

## Financing Extractives in Southern Africa: Questions on Human Rights Due Diligence

The [UN Guiding Principles on Business and Human Rights](#) make clear that all companies have a responsibility to respect human rights. This includes avoiding negative impacts on people affected by their operations and business relationships, including throughout their supply chains, and addressing negative impacts when they do occur.

Financial institutions play a critical role in determining which projects and companies receive access to capital. This survey aims to better understand the current approach banks and investment firms take to assessing their clients with respect to human rights issues in the extractive industries. Human rights issues in the sector include the rights to land, access to clean water, livelihood, fair and safe working conditions, and consultation about the use of land and other natural resources. They also include respect for indigenous land rights and adherence to the process of securing free, prior and informed consent.

It is our hope that you will view this invitation as an opportunity share your institution's best practices with the investor community and a chance to exchange knowledge. Thank you for your time.

### Name of company: **RAND MERCHANT BANK**

1. What policies and procedures does your institution have to undertake human rights due diligence regarding the companies and projects it finances, beyond what is publicly available on your website?

Rand Merchant Bank (RMB) is a division of FirstRand Bank Limited. As a result, all RMB transactions go through an 'Environmental and Social Risk Assessment' (ESRA) as required by FirstRand's Group policy. Please see FirstRand Limited's latest 'Environmental and Social Risk Report 2017'

(<https://www.firstrand.co.za/Sustainability/EquatorPrinciplesReports/FirstRand%20environmental%20and%20social%20risk%20report%202017.pdf>) that details the application of the ESRA process across the FirstRand Group and its entities (RMB being one of these).

FirstRand is a signatory to the Equator Principles. As a result, RMB applies the International Finance Corporation's (IFC) Performance Standards and associated guidelines to all project finance related projects/transactions. Human rights aspects are covered by a combination of these Performance Standards namely that on 'Labour', 'Community', 'Land Resettlement', 'Indigenous People' and 'Cultural Heritage'. More information on these Performance Standards and associated guidance is available at -

[https://www.ifc.org/wps/wcm/connect/Topics\\_Ext\\_Content/IFC\\_External\\_Corporate\\_Site/Sustainability-At-IFC/Policies-Standards/Performance-Standards](https://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/Sustainability-At-IFC/Policies-Standards/Performance-Standards).

2. Do you require new clients or new projects in the extractives sector to have undertaken human rights due diligence prior to providing financing?

Yes, new projects in the extractive industry will be subject to an independent Equator Principles Review (including a review against the IFC Performance Standards) as detailed in the previous response.

Funding to clients in the extractive industry that are not linked to a specific project would still be subject to an in-house ESRA review by our internal team of qualified environmental and social experts that would include, amongst other checks, a 'reputational check' on human rights abuses. Should concerns be noted, this will be formally escalated through RMB's 'Clients of Interest' Forum that involves thorough interrogation of the issues at hand by RMB Senior Management.

3. Which human rights issues are included in your risk assessment process for extractive projects?

Please see the IFC Performance standards but to name a few - forced labour, child labour, modern slavery, victimization, gender discrimination, forced resettlement without consent, non-consideration of indigenous people's rights, working conditions, etc.

4. Does your institution adapt its human rights policies and procedures for the specific sector of investment in order to account for the varied risks across sectors? If so, do you have specific policies on the mining sector?

Yes, each project is considered on its own merits. FirstRand also has various internal position statements and funding exclusions many of which are relevant to the mining sector such as conflict minerals, forced and child labour, cross border movement of waste, induced hydraulic fracking and destruction of high conservation value areas/sites.

The IFC Performance Standards also have associated guidance documents per sector such as mining which are applied where required. These cover any specific human rights aspects that are not covered by the eight IFC Performance Standards.

5. Does your institution adapt its human rights policies and procedures for the specific country of investment in order to account for the varied risks across nations? If so, do you have specific policies for any countries or areas in Southern Africa?

Yes, we do have ESRA policies that are tailor made for each country that refer the ESRA reviewer to relevant guidance such as the IFC Performance Standards and associated guidelines as well as Group funding exclusions and position statements.

6. Who assesses human rights risks at your bank (departments, positions, internal/external, etc.)?

For all moderate to high risk Equator Principle transaction, an independent and competent environmental consultant conducts the review. For all other transaction, in-house ESRA reviewers conduct reviews. Please see FirstRand Limited's latest 'Environmental and Social

Risk Report 2017' for more information -

<https://www.firststrand.co.za/Sustainability/EquatorPrinciplesReports/FirstRand%20environmental%20and%20social%20risk%20report%202017.pdf>).

7. Do you require companies to have grievance mechanisms in place for each extractive project and if so, what do you see as essential in an effective grievance mechanism?  
Yes, grievance mechanisms are a requirement in terms of the Equator Principles/IFC Performance Standards. A grievance mechanism needs to be applied at ground level at all phases of a project i.e. prior to construction, during construction, during operation, during decommissioning/closure, and needs to have numerous functioning and traceable channels for grievances to be submitted.

8. Have you ever taken any steps to require or support a client in remediating a human rights impact?

We are not yet at a stage where we can apply sustainably performance linked loans but we are considering this. At this stage, we expect clients to remediate any material issues prior to us providing funding given that human rights issues would be seen as having both credit risk and reputational risk for FirstRand/RMB.

9. Have you ever withheld loans or other financial services as a result of a human rights assessment or allegation?

Yes, if our initial ESRA review identified material human rights concerns, we have not pursued the funding or applied restrictions on funding allowed. An example of this is not funding certain companies in certain jurisdictions for environmental and social impacts/risks in the palm oil industry.

10. Do you undertake any form of on the ground assessment of conditions at project sites?

Yes, site visits to project sites both before funding and during the term of a loan is an Equator Principles requirement. Environmental and social requirements/actions are also included as covenants in the loan agreement. In-house ESRA staff also conduct site visits to client operations if warranted by the associated environmental and social risk.

#### **Further information and guidance:**

[UN Guiding Principles on Business and Human Rights](#)

[OECD Guidelines for Multinational Enterprises](#)

[Mapping of Sustainable Development Goals to human rights instruments and issues](#)

[OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas](#)

[EU Regulation on Due Diligence in Mineral Supply Chains - Civil Society Guidance for Companies](#)