not, are they regulated by law?
- Is there a contractually defined commitment from the company to manage environmental impacts?
- Does the company conduct and disclose regular project-specific assessments in regard to environmental stewardship?

➔ See [IFC PS 1](#); [RMI F.01](#); [ICMM P6](#); [GRI 307](#) for more details.

Biodiversity and Ecosystem Services

- Does the contract provide clear requirements for the protection of biodiversity and ecosystem services or if not, are they regulated by law?
- Does the contract clearly define who is responsible and accountable for mitigating adverse impacts on biodiversity and ecosystem services, as well as for financing mitigation efforts?
- Are the operations taking place in or adjacent to protected areas and/or areas of high biodiversity established under national law or international agreements?
- Does the company assess and address direct and indirect risks and impacts of the specific project to biodiversity and ecosystem services?
- Are there any laws requiring mining companies to account for direct, indirect, and induced impacts on the environment? If so, how are they considered and monitored?

² Note: The questions formulated here are intended to draw attention to certain environmental, social and governance aspects that are of importance in the extractive sector in general and CONNEX's work in particular. In some cases, some of the issues listed here may already be regulated by existing laws and regulations. These questions are nevertheless intended to provide guidance and advice to encourage CONNEX Experts to consider the issues listed below, where they relate to their expertise and consultancy work.

→ See [IFC PS 6](#); [RMI F.05](#); [ICMM P7](#); [GRI 304](#); [SASB EM-MM-160](#); [TSM Biodiversity Management Protocol](#) for more details.

Climate Change and Energy Efficiency

- Does the contract include requirements to monitor and manage the project's impact on climate change?
- Does the contract require the company to assess and/or mitigate climate change risks? Or does the company conduct project-specific climate risks assessments?
- Are there provisions in the contract for monitoring and reducing GHG emissions and improving energy efficiency? Or is the company reviewing and improving GHG emissions and energy consumption/efficiency of the specific project?
- Does the company have a demonstrated corporate climate change strategy for the specific project?
- Is the company identifying potential implications of climate change on its operations impacts on communities and the environment? If so, are there appropriate adaptation and transition strategies?
- Are there any laws requiring companies to assess and/or mitigate climate change risks? If so, how are they considered and monitored?

→ See [IFC PS 3](#); [RMI F.06](#); [ICMM P6](#); [GRI 302, 305](#); [SASB EM-MM-110a.2, 130a.1](#); [TSM Climate Change Protocol](#) for more details.

Stakeholder Engagement, Indigenous Peoples and Community Relationships

- Have potentially affected communities and individuals been identified before the contract is finalized?
- Have both parties agreed on the scope of community engagement and have agreed to their respective roles, responsibilities and accountability for these efforts?
- Has the community engagement plan, to the extent possible at the contracting stage, been properly costed and resourced?
- Does the contract stipulate that individuals or communities that have suffered harm in the context of project activities will have access to an effective non-judicial grievance mechanism?
- Are effective mechanisms for local stakeholders in place for seeking resolution of grievances related to the company and its activities?
- Is there legally enforceable and/or contractually defined commitment on the part of the company to obtain free, prior and informed consent of affected communities and indigenous peoples?
- Are there inclusive and project-specific approaches with local communities/indigenous peoples to identify their development priorities?

- Does the company ensure that the engagement process fosters full respect for the human rights, dignity, aspirations, culture, and natural resource-based livelihoods of Indigenous Peoples?
- Does the company maintain support activities that contribute to the lasting social and economic wellbeing of affected communities and indigenous peoples?

→ See [IFC PS 4 & PS 7](#); [RMI D.03, D.08, D.09, D.12](#); [ICMM P3, P9](#); [GRI 411 & 413](#); [SASB EM-MM-210a, 210b.1](#); [TSM Indigenous and Community Relationships](#) Protocol for more details.

Security and Human Rights

- Does the contract clearly define who is responsible and accountable for mitigating the risks of adverse human rights impact, as well as for financing mitigation efforts?
- Did the parties agree on a set of human rights baselines? E.g. do they show commitment to respect the [UN Guiding Principles on Business and Human Rights](#) or [Voluntary Principles on Security and Human Rights](#)??
- Did the parties ensure that funding for mitigation efforts will be available when needed, setting up special financial mechanisms with independent or joint accountability structures where appropriate?
- Have the parties agreed on an initial plan to communicate with potentially affected individuals and communities on the project's risks of adverse impact in order to involve them in the development of prevention and mitigation plans?
- Do both parties have ensured that their respective human rights obligations or responsibilities are reflected in the negotiating agenda?
- Do the parties have ensured that all operating standards, including any external standards necessary to supplement domestic standards, apply to successors and subcontractors?
- Does the company and the government regularly conduct project-specific human rights due diligence?
- Is there any information on areas of conflicts in or near the area of operation?
- Is the company committed to not support any parties that contribute to conflict or the infringement of human rights?

→ See [IFC PS 3](#); [RMI D.01, D.02](#); [ICMM P3](#), [GRI 410, 412](#); [SASB EM-MM-210a](#) for more details.

Land Acquisition and Involuntary Resettlement

- Does the contract specify how to proceed with the resettlement of people and what compensation is to be provided by the company?

- Does the contract specify that the modalities of resettlement must be negotiated jointly with the affected communities?
- Are alternative project designs being considered to avoid or if not possible, minimize displacement?
- Are actions or remedies implemented that address adverse effects to restore or improve livelihoods and standards of living of displaced people?
- Are forced evictions being avoided?

➔ See [IFC PS 5](#); [RMI D.10](#); [ICMM P3](#); [GRI 413-2](#); [SASB EM-MM-210b.1](#) for more details.

Mine closure

- Does the contract specify how the project site must be rehabilitated at the end of operations/require the development of an adequate mine closure plan?
- Does the contract specify sufficient financial guarantees for mine closure and subsequent activities?
- Does the contract include obligations to integrate local stakeholders in the development of mine closure plans and the planning of post-closure activities?
- Has the company developed and maintained mine closure plans including post-closure activities?
- Is the company working with affected communities to mitigate socio-economic impacts and develop plans for long-term economic development?
- Is there adequate financial assurance for closure?
- Do the rehabilitation strategies reflect an understanding of the changing relationship between the ecosystem and the climate?
- Does the company model the long-term sustainability of rehabilitation projects?

➔ See [IFC PS 4](#); [RMI C.03](#); [ICMM P6](#); [TSM Mine Closure Framework](#) for more details.

Business Ethics & Transparency

- Have the parties agreed to disclose the contract terms and identified the exceptions, if any?
- Does the contract require publication in an accessible manner, taking into account possible barriers to access such as linguistic, technological, financial, administrative, legal or other practical constraint?
- Are there project-specific management systems in place for prevention of corruption and bribery throughout the value chain?
- Are contracts being disclosed?
- Is there transparency about beneficial ownership, tax payments and other payments to the government?

➔ See [RMI B.01-08](#); [ICMM P1](#); [GRI 204, 205](#); [SASB EM-MM-510a.1](#) for more details.

Gender

- Have measures been taken to ensure that women's voices are heard and considered in stakeholder consultations and negotiations?
- Does the project provide equal employment opportunities for women at all levels?
- Are there policies in place to support women's employment?
- Are training programs and capacity-building initiatives available to women to enhance their skills and increase their employability in the mining sector?
- Are mitigation measures in place to address the specific needs and vulnerabilities of women affected by mining activities?
- Are women benefiting equally from community development programs and initiatives funded by the mining project?
- Do the benefit-sharing mechanisms consider the specific needs of women, such as healthcare, education, and economic opportunities?
- Are there specific health and safety measures in place to protect women workers in the mining environment e.g. have the potential health impacts of mining on women, particularly reproductive health, been assessed and addressed?
- Is there a system for reporting and addressing gender-based violence and harassment in the workplace?
- Are there policies in place to ensure compliance with gender-related commitments and objectives?
- Is gender-disaggregated data collected and used to inform project planning and decision-making?

➔ See [Guide to Gender and Mining](#); [Clause Insights](#);