



GOING OUT, BUT GOING GREEN?

**ASSESSING THE IMPLEMENTATION OF
CHINA'S GREEN CREDIT GUIDELINES
OVERSEAS**

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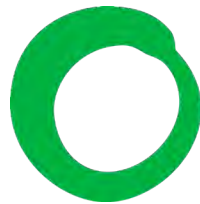
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Executive Summary

This study presents seven case studies of Chinese bank financing for overseas investments: China Development Bank's financing of the Stanari coal project in Bosnia and Herzegovina, the Golden Veroleum palm oil plantation in Liberia and Asia Pulp and Paper in Indonesia, and Industrial and Commercial Bank of China Ltd.'s involvement in the Pacific Refinery in Ecuador and the Lower Sesan 2 dam in Cambodia. Also presented are four banks' financing of fossil fuel export projects in the Great Barrier Reef and six banks' financing the El Mirador mine in Ecuador.

The report analyzes these transactions to determine the extent to which banks have implemented Article 21 of the Green Credit Guidelines, China's innovative sustainable finance policy. According to the GCG, Chinese banks are expected to ensure that borrowers comply with relevant environmental and social regulations and uphold good international practices when lending overseas.

Nongovernmental organizations sought information from the banks about transactions in five of the seven cases, but there is inadequate publicly available information and transparency to determine whether the banks conditioned their loans in a way to spur better corporate environmental performance, which is the ultimate promise of the GCG as a sustainability policy. Furthermore, evidence suggests that widespread problems in bank compliance with Article 21 of the GCG exist. In almost all these cases, there are clear breaches of applicable environmental regulations and failures to uphold good international practice, particularly the right of indigenous communities to Free, Prior and Informed Consent.

The case studies indicate that Chinese banks lack transparency and sufficient methods of engaging with the public, practices which reduce their access to beneficial information and input that could improve their GCG compliance. Compared with lending within China, as was the GCG's original focus, it is relatively difficult for Chinese banks to conduct robust due diligence on borrower compliance with the range of regulations that affect overseas transactions. Similarly, it can be challenging for banks to stay abreast of ever-shifting environmental and social norms that constitute "good international practice."

This report concludes with several recommendations, including one that Chinese embassies abroad take a proactive role to ensure compliance with Article 21 of the GCG. A key recommendation for Chinese banks is to establish departments or units responsible for engaging with civil society on GCG implementation—particularly with respect to instances of potential noncompliance. Similarly, the Chinese Banking Regulatory Commission should establish a department or unit to monitor and oversee the implementation of the GCG, create a mechanism for engaging with civil society regarding implementation of the GCG, and lastly, establish punitive consequences for breaching Article 21 and the GCG more broadly.

Introduction

China issued its first green banking policy in 1995;¹ since then, the government has continued to develop a broad policy framework on sustainable finance, which has become one of the most innovative in the world. Most notably, in 2008 China's Banking Regulatory Commission announced the Green Credit Guidelines, which were intended to guide and promote sustainability in the banking sector. The guidelines set a precedent in financial policy for tying the extension of bank credit to a client's environmental and social performance. When the policy was updated in 2012, a new article obligating banks to abide by international norms for overseas investments was added. Although there is no formal mechanism for enforcement, banks are expected to implement it.

Although there have been analyses published by Chinese government agencies on the implementation of the Green Credit Guidelines,² no study on GCG's implementation abroad exists. This report examines the extent to which Article 21—which requires banks to uphold international norms and host country laws—has been implemented by Chinese banks overseas. Article 21 states:

Article 21: Banking institutions shall strengthen the environmental and social risk management for overseas projects to which credit will be granted and make sure project sponsors abide by applicable laws and regulations on environmental protection, land, health, safety, etc, of the country or jurisdiction where the project is located. The banking institutions shall make promise in public that appropriate international practices or international norms will be followed as far as such overseas projects are concerned, so as to ensure alignment with good international practices.³

This report draws upon a series of case studies across sectors and geographies, identifying a series of challenges in adopting and implementing international norms. Lastly, it offers recommendations for improving bank compliance with Article 21 to Chinese financiers and regulators.

STANARI COAL PROJECT



Stanari coal mine

Project background

The Stanari coal project includes a coal mine and an adjacent 300 MW coal lignite plant which uses circulating fluidized bed combustion technology and a dry cooling system. Proposed in 2008, the Stanari coal plant originally consisted of a 410 MW plant with a gross efficiency rate of 43 percent. An environmental impact assessment was conducted based on these plans, and a permit was subsequently licensed for the project. In 2010 the project was significantly revised to a 300 MW plant with a lower gross efficiency rate of 34.5 percent. Although an updated environmental impact assessment process was not performed, and a new public comment period was not opened, construction for the coal plant commenced in May 2013. Commercial operations are scheduled to begin in 2016.⁴

The sponsor of the Stanari coal project is EFT, an energy trading and investment group. In May 2010, EFT signed an Engineering, Procurement and Construction

contract with China's Dongfang Electric Corporation to build the thermal plant.⁵ Dongfang later subcontracted some of the construction and installation work to the companies Gradj Promet, Kors and Peric Company; a total of 1,000 employees are expected to be hired, with about 350 Dongfang workers overseeing the project.⁶

Environmental and social impacts

The lack of an updated environmental impact assessment process for Stanari renders it impossible to provide specific details on the plant's environmental and social impacts; but the impacts are expected to be significant. Extensive research and data has shown that coal is the "dirtiest" of fossil fuels,⁷ and that coal power plants are linked with poor health.⁸

For instance, pollution from the mining, production and combustion of coal is strongly associated with widespread environmental and health problems, such as water and air

pollution, respiratory diseases and premature death.⁹ Moreover, the type of coal mined and used in Stanari would be lignite, which is considered the lowest grade of coal due to its low heat content. This, combined with the plant's low efficiency (around 34.1 percent net), greatly increases the amount of coal burned and thus the pollution produced. The combined impacts of a coal power plant and mine in the region would likely reduce the quality of life and health for local residents.

Chinese finance

In June 2012, EFT signed a EUR 350 million financing deal with China Development Bank for constructing the Stanari coal plant.¹⁰ The deal followed China's announcement that it would provide \$10 billion in credit for infrastructure in eastern and central Europe.¹¹ According to EFT, the project represents the largest credit facility agreed to by a private enterprise in Bosnia and Herzegovina.¹²

In total, the project will cost EUR 560 million. Most of the project costs will be covered through the EUR 350 million China Development Bank loan, with EUR 175 million, or approximately 30 percent, covered by equity investments from EFT.

Assessing compliance

Violations of EU regulations

- Because Bosnia and Herzegovina is a member of the Energy Community Treaty,¹³ it is bound to abide by specific emissions limits when developing power plants,¹⁴ including the EU Large Combustion Plants Directive. However, Stanari's environmental permit allows the plant to produce emissions in greater quantities than are allowed under the LCPD. In 2014, two NGOs, the Center for Environment and ClientEarth, filed a formal complaint to the Energy Community secretariat in Vienna on the basis that the Stanari coal plant would be allowed to produce 2-3 times the emissions allowed under the treaty.¹⁵

- In addition, Bosnia and Herzegovina will soon have to comply with the new 2010 Industrial Emissions Directive. As currently permitted, Stanari does not meet the IED standards, and will need to be upgraded within a few years in order to comply with the latest European regulations.¹⁶

Violation of national host country law

- The project was not in line with "applicable laws and regulations on environmental protection, land, health, safety, etc., of the country or jurisdiction where the project is located," as required by the Article 21 of the Green Credit Guidelines. When the project was redesigned in 2010, EFT should have been required to submit a new environmental impact assessment since the alterations were so significant as to essentially constitute a wholly different project with different impacts. The local government, Republika Srpska, is also at fault as it violated its own national law by allowing EFT to submit the project's old environmental permit without re-evaluating the environmental impacts of the new design changes.¹⁷

Contravenes the emerging norm to curb financing for coal power plants

- Article 21 states that "appropriate international practices or international norms will be followed." In the last few years, the World Bank, European Investment Bank, the European Bank for Reconstruction and Development and export credit agencies from the U.S., U.K. and Netherlands have all pledged to end financing for most coal power projects.¹⁸ Under these commitments, financing for coal power projects is only provided in extreme cases where no other energy source is available. Several studies have already demonstrated comparable alternatives to the coal project, such as sustainably sourced biomass, solar power, and wind farms.¹⁹

13. The Energy Community consists of the European Community and Balkan Countries. The community's objective is to create an integrated energy market and regulatory space for energy between the European Community and contracting parties. The Energy Community essentially functions as a bridge for countries aspiring to join the European Union. http://europa.eu/legislation_summaries/enlargement/western_balkans/127074_en.htm

15. At the time of this report's writing, the complaint was still under evaluation.



Construction near Stanari coal mine

Discussion

Government permits as a proxy for legal compliance

The Stanari case illustrates that Chinese banks cannot rely on the issuing of government permits to ensure that a borrower is complying with municipal or host country laws. In this case, Republika Srpska failed to enforce its own laws when it updated EFT's permit without requiring a new environmental impact assessment process and public consultation to be carried out.²⁰ When banks use government-issued permits as a proxy for legal compliance, it not only is an inadequate way to comply with the Green Credit Guidelines, but it also exposes the bank to potential legal and financial risk, as illustrated by the complaint filed by the Center for Environment and ClientEarth at the Energy Community secretariat.²¹

Abiding by regional laws and regulations

The Stanari project also illustrates the gap in meeting both host country and regional environmental requirements. Under the Green Credit Guidelines, CDB must consider how its borrowers can and will follow all “applicable laws and regulations,” not only host country laws. In permitting the Stanari project, the Republika Srpska failed to enforce both its own laws and those of the regional EU Energy Community Treaty.

The bank's financing for Stanari suggests that it either was not fully aware of the Energy Community Treaty obligations (inadequate due diligence), or that it chose to ignore them (inadequate implementation).

20. Following the Bosnian War, the Dayton Agreement established the State of Bosnia Herzegovina. Although the country has a centralized government, it effectively functions two political entities, one being the Republika Srpska and the other being the Federation of Bosnia and Herzegovina. Each political entity functions with its own president, parliament and court system.



EL MIRADOR COPPER PROJECT

Rio Zamora, Ecuador; Wikimedia Commons

Project background

The El Mirador project is located in the Zamora Chinchipe province of Ecuador. It contains approximately 2.9 million tons of recoverable reserves of copper,²² along with gold and silver. The right to develop El Mirador project was formerly owned by Corriente Resources, a Canadian company.²³ In 2010, Tongling Nonferrous Metals Group and China Railway Construction Corp acquired 96.9 percent of the common shares of Corriente and assumed ownership of the company.²⁴ Since then, Ecuacorriente, a subsidiary of Corriente, has been the largest Chinese owned mining company in Ecuador.²⁵

In March 2012, Ecuacorriente signed a \$1.72 billion deal with the Ecuadorian government to develop the Mirador mine. According to the company, the copper deposit is “one of the few new, sizable copper projects in the

world available for near term production.”²⁶ If completed, the mine would have an ore-processing capacity of 60,000 tons per day and produce about 345,000 tons of copper concentrate per year.²⁷ The project would also become the first large scale mining contract in Ecuador, extending across approximately 10,000 hectares (25,000 acres) of the Cordillera del Condor (Condor Highland) and affecting over 6000 hectares of the Protected Forest.²⁸ Construction for the mine is slated to commence by 2015.

Environmental and social impacts

The region where the mine is located is considered one of the most bio-diverse places on Earth,²⁹ and is the home to several indigenous groups. To develop the mine, Corriente (Ecuacorriente’s parent company) proposed hollowing out one of the region’s largest

mountains and razing forests on several others. A giant tailings pool would be dug in order to hold 200 million tons of toxic waste³⁰ over an 18 year lifespan. Infrastructure for the project, such as roads and bridges would be constructed to accommodate eighteen-wheel truck traffic to transport minerals to a port on the Pacific coast of Ecuador,³¹ and demand a power supply of 205 GWh/a.³² It would also require 140 liters of water per second from the Wawayme and Quimi rivers for the chemical treatment of rocks and other operations.³³

The impact of such a large scale mine would cause dangerous levels of water and soil pollution; acid mine drainage can spread toxic chemicals and heavy metals across an entire region. Seasonal rains and seismic activity would further compound the risk and spread of contaminants. El Mirador is home to an array of endangered species and habitats, some which would become extinct should the project move forward.³⁴

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AND AFFECTING OVER
6,000 HECTARES OF THE
PROTECTED FOREST.**

The project would have significant impacts on local communities, including adverse impacts on water and natural resources. In particular, indigenous peoples living in the area have not given their free, prior and informed consent to the project. The mining contract states that Ecuacorriente must pay USD \$100 million in advanced royalties for the development of social projects in the area, of which USD \$40 million has already been paid to the government.³⁵

Chinese financiers

Tongling Nonferrous Metals Group, the partial owner of Ecuacorriente, has received loans from:

- Bank of China
- China Development Bank
- Export Import Bank of China
- China Merchants Bank
- Construction Bank of China
- Industrial and Commercial Bank of China³⁶

Assessing compliance

Violations of host country law

According to civil society groups, the project has or would breach at least ten articles of the Ecuadorean Constitution, the highest legal authority in the country, in addition to a series of other national and local laws and policies.³⁷ According to letters signed by seven Ecuadorean NGOs and 18 Shuar leaders, these constitutional breaches include:³⁸

- Article 32 – The right to health would be violated due to dangerous water and soil pollution caused by mining activity, such as tailings ponds, coal dust or others, rendering impacted areas severely contaminated or even unlivable.
- Article 57.7 – Ecuadorean citizens and indigenous communities bear the right to free, prior and informed consent. Although Corriente Resources states that “extensive consultation process with local communities [were] carried out in late November and early December 2005,”³⁹ local residents have reported that though the company did meet with them, they were not asked about their consent to the project but instead coerced into giving up property rights.⁴⁰
- Article 71-74 – Ecuador is the first country in the world to codify the Rights of Nature, which recognizes and guarantees that nature itself is a rights bearing entity. The Environmental Impact Assessment warned that should the project proceed, at least three species of amphibians and one reptile would be rendered extinct due to habitat loss. The extinction of species resulting from mineral development would constitute a direct violation of the Rights of Nature as

protected in the Constitution. Moreover, the mine could permanently inhibit the regeneration of the ecosystem's natural life cycles and thus preclude alternative modes of development, such as tourism.

- Article 282 – The Constitution prohibits monopolizing and privatizing water. Since copper processing is a highly water intensive process, the project would likely over-exploit most if not all nearby water sources, on which indigenous populations critically depend for their livelihood.
- Article 318 – Communities and the public have the right to “exclusively” manage water, yet environmental and public health risks from toxic run off or acid mine drainage, would preclude the public’s right to do so.
- Article 319 – Ecuador has codified the rights of indigenous peoples into its Constitution. Under this article, it recognizes and guarantees the right of people to determine their own mode of production and labor. As the copper project is located on land belonging to indigenous communities, such as the Shuar, it would directly impact their ability to continue and sustain their “organizing production” of community, business, associative, autonomous or family livelihoods.
- Article 411 – Water use should be prioritized for human consumption under this article, yet the water intensive needs and problems of copper mining could jeopardize public access to clean, safe water.

In February 2013, Ecuadorean NGOs filed a lawsuit against Ecuacorriente on the grounds of violating the Rights of Nature.⁴¹

Violations of United Nations Declaration on the Rights of Indigenous Peoples to FPIC

Cordillera del Condor is the ancestral home of the Shuar people, who did not give their Free, Prior and Informed Consent to the El Mirador project. Under the United Nations Declaration on the Rights of Indigenous Peoples, the Shuar have the right to FPIC in any projects in their territories.⁴²

Discussion

The role of Chinese embassies in implementing Article 21 of the Green Credit Directive

The Guidelines are issued and enforced per the authority of the China Banking Regulatory Commission. Yet due to the lack of overseas CBRC offices, other overseas-based Chinese government agencies, such as embassies or overseas representatives of the Ministry of Commerce, could play an important role in helping to uphold Article 21. These agencies could inform Chinese companies and banks about the obligations of the Green Credit Directive, current host country conditions, relevant environmental and social laws and other important issues.

SINCE 2012, ECUADOREAN NGOS HAVE REPEATEDLY INFORMED THE CHINESE EMBASSY IN QUITO OF ECUACORRIENTE'S MULTIPLE LEGAL VIOLATIONS; HOWEVER, THE CHINESE EMBASSY HAS NOT OFFICIALLY RESPONDED TO REQUESTS FOR INFORMATION AND INTERVENTION.

In the case of El Mirador, the Chinese Embassy played a decidedly unhelpful role. Since 2012, Ecuadorean NGOs have repeatedly informed the Chinese Embassy in Quito of Ecuacorriente's multiple legal violations; however, the Chinese Embassy has not officially responded to requests for information and intervention. In March 2012, for instance, a nationwide march against mining in El Mirador and in defense of water culminated in the delivery of a letter from civil society to the Chinese ambassador. After waiting several hours to address the ambassador, Ecuadorean activists were evicted from the embassy by police.⁴³

Later in 2014, the Chinese Embassy provided Ecuadorean NGO Acción Ecológica a phone number to obtain more information regarding the project; however, over the course of one and a half months, the NGO reported that no person has ever answered the line.

Applying the Green Credit Guidelines in mergers and acquisitions

Language in Article 21 indicates that banks must apply environmental best practices according to international standards when financing overseas projects. However, very little financing for overseas projects is provided through traditional project finance (structured, non-recourse) mechanisms. Rather, lending for projects most commonly occurs through corporate lending, including for mergers and acquisitions. In particular, much of the financing for Chinese mining companies' "Going Out" activities have been through M&A finance.

Even before TNMG and CRCC's acquisition of the company, Corriente Resources had long encountered ongoing opposition to mining development, which have at times become violent.⁴⁴ In 2006, for instance, Shuar and mestizo communities organized a peaceful march to the Mirador mining site. However, leaders of the march were ambushed and badly beaten by men with rifles, machetes, sticks and knives who are suspected to have been hired by the company.⁴⁵ Afterwards, indigenous peoples and communities grew increasingly frustrated and launched a series of protests against the company, its sub-contractors and government policies. In response, the Ecuadorean government militarized mining camps, which has only exacerbated community relations. Local leaders anticipate that the mine, now owned by Chinese companies, will result in "wars throughout the region."⁴⁶

TNMG and CRCC inherited a development project already beleaguered by a long pattern of distrust and violence. If TNMG and CRCC were aware of the problems, it is curious that they took no mitigation or community outreach measures. On the other hand, if the Chinese companies were not aware of the risks, it suggests that banks should strengthen their due diligence in assessing social risks, and companies' abilities to manage them, in advance of acquisitions.



COAL PROJECTS IN THE GREAT BARRIER REEF

Great Barrier Reef ; EO ; Wikimedia Commons

Project background

Australia's Great Barrier Reef is threatened by a suite of fossil fuel extraction and transport projects aimed at exporting Australian coal to Asian markets. Two of those projects, the Wiggins Island coal export terminal and Australia Pacific liquefied natural gas project, are being built in or near the Great Barrier Reef.

The Wiggins Island coal export terminal is one of several coal projects which would facilitate the export of coal mined in the untapped Galilee Basin, which is about 500 km from the coast in the Gladstone region. Project sponsors claim it “has the potential to be the largest of its kind,” with the construction of a rail receival dump station designed to handle 7,600 metric tons per hour, a stockyard area for 1.9 million metric ton of coal, and channels and wharf to accept a range of vessels from 40,000dwt to 220,000dwt.⁴⁷ It is projected to cost AU \$2.5 billion and provide 800 jobs.⁴⁸

Once completed, the privately-owned project would have a coal export capacity of 80 million metric tons per year, doubling the existing capacity at the Port of Gladstone.⁴⁹ Since taking the inner shipping route through the Great Barrier Reef is considered the shortest between Australia to Asia, routes destined for Wiggins Island would essentially turn the area into a coal megahighway. Such a plan would increase the likelihood of damage to reef structures and marine life, according to industry and government experts.⁵⁰

Besides the Wiggins Island coal terminal, the Australia Pacific LNG is another controversial project impacting the reef. The Australia Pacific LNG project is the largest producer of coal seam gas in Australia. It converts coal seam gas into liquefied natural gas, and consists of three phases: further development of Australia Pacific LNG's gas fields in the Surat and Bowen Basins in southwest and central Queensland, construction of a 530km gas transmission pipeline from the gas fields to an

LNG facility on Curtis Island off the coast of Gladstone, and construction of an LNG facility on Curtis Island off the coast of Gladstone.⁵¹ LNG is expected to be shipped from Curtis Island to Asia. One of China's largest energy and chemical company, Sinopec, signed on as a project partner in 2011. It holds 25 percent stake in the project.⁵²

Environmental and social impacts

The Great Barrier Reef has long been recognized by the United Nations Educational, Scientific and Cultural Organization and the International Coral Reef Initiative, a coalition of development banks, governments and the World Bank. Development along the reef would cause significant environmental impacts, including increased shipping, dredging, coastal landscape industrialization and accelerated climate disruption.

Both projects would move fossil fuels through the Great Barrier Reef area. Constructing coal export terminals would essentially transform part of the Great Barrier Reef into a coal shipping highway, leading to higher traffic and thus a higher rate of shipping accidents.⁵³ In April 2010, for instance, the Chinese registered coal tanker Shen Neng 1 ran aground the Douglas Shoal, which is located about 50 miles from the port of Gladstone, Queensland. The ship was carrying 65,000 tons of coal and 975 tons of oil fuel which crushed the reef into a "white, flat plane of sand," causing permanent damage.⁵⁴

Dredging, an excavation process used to gather and dump sediment from the seabed, is particularly damaging to coral as it may reduce or block sunlight, thus stunting or killing reef systems.⁵⁵ Should the projects go forward, about three million cubic meters will be dredged at Abbot Point. This would endanger marine life such as dolphins, dugongs (a type of manatee) and turtles. For comparison, the Gladstone project's dredging has led to dolphin, dugong and turtle deaths.⁵⁶

Moreover, transforming the Great Barrier Reef's coastline into one of the world's largest fossil fuel terminals would radically degrade the coastal landscape and jeopardize the

habitats of several endangered bird and turtle species. Already, one lender to the Australia Pacific and Gladstone LNG projects, the U.S. Export-Import Bank, has been the subject of a 2013 lawsuit, alleging that the agency's lending decision breached the U.S. Endangered Species Act.⁵⁷

According to a 2012 report by UNESCO, the Great Barrier Reef is precariously close to becoming an endangered site if remedial measures are not undertaken.⁵⁸ The World Heritage Committee most recently requested the government to "not permit any new port development or associated infrastructure outside of the existing and long-established major port areas within or adjoining the property, and to ensure that development is not permitted if it would impact individually or cumulatively on the Outstanding Universal Value of the property."⁵⁹

Chinese finance

The extraction and shipping of fossil fuels have generated such intense international controversy that many financial institutions have already publicly committed to not finance the expansion of one of the proposed projects, the Abbot Point coal port, given the concerns held by UNESCO and the World Heritage Committee over the negative impacts of the new coal export terminals; these include Deutsche Bank, HSBC, Royal Bank of Scotland, Credit Agricole, Barclays, Citigroup, Goldman Sachs and JPMorgan Chase.⁶⁰

However, several Chinese banks are linked to projects impacting the Great Barrier Reef:

Wiggins Island coal export terminal

- China Development Bank
- Bank of China
- Industrial and Commercial Bank of China

Australia Pacific LNG Project

- Export Import Bank of China
- Bank of China⁶¹

Assessing compliance

Violations of international norms

- As a UNESCO World Heritage site, the Great Barrier Reef is recognized and protected under international standards set by the World Heritage Committee. In general, coal extraction and export are known to cause a myriad of environmental problems from water pollution, coal dust and dredging; these impacts may have an irreparable effect on the Great Barrier Reef's hyper-sensitive ecosystem. The controversial proposals for fossil fuel development in the region has even prompted UNESCO to potentially recategorize the site as "In Danger" should the Australian government fail to enact protective measures.⁶²
- Coal projects in the Great Barrier Reef would violate the International Coral Reef Initiative, a public-private partnership between over 60 nations (including Australia) and organizations, which strives to preserve coral reefs and related ecosystems around the world. Although the initiative is not binding on its members, the initiative is regularly recognized by international bodies such as the United Nations.

Discussion

Upholding international treaties and soft law

Both China and Australia are parties to the Convention Concerning the Protection of the World Cultural and Natural Heritage, and are committed to "do all they can" to ensure "the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage." Financing these coal related projects in the Great Barrier Reef would run counter to the aims of the World Heritage Convention—one of the most respected and observed international norms in the world.⁶³

China is a member of many international conventions, including the Convention on Biodiversity, the International Tropical Timber Agreement, the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Ramsar Convention on Wetlands and the Stockholm Convention on Persistent Organic Pollutants. Certainly, the Green Credit Guidelines would require banks

to ensure that their borrowers conduct activities in accordance with international treaties to which China is a party. The Guidelines should also require borrowers to respect international conventions to which the host country is a party.

In addition, as the GCG requires the implementation of good international practice, Chinese banks should also draw upon "soft law" – non-binding international laws, such as UN Declarations and Resolutions, which form the basis of internationally established social and environmental norms. Such instruments include the Rio Declaration on Environment and Development, the UN Declaration on Human Rights, the UN Declaration on the Rights of Indigenous Peoples and the UN Guiding Principles on Business and Human Rights.

In order to adequately implement Article 21, Chinese banks and regulators should be aware of both hard and soft law obligations, and ensure that borrowers uphold these norms overseas. Collaboration with NGOs, China's Foreign Ministry and other parties could be helpful in providing ongoing training and capacity building, as well as current information on emerging norms.



THE OKI PULP AND PAPER MILL

Sumatran forest ; Luke Mackin, Flickr

Project background

Asia Pulp and Paper is the fourth largest pulp and paper company in the world. APP is the trade name for pulp and paper activities under the Sinar Mas Group, an Indonesian conglomerate that produces pulp and paper, palm oil and foodstuffs.⁶⁴ In 2003, APP was split into APP China, which became responsible for Chinese and foreign operations, and APP, which manages Indonesian operations. APP's proposed OKI pulp and paper mill would be Indonesia's largest.⁶⁵ It will have an annual capacity of 2 million metric tons of pulp and 500,000 metric tons of tissue.

Environmental and social impacts

APP historically has been billed as "one of the most destructive companies on the planet."⁶⁶ In the past two decades, APP has contributed to the mass clearing of rain forest and

draining of peatland forests, which releases enormous amounts of greenhouse gases, contributing to Indonesia's status as the world's third-largest emitter of greenhouse gases, after the U.S. and China.⁶⁷ According to WWF, APP is responsible for the most natural forest clearance than any other company in Sumatra, leading to habitat loss and pushing endangered species, like the Sumatran tiger, to the brink of extinction.

Its operations have caused or triggered serious environmental and social conflicts which have worsened as the company expanded. WWF reports indicate that the company's activities have led to the deaths of 55 people due to conflicts triggered by company operations over twelve years.⁶⁸ In 2003, Human Rights Watch reported that APP illegally seized community land through intimidation and military agents, and has developed a longstanding pattern of human rights abuses.⁶⁹

65. APP subsidiaries Pindo Deli Pulp and Tjimi Kimia co-own the OKI Pulp and Paper Mill. Each own 47.58% of the shares.
http://www.banktrack.org/show/dodgydeals/oki_pulp_paper_mills#tab_dodgydeals_basics

Because of its poor environmental record, numerous high profile companies such as Disney⁷⁰ have committed to stop using paper supplied by APP. In response to public pressure, in February 2013 APP adopted a new “Forest Conservation Policy” which established an immediate moratorium on logging in natural forests and peatlands, and includes standards such as FPIC.⁷¹ The policy pledges to protect high conservation areas and recognize the customary rights of indigenous peoples impacted by its pulp plantations.

According to the company, OKI mill is set to abide by APP’s “Forest Conservation Policy”; it plans to use advanced environmental technology to ensure the company’s pledge to zero deforestation, and to use only plantation grown wood for its raw materials.⁷⁰ However, NGO watchdogs have expressed concern that APP may not fully implement the new policy in the OKI mill, let alone its existing operations.⁷³ For example, there is already community concern regarding poor information disclosure and consultations on the pulp mill’s development.⁷⁴ In addition, the “sudden increase of production capacity by APP could bring the company to face a severe fibre shortage, discouraging it from reforming its practices on the ground... [and] could even lead the company to fail to adequately implement its new policy.”⁷⁵

Chinese finance

In February 2013, China Development Bank announced a USD \$1.8 billion loan to APP for the OKI Pulp & Paper mill.⁷⁶ It is the largest single transaction made between China and Indonesia.

Assessing compliance

A history of violating host country law

- APP has been long associated with illegal practices in Indonesia. A WWF study estimated that at one time about 30 percent of APP’s fiber supply came from illegal sources.⁷⁷ Historically, APP’s other violations of Indonesian law include clearing peat forests, sourcing wood from illegal operations, purchasing wood from proposed national parks, logging beyond licensed limits,

and construction of unpermitted logging roads.⁷⁸ In 2012, the results of a year-long, independently verified study was released, which found that APP was illegally logging ramin, a tree species that is protected under Indonesian law as well as the CITIES convention, to which both Indonesia and China are parties.⁷⁹

Violates UN Declaration on the Rights of Indigenous Peoples to FPIC

- Under the UN Declaration on the Rights of Indigenous Peoples, indigenous peoples have the right to Free, Prior and Informed Consent to projects occurring within their territories. APP has committed to applying these principles in managing its social conflicts, in addition to remedying past harm through an independent mediator. As such, implementing FPIC should be a high priority for the company. APP bears a weak record in respecting the rights of indigenous peoples for many years. As a result, it should be considered a high risk client involving potential “major environmental and social risks”⁸⁰ and be subject to a rigorous accountability system.

Discussion

Doing business with borrowers who have known negative track records

This case raises questions regarding how Chinese banks do due diligence on and ultimately make lending decisions about high risk borrowers with known negative track records. Article 11 of the GCG, requires banks to “prepare a list of clients currently faced with major environmental and social risks, and require these clients to take risk mitigation actions.” APP has had a long history of environmental problems, including illegal logging. In fact, in March 2014, after the announcement of the CDB loan, the former governor of Indonesia’s Riau province was sentenced to 14 years in prison and ordered to pay almost \$90,000 in fines for illegally issuing logging permits to APP subsidiaries.⁸¹

Such a long and recent track record of breaching environmental laws would suggest that CDB should not have extended the loan to APP. However, the CDB loan appears to be

a project loan for the construction of OKI's massive new pulp mill in Sumatra, rather than a general obligation loan to parent company APP.⁸² This raises questions about how Chinese banks should apply the GCG (which requires borrowers to be in compliance with all relevant regulations) to a greenfield project proposed by a company subsidiary, which is technically a separate entity.

Improving company practices and ensuring compliance with new commitments

Determining borrower compliance with good international practice, as required by Article 21 of the GCG, can be difficult. Referring to international treaties and conventions, global soft law instruments and emerging industry standards (including from other financial institutions) are helpful benchmarks. In addition, borrowers themselves might adopt their own environmental and social commitments or codes of conduct. In the case of APP, its own Forest Conservation Policy addressed issues that were critical for the Indonesian pulp and paper sector generally and APP's operations in particular.

CDB provided its loan to OKI eight months after APP released its Forest Conservation Policy. NGOs Environmental Paper Network and BankTrack wrote to CDB to inquire how the bank applied the GCG to this transaction, but the bank did not reply. Under the GCG, banks are meant to, "by improving contract clauses, urge their clients to strengthen environmental and social risk management" (Article 18). Although it not known whether CDB required the company to commit to higher standards before extending credit (or engaged in any other way with APP on its new policy), this case study points to the potential for the Green Credit Guidelines to spur Chinese bank borrowers to adopt stronger environmental and social policies.

Article 18 of the GCG also requires banks to use loan covenants to ensure that borrowers comply with whatever environmental commitments companies make: "As for clients involving major environmental and social risks, the contract shall provide for clauses that require them to submit environmental and social risk report, state and avow that they

will strengthen environmental and social risk management, and promise that they are willing to be supervised by the lender; the contract shall also provide for clauses concerning the remedies banking institutions can resort to in the event of default on environmental and social risks made by the clients." Banks like CDB should be transparent in what environmental and social commitments they are requiring their borrowers to make, whether the borrowers are complying, and what corrective actions the bank has required of borrowers in cases of non-compliance. Such reporting would be particularly helpful for high-risk borrowers like APP that have a long history of environmental problems and a low level of trust amongst the public.

GVL'S PALM OIL PLANTATIONS



Palm plantation, Liberia; Golden Veroleum

Project Background

Golden Veroleum Liberia is owned by Verdant Fund LP. The Verdant Fund's sole investor is Golden-Agri Resources, which belongs to the Sinar Mas Group conglomerate.⁸³

Golden Agri Resources is the second largest palm oil company in the world,⁸⁴ and GVL is one of the largest investors in Liberia. GVL was the first company to announce a "No Deforestation" strategy through its Forest Conservation Policy in February 2011.⁸⁵

In 2010, the Liberian government awarded Golden Veroleum Liberia a 65-year concession of 220,000 hectares' worth of oil palm plantation and 40,000 additional hectares to be developed in collaboration with smallholders.⁸⁶ The concession spans across five counties in South-Eastern Liberia. In 2013, GVL posted a New Planting Procedure notice regarding 28,171 hectares located in Grand Kru county, which includes Grand Cess Wedabo and Threnbo districts.

Environmental and social impacts

Large scale palm oil plantations are typically located in the tropical climates of Indonesia and Malaysia. Although wild oil palm trees are found in Liberia, the model of plantation farming palm oil is expanding to new regions, such as equatorial African countries like Liberia, due to increasing global demand and the plant's effect in depleting the soil.⁸⁷ Palm oil cultivation has been closely tied to deforestation, biodiversity loss, land grabs and increasing carbon emissions.⁸⁸ In addition to its global impacts, palm oil development causes serious social conflicts on the local level. Conflicts typically arise in response to illegal land grabs, and the lack of Free, Prior, Informed Consent regarding plantation proposals.

The company committed to a FPIC process to facilitate consultation and engagement with local communities living in Grand Kru County that hold customary ownership rights over their land. Although communities

83. [Sinar Mas](#) is Indonesia's largest palm oil producer and the second largest in the world.

did consent for GVL to begin clearing and planting, the FPIC process, as documented under GVL's "provisional" Memorandums of Understanding, contained flaws.⁸⁹ For example, several communities did not receive copies of ESIAs (Environmental & Social Assessment Impact Assessment), High Conservation Value Assessments, Environmental Social Management Plans or the Concession Agreement from GVL, despite official requests. According to the Roundtable on Sustainable Palm Oil, a voluntary industry standard to which GVL is a member, the FPIC process must be "based on an open sharing of all relevant information;" however, multiple communities were misinformed by GVL staff regarding compensation, legal documents⁹⁰ and options regarding financial and non-financial terms and conditions. No women were involved in the participatory process, and neither were communities involved in developing meeting agendas (when meeting with the company) or the environmental management plan.

Other complaints against the company included lack of compliance with applicable laws, lack of mitigation measures and consent for damaged creeks, and under-compensating communities. Liberian NGOs and communities contacted the RSPO in response to GVL's lack of compliance, requesting that the RSPO force GVL to freeze new planting procedures until community issues were resolved, per RSPO principles. In response, the RSPO organized a mission to Liberia and investigated GVL's behavior. The subsequent mission report from the RSPO, however, absolved GVL of any wrongdoing. The finding contradicts evidence compiled by NGOs that the mission report was conducted in an unprofessional and biased manner.⁹¹

Chinese finance

In March 2013, GVL announced that it would receive a USD \$500 million loan from China Development Bank over six years to develop palm oil plantations and related infrastructure in Liberia.⁹²

Assessing compliance

Violations of Roundtable on Sustainable Palm Oil

Although the Roundtable on Sustainable Palm Oil principles and criterion⁹³ is increasingly considered to be inadequate to guarantee the sustainable sourcing and supply of palm oil, RSPO is an internationally recognized social and environmental norm for the palm oil sector. Liberian communities and NGOs have reported that GVL has failed to uphold RSPO principles despite company claims otherwise.

• Access to information

- Principle 1, Criterion 1.1: "Oil palm growers and millers provide adequate information to other stakeholders on environmental, social and legal issues relevant to RSPO Criteria".
- Principle 2, Criterion 2.3: "Use of the land for oil palm does not diminish the legal rights, or customary rights, of other users, without their free, prior and informed consent."
 - » Communities did not receive documentation of all maps, concession agreement, ESIAs, HCV Assessments, Environmental and Social Management Plans; nor did they receive public notification of new planting procedures within the 30 day time period. Communities have documented that land preparation and infrastructure development commenced prior to the expiration of the 30 day minimum period.

90. "Complaints Panel Meeting Minutes," Meeting No. 3/2015, RSPO, March 17, 2015.

• Participation of affected parties

- Principle 6, Criterion 6.1: “Aspects of plantation and mill management, including replanting, that have social impacts are identified in a participatory way, and plans to mitigate the negative impacts and promote the positive ones are made, implemented and monitored, to demonstrate continuous improvement.”
 - » Communities in Grand Cess Wedabo confirmed that only one woman was involved in consultations.
 - » None of the communities participated in the development of agendas for meetings. Although a dispute mechanism was discussed during meetings, GVL developed it without their participation.

• FPIC process

- Principle 1, Criterion 1.1: “Oil palm growers and millers provide adequate information to other stakeholders on environmental, social and legal issues relevant to RSPO Criteria, in appropriate languages & forms to allow for effective participation in decision making.”
- Principle 1, Criterion 1.3: “Growers and millers commit to ethical conduct in all business operations and transactions.”
- Principle 2, Criterion 2.3: “Use of the land for oil palm does not diminish the legal rights, or customary rights, of other users, without their free, prior and informed consent.”
 - » GVL did not fully comply with FPIC standards by failing to provide all adequate information regarding the project and compensation proposals. GVL also did not acquire the communities’ consent for new plantings.

• According to the RSPO, the current status of the case is “escalated.”⁹⁴

The RSPO has confirmed that 1. “Based on the evidence, that there is merit in the complaint. 2. There are reasonable doubts on the issue of Free, Prior and Informed Consent of the communities. 3. There is a need for validation of the Environmental Impact

Scoping Study done in December 2010 and Environmental & Social Assessment Impact Assessment done in February 2011.”⁹⁵

Discussion

Voluntary industry sustainability initiatives may not ensure responsible environmental and social performance

As mentioned above, determining borrower compliance with good international practice, as required by Article 21 of the GCG, can be difficult. Companies can develop their own policies, draw on international hard and soft law, or use voluntary industry guidelines.

In the palm oil sector, the Roundtable on Sustainable Palm Oil is the most widely-known voluntary standard for the industry. It is the most developed and advanced initiative in terms of protocols for implementation, including a certification system. However, it is increasingly recognized that RSPO is inadequate for ensuring sustainability in the palm oil sector, particularly with respect to social issues.⁹⁶ For example, in 2013, WWF, a long-time RSPO participant and supporter, stated that “it is, unfortunately, no longer possible for producers or users of palm oil to ensure that they are acting responsibly simply by producing or using Certified Sustainable Palm Oil.”⁹⁷ Similarly, an HSBC report predicted that, due to growing awareness and civil society pressure, banks will begin to demand stronger sustainability standards. In December 2013, Wilmar, the world’s largest palm oil trader, set a new bar for the industry by issuing a company sustainability policy that went well beyond RSPO on several counts.⁹⁸

It is unknown whether CDB required GVL to comply with the RSPO as a condition of receiving financing. But this case illustrates the point that voluntary industry initiatives are inadequate for ensuring sustainability, and that the definition of industry good practice is always evolving.

Post-loan monitoring

The GCG and other bank environmental and social risk mitigation frameworks put a lot of emphasis on due diligence procedures, as

well as standards and policies. These steps are important, but banks (both Chinese banks and their international peers) often give short shrift to post-loan monitoring.

In early 2013, The Forest Trust, an independent verification organization, was hired to review and improve GVL's environmental and social policies. These inspections were done before the financial close of the CDB-GVL deal, and by the time that GVL announced its CDB loan in March 2013, TFT had publicly reported that the company had violated RSPO principles on many counts, including damaging graves, clearing existing crops and polluting creeks.⁹⁹ Although TFT later found that GVL had mostly resolved these issues,¹⁰⁰ by November 2013, after the CDB loan had been closed, Liberian NGOs and several communities informed the RSPO of GVL's continuing violations of RSPO principles and of GVL's own FPIC procedures.¹⁰¹

Later that year, a CDB delegation visited Butaw and Kpanya¹⁰² in Liberia to monitor GVL's palm oil plantations. Press reports of the site visit state that, according to GVL, "at present [GVL] has a high standard of Free Prior and Informed Consent, adding that the company is working with other organizations like The Forest Trust to make sure international guidelines are implemented."¹⁰³

It is unclear whether CDB's site visit was for environmental compliance purposes; it is not known what conclusions bank staff made. Conducting post-loan inspections of projects can be an important opportunity way for banks to monitor the performance of clients, including whether borrowers are implementing the environmental and social commitments contained in the loan covenants. However, it is important for banks to not rely solely on company-reported information or limit themselves to client-organized tours. For example, the CDB delegation appears to not have visited local communities in Grand Kru County who have lodged complaints to the RSPO, preventing them from adequately assessing community conflicts. In addition, bank staff conducting site visits should be qualified and knowledgeable about international environmental and social safeguards.

Finally, although independent third parties, such as The Forest Trust, can be helpful sources of additional information, simply hiring them may be inadequate to ensure compliance. As evidenced by the continued complaints to the RSPO, GVL continues to experience problems implementing FPIC in community consultations.

PACIFIC REFINERY



Manabi coast, Ecuador; Eduardo Ochoa, Flickr

Project background

The Ecuadorean government has been in negotiations with China since 2011 about the financing of a new project to increase domestic refining capacity. Despite Ecuador's rich crude oil reserves, the country must import the majority of its refined oil because of limited refining capacity. In 2013, China National Petroleum Corporation and state-owned PetroEcuador, signed a framework agreement to develop the Refinery of the Pacific, which was slated to begin operations in 2017.¹⁰⁴ If fully operational, the facility would be able to process 200,000 barrels of crude oil daily.¹⁰⁵

The project was to be developed by China National Petroleum Company, PetroEcuador and the state owned company Petroleos de Venezuela.¹⁰⁶ Currently, Petroecuador and PdVSA have invested 990 million.¹⁰⁷ Project ownership is expected to be divided among

the three developers: PetroEcuador would retain a 51 percent majority ownership, CNPC will take 30 percent and PDVSA will take 19 percent.¹⁰⁸

Environmental and social impacts

If built, the project would cause several environmental and social problems. The project would violate the Collective Rights of the Pueblo Montubio, indigenous communities located along the coast of the nearby project site. The community of Río Manta has filed two complaints about the project in the Constitutional Court, on the grounds that a) project did not respect a petition regarding communities' collective territory and also paid indemnification of the purchased territory from previous owner of the property, La Fabril, and b) the project sponsors did not

conduct FPIC procedures in assessing the impact of the refinery on communities.

In addition, Ecuadorean NGOs¹⁰⁹ strongly suspect that oil for the refinery may be supplied from the Yasuní National Park. Yasuní National Park is considered to be one of the most biodiverse regions in the world and was named a biosphere region by UNESCO. The region is home to numerous indigenous peoples, with some living in voluntary isolation. Oil drilling would essentially dispossess indigenous communities of their livelihood and culture. Additionally, extractive activities on the lands of indigenous peoples in voluntary isolation is classified as “ethnocide” in article 57 of the Ecuadorian constitution.¹¹⁰ Numerous communities, including those from the Shuar, Kitchwa, Waorani communities and the Tagaeri and Taromenane clans, would be irreparably impacted. In 2014, more than 700,000 signatures were collected to urge President Rafael Correa to conduct a public consultation on keeping Yasuní oil in the ground.¹¹¹ However, Correa denied the request. Since then, Yasuní has become the most contentious issue between Ecuador’s environmental movement and its government.

Chinese finance

Several press reports indicated that Industrial and Commercial Bank of China would provide virtually all of the financing for the Pacific Refinery through two loan installments totaling USD \$9 billion.¹¹² According to Chinese and Latin American media reports, the first loan of USD \$2 billion would be given to PetroEcuador. The second loan would have totaled USD \$7 billion and was set to be signed in September 2014.¹¹³

Assessing compliance

Violates host country laws

- Indigenous groups filed a lawsuit on the grounds that the project would violate the Ecuadorean Constitution.¹¹⁴ These articles protect indigenous groups and their rights.
 - Article 57: Indigenous communes, communities, peoples and nations are

recognized and guaranteed, in conformity with the Constitution and human rights agreements, conventions, declarations and other international instruments, the following collective rights.

- » 57.4. To keep ownership, without subject to a statute of limitations, of their community lands, which shall be unalienable, immune from seizure and indivisible. These lands shall be exempt from paying fees or taxes.
- » 57.5. To keep ownership of ancestral lands and territories and to obtain free awarding of these lands.
- » 57.6. To participate in the use, ..., administration and conservation of natural renewable resources located on their lands.
- » 57.7. To free prior informed consultation, within a reasonable period of time, on the plans and programs for prospecting, producing and marketing non-renewable resources located on their lands and which could have an environmental or cultural impact on them.¹¹⁵
- » 57.21 The territories of the peoples living in voluntary isolation are an irreducible and intangible ancestral possession and all forms of extractive activities shall be forbidden there. The State shall adopt measures to guarantee their lives, enforce respect for self-determination and the will to remain in isolation and to ensure observance of their rights. The violation of these rights shall constitute a crime of ethnocide, which shall be classified as such by law.

Violates UN Declaration on the Rights of Indigenous Peoples

- By failing to consult with communities, the project sponsors violated Article 10 of the UNDRIP requiring that: “...No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.”

109. Ecuadorean human rights group [Center for Economic and Social Rights](#) and environmental coalition [Leave It In the Ground](#) strongly suspect that oil extracted from Yasuni Park may be refined at the proposed Pacific Refinery.

Discussion

Project was not funded

In July 2014, Ecuadorean groups and indigenous organizations wrote to ICBC regarding the various sustainability policies governing Chinese overseas investments and asked for the bank to comment on how it would reconcile financing the Pacific Refinery, given the project's manifold environmental and social concerns. No acknowledgement was received from the bank, so a follow-up call was made to ICBC's corporate social responsibility department in Beijing, and, at the request of the bank, the letter was sent again. In September 2014, the coalition group LINGO contacted ICBC regarding the Pacific Refinery deal, and the bank replied that ICBC could not comment as it was not investing in the Pacific Refinery.

It is unclear why ICBC has not funded this project, or if the GCG played any role. While ICBC has adopted a "one ballot veto" approach to its environmental policy, which allows the bank to reject a financing application solely for environmental reasons, it is unlikely that such a politically important project, which was negotiated at the highest levels of government, was rejected for environmental reasons alone.

Lines of communication with Chinese banks

In almost all of the case studies contained in this report, local stakeholders attempted to contact Chinese lenders regarding their implementation of Article 21 of the Green Credit Guidelines. For the most part, communication with the banks has been extremely difficult. For example, CDB has a corporate social responsibility department, but it is virtually unreachable (with no listed phone number and an invalid CSR email). Similarly, Acción Ecológica sent information on the El Mirador project to Construction Bank of China, but their letters were returned. The group successfully contacted Bank of China about this project, and complied with the bank's request to send a Spanish version of their letter, but never heard from the bank again.

ICBC appears to be one of the only Chinese banks with a CSR department which has designated staff responsible for fielding questions from the public. This has made a tremendous difference in increasing transparency and communication with civil society and the public. Establishing public engagement mechanisms could help banks implement the GCG by providing them with a means of receiving and soliciting important information with respect to specific overseas transactions (including environmental and social risks and compliance issues), applicable regulations and norms and emerging good international practices.

LOWER SESAN DAM II



Sesan River; International Rivers

Project background

The Lower Sesan Dam 2 Hydropower project is expected to have an installed capacity of up to 400MW and cost more than USD \$800 million.¹¹⁶ The project is a joint venture between Cambodia Royal Group and Hydrolancang International Energy, and EVN International Joint Stock Company, which is a subsidiary of Electricity of Vietnam. Generated power will be sold to the Electricité du Cambodge and possibly exported to Vietnam. Ownership of the project will be transferred to the government after 40 years.

Located on the Sesan River in Cambodia, the dam will be 1.5 km downstream from where it meets the Srepok River and 25 km from where the two rivers meet the Mekong River. LS2 is a tributary dam and is expected to be completed in five years. Despite the fact that its Environmental Impact Assessment failed to meet international best practice, the project was approved by Cambodia's

Cabinet in November 2012. In February 2013, Cambodia's National Assembly passed a law providing government guarantees to the project.¹¹⁷ By March, the dam's reservoir was cleared to prepare for construction.¹¹⁸ Because of the dam's widespread impact on many local communities, international donors, in addition to the Australian, Finnish, Japanese and U.S. governments, have repeatedly called upon Cambodia to submit the project to the Mekong River Commission's prior consultation process. This would essentially allow for regional governments (but not local populations) to decide and evaluate the project. However, the Cambodian government did not respond to these international calls.

Environmental and social impacts

The dam would result in a number of environmental and social impacts. In a joint submission to the ASEAN Civil Society Forum, Cambodian CSOs said that the dam may have

“more negative impacts than benefits from energy exporting.”¹¹⁹ In addition, International Rivers has said that LS2 would have a “catastrophic impact” on the Mekong River’s fisheries and biodiversity, including causing a 9.3 percent drop in fish stocks and altering sediment flows by 6-8 percent.¹²⁰ Recent design changes to the dam may alter the anticipated impacts, but regardless, the impacts on fisheries will remain extremely serious.

The project would significantly impact thousands of villages and local populations who depend on the rivers for their livelihood. The dam includes the construction of a 33,560 hectare reservoir, which according to the EIA will effectively dispossess approximately 5,000 people and flood eight villages.¹²¹ However, another report has argued that the upstream impacts will actually be more severe, “with at least 78,000 villagers along the Sesan and Srepok Rivers upstream of LS2, as well as 87 villages along tributaries of the two rivers, losing access to migratory fish;” in addition, over “22,000 villagers living downstream ... would be negatively impacted as a result of changes in the river hydrology and water quality.”¹²²

Chinese financiers

Details regarding the financing structure for LS2 are undisclosed. However, extensive financial research has confirmed that ICBC is linked to the project through a leasing agreement with Hydro Lancang.¹²³ The total value of the leasing agreement is USD \$220 million and finances equipment (airplanes, machinery, etc) needed by the contractor, SinoHydro. At this time, it is unclear if other Chinese banks have committed or provided loans to the LS2 project, or if the project is funded primarily through bond issuances.

Assessing compliance

World Commission on Dams and involuntary relocation

- The World Commission on Dams has established the most comprehensive guidelines in the world for dam building;¹²⁴ it emphasizes strategic priorities in addressing the rights and risks of all stakeholders.

- Strategic Priority 2: Comprehensive Options Assessment. “The preferred development plan is selected through a participatory multi-criteria assessment that gives the same significance to social and environmental aspects as to technical, economic and financial aspects and covers the full range of policy, programme, and project options.”
 - » Although communities have expressed a desire for exploring alternative projects, project sponsors have not done so.¹²⁵
- Strategic Priority 3: Addressing Existing Dams. “Outstanding social issues associated with existing large dams are identified and assessed; processes and mechanisms are developed with affected communities to remedy them.”
 - » Although compensation packages were developed, communities have reported being coerced into accepting them, or discriminated against for initially rejecting offers.¹²⁶ International Rivers has noted that most communities have never seen the compensation packages, but only given pieces of information.
- Strategic Priority 5: Recognizing Entitlements and Sharing Benefits. “All recognized adversely affected people negotiate mutually agreed, formal and legally enforceable mitigation, resettlement and development entitlements.”
 - » Resettlement plans have not been mutually agreed upon by impacted communities.¹²⁷
- Strategic Priority 6: Ensuring Compliance. “Corrupt practices are avoided through enforcement of legislation, voluntary integrity pacts, debatement and other instruments.”
 - Cambodian media has reported a pattern of corruption among local officials involved in the process of remuneration. Local officials were reported to have taken a cut of villagers’ compensation as a “tip” for their “services.”¹²⁸



Sesan River; International Rivers

- Strategic Priority 7: Sharing Rivers for Peace, Development and Security. “Where a government agency plans or facilitates the construction of a dam on a shared river in contravention of the principle of good faith negotiations between riparians, external financing bodies withdraw their support for projects and programmes promoted by that agency.”

- » In a joint letter to the chairman of Hydropower Lower Sesan 2 Co. Ltd, NGOs state that the project will likely have transboundary impacts.¹²⁹

International norms regarding transboundary impacts

- There are a number of international norms and best practice which require the assessment and disclosure of impacts. For example, the International Court of Justice cites: “A requirement under general international law to undertake an Environmental Impact Assessment where there is a risk that the proposed industrial activity may have a significant adverse impact in a transboundary context, in particular, on a shared resource.”¹³⁰ Project sponsors do not appear to have undertaken an EIA to assess transboundary impacts.¹³¹

Discussion

Scope of application in complex transactions

Large infrastructure projects are often funded through complex financial arrangements, involving many financiers and entities. In the case of LS2, ICBC did not directly lend to the project joint venture, but provided a leasing agreement to Hydro Lancang to finance project equipment. In a financial lease agreement, the financier (ICBC) is the legal owner of assets during the leasing period and the lessee (Hydro Lancang International Energy, one of the project joint venture partners) pays for the use of those assets. This transaction raises the question of how banks should implement Article 21 in complex deals where it is clear bank financing is tied to a particular project.

By way of comparison, OECD Export Credit Agencies commonly provide financing to equipment manufacturers in order to participate in particular projects. For such deals (where financing is provided to a supplier of a project, but not to the project company itself), OECD ECAs are obligated to apply their environmental policies, and evaluate the project to determine whether it meets its environmental standards.

Corruption, compensation and good governance

Chinese banks' overseas lending is often tied to large infrastructure and natural resource projects. These projects are in inherently risky sectors and sometimes involve involuntary resettlement. Moreover, the massive size of some of the deals exposes financiers and clients to corruption risk.

Article 4 of the GCG requires banks to “effectively identify, measure, monitor and control environmental and social risks associated with their credit activities,” and particularly mentions “resettlement of people” as a key social risk. Indeed, the importance of minimizing and properly managing resettlement issues is reflected in various Chinese central government policies, including “Land Administration Law and Circular No. 238” (pertaining to resettlement within China), and most notably China Export-Import Bank's 2011 Resettlement Policy Framework.

The LS2 project illustrates the need for Chinese banks to pay more attention to resettlement and corruption issues. Villagers who face displacement from the dam have lodged petitions and complaints to Cambodian ministries, the Chinese Embassy or project sponsors for the lack of consultation, adequate compensation and poor resettlement site. For example, residents from Stung Treng and Ratanakiri provinces submitted a complaint regarding lack of fair compensation for the destruction of ancestral burial grounds,¹³² and villagers from Stung Treng province's Sesan district have submitted a petition to the government and asked to develop alternatives to the dam to prevent forcible relocation.¹³³ Approximately USD \$38 million is expected to cover the relocation of nearly 800 families.¹³⁴

LS2's compensation process also has become fraught with allegations of corruption and poor governance. Recently, the Phnom Penh Post reported that “villagers had been pressured into accepting lower compensation than they wanted – between USD \$8,000 and \$15,000 – and officials had taken a 10 per cent cut without consulting the families;”¹³⁵ at the same time, families who rejected compensation from the company ultimately were

offered only USD \$500.¹³⁶ Corruption charges have exacerbated a compensation process which villagers say is unclear and below an acceptable amount.¹³⁷

A photograph showing a person in the background harvesting oil palm fruit. The foreground is filled with large, dark brown, spiky clusters of oil palm fruit (bunches) that have been harvested. The background is a lush green field with more palm trees.

KEY TAKEAWAYS

Oil palm fruit harvest; Craig Morey,

The ultimate potential of the GCG is that Chinese banks, through their lending processes, can spur borrowers to not only fully comply with all applicable regulations, but also uphold good international practice in overseas projects. Within these seven case studies, there is not enough transparency to determine whether Chinese banks have realized this potential by conditioning their loans on better borrower environmental performance. However, there is evidence to demonstrate that there are widespread problems in complying with Article 21 of the GCG.

There are many potential reasons for the lack of implementation. One likely reason is the fact that although banks are obligated to implement the GCG, there is no formal mechanism for enforcing it. In other words, there are no punitive consequences for violating the GCG. The fact that there does not appear to be a unit of the CBRC tasked with ensuring overseas compliance with the GCG adds to this impression.

Another reason for poor implementation could be that domestically, Chinese banks are more familiar with the environmental regulatory and legal landscape, and therefore might be better positioned to comply with the domestic aspects of the GCG. In addition, the Ministry of Environmental Protection and the CBRC both provide tools to assist banks with the implementation of the GCG within China. But as Chinese banks go abroad, they lack experience in local policy, laws and risk management, in addition to social and economic aspects of foreign markets.

Based on these case studies, we have identified common themes which illustrate why compliance Article 21 may be difficult. The following key takeaways can help shed light on why banks are particularly struggling, and how banks can improve implementation.

Few lines of communication with Chinese banks

Among the six cases where civil society groups attempted to communicate with Chinese banks, all the financiers were extremely difficult to contact. For the Stanari, Great Barrier Reef and APP case studies, none of the banks acknowledged receipt of NGO letters, and in the case of Mirador, mailed letters were returned. If Chinese banks are committed to abiding by international norms and host country law, creating departments to receive and manage communications from civil society groups would help keep banks aware of client misconduct and improve compliance with international norms and host country laws.

Lack of transparency

As seen in the case studies, the opacity of Chinese banks fuels public distrust. There is a lack of disclosure regarding what projects banks are financing, and what environmental or social covenants are included in loan contracts, if any. For instance, in the Stanari case, NGO representatives reported that during a 2012 meeting with EFT, the company claimed that the CDB's environmental standards were more stringent than those of the

EBRD, in some aspects. However, neither the bank nor the client disclosed any details about the CDB's standards. In the APP case, it is unknown whether CDB played any role in, or paid any attention to, the company's new environmental policy. If banks are applying Article 21 of the Guidelines in particular projects, they should disclose details to the public. By doing so, they could solicit information from stakeholders "on the ground" about borrower compliance with environmental obligations, and potentially boost their reputation as well.

The importance of resettlement and Free, Prior and Informed Consent

Some of the riskiest social issues faced by Chinese banks overseas involve projects requiring resettlement and those impacting indigenous peoples, which require obtaining their Free, Prior and Informed Consent. FPIC is an international norm whose application is fundamental to the success or failure of many investments. As exemplified in the GVL palm oil case, the failure to adopt FPIC may in turn trigger controversy and worsen relations between communities and companies. As the Mirador case showed, the lack of FPIC can jeopardize a project's progress and impact company reputation. A significant number of case studies involve the lack of Free, Prior and Informed Consent, suggesting that Chinese banks need to be particularly sensitized to this right in order to uphold Article 21 of the GCG.

Ensuring good governance

Many of the projects featured in this report are large and expensive, which increases the risk of corruption. For example, a few months after CDB extended a loan to APP for the OKI mill, an Indonesian anti-corruption court sentenced the former governor of Riau to 14 years in prison for issuing illegal permits to APP. Similarly, in the Lower Sesan 2 project, corrupt local officials took an illegal cut of resettlement compensation funds, and according to 3S Rivers Protection Network, it is doubtful that government officials even had the legal right to be involved in the compensation talks with villagers.¹³⁸ In both these cases, corruption problems exacerbated

environmental and social impacts, suggesting that minimizing corruption can also result in better environmental and social results.

Determining compliance with relevant laws is not always straightforward

As seen in the Stanari (EU), Lower Sesan 2 (Mekong River Commission) and Great Barrier Reef (World Heritage Convention) examples, lenders must ensure that borrowers comply not only with local and host country laws, but also regional and international treaties, regulations and agreements. This due diligence may be more difficult given that regional and international authorities may not issue permits or licenses which, superficially at least, indicate regulatory compliance. But the Stanari case also shows that just because a government has issued a permit, it does not necessarily mean the borrower (or the government) has complied with the law.

Determining good international practice is not always straightforward

The benchmark for good international practice is constantly changing, and in order for Chinese banks to comply with the GCG, they must keep abreast of relevant changes. For example, two years ago only a few international finance agencies had restrictions on overseas coal plant financing, but today several financial institutions have adopted that policy, and it is being debated as a potential common standard for OECD export credit agencies. When looking for examples of good international practice, international soft law can be a good source, as can voluntary industry standards. However, as illustrated by the GVL case, sometimes the most well-known industry standards (e.g. Roundtable on Sustainable Palm Oil) are not the most robust.

Applying the GCGs in different financing arrangements

The case studies illustrate that banks may need to alter their due diligence and environmental procedures depending on the specifics of the lending transaction. For example, the El Mirador case involves a merger and acquisition, which requires banks to take a longer view of the history of environmental

and social impacts and risks associated with the company being acquired. The APP case involves a brand new project; while the project itself does not have a lengthy history, the parent company APP does have a long track record of environmental problems. This suggests that, for risky clients, the bank should conduct more robust due diligence, impose specific strong environmental and social performance requirements and increase client monitoring. Lastly, the Lower Sesan 2 case involved an ICBC equipment leasing agreement; to uphold the intent of the GCGs, banks should apply environmental standards to the entire project rather than just the component they may be technically financing.

Robust post-loan monitoring is critical

Monitoring loans for compliance with environmental and social loan covenants is as important as having strong due diligence procedures and environmental policies up front. This is especially needed for borrowers who have records of environmental problems. Hiring a third party consultant to monitor loans after disbursement can be helpful, but the GVL case shows that third party assurances do not necessarily guarantee environmental and social compliance. Similarly, the GVL case demonstrates the need for Chinese banks to increase the capacity and knowledge of bank staff to evaluate environmental and social risks and verify a borrower's compliance.

POLICY RECOMMENDATIONS

Recommendations to Chinese embassies in host countries

- *Respond to requests from the public to assist in the implementation of Article 21 of the GCG. Provide banks and borrowers with information on applicable environmental and social regulations, and environmental and social issues that are particularly relevant in the host country.*
- Take a proactive role in ensuring compliance with Article 21 of the Green Credit Directive;
- Educate Chinese banks and borrowers about the Article 21's requirement that borrowers comply with all relevant regulations and uphold good international practice;

Recommendations to Chinese banks

- *Establish departments or units responsible for engaging with civil society regarding implementation of the GCG, particularly with respect to instances of potential noncompliance;*
- Ensure clients are aware of the obligation to abide by host country law and international norms for overseas projects;
- Upon request, disclose the environmental and social loan covenants in loan agreements, in order to inform stakeholders of a borrower's environmental and social obligations;
- Require clients to develop and establish, in consultation with affected communities, grievance mechanisms to address problems arising over the life of the loan;
- Disclose corrective or punitive measures taken in cases of borrower environmental and/or social non-compliance;
- Seek the input of impacted communities when conducting due diligence or post-loan monitoring
- Upon request, disclose contact information for bank staff responsible for monitoring the environmental and social performance of clients;
- Enhance staff knowledge and expertise on the right to Free, Prior and Informed Consent and how it can be applied at the project level.

Recommendations to the China Banking Regulatory Commission

- *Establish a department or unit within the China Banking Regulatory Commission responsible for engaging with civil society regarding implementation of the GCG, particularly with respect to instances of potential noncompliance;*
- Establish a department or unit within the CBRC to monitor and oversee implementation of the GCG, including Article 21;
- Establish punitive consequences for breaching Article 21, such as fines or lack of permission to open new branches;
- Apply Green Credit Guidelines Assessment Indicators¹³⁹ to overseas investments;
- Require banks to report on loans made to overseas projects, which all should be subject to Article 21 of the GCD. Provide a list of these loans to relevant embassies so that embassies can inform interested stakeholders about which banks are financing particular projects or companies in the host country.

Appendix: Copy of the Green Credit Guidelines

Notice of the CBRC on Issuing the Green Credit Guidelines¹³⁶

CBRC local offices, policy banks, state-owned commercial banks, joint-stock commercial banks, financial assets management companies, the PSBC, provincial rural credit unions, as well as all trust firms, enterprise group finance companies and financial leasing firms directly regulated by the CBRC:

To implement the macro adjustment policies provided for in the Integrated Working Plan of the State Council for Energy Conservation and Emission Reduction during the 12th Five-year Period and the Comments of the State Council on Strengthening Environmental Protection Priorities, and to follow the requirements of matching supervisory policies with industrial policies, the CBRC has formulated the Green Credit Guidelines for the purpose of encouraging banking institutions to, by focusing on green credit, actively adjust credit structure, effectively fend off environmental and social risks, better serve the real economy, and boost the transformation of economic growth mode and adjustment of economic structure. The Guidelines are hereby printed and issued for implementation.

Banking supervisory authorities should forward the Notice to local banking institutions and urge them into implementation.

Feb. 24, 2012

The China Banking Regulatory Commission

Green Credit Guidelines

Chapter 1: General Provisions

Article 1 For the purpose of encouraging banking institutions to develop green credit, these Guidelines are formulated pursuant to the Law of the People's Republic of China

on Banking Regulation and Supervision and the Law of the People's Republic of China on Commercial Banks.

Article 2 Banking Institutions mentioned herein include policy banks, commercial banks, rural cooperative banks and rural credit cooperatives lawfully incorporated within the territory of the People's Republic of China.

Article 3 Banking institutions shall promote green credit from a strategic height, increase the support to green, low-carbon and recycling economy, fend off environmental and social risks, and improve their own environmental and social performance, thus optimizing their credit structure, improving the quality of services, and facilitating the transformation of development mode.

Article 4 Banking institutions shall effectively identify, measure, monitor and control environmental and social risks associated with their credit activities, establish environmental and social risk management system, and improve relevant credit policies and process management.

The environmental and social risks mentioned herein refer to the hazards and risks on the environment and society that may be brought about by the construction, production and operating activities of banking institutions' clients and key affiliated parties thereof, including environmental and social issues related to energy consumption, pollution, land, health, safety, resettlement of people, ecological protection, climate change, etc.

Article 5 The CBRC is responsible for, in accordance with applicable laws, regulating and supervising banking institutions' green credit business and their environmental and social risk management.

Chapter 2: Organization and Management

Article 6 The board of directors or supervisory board of a banking institution shall build and promote green credit concepts concerning energy saving, environmental protection and sustainable development, be committed

to giving play to the functions of facilitating holistic, coordinated and sustainable economic and social development, and establish a sustainable development model that will benefit the society at the same time.

Article 7 The board of directors or supervisory board of a banking institution is responsible for developing green credit development strategy, approving the green credit objectives developed by and the green credit report submitted by senior management, and monitoring and assessing the implementation of green credit development strategy.

Article 8 The senior management of a banking institution shall, pursuant to the resolutions of the board of directors or supervisory board, develop the green credit objectives, have in place relevant mechanisms and processes, define clearly the roles and responsibilities, conduct internal checks and appraisal, annually provide report to the board of directors or supervisory board on the development of green credit, and timely submit relevant reports to competent supervisory authorities.

Article 9 The senior management of a banking institution shall assign a senior officer and a department and configure them with necessary resources to organize and manage green credit activities. Where necessary, a cross-departmental green credit committee can be set up to coordinate relevant activities.

Chapter 3: Policy, System and Capacity Building

Article 10 Banking institutions shall, as per national environmental protection laws and regulations, industrial policies, sector entry policies, and other applicable regulations, establish and constantly improve the policies, systems and processes for environmental and social risk management and identify the directions and priority areas for green credit support. As for industries falling within the national “restricted” category and industries associated with major environmental and social risks, they shall customize credit granting guidelines, adopt differentiated and dynamic credit granting policies, and implement the risk exposure management system.

Article 11 Banking institutions shall develop client environmental and social risk assessment criteria, dynamically assess and classify client environmental and social risks, and consider the results as important basis for credit rating, access, management and exit. They shall adopt differentiated risks management measures concerning loan investigation, review and inspection, loan pricing, and economic capital allocation.

Banking institutions shall prepare a list of clients currently faced with major environmental and social risks, and require these clients to take risk mitigation actions, including developing and having in place major risk response plans, establishing sufficient, effective stakeholder communication mechanisms, and finding a third party to share such risks.

Article 12 Banking institutions shall establish working mechanisms conducive to green credit innovation to boost innovation of green credit processes, products and services while effectively curbing risks and ensuring business continuation.

Article 13 Banking institutions shall give priority to their own environmental and social performance, set up appropriate systems, step up the publicity and education on green credit concepts, standardize their operational behaviors, promote green office, and improve the level of intensive management.

Article 14 Banking institutions shall strengthen green credit capacity building, establish and improve green credit labeling and statistics system, improve relevant credit management systems, enhance green credit training, develop and employ related professionals. Where necessary, they can hire an eligible, independent third party to assess environmental and social risks or acquire related professional services by means of outsourcing.

Chapter 5: Process Management

Article 15 Banking institutions shall strengthen due diligence in credit granting. The scope of due diligence on environmental and social risks shall be defined according to

the characteristics of the sector and region in which the client and its project is located, so as to ensure the due diligence is complete, thorough and detailed. Where necessary, the banking institutions can seek for support from an eligible, independent third party and competent authorities.

Article 16 Banking institutions shall examine the compliance of clients to whom credit will be granted. As for environmental and social performance, compliance checklist and compliance risk checklist shall be developed according to the characteristics of different sectors, so as to ensure compliance, effectiveness and completeness of the documents submitted by the clients, and make sure they have paid enough attention to related risk points, performed effective dynamic control, and satisfied the requirements on substantial compliance.

Article 17 Banking institutions shall strengthen credit approval management, and define reasonable level of credit granting authority and approval process according to the nature and severity of environmental and social risks faced by the clients. Credits may not be granted to clients whose environmental and social performance fails to meet compliance requirements.

Article 18 Banking institutions shall, by improving contract clauses, urge their clients to strengthen environmental and social risk management. As for clients involving major environmental and social risks, the contract shall provide for clauses that require them to submit environmental and social risk report, state and avow that they will strengthen environmental and social risk management, and promise that they are willing to be supervised by the lender; the contract shall also provide for clauses concerning the remedies banking institutions can resort to in the event of default on environmental and social risks made by the clients.

Article 19 Banking institutions shall enhance credit funds disbursement management, and consider appropriation management, and regard how well clients have managed environmental and social risks as important basis

for credit funds appropriation. As for projects to which credit is granted, all stages, including design, preparation, construction, completion, operation and shutdown shall be subjected to environmental and social risk assessment. Where major risks or hazards are identified, credit funds appropriation can be suspended or even terminated.

Article 20 Banking institutions shall strengthen post-loan management. As for clients involving potential major environmental and social risks, relevant and pertinent post-loan management actions shall be developed and implemented. They shall watch closely the impact of national policies on the clients' operation, step up dynamic analysis, and make timely adjustment to asset risk classification, reserve provisioning and loss write-off. They shall establish and improve internal reporting system and accountability system concerning major environmental and social risks faced by the clients. Where major environmental or social risk event occurs to the client, the banking institution concerned shall timely take relevant risk responses and report to competent supervisory authorities on potential impact of said event on itself.

Article 21 Banking institutions shall strengthen the environmental and social risk management for overseas projects to which credit will be granted and make sure project sponsors abide by applicable laws and regulations on environmental protection, land, health, safety, etc. of the country or jurisdiction where the project is located. The banking institutions shall make promise in public that appropriate international practices or international norms will be followed as far as such overseas projects are concerned, so as to ensure alignment with good international practices.

Chapter 5: Internal Controls and Information Disclosure

Article 22 Banking institutions shall incorporate green credit implementation into the scope of internal compliance examination, and regularly organize and carry out internal auditing on green credit. Where major

deficiencies are identified, investigation shall be conducted to determine whom to be held accountable as per applicable regulations.

Article 23 Banking institutions shall establish effective green credit appraisal and evaluation system and reward and penalty system, and have in place incentive and disciplinary measures, so as to ensure sustained and effective offering of green credit.

Article 24 Banking institutions shall make public their green credit strategies and policies, and fully disclose developments of their green credit business. As for credit involving major environmental and social risks, the banking institutions shall disclose relevant information according to laws and regulations, and be subjected to the oversight by the market and stakeholders. Where necessary, an eligible, independent third party can be hired to assess or audit the activities of banking institutions in performing their environmental and social responsibilities.

Chapter 6: Monitoring and Examination

Article 25 Banking supervisory authorities at all levels shall strengthen the coordination with competent authorities, establish and improve information sharing mechanism, improve information services, and remind banking institutions of related environmental and social risks.

Article 26 Banking supervisory authorities at all levels shall strengthen off-site surveillance, improve off-site supervisory indicator system, enhance the monitoring and analysis of environmental and social risks faced by banking institutions, timely guide them to strengthen risk management and adjust credit orientation.

Banking institutions shall, pursuant to the provisions hereof, perform overall green credit evaluation at least once every two year, and submit the self-evaluation report to competent banking supervisory authorities.

Article 27 When organizing and conducting on-site examination, banking supervisory authorities shall take into full account the

environmental and social risks faced by banking institutions, and make clear the scope and requirements of examination. As for regions or banking institutions involving prominent environmental and social risks, ad hoc examination shall be conducted and urge said institutions to improve in light of examination results.

Article 28 Banking supervisory authorities shall provide more guidance to banking institutions on green credit self-evaluation, and, in conjunction with the results of off-site surveillance and on-site examination, holistically assess the green credit performance of banking institutions, and treat the assessment results, as per applicable laws and regulations, as important basis for supervisory rating, institution licensing, business licensing, and senior officer performance evaluation.

Chapter 7: Supplementary Provisions

Article 29 These Guidelines become effective as of the date of promulgation. Village banks, lending firms, rural mutual cooperatives and non-banking financial institutions shall enforce actions in reference to these Guidelines.

Article 30 These Guidelines are subject to interpretations by the CBRC.¹⁴⁰

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