

Draft International Principles on the Regulation of Transactions Involving Oil and Gas Infrastructure Assets

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By selling, assigning, or otherwise transferring fossil fuel infrastructure assets, oil and gas companies could potentially claim progress towards net-zero goals even if this does not translate into real global reductions in greenhouse gas emissions. Further, asset transfers by large oil and gas companies can move the assets to smaller or less publicly accountable entities so that the transferred assets and the greenhouse gas emissions associated with them are subjected even less to decarbonizing pressures, hindering the ability of investors and the public to push for actual emissions reductions. These transactions can create transferred emissions that can obscure their real economy emissions impacts.

Studies by the Columbia Center on Sustainable Investment (CCSI) and the Sabin Center for Climate Change Law,¹ Environmental Defense Fund and Ceres,² the Natural Resource Governance Institute (NRGI),³ and the United Nations Conference on Trade and Development (UNCTAD),⁴ among others, have examined the issue of transferred emissions by oil and gas companies. All the publications mentioned have also proposed reforms to address the issue of transferred emissions.

Building on the findings of these and other publications,⁵ CCSI, in partnership with the Sabin Center for Climate Change Law, is proposing for discussion among policymakers and other stakeholders at the 8th World Investment Forum the following Draft International Principles on the Regulation of Transactions Involving Oil and Gas Infrastructure Assets.

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Definitions

Asset – Infrastructure asset for the exploration, exploitation, refining, or transportation of oil, gas, or both, or an interest in a license, concession contract, permit, approval or other legal instrument authorizing the exploration, exploitation, or transportation of those resources.

Company – Legal entity, including privately held or publicly traded companies and state-owned enterprises, that directly or indirectly owns, manages, or operates an asset.

Government – Ministry, agency, or other governmental entities with regulatory authority over a company, regardless of the location of the company’s headquarters or operations.

Principles – The following set of principles.

Transaction – Transaction leading to the change of direct or indirect ownership, management, or operation of an asset, through, among others, a corporate transaction or the sale or assignment of an asset.

Principle 1: Domestic legal and institutional frameworks

1.1 Governments should revise domestic laws and regulations and investor–state contract templates as well as seek to renegotiate existing investor–state contracts to update them in line with the principles, subjecting the companies and their ultimate parent companies to appropriate penalties for non-compliance with the measures required in the principles, and ensure that governments have the authority and the necessary human and financial resources to monitor and enforce them, along with other applicable laws, regulations, and contracts.

1.2 Where government approval of a transaction is required, governments should take the broadest interpretation of approval rights. Where government approval of a transaction is not required, governments should establish an independent legal obligation on companies to obtain government approval of a transaction. In either case, governments should condition approval to the companies' compliance to the fullest extent possible with the measures outlined in the principles.

Principle 2: Early retirement and decommissioning of an asset

Governments should reserve themselves the right to determine the early retirement and decommissioning of an asset, in line with the recommendations by the Glasgow Financial Alliance for Net Zero (GFANZ) on the managed phase-out of high-emitting assets and other best practices, including by denying approval of a transaction involving the asset or reserving themselves the right of first refusal to reclaim the asset.

Principle 3: Greenhouse gas accounting and disclosure

Governments should require that the companies involved in a transaction and their ultimate parent companies jointly and consistently account, report, and disclose, in accordance with the Greenhouse Gas Protocol or another internationally accepted greenhouse gas accounting and reporting framework, on an annual basis or more frequent basis, asset-level scopes 1, 2, and 3 emissions of greenhouse gases resulting from the operation of the asset from five years before the effective date of the transaction and until the decommissioning of the asset is completed, along with forecasted asset-level scopes 1, 2, and 3 emissions for the expected commercial lifecycle of the asset.

Principle 4: Decommissioning

Governments should require that the companies involved in a transaction and their ultimate parent companies commit to fully funding and executing the decommissioning of the asset and provide evidence of the government-approved decommissioning plan and of the funds set aside for its execution, in accordance with applicable laws and regulations and the highest available social and environmental protection standards and industry best practices.

Principle 5: International cooperation

Governments should cooperate internationally in matters pertaining to the regulation of transactions of assets between companies, including to ensure the tracking of proven oil and gas reserves and their related potential or actual scopes 1, 2, and 3 greenhouse gas emissions in a global asset-level registry such as the Global Registry of Fossil Fuels, coordinate with respect to domestic-level regulations, and periodically increase their level of ambition toward the accelerated timing of asset retirement and decommissioning in light of developments in climate science and policy.

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To comment on the proposed principles or to discuss how to support the regulation of transactions involving oil and gas assets, contact Martin Dietrich Brauch, Lead Researcher, CCSI (martin.brauch@columbia.edu).

Endnotes

- ¹ Columbia Center on Sustainable Investment and Sabin Center for Climate Change Law, *Transferred Emissions Are Still Emissions: Why Fossil Fuel Asset Sales Need Enhanced Transparency and Carbon Accounting*, 2023, <https://ccsi.columbia.edu/fossil-fuel-asset-sales>;

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- ² Ceres, *An Investor Guide to the Climate Principles for Oil and Gas Mergers and Acquisitions*, 2023, <https://www.ceres.org/resources/reports/investor-guide-climate-principles-oil-and-gas-mergers-and-acquisitions>;

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- ³ Natural Resource Governance Institute, *Governments and Companies Must Address Climate and Governance Risks when Petroleum Assets Change Hands*, 2023, <https://ccsi.columbia.edu/sites/default/files/content/docs/fdi%20perspectives/No%20352%20-%20Woodroffe%20and%20Westenberg%20-%20FINAL.pdf>.
- ⁴ United Nations Conference on Trade and Development, *World Investment Report 2023: Investing in Sustainable Energy for All*, 2023, https://unctad.org/system/files/official-document/wir2023_en.pdf.
- ⁵ United Nations' High-Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities, *Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions*, 2022, <https://www.un.org/en/climatechange/high-level-expert-group>.

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Glasgow Financial Alliance for Net Zero (GFANZ), *The Managed Phaseout of High-emitting Assets*, 2022, https://assets.bbhub.io/company/sites/63/2022/06/GFANZ_Managed-Phaseout-of-High-emitting-Assets_June2022.pdf.