

Annual Report of the EXAMINERS FOR ENVIRONMENTAL GUIDELINES (FY2018)

1. Introduction

(1) Outline of the Objection Procedures¹

The Objection Procedures (the “Procedures”) stipulate their objectives as follows:

- (i) To investigate facts as to whether or not the Japan Bank for International Cooperation (“JBIC”) has complied with the Guidelines for Confirmation of Environmental and Social Considerations² (the “Guidelines”) and Guidelines for Confirmation of Information Disclosure Considerations for Nuclear Sector Projects³ (the “Information Disclosure Guidelines”), and to report the results to the Executive Committee to ensure that JBIC complies with those two Guidelines; and
- (ii) To promote dialogue between the parties concerned and, based on their consent, to quickly solve specific conflicts concerning environmental or social issues related to JBIC-financed projects which have emerged due to non-compliance with those two Guidelines.

The Procedures call for the Examiners for Environmental Guidelines (the “Examiners”) to conduct an independent and impartial investigation when objections are submitted by affected parties, such as local residents, in line with the Procedures, and to report the results to the Executive Committee. The Examiners also contribute to the speedy solution of problems by promoting dialogues between the parties concerned.

JBIC established this system of the Procedures in October 2003 in advance of other export credit agencies and prior to the adaptation of the “common approach” environmental review recommendations adopted by the Organization for Economic Co-operation and Development.

In January 2015, JBIC revised the Summary of Procedures to Submit Objections concerning the Guidelines (the “Summary”), which was originally enacted in July 2012, due mainly to the reflection of the revision of the Guidelines. In addition, with JBIC’s institutional change in June 2017, the text of the Summary was partly revised. Furthermore, due to the establishment of Information Disclosure Guidelines in December 2017, we made additional revisions to the text of the Summary in the same month.

¹ Summary of Procedures to Submit Objections concerning JBIC Guidelines for Confirmation of Environmental and Social Considerations and Guidelines for Confirmation of Information Disclosure Considerations for Nuclear Sector Projects

https://www.jbic.go.jp/en/business-areas/environment/disagree/images/procedure_04_en.pdf

² JBIC Guidelines for Confirmation of Environmental and Social Considerations

https://www.jbic.go.jp/wp-content/uploads/page/2013/08/36442/Environmental_Guidelines2015.pdf

³ Guidelines for Confirmation of Information Disclosure Considerations for Nuclear Sector Projects

<https://www.jbic.go.jp/en/business-areas/environment/images/consultation02.pdf>

(2) Publication of the Annual Report

The Annual Report details the Examiners' activities during the previous fiscal year in line with the Procedures.

2. Appointment of new Examiners for Environmental Guidelines

From the first half period of FY 2018 until September 2018, Professor KOBAYASHI Hiroshi (Faculty of Economics and Law (Institute of Social Science), Shinshu University) and Professor SHIMADA Koji (College of Economics, Ritsumeikan University) were in charge of the Examiners position. Then, in October 2018, JBIC newly appointed three experts as Examiners for Environmental Guidelines. Below are the profiles of the two persons currently in office as of January 2020⁴ (in the order of the Japanese syllabary):

Mr. TOYONAGA Shinsuke

Attorney-at-Law admitted in Japan and New York State, Daichi Law Offices

2004: LL.B., the University of Tokyo

2006: J.D., School of Law, the University of Tokyo

2015: LL.M., Northwestern University School of Law

In 2007, he completed legal apprentice training at the Japanese Supreme Court and registered as a lawyer. He then joined Nishimura & Asahi in 2008. During 2011 and 2013, he was seconded to the Nuclear Damage Compensation Facilitation Corporation (former name). He was appointed to his current position in 2015.

Publications: "Nuclear Compensation Law" (Shinzansha, 2014)

Mr. HOSHINO Kazuaki

Specially Appointed Professor, Kagoshima University Regional Co-creation Center

1978: B.S., Department of Biological Science, Faculty of Science, the University of Tokyo

In 1978, he joined the Environment Agency (former name) and worked in several departments mainly related to nature conservation. During the period, he was also seconded

⁴ Mr. ROKUSHA Akira (Professor Emeritus, Keio University), another Examiner assigned to the position in FY 2018, resigned in July 2019 due to circumstances.

to both the Embassy of Japan in Kenya (Ministry of Foreign Affairs) and the Environment and Community Affairs Department of the Kagoshima Prefectural Government. Later, in 2011, he became the Head of the Kyushu Environmental Office of the Ministry of the Environment and in 2012, Councilor, Environment Minister's Secretariat (in charge of the Nature Conservation Bureau). In 2013, he was promoted to Director General of the Nature Conservation Bureau of the Ministry. He was appointed to current position in 2015. Currently, he is in charge of the "Kagoshima Environmental Studies Project" at the Kagoshima University Regional Co-creation Center. While he was an administrative official at the Ministry of the Environment, he engaged in the establishment, revision and management of both international environmental laws (Convention on Biological Diversity, etc.) and domestic environmental laws (Antarctic Environmental Protection Law, etc.).

3. Report on Activities in FY2018

(1) Objections submissions and Preparations/Publication of Reports

There was one objection submitted during the course of FY2018 (April 2018 to March 2019):

Date of Acceptance: May 23, 2018

Name of Project: Hai Phong Thermal Power Plant and Hai Phong 2 Thermal Power Plant

Name of Country: Socialist Republic of Viet Nam

Present status (January 2020): Rejected as a result of preliminary investigation

After receiving the objection, the Examiners conducted a preliminary study and rejected it in September 2018. Although the sending and submission of the objection form by the requester was done in November 2017 and the objection was actually sent to JBIC at that time, it failed to be circulated to the Examiner for a certain period of time. It was in May 2018 when the examiners became aware of the existence of this objection, and therefore there was some delay in the process. In this regard, the examiners at that time expressed regret and made a request to the bank to prevent the recurrence of such a delay.⁵ In October 2018, JBIC issued "In Response to Error in Handling Procedures for Requests for Objection concerning JBIC Environmental Guidelines" (<https://www.jbic.go.jp/en/information/news/news-2018/1024-011516.html>), in which JBIC announced the implementation of recurrence prevention measures.

⁵ Please refer to the Examiner's notice on this case (dated September 11, 2018) attached to this annual report.

Other cases for which the review process was not completed during FY2018 include the Cirebon Coal-fired Power Plant Unit 2 project in West Java, Indonesia, for which the objection had been received in the previous fiscal year. The process had been temporarily suspended due to ongoing related local court proceedings in Indonesia during this fiscal year.

(2) Public Relations Activities

Details of the Procedures are explained in both English and Japanese on the JBIC website. The backgrounds of two Examiners are also introduced. Further, the full texts of the Procedures in English and Japanese are available there so as to disseminate the existence of this mechanism.

(3) Communication with Objection Mechanisms of International Financial Institutions and Other Institutions

Multilateral development banks such as the World Bank have successively introduced objection procedures, as well as examining bodies which act in accordance with the procedures, over the last twenty-plus years. Their names vary by agency, but they are recently becoming generally known as Independent Accountability Mechanisms (“IAMs”).

Such IAMs of international finance and bilateral institutions have formed the so-called Independent Accountability Mechanisms Network (the “IAMs Network”). The IAM Network has held its Annual Meeting since 2004 as an opportunity for those various institutions to share information and views. The fifteenth meeting was hosted by the World Bank Inspection Panel and was held on November 13 and 14, 2018, in Washington, D.C., with one of our Examiners in attendance.⁶ The IAMs Network has been expanding, and they continue to receive many participation requests from new international and bilateral institutions.

The meeting consisted of an activity report from each IAM and sessions on various themes. Each IAM presented information including the number of objections received, the specifics of several cases, their outreach activities and their personnel changes. In theme-specific sessions, discussions were held on topics such as: the status of each IAM’s objection procedure revisions, the results of various working groups in the IAM network, gender-based

⁶ Participants (excluding JBIC): World Bank Inspection Panel, IFC/MIGA Compliance Advisor/Ombudsman, EBRD Project Complaint Mechanism, ADB Accountability Mechanism, IDB Independent Consultation and Investigation Mechanism, AfDB Independent Review Mechanism, CDB Project Complaints Mechanism, NIB Office of the Chief Compliance Officer, UNDP Social and Environmental Compliance Unit, BSTDB Internal Audit, GCF Independent Redress Mechanism, EIB Complaints Mechanism, OPIC Office of Accountability, DEG/FMO Independent Complaints Mechanism, and AFD Environmental and Social Complaints Mechanism.

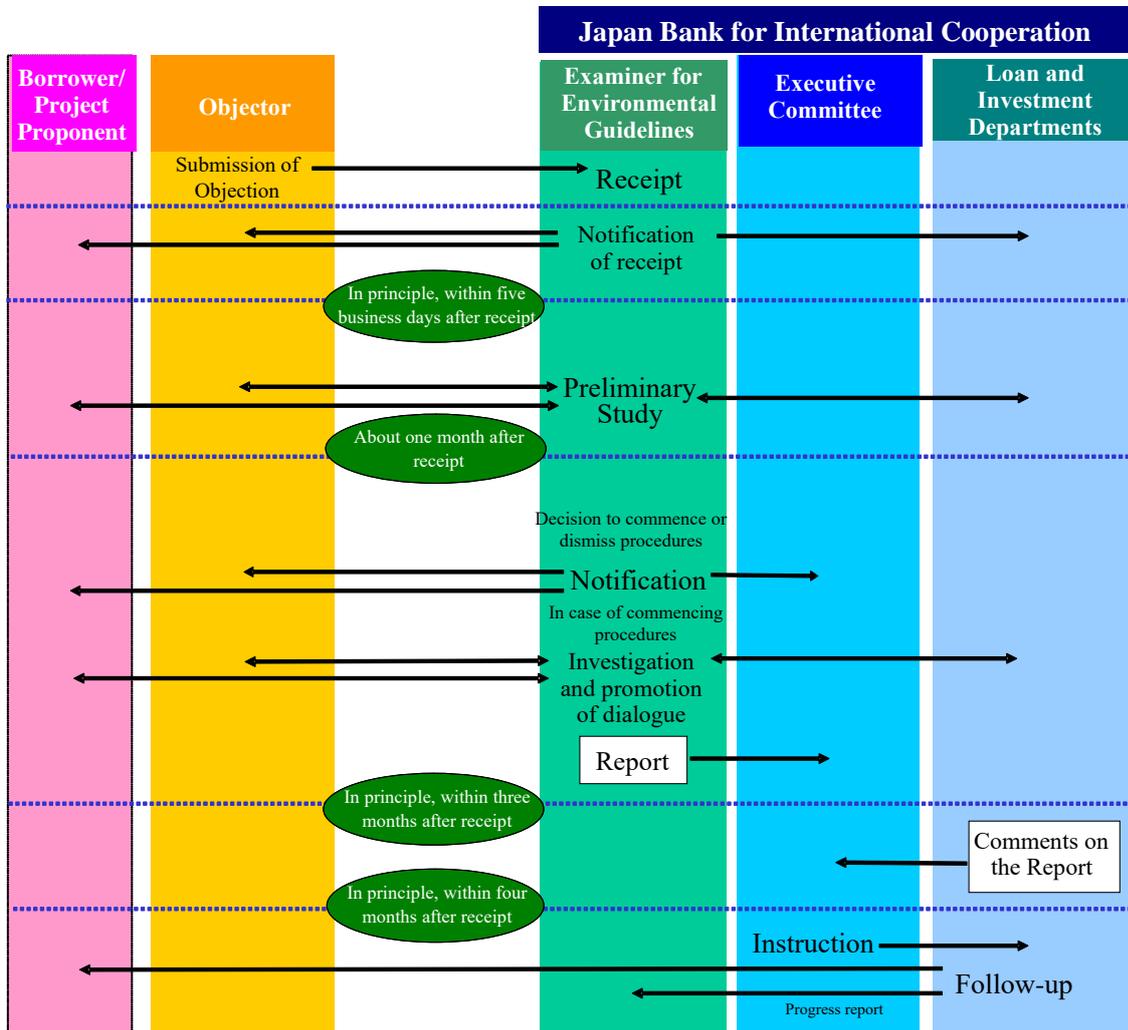
violence issues, and effective problem-solving processes (arbitration, mediation).

Also, on November 14th, the celebration of the 25th anniversary of the establishment of the Inspection Panel was held at the World Bank Headquarters, and the IAM meeting participants took part in that ceremony.

Through these activities, the Examiners proactively exchanged information and views on how to ensure fair and appropriate implementation of the Procedures, as well as on the important points in practice.

Objection Procedures

(1) Flow of Objection Procedures



(2) Submission of the Objection

An Objection should be sent to the Examiners:

Address 4-1, Ohtemachi 1-chome, Chiyoda-ku
Tokyo 100-8144, JAPAN

Examiner for Environmental Guidelines,
Japan Bank for International Cooperation

Fax +81-3-5218-3946

E-mail sinsayaku@jbic.go.jp

Website: <https://www.jbic.go.jp/en/business-areas/environment/disagree/procedure.html>

(Sample)

Objection

Date: _____

To: The Examiner for Environmental Guidelines
Japan Bank for International Cooperation (“JBIC”)

- (A) Names of Objector:
(B) Place of contact of the Objector:
[if the Objector uses an agent]
(Name of the agent)
(Place of contact of the agent)

We wish to keep our names undisclosed to the Project Proponent.
Yes / No (circle one)

- (C) Project with respect to which the objections are submitted:
- Name of country
 - Project site
 - Outline of the project
- (D) Substantial damage actually incurred by the Objector or substantial damage likely to be incurred by the Objector in the future as a result of JBIC’s non-compliance with the Guidelines with regard to the Project for which JBIC provides financing
- (E) Relevant provisions of the Guidelines considered by the Objector to have been violated by JBIC and the facts constituting JBIC’s non-compliance alleged by the Objector
- (F) Causal nexus between JBIC’s non-compliance with the Guidelines and the substantial damage
- (G) Resolution desired by the Objector
- (H) Facts concerning the Objector’s communication with the Project Proponent
- (I) Facts concerning the Objector’s communication with JBIC’s Operational Department
- (J) If an Objection is submitted by an agent, the Objector must set forth the necessity to submit the Objection by an agent, and evidence must be attached that the agent has been duly authorized by the Objector.

The Objector hereby covenants that all the matters described herein are true and correct.

[THE END]

Notice of Decision not to commence the Procedures and Transfer of your Request

September 11, 2018

To: Requesters (26 persons in total)

The Examiner for Environmental Guidelines
Japan Bank for International Cooperation (“JBIC”)

We hereby notify you that your requests to raise objections dated October 31, November 1, November 4, and November 6, 2017 (Acceptance No. 1801; accepted as of May 23, 2018) have been rejected.

The main reason for the rejection is the absence of facts concerning your consultation with the Project Proponent and JBIC’s Operational Department prior to the requests to raise objections (although there was an unavoidable reason for some requesters that prevents the Requester from endeavoring to have dialogues with the Project Proponent, as described in the appendix). We kindly ask you to consult with the Project Proponent and JBIC’s Operational Department, before requesting to raise objections.

Please note that your request to raise objections will be transferred to JBIC’s Operational Department and that we will ask the Department to properly address your matters of concern (such as the influence of environmental pollution on health and livelihood) as needed, through such means as investigations and dialogues. In addition, the Examiner regrets that the acceptance of the requests to raise objections was delayed for more than six months. We would like to add that we will ask JBIC’s Operational Department to prevent recurrence of such a delay.

Thank you again for your interest in JBIC’s procedures to submit objections.

CC: LPSD

(Attachment)

Results of Examination

1. Formality requirements of the request

All items are written in Japanese, English or the official language of the country in which the Requester resides.	✓
There are items the descriptions of which are insufficient.	

(Items the descriptions of which are insufficient: _____)

2. Requirements to commence the procedures

(1) Requirements regarding the Requester

The request has been submitted by two or more residents in the country in which the project is implemented.	✓
The request does not satisfy the above requirement.	
The fact that the request has been submitted by the Requester cannot be confirmed.	

(2) Project with respect to which the objections are submitted

As a result of identifying the project based on the request, it has been confirmed that it is a project for which JBIC provides funding.	✓
As a result of identifying the project based on the request, it has been confirmed that it is not a project for which JBIC provides funding.	
The project cannot be identified based on the request.	

(3) Period

The request was submitted during the period between the time when a loan agreement was executed and the time when drawdown was completed.	
The request was submitted on or before the time when a loan agreement was executed and, therefore, it is appropriate to transfer the request to the Operational Department for examination.	
The request was submitted after the completion of disbursement and JBIC's non-compliance with the Guidelines concerning JBIC's monitoring was pointed out.	
The request was submitted after the completion of disbursement but JBIC's non-compliance with the Guidelines concerning JBIC's monitoring was not pointed out.	✓

(4) Substantial damage actually incurred by the Requester or substantial damage likely to be incurred by the Requester in the future as a result of JBIC's non-compliance with the Guidelines with regard to the project which JBIC provides funding

Substantial damage actually incurred or substantial damage likely to be incurred in the future is described.	✓
Substantial damage actually incurred or substantial damage likely to be incurred in the future is not described.	

(5) Relevant provisions of the Guidelines considered by the Requester to have been violated by JBIC and the facts constituting JBIC's non-compliance alleged by the Requester

Provisions not complied with and the facts of non-compliance are fairly and reasonably described.	✓
Provisions not complied with and the facts of non-compliance are not fairly and reasonably described.	

(6) Causal nexus between JBIC's non-compliance with the Guidelines and the substantial damage

Description of causal nexus is fairly reasonable.	✓
Description of causal nexus is not considered to be fairly reasonable.	

(7) Facts concerning the Requester's consultation with the Project Proponent

The Requester has endeavored to have dialogues with the Project Proponent.	
There is an unavoidable reason for the Requester that prevents the Requester from endeavoring to have dialogues with the Project Proponent.	*A
As the Requester has not fully endeavored to have dialogues with the Project Proponent, the Requester should first propose to have dialogues.	*B

*A: Seven requesters in Minh Duc Town fall under this category.

*B: Nineteen requesters, who do not constitute A, fall under this category. The LPSD could not be recognized as an agent of the Requester as of November 22, 2017 in the letter from the LPSD dated the same day, which is asking for dialogues with the representative of JBIC's Representative Office in Hanoi. It is from August 13, 2018 onwards that the LPSD can be recognized as the agent of four individuals among the requesters.

(8) Facts concerning the Requester's consultation with JBIC

The Requester has had communication with JBIC's Operational Department.	
As the Requester has not fully endeavored to have communication with JBIC's	✓

Operational Department, the Requester should first propose to have dialogues.	
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* The LPSD could not be recognized as an agent of the Requester as of November 22, 2017 in the letter from the LPSD dated the same day, which is asking for dialogues with the representative of JBIC's Representative Office in Hanoi. It is from August 13, 2018 onwards that the LPSD can be recognized as the agent of four individuals among the requesters.

(9) Prevention of abuse

There is no concern that the request was submitted for abusive purposes.	✓
There is a concern that the request was submitted for abusive purposes and, therefore, it is inappropriate to commence the procedures.	
There is a serious false description in the request.	

(Describe the reasons why the request is considered to have been submitted for abusive purposes or the matters that are considered to be false.)

[THE END]