

Comments  
on  
the Draft Summary of Procedures (the Procedures) to Submit Objections Concerning  
JBIC Guidelines for Confirmation of Environmental and Social Considerations  
and  
the Draft of the Establishment of the Office of Examiner for Environmental Guidelines

Contents

1. Overall
2. Basic Principles
3. Powers and Duties of the Examiner
4. Requirements to Commence the Procedures
5. Process of Submitting A Request
6. Disclosure of Information
7. Review of the Summary and Interim Provisions
8. The Office of Examiner for Environmental Guidelines

1. Overall

No.	Comments	Response of JBIC
1	<p>Laying down specific procedures for dealing with objections concerning the new JBIC Guidelines for Environmental and Social Considerations (“the Guidelines”) has been a pending issue for “ensuring their appropriate implementation and compliance”. Discussions on a series of open public consultation forums led to putting together the Procedures of Procedures. This process is very important as it provided an open public discussion of policies regarding the Guidelines.</p> <p>It is unprecedented that an opportunity was provided for the general public to participate in this process; that open and free discussions have been held in developing the Procedures ; and that the work proceeded smoothly by integrating various views and forming consensus. In this sense, credit should be given to JBIC for its positive attitude and competence.</p>	<p>We appreciate a broad spectrum of people, from industry, NGOs, the academic community, Diet members to relevant government departments and agencies, for numerous and useful comments in public consultations and on other occasions. We also acknowledge valuable comments sent to us by the general public in response to our solicitation.</p>
2	<p>While the Procedures are considered effective in assuring JBIC’s compliance with the Guidelines, JBIC should make a more assertive effort to raise public awareness of Japanese contribution to environmental protection in the countries where the Japanese have been involved in projects.</p>	<p>We will certainly make an effort to raise public awareness of Japanese contribution to environmental and social considerations through the Guidelines and the Procedures. The Procedures mandates the Examiner for Environmental Guidelines (“the Examiner”) to increase public awareness of its existence and activities by making use of its website and pamphlets. We are hopeful that the Procedures will gain broad recognition not only by various country governments but also among local communities of project sites.</p>
3	<p>The Examiner should confirm compliance not only with the Guidelines but also with the other guidelines set forth by JBIC as well as with international standards to which the Japanese government has agreed.</p>	<p>Discussions on the procedures for filing objections started based on the provision in the Guidelines that JBIC may accept objections to non-compliance with the Guidelines and take necessary measures “to ensure compliance with the Guidelines.” Recognizing that special consideration is required for ensuring compliance with the Guidelines, JBIC</p>

		has laid down the provisions of the procedures for accepting objections from local communities, in addition to the conventional internal screening process.
4	An appropriate use of this mechanism is called for, while avoiding its abuse.	The Examiner may decide not to commence the Procedures, from the viewpoint of preventing abuse, after conducting a preliminary investigation. The Examiner is thus called on to conduct his duties, while ensuring to prevent the abuse of this mechanism.
5	We appreciate a delicate balance being struck between public purposes and support for private business activities, while the focus is placed on environmental protection.	Achieving both environmental and project sustainability was a major challenge. One of the highest priorities in drawing up the Procedures is achieving a harmony between support for overseas activities of Japanese businesses and environmental and social considerations. Those who reviewed the Procedures noted a balanced approach, which may be attributable to an exchange of views with various parties concerned.

## 2. Basic Principles

No.	Comments	Response of JBIC
1	While speedy processing of the procedures for dealing with objections is an important factor, adequate time may be required for the investigation, particularly, to make appropriate judgment on compliance with the Guidelines. It would be difficult to bring the investigative activities to a close in less than 3 months after the submission of the Request. Since it is more likely that the investigation will take, at minimum, 6 months, we propose reconsideration of the duration of the investigation.	As the comment rightly pointed out, speed and efficiency are important factors for the Procedures. That is the reason why a period of 3 months is given to the Examiner to conduct investigative activities. However, reflecting concerns expressed in the discussions of public consultations, we have allowed a 2-month extension of this period under unavoidable circumstances. Thus we believe the present provisions will not pose particular difficulties.
2	Since the Procedures aimed at preventing any environmental or social adverse effects on the local residents as a result of non-compliance with the Guidelines, what is called for on the part of the Procedures is “fairness” rather than “neutrality”.	The purpose of the Procedures is, as described in the provision setting forth the purpose, to investigate facts to determine JBIC’s compliance with the Guidelines, as well as to encourage a dialogue between the parties concerned. The Examiner is thus required to take a neutral stand without any bias toward specific parties. At the same time, being fully aware that it is difficult for the local residents to have access to JBIC, JBIC has paid special attention to “fairness” by: (1) allowing the preparation of the Request in the local official language; and (2) ensuring anonymity of the Requester to the Project Proponent.
3	Equal Footing should be added to the Basic Principles: “The principle of Equal Footing should be maintained by, for example, setting up common rules with other governments and ECAs, so as to provide Japanese firms with a fair and equal platform to compete with their counterparts in the other OECD countries.	The Basic Principles should include required discipline of the Examiner and the principles governing its actions, based on discussions in public consultations. Adding the proposed principle therefore does not seem appropriate. JBIC will actively take opportunities such as OECD conferences to present and disseminate information on the basic idea behind the Procedures in an effort to promote the establishment of similar mechanism in other OECD member countries.
4	We would like the Examiner to take into account Equal Footing with other official financial institutions so as not to hamper fair competition of Japanese companies with overseas rivals.	The Procedures see to the competitive footing of the Japanese companies, while ensuring environmental and social considerations at the same time. JBIC will actively take opportunities such as OECD conferences to present and

		disseminate information on the basic idea behind the Procedures in an effort to promote the establishment of similar mechanism in other OECD member countries.
5	We would like the Examiner to listen to views and comments from a broad spectrum of stakeholders to make decisions on the neutral ground.	The Procedures stated “Neutrality” as one of the Basic Principles and urges the Examiner to take a neutral stand when promoting dialogues. The Examiner is expected to engage in activities while ensuring neutrality in accordance with the Procedures .
6	We would like the Examiner to respect the legal framework, political decisions, etc. of the host country, understand the need of her social and economic development, and respect her sovereignty.	We have a good reason to pay serious attention to the host country’s sovereignty. The Examiner will also respect it in implementing the Procedures. A case in point: during preliminary investigations and activities following the decision to commence the Procedures, the Examiner is authorized to take steps such as suspension of Procedures, if a dispute resolution process including litigation is underway in the host country.
7	Make sure that additional cost incurred by the submission of the Request is not shifted to private businesses and that it does not result in excessive public burden.	JBIC will keep in mind this comment in considering how to set about to achieve the purpose of the Procedures. Meanwhile, to prevent excessive cost burden, the Office of Examiners will have the minimum staff.

### 3. Powers and Duties of the Examiner

No.	Comments	Response of JBIC
1	The Examiner should have the power to directly request relevant companies to submit documents necessary for investigation.	The Procedures call on the Examiner to have the Operational Department make arrangements at first for interviews with the Project Proponent, the borrower, etc. to ensure procedural efficiency. It does not prohibit interviews per se, however. In addition, since the Examiner is allowed to have direct contact with interviewees later, the key issue pointed out in the comment has been addressed.
2	In wrapping up the 6th public consultation, Deputy Director General Yajima, who chaired, summarized the	Based on the discussions in public consultations, the Examiner is authorized to make

	<p>discussions as follows: “It seemed that there is a broad convergence of discussions toward the view that under extreme circumstances where a serious problem could arise, the Examiner may actually make a recommendation for suspending the loan. However, it is the Governor who should make the final decision. What is important in this context is discussion on the timing of information disclosure. When information is made available to the public in the stage of making such recommendation, it could have a substantial impact on the host country as well as the project. A conservative approach should be taken here.” We agree with his view, and propose the addition of a clause: “Whereas the Examiner has the power to make a recommendation to the Governor that the JBIC loan be suspended, such information shall not be disclosed to the public until the Governor makes its decision.” (There were a number of similar comments.)</p>	<p>recommendations to the Governor on possible remedial measures against non-compliance.</p>
3	<p>There is a need to form consensus with the borrower regarding the powers of the Examiner, including the one mentioned above.</p>	<p>As JBIC can, in general, conduct investigation on the project in accordance with the loan agreement with the borrower, the Examiner can exercise this power as a member of JBIC staff and there is no need for additional agreement with the borrower.</p>

#### 4. Requirements to Commence the Procedures

No.	Comments	Response of JBIC
1	<p>JBIC should accept the Request in the projects financed in its international financial operation (IFO) upon completion of the internal loan appraisal process. The difference of the Request-submission period between the ODA operation and the IFO represents a “double standard,” which means failure in the establishment of</p>	<p>In operations other than ODA lending, there is no appropriate timing for public disclosure of JBIC’s decision as it works its way through the process of confirming environmental and social considerations. In fact, this process continues until the signing of the loan agreement. In the case of private sector projects, if JBIC</p>

	<p>integrated procedures based on the integrated Environmental and Social Guidelines. (There are similar comments.)</p>	<p>accepts any objection prior to the signing of a loan agreement, there may be a significant impact on export/import or investment contracts. Thus the Procedures have to begin after the signing of the loan agreement. As a result, there are differences with the practice for ODA lending operations. They reflect the different nature of these two operations.</p>
2	<p>Based on common and different factors in international financial operation (IFO) and overseas economic cooperation operation (OEEO), a different timing was set for submitting the Request. This point is favorably recognized.</p>	<p>As noted in the comment, the periods for submission of the Request reflect common and different factors in these two operations. This treatment was a result of the exchange of views with external parties concerned .</p>
3	<p>Regarding the period during which the Request may be submitted for ODA loan-financed projects, what is meant by “the time when the Bank indicates the result of its appraisal of the project ...” should be explicitly stated. There must also be an explicit description of the procedures of public disclosure as to whether this timing has reached.</p>	<p>“The time when the Bank indicates the result of its appraisal of the project ...” means “the time the Bank indicates its assessment as to the appropriateness of the development project or the program for economic stability and the prospect for achieving objectives of such project or program.” It is understood that the Examiner will act appropriately based on information on such project or program when an opinion is expressed from outside sources.</p>
4	<p>The submission of the Request should not be limited to the monitoring period and be allowed through the end of the loan repayment period. The Procedures contains the provision that “after the completion of disbursement, a Request pointing out the Bank’s non-compliance with the monitoring provisions of the Guidelines may be submitted.” The submission of a Request should be allowed up to the end of repayment period with respect to not only the monitoring provision but also the entire provisions of the Guidelines.</p>	<p>In the case where it is highly likely that adverse local impact will occur from the project during the loan period and since the submission of the Request is allowed in the case where there is a high likelihood of adverse impact in the future, there is no particular problem for setting the period when the submission of the Request is allowed up to the end of the loan period. In addition, the loan period of JBIC is usually very long (up to 40 years for ODA loans), the submission of the Request after the passage of many years will make it difficult to conduct an appropriate investigation as relevant documents may have been discarded. Thus it is not realistic to</p>

		cover through the end of the repayment period. In addition, upon completion of disbursement, the influence of JBIC on the borrower tends to decline, and it is difficult to adopt appropriate measures to resolve the problems. In the procedures of the inspection panel in the World Bank and the ADB, the period for submitting a request for inspection is up to 95% disbursement rate. The provision set by JBIC that the period covers up to the completion of disbursement and even beyond loan closure for the monitoring provisions of the Guidelines is very advanced as an international practice.
5	If the Examiner transmits comments received from an outside person or entity prior to the period during which the Request may be submitted, the Examiner should obtain consent from the person or entity that offered the comment.	Comments received prior to the period during which the Request may be submitted will be transmitted to the Operational Department for the purpose of reflecting them in JBIC operations. This is apparently for the same reason that such comments have been sent to the Examiner. Thus it is not appropriate to require consent of each and every person or entity that sends comments, as this will cause delays in reflecting them in JBIC operations. Such request seems to have arisen out of concern that personal information of those who made the comments may be transmitted through the Operational Department to Project Proponents. However, JBIC staff in the Operational Department are bound by an obligation to safeguard confidentiality, and such possibility is minimal.
6	The Examiner should monitor whether the Operational Department is properly addressing the comments.	Since the Examiner will receive a report on how the Operational Department has addressed the comments transmitted to them, the monitoring mechanism is in place.
7	The period during which the Request may be submitted in international financial operation should be limited	In the Procedures, the Request may be submitted in operations other than ODA lending in the period



	to the duration from the signing of a loan agreement to loan closure out of consideration that business activities should not be affected. (There are similar comments.)	from the signing of a loan agreement to loan closure. However, following the new Guidelines, JBIC may keep monitoring even after loan closure, and, therefore, the Request pointing out the Bank's non-compliance with the monitoring provision will be accepted.
8	To prevent the abuse of this mechanism, the Requestor should be limited to representatives of local residents being adversely affected.	To increase the convenience of this mechanism, the qualifications for the Requester have been relaxed to the maximum extent possible. The project on which the Request may be submitted is considered to have incurred or be highly likely to incur material damage. Therefore, the Examiner excludes subjective emotional damages of individuals and personal economic interests that are not shared by other residents in the process of investigation.
9	As indicated by the provision that "A Request must be submitted by two or more residents of the recipient country...", the mechanism was designed to be more open and simplified for utilization. This is an unprecedented achievement.	The qualifications of the Requester, which have been favorably received, are the result of the exchange of information with external parties concerned.

##### 5. Process of Submitting A Request

No.	Comments	Response of JBIC
1	At the time or after individual residents who have been or are likely to be adversely affected submit a Request, the Examiner should provide suitable advice, if necessary, with respect to the qualifications of the Requester, the content of the Request and the method of submitting the Request. (There were similar comments.)	Under the Procedures, when information contained in the Request is insufficient, the Examiner may ask for additional information instead of turning it down immediately. JBIC makes an effort to ensure that the Request is well qualified through such process.
2	JBIC should create an exclusive e-mail address and disseminate the Examiner's existence so that ordinary citizens may provide information or express their views with respect to the project for which	The Examiner will make the contact address available on the JBIC website. At the same time, an effort has to be made to broaden recognition of his/her existence and activities by, for instance, preparing

	the Request was submitted. (There are similar comments.)	and distributing pamphlets.
3	Following the examples of multilateral institutions, JBIC should not demand the Requester to indicate the relevant provisions of the Guidelines that he/she considers have been violated.	Under the Procedures, the Examiner may ask for additional information when information contained in the Request is inadequate. It should be noted that the Request will not be turned down simply because it contains inadequate information.
4	The fact that the Requester is engaging in consultation with the Project Proponent and the Bank's Operational Department should not be the requirement for commencing the Procedures. Instead, the Procedures should be commenced when the Project Proponent and the Operational Department have in some way recognized the problem raised by the Requester.	The relevant paragraph in the Procedures was based on the idea that the local problem should be left to the resolution by the relevant parties concerned. The Procedures simply require that the Requester make an effort for a dialogue with the Project Proponent and enter into a dialogue with the Operational Department. We believe this requirement does not particularly constrain the Requester.
5	While the Procedures ensure non-disclosure of the Requester's name to the Project Proponent if he/she so wishes, his/her anonymity must be ensured even within JBIC (anonymity to all except the Examiner) . The independent inspection panel in the World Bank ensures the anonymity of the Requester to the management of the Bank.	This comment seems to have risen out of concern that the personal information of the Requester may leak through the Operational Department to the Project Proponent. However, as JBIC staff, the officers in charge in the Operational Department are required to hold the Requester's name confidential, and thus there is no such possibility.
6	In the case where the Japanese law stipulates disclosure of the Requester's name despite his/her desire to be otherwise, the Requester should be informed of this point.	The Japanese information disclosure law set forth that personal information such as the name of an individual might be withheld. The exceptional case where it will be disclosed should follow the relevant law and the opinion of the individual in question must be heard.
7	The Request should be submitted in such form as facsimile, e-mail and by hand. JBIC's overseas representative offices should also accept the Request in sealed envelope, but only the Examiner should open it.	The overseas offices will receive the Request and transmit it to the Examiner. The Examiner will issue the notification of receipt within 5 business days of its receipt. It should be kept in mind that the notification of receipt might take more time in this case than the case where the Examiner has received

		the Request directly. If the received document indicates manifestly that the people other than the Examiner should not open it and the staff in his office, special care will be taken to this effect.
8	The Examiner will notify the receipt of the Request “so long as the name and the place of contact are stated in the Request,” but in the case of delay in notification due to additional time required for translation, the Examiner should clearly state the maximum number of days delayed. The Requester should be promptly informed of the number of days delayed. (There are similar comments.)	The Request may be accepted in Japanese, English or the official language of the relevant country. Since there are a variety of languages, the time taken for its translation may vary, and it is difficult to tell in advance how many additional days are required for it. When the number of days delayed due to this reason is ascertained, the Examiner will promptly inform the Requester thereof.
9	The Examiner should be able to conduct a preliminary investigation at the project site if necessary. In fact, the independent inspection panel in the World Bank often conducts an on-site study as part of its preliminary review and they reported that this has enabled them to make an appropriate judgment. (There are similar comments.)	In the preliminary investigation, the Examiner reviews whether the submitted Request is adequate. If the submitted documents provide adequate information, he/she may start full investigation including a visit to the project site. We believe there is no problem in this process. In the case of the World Bank, it seems that the need for on-site investigation arises in the preliminary review because it is the board of executive directors that makes decision on whether to commence the investigation. We also add that we have not ruled out a visit to the project site in the preliminary investigation.
10	When full investigation commences after the Request is found to meet all the requirements for commencing the Procedures, the project process should be suspended if it is prior to a loan agreement or disbursement should be suspended if a loan agreement has already been signed. The suspension should last until full investigation has been completed and the Examiner makes a recommendation.	When the Request is submitted prior to the signing of a loan agreement, JBIC will, in addition to reviewing the content of the Request, consider necessary steps to ensure appropriate environmental and social considerations depending on specific circumstances of the project in question. Thus a uniform step such as deferral of the signing of a loan agreement is not considered an appropriate action. When the Request is submitted after the signing of a loan agreement, it is not appropriate to

		place the borrower to disadvantage by suspending or canceling disbursement because of JBIC's non-compliance with the Guidelines, and if disbursement has to be suspended, it will be done in accordance with the provisions of the loan agreement.
11	When the decision was made not to commence the Procedures, the Requester should be informed of its reasons in writing, and he/she should be able to submit a counterargument in writing.	Under the present Procedures, if the decision not to commence the Procedures is made, its reasons have to be described in detail. This is consistent with the request of the comment on the left. If there is a counterargument, it is up to the Requester to submit it in writing, and we believe it is not appropriate to require its submission in writing.
12	As environmental and social considerations are deemed to continue even after the signing of a loan agreement, the phrase, "environmental assessment conducted on or before the execution of the relevant loan agreement," makes an extremely narrow definition of environmental and social considerations. A revision is called for. (There are similar comments.)	The Procedures stated, "The Examiner shall interview relevant persons in the Operational Department and ascertain the facts concerning (i) environmental assessment conducted on or before the execution of the relevant loan agreement and (ii) monitoring." "Environmental assessment" here corresponds to "screening," "category classification," and "environmental review" under the new Guidelines. "Monitoring" used here also corresponds to the same term in the new Guidelines. As "monitoring" is defined to be a process after the execution of the loan agreement under the new Guidelines, it is solely "environmental assessment" that is "conducted on or before the execution of the relevant loan agreement." Therefore, contrary to the criticism, JBIC does not define environmental and social considerations in an extremely narrow sense. Having said that, we will clarify this description, by revising "environmental assessment conducted on or before the execution of the relevant loan agreement" into "confirmation of environmental and social considerations on or before

		the execution of the relevant loan agreement.”
13	Referring to the description, “The Examiner may inspect any and all materials used ...,” these materials certainly include documents produced by JBIC in the process of environmental assessment and monitoring. I would like to see if the “materials used” include those produced by JBIC.	“Any and all materials” naturally include documents prepared by JBIC.
14	There is a need to consider cooperative arrangements with the Japanese government in obtaining documents held by the host country government or its agency and in arranging a visit to the project site.	We would like to call attention to the fact that the Examiner, who is a member of JBIC staff, has, in general, the power to request the submission of documents relevant to the project and visit the project site in accordance with the loan agreement. If, depending on special circumstances of specific projects, the Examiner considers the cooperation of the Japanese government will be effective for discharging his/her duty, he/she will consider such request.
15	We believe that the Examiner will find it necessary to conduct interviews with relevant NGOs in the investigation. What is JBIC’s position on this point?	The Procedures stated that “the Examiner may interview residents having the same view as that of the Requester, residents having different views from that of the Requester, the Project Proponent, specialists, the government of the host country and other persons concerned.” Therefore, if the Examiner deems it necessary in his/her own judgment, he/she may conduct interviews with relevant NGOs.
16	Couldn’t the Examiner go beyond mediating a dialogue between the adversely affected residents, including the Requester, and the Project Proponent in order to resolve disputes and play an active role, for example, by proposing a specific arrangement to resolve disputes?	Since JBIC is not a party directly involved in the project, our involvement in resolving disputes is necessarily limited. What we can expect of the Examiner is to basically rely on the resolution of disputes by the parties concerned, while he/she engages in activities supporting such move.
17	This Procedures were drawn up to evaluate whether or not JBIC has complied with its guidelines for environmental and social	As rightly pointed out, the Procedures will check JBIC’s compliance with the new Guidelines. However, it is Project

	<p>considerations. Therefore, its Procedures should go on independently even if the project has been referred to other dispute resolving process. (There are similar comments.)</p>	<p>Proponents who do actual work for environmental and social considerations, and JBIC's position is to confirm their considerations. Should JBIC be found to be in violation of these guidelines, the presumption is that there is some problem in environmental and social considerations. This means that if the problem is referred to the local litigation or other dispute resolution process, this could affect JBIC's Procedures. Out of this consideration, the Examiner may suspend the Procedures in the case where the problem in question has already been referred to any other dispute resolution process.</p>
18	<p>In the case where an environmental or social problem for which the Request is submitted has been in the dispute resolution process under the institutional framework of the project residing country, the Request should not be accepted.</p>	<p>As indicated above, the Procedures empowered the Examiner to suspend the Procedures for the submitted Request in the case where the environmental or social problem in question is in other dispute resolution process. Thus the Procedures are in line with the comment.</p>
19	<p>The Examiner should hear the argument of the Requester on the Examiner's report and submit it to the Governor together with an opinion from the Operational Department.</p>	<p>The report will be sent to the Requester after it is completed . The Requester is free to express his/her opinion with respect to the report and it is also possible to submit such opinion to the Governor.</p>
20	<p>A list of interviewees should be submitted to the Governor together with the report and be made available to the public. (For those preferring to remain anonymous, their profession or social position may be sufficient.) What is the position of JBIC on this question?</p>	<p>As the sample form of the report indicates, the record of interviews will be attached to the report. The names and other personal information that should remain undisclosed under the domestic information disclosure law shall not be included in this list. Thus, aside from the content of the interviews, names will not be included.</p>
21	<p>The Examiner should conduct continuous monitoring on the implementation of the Governor's instructions based on the recommendation of the Examiner, and the monitoring report should be made available to the public.</p>	<p>The Procedures set forth that the Governor's instructions will be implemented by the Operational Department, which should report to the Examiner on its progress. We believe this has ensured the same scope and depth of monitoring as</p>

	In doing so, information should be collected from the Requester on the progress of the implementation. When completing the monitoring, the Examiner should obtain consent from the Requester.	conducted by the Examiner. The Examiner is to attach the status of implementation and his opinions thereof to the annual report he/she prepares and it will be made public. This will essentially ensure a mechanism for preparing the monitoring report and making it available to the public. We consider it natural that the Operational Department will take into account desires of the Requester in implementing and completing the Governor's instructions.
22	While the Examiner may enter the annual report his/her opinions regarding measures to ensure compliance with the Guidelines, the problems of which have been made clear through individual Procedures, the Examiner should have the power to directly report to the Governor where necessary concerning institutional capacity building for expanding environmental and social considerations.	As the Office of the Examiners is to be set up directly under the Governor, it should be natural behavior if he/she reports directly to the Governor, his/her immediate superior, on matters within the scope of his/her designated duties.
23	In 2. (g) and (h) of the sample results of examination, there are provisions: "...the Project Proponent has not faithfully responded to this proposal" and "...the Operational Department has not faithfully responded to this proposal." They give the impression that the Examiner would refuse to commence the Procedures if they have "faithfully responded." As this is not consistent with the descriptions in the text, these provisions should be revised.	Based on the comment, we will make necessary revisions to ensure consistency with the text.

## 6. Disclosure of Information

No.	Representative Comments	Response of JBIC
1	The Examiner has an obligation to disclosed information.	The Examiner has an obligation to disclose information based on the Procedures.
2	The following documents should be made available to the public at the	While there are many documents described in the Procedures for

	<p>respectively specified timing:</p> <p>Submission of the Request (promptly);  The content of the Request (promptly);  Results of preliminary investigation (promptly);  The decision not to commence the Procedures and its reasons (promptly);  Counterargument to that decision by the Requester (promptly);  Report, including the list of interviewees (promptly upon completion);  Opinions of the Requester to the report (promptly after the interviews have been completed);  Opinions of the Operational Department describing measures to ensure compliance with the Guidelines (promptly after submission);  The Governor’s instructions (promptly);  The monitoring report by the Examiner (promptly upon completion);  The annual report (promptly upon completion); and  Other opinions submitted by the Examiner (promptly).  (There are similar comments.)</p>	<p>information disclosure that correspond to the comments, we will make some revision based on the comment. However, “counterargument by the Requester to that decision” and “opinions of the Requester to the report” are the documents to be prepared by entities outside JBIC. Thus we consider it inappropriate to disclose them because they do not represent JBIC’s opinions.</p> <p>Also, as mentioned in 5. No. 21, the monitoring report is in practice contained in the annual report, and we will not prepare them separately for disclosure.</p> <p>It is difficult to disclose all the “other opinions submitted by the Examiner,” in order not to hamper a frank exchange of views within JBIC. Thus there will be no revision on this point.</p>
3	<p>Information disclosure should be based on the consent of the parties concerned to promote a dialogue for resolving disputes and safeguarding corporate secrets.  (There are similar comments.)</p>	<p>In disclosing information, the Examiner should take care not to include personal and corporate information, and other non-disclosure items in accordance with relevant laws. In the event that such information has to be made public under compelling circumstances, JBIC is required to obtain the consent of the parties concerned. Therefore, there is adequate care for the issue pointed out by the comment.</p>

## 7. Review of This Summary and Interim Provisions

No.	Representative Comments	Response of JBIC
1	In revising the Summary, JBIC should listen to opinions of its Operational Department, analytical departments,	In reviewing the Procedures, the Procedures stated, “Such review shall be conducted in consideration



	<p>the past Requesters and NGOs concerned.</p>	<p>of the opinions given and evaluations made by the users and the Examiner accumulated up to the time of such review.” It follows that the “users” include NGOs and others involved on behalf of the Requester.</p>
2	<p>We propose setting up a joint compliance forum (provisional name) consisting of a broad range of stakeholders, including representatives of the academic community, relevant government departments and agencies, industry, and NGOs. In such forum, policy agenda will be discussed for JBIC to confirm appropriate environmental and social considerations and to reflect them in specific improvements in policies. The forum meets once a year and is participated by the Examiner and all the staff related to the Procedures. The Examiner should prepare the annual report to the Governor by taking into account opinions expressed there. The Governor should reflect such opinions in JBIC policies based on that report. Setting up such forum will play a significant role for ensuring transparency and accountability in the Procedures for submitting objections and provide a good opportunity for reviewing the guidelines for environmental and social considerations as well as the.</p>	<p>A review of this Summary is scheduled within 5 years after it goes into effect, to be conducted concurrently with the review of the Guidelines. The review will be conducted based on the opinions and evaluations made by the users of the Procedures, the Examiners and a broad range of stakeholders.</p>
3	<p>There may be a case where despite compliance with JBIC guidelines for environmental and social considerations, it is not possible to realize the basic objective of the guidelines: “to prevent or minimize the impact on the environment and local communities which may be caused by the project funded by JBIC and not to bring about unacceptable effects.” In such case, JBIC should review whether the present Guidelines are adequate and revise them or set forth additional provisions in the Guidelines.</p>	<p>The new Guidelines stated that JBIC conducts a comprehensive review of the Guidelines within 5 years of their enforcement and revisions may then be made as needed. JBIC will consider revisions based on the status of implementation of the new Guidelines.</p>

4	<p>In the next review of this mechanism, JBIC should explore the establishment of an agency with the third party standing, namely Development Ombudsperson, which would take more active part in problem resolutions.</p>	<p>In the next review of this mechanism, JBIC will consider the proposed idea, while taking into account the implementation status of the Procedures up to that point.</p>
5	<p>JBIC should examine the following issues, while taking into account the implementation status of the Guidelines:</p> <ul style="list-style-type: none"> <li>● Establishing a system for incorporating proposals that involve a substantial modification of the project when the Request containing such proposal is submitted. (In this case, the consultants of the project as well as companies without Japanese capital should be excluded.)</li> <li>● Further relaxation of requirements for submitting the Request.</li> <li>● It is hoped that JBIC will step out of building a system that provides remedies after the fact, recognizing fully that securing transparency in the policy making and implementing process is the most effective and efficient remedial system, and strive to create a model of participatory policy implementation.</li> </ul>	<p>In the next review of this mechanism, JBIC will consider the proposed idea, while taking into account the implementation status of the Procedures up to that point.</p>
6	<p>The Procedures should expand the scope of projects covered by the Procedures to include those for which the loan request was made before October 1, 2003.</p>	<p>One of the purposes of the Procedures is to investigate compliance of JBIC with the New Guidelines, which are to be applied to projects for which the loan request was effectively made on October 1, 2003 or later. It would be appropriate therefore to apply the Procedures to projects for which the loan request was effectively made on October 1, 2003 or later.</p>
7	<p>Following the precedent of the World Bank, the Procedures should be applied to the previous environmental guidelines under JEXIM and OECF respectively (including the 1st and 2nd versions for OECF's guidelines), as well as the checklists before the</p>	<p>The Guidelines stipulate under 7. "Ensuring Appropriate Implementation and Compliance" that "For the purpose of ensuring the compliance of JBIC with the Guidelines, JBIC accepts objections concerning the compliance of JBIC</p>

	<p>establishment of these guidelines. (There are similar comments.)</p>	<p>and take necessary steps.” The Procedures have been drawn up based on this provision, without envisioning any application to former guidelines or checklists. Also, in view of the possibility that the adoption of the Procedures may bring some disadvantage to the borrower or the Project Proponent, it seems difficult, as well as inappropriate, to obtain understanding of the parties concerned for retroactively applying the Procedures to former guidelines.</p>
--	---	--

#### 8. The Office of Examiners in Charge of Environmental Matters

No.	Comments	Response of JBIC
1	<p>According to the Procedures, there are two Examiners. However, since there is a possibility of failing to make a fair judgment with two Examiners, the Office of Examiners should be comprised of three Examiners. Its Chairman should be elected by mutual vote, and at least one Examiner should work on a full-time basis. (There are similar comments.)</p>	<p>The Procedures stipulate that “Each request to submit objections shall be handled by either one of the Examiners. An Examiner who handles such request shall prepare a report taking into consideration the opinion of the other Examiner.” An Examiner does not make decision on his own, but consults with the other Examiner, reducing possibility of “not making a fair judgment.” On top of that, JBIC is called on, as a public financial institution, to contain costs to the lowest level possible. Under these circumstances, two Examiners seem appropriate.</p>
2	<p>Whereas multilateral development banks recruit candidates from across the world, recruitment at JBIC draws from a limited pool of candidates because of the requirement of the Japanese language ability. Therefore, the Summary should contain an explicit description that the full-time Examiner can concurrently hold other posts.</p>	<p>Since stringent qualifications and superior competence are required for the Examiner, we believe it will better serve our purposes if we do not limit the candidate pool beforehand by full-time requirement. Even if the position is part-time, it could well lead to a sufficient experience depending on specific working conditions. The appointment and working conditions should therefore be decided, while taking into account desires of the candidates. JBIC does not exclude holding</p>

		concurrent posts, but as the Examiner is a member of JBIC staff, he must obtain a permission to hold such posts.
3	Shouldn't the Office of Examiners in Charge of Environmental Guidelines be renamed to the Office of Examiners (in Charge of Objections Concerning Non-Compliance with the Environmental Guidelines) or the Office of Independent Inspectors (in Charge of Objections Concerning Non-Compliance with the Environmental Guidelines) to avoid confusion with the Environmental Analysis Department?	We will take into account the proposed titles when we name this position.
4	Qualifications of the Examiner should include communications skill among parties holding different positions, in addition to fairness and research skill.	We consider that the skills pointed out by the comment are certainly required for this position and to be considered fully in the discussion of the screening committee to be set up in due course .
5	Selection of the Examiners is an important process in winning the confidence of each stakeholder and implementing the Procedures. The screening committee should include academics and relevant ministries and agencies. The selection process and results should be made public to the extent that it will no infringe on the privacy of candidates.	We will consider the composition of the screening committee based on the comment. As individual qualifications and competence will be the central focus of discussions in the screening committee , it will be difficult to let the public have access to such discussions.
6	In view of the importance of accumulating experience, isn't it more preferable to have a 3-year term of office, particularly for the first term, rather than a 2-year term?	Considering the possibility of reappointment, 2-year term is a sufficient period in term of accumulating experience.
7	While there is no need for the staff in this office to be derived from JBIC staff, the Examiner should screen the candidates who have knowledge and experience in considering environmental and social problems and skills in resolving them. The Examiner should then recommend qualified candidates to be appointed by the Governor.	Since the Examiner will be selected from external sources, it is desirable that the Office of Examiners will be made up with well versed in JBIC operations as this will lead to effective and efficient implementation of the Procedures. However, recruiting the staff from external sources is possible if that is necessary.
8	The Office should avoid frequent access from JBIC and refrain from getting involved in decision-making by the Examiner.	The Office of Examiners will support activities of the Examiners, but it should be emphasized that only the Examiners make decisions.

		In view of the function of the Office, the Operational Department should refrain from making contact with the Office more than necessary.
9	In view of examples in other countries and institutions, JBIC's conventional internal process may adequately address this task. We hope a unit dealing with objections concerning the Guidelines will not grow into a bloated organization.	We will keep the comment in mind in considering how we set about to achieve the purposes of these Procedures.