

Final Statement on a Specific Instance Involving
Mizuho Financial Group, Inc., Sumitomo Mitsui Banking Corporation and Mitsubishi UFJ
Financial Group, Inc. in Relation to the OECD Guidelines for Multinational Enterprises

January 15, 2021

Japanese National Contact Point (NCP) for the Organisation for Economic Co-operation and
Development (OECD) Guidelines for Multinational Enterprises

1 OECD Guidelines for Multinational Enterprises

- (1) The OECD Guidelines for Multinational Enterprises (hereinafter referred to as the “Guidelines”), adopted by the Organisation for Economic Co-operation and Development (OECD) in 1976, are recommendations addressed by governments to multinational enterprises. The Guidelines provide the principles and standards for responsible business conduct in a wide range of fields, including disclosure, human rights, employment and industrial relations, the environment, combating bribery, consumer interests, science and technology, competition, and taxation.
- (2) Governments adhering to the Guidelines establish National Contact Points (NCPs). In Japan, the Ministry of Foreign Affairs, the Ministry of Health, Labour and Welfare and the Ministry of Economy, Trade and Industry jointly constitute the NCP for Japan (hereinafter referred to as the “Japanese NCP”), which promotes activities to disseminate the Guidelines and handles issues raised based on the Guidelines.
- (3) While the Guidelines are not legally binding, the Japanese NCP encourages enterprises to observe the Guidelines.
- (4) Since the Guidelines does not require NCPs to determine whether corporate behavior is in line with the Guidelines, the Japanese NCP does not determine whether corporate behavior is in line with the Guidelines. In addition, the Japanese NCP does not determine the fact findings and validity of each party's claims on the issues raised.

2 History of raising issues and decisions of leading NCP

(1) Issues raised

On September 19, 2018, Market Forces (hereinafter referred to as the "Complainant") filed a complaint with the Japanese NCP, based on the OECD Guidelines for Multinational Enterprises, alleging that Mizuho Financial Group, Inc. (hereinafter referred to as "Mizuho"), Sumitomo Mitsui Banking Corporation (hereinafter referred to as "SMBC") and Mitsubishi UFJ Financial Group, Inc. (hereinafter referred to as "MUFG") (Mizuho, SMBC and MUFG are hereinafter collectively referred to as the “Enterprises Involved”) had breached the Guidelines as described in (2) below.

(2) Summary of the issues alleged by the Complainant

Summary of the issues alleged by the Complainant is as follows (as of September 19, 2018):

Mizuho, SMBC and MUFG finance the Nghi Son 2 coal-fired power project, and are

considering financing the Vung Ang 2 coal-fired power project and the Van Phong 1 coal-fired power project in the Socialist Republic of Vietnam. Moreover, Mizuho and MUFG are considering financing the Nam Dinh 1 coal-fired power project in the same country. Regarding these financing projects, the Enterprises Involved breach the Guidelines by failing to:

- (a) exercise their leverage on the project sponsors to ensure that communities impacted by the coal-fired power stations were adequately consulted and had their views taken into account;
- (b) ensure that project-affected communities are able to make informed decisions about projects, including the environmental and social impact assessments of these projects, through sufficient disclosure of information by either requesting or demanding the project sponsor to provide information about environmental, livelihood or health impacts or by providing information themselves; and,
- (c) urge the project sponsor to assess, prevent or minimise environmental damage and impacts to human rights such as the right to livelihood and the right to a healthy environment.

(3) Requests by the Complainant (as of September 19, 2018)

The Complainant requests that Enterprises Involved engage in a dialogue with the Complainant through this specific instance process; provide stakeholders with key project information of the projects such as ESIA, or alternatively, use their leverage to encourage the sponsor disclose the ESIA for the projects; use their leverage to ensure that the project sponsor to consult with rights holders and stakeholders in any of the projects involved; conduct an independent review of human rights and other environmental impacts in respect of Nghi Son 2 as well as reconsider its plans to finance the project; confirm that the projects currently under financing consideration such as Van Phong 1, Vung Ang 2 (which are linked to all the Enterprises Involved) and Nam Dinh 1 (which is linked with Mizuho and MUFG) are excluded by the financing policies of each of the financial institutions; and, amend their policies to exclude financing to any coal-fired power projects in Vietnam given the environmental impacts and that renewable energy serves as a significant alternative to coal.

(4) Subsequent claims by the Complainant

In May 2019, the Complainant contacted the Japanese NCP regarding the Van Phong 1 coal-fired power project. The Complainant explained that the Japan Bank for International Cooperation (JBIC) had signed a loan agreement for this project on April 19, 2019 and that the loan is co-financed with Sumitomo Mitsui Banking Corporation, MUFG Bank, Ltd., and Mizuho Bank, Ltd. among others. Moreover, the Complainant claimed that the project violates article 2(f) of Chapter III Disclosure, article 1 of Chapter IV Human Rights and article 2(b) and 6(a) of Chapter VI Environment of the Guidelines. The Japanese NCP informed the said Enterprises Involved of the Complainant's subsequent claim.

(5) Pertinent parts of the Guidelines

The provisions of the Guidelines cited as being breached by the Enterprises Involved according to the claim by the Complainant are as follows.

<Articles A14 and B2 of Chapter II "General Policies" of the Guidelines>

Engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision making for projects or other activities that may significantly impact local communities. (Article A14)

Engage in or support, where appropriate, private or multi-stakeholder initiatives and social dialogue on responsible supply chain management, while ensuring that these initiatives take due account of their social and economic effects on developing countries and of existing internationally recognized standards. (Article B2)

<Article 3 of Chapter III "Disclosure">

Enterprises are encouraged to communicate additional information, that could include:

- a) enterprise value statements or statements of business conduct intended for public disclosure (including, depending on the relevance for the enterprise's activities, information on the enterprise's policies relating to matters covered by the Guidelines);
- b) policies and other codes of conduct to which the enterprise subscribes, their date of adoption and the countries and entities to which such statements apply;
- c) performance in relation to these statements and codes;
- d) information on internal audit, risk management and legal compliance systems; and
- e) information on relationships with workers and other stakeholders.

<Articles 2 and 3 of Chapter IV "Human Rights">

Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur. (Article 2)

Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to enterprises' business operations, products or services by a business relationship, even if they do not contribute to those impacts. (Article 3)

<Articles 2 and 4 of Chapter VI "Environment">

Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights, the following actions shall be taken:

- a) provide the public and workers with adequate, measurable and verifiable (where applicable) and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance; and
- b) engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation. (Article 2)

Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, do not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimize such damage. (Article 4)

3 Initial assessment

On February 21, 2020, the Japanese NCP conducted an initial assessment of whether the issues raised merit further consideration based on the Guidelines and the Procedural Guidance for the Japanese National Contact Point (NCP) under the OECD Guidelines for Multinational Enterprises. The results of the considerations are as follows:

- (1) Whether the Japanese NCP is the correct entity to assess the complaint

The NCP of Japan, where the headquarters of the Enterprises Involved are located, is the appropriate NCP to handle this specific instance, since Vietnam is not a signatory to the Guidelines and does not have an NCP.

(2) The identity of the parties and their interest in the matter

The Complainant is Market Forces, an Australian NGO and affiliate organization of Friends of the Earth Australia. Based on the complaint form, Market Forces, which advocates environmentally sustainable behaviors in the financial sector both in Australia and internationally, submitted the complaint in support of a local organization seeking to prevent the environmental degradation and loss of livelihood resulting from the expansion of coal-fired power generation in Vietnam.

The Enterprises Involved are Mizuho, SMBC and MUFG, which their headquarters are located in Japan.

(3) Whether the issue is material and substantiated

The Complainant raised concrete issues as Section 2 above.

The press releases of JBIC on April 13, 2018 and April 19, 2019, substantiates that SMBC, MUFG Bank, Ltd. and Mizuho Bank, Ltd. financed the Nghi Son 2 coal-fired power project and Van Phong 1 coal-fired power project.

The Enterprises Involved substantiated their positions against the issues raised in the meeting with the Japanese NCP.

After reviewing the issues, the Japanese NCP concluded that the Complainant and the Enterprises Involved both present concrete cases with differing positions, and which deems this issue material and substantiated.

(4) Whether there seems to be a link between the enterprise's activities and the issues raised in the specific instance

The issues raised applies to the loan business of the Enterprises Involved and thus a link is a plausible except for those projects for which the Japanese NCP is unable to substantiate the conclusion of a loan agreement at the time of the initial assessment.

(5) The relevance of applicable law and procedures, including court rulings

The Complainant claims that the ESIA is not seen to have been conducted in accordance with the Vietnamese Law on Environmental Protection 2014 (No 55/2014/QH13). The Japanese NCP does not determine whether this claim is accurate.

(6) How similar issues have been or are being treated in other domestic or international proceedings

According to the complaint, no other domestic or international proceeding impacting this specific instance is ongoing.

(7) Whether the consideration of the specific issue would contribute to the Guidelines' purposes and effectiveness of the Guidelines

This specific issues are associated with the provisions of the Guidelines. The Japanese NCP considers that further examination of the issues would contribute to the purposes and effectiveness of the Guidelines.

(8) Conclusion of the initial assessment

Having considered (1)-(7) above, the Japanese NCP considers the issues raised are bona fide and relevant to the implementation of the Guidelines, and merit further examination. However, the Japanese NCP considers the issues raised about the Vung Ang 2 and the Nam

Dinh 1 do not merit further examination, because no loan agreements for these two projects by the Enterprises Involved are substantiated at the time of the initial assessment.

This conclusion does not serve to determine the Enterprises Involved to have acted consistently or inconsistently with the Guidelines.

4 Japanese NCP's assistance in dealing with the issues

(1) The Japanese NCP has repeatedly carried out the interview with the Complainant and the interview with the Enterprises Involved respectively in order to assist both parties in solving the issues. In the course of these efforts, it has conveyed the views of the Complainant to the Enterprises Involved and, at the Complainant's request, it has asked the Enterprises Involved for their views and conveyed the views to the Complainant.

(2) Initial assessment and inquiries on acceptance or rejection of mediation

On February 21, 2020, the Japanese NCP sent an initial assessment result to the Complainant and the Enterprises Involved, and requested that the parties answer whether or not they would accept dialogue regarding issues raised by the Complainant through the Japanese NCP's mediation.

(3) Expression of acceptance of mediation by both parties

On February 26, 2020, the Complainant expressed its intention to accept dialogue through the Japanese NCP's mediation, and on March 16, 2020, the Enterprises Involved expressed the same intention.

(4) Decision to hold mediation

According to (3) above, the Japanese NCP decided to hold a dialogue through mediation and notified both parties to that effect. Upon mediation, the parties agreed to preserve confidentiality for mediation, and both parties submitted a signed Pledge of Confidentiality (Procedural Guidance Form 1) to the Japanese NCP.

5 Mediation

On July 15, 2020, a dialogue was held through mediation provided by the Japanese NCP in an online format, with the participation of the Complainant and the Enterprises Involved. A summary of the dialogue is as follows:

(1) Issues and requests raised by the Complainant

The Complainant raised the following four issues with regard to the Nghi Son 2 coal-fired power project and the Van Phong 1 coal-fired power project to the Enterprises Involved:

- (a) Stakeholder engagement: Insufficient disclosure on adequate consultations with the communities regarding the Environmental and Social Impact Assessment;
- (b) Disclosure obligations: Weak exercise of the leverage of Enterprises Involved on the project sponsors to disclose information on the Environmental and Social Impact Assessment to the communities;
- (c) Environment: Serious potential environmental impacts and health risks to the community due to coal ash and pollution due to CO₂ emissions; and
- (d) Human rights: No compensation for the resettled residents and the harassment to the

fishing communities around Nghi Son 2 that sought for compensation.

Reflecting on the abovementioned issues, the Complainant requested conducting an independent review on human rights and environment as well as reinvestigation of the process toward the loan agreement for the two projects. On top of the two projects, the Complainant requested the Enterprises Involved to shift their financing policy in Vietnam to exclude lending to new coal-fired projects and instead help it to increase its renewable energy capacity.

(2) Views and response to the requests from the Enterprises Involved

The Enterprises Involved are tackling environmental and social issues in accordance with the spirit of the OECD Guidelines for Multinational Enterprises, as good corporate citizens engaged in global finance. As specific project information are not to be disclosed due to client confidentiality, the Enterprises Involved presented the loan approval process in accordance with the Equator Principles (EP) adopted by all Enterprises Involved. The Enterprises Involved also explained, with their documents, their fundamental efforts for environment, as well as due diligence.

Regarding these specific projects, the Enterprises Involved are involved not as sponsors managing the projects, nor as shareholders owning the projects, but just as lenders, and the Environmental and Social Impact Assessment and environmental permit applications were prepared and submitted by the sponsors. Thus, the Enterprises Involved do not have direct involvement with the projects. Moreover, the Enterprises Involved, which cover no more than half of the total loan amount and thus are not majority lenders, have only a limited influence over the sponsors who have signed the loan agreements. Notwithstanding the above, for each project, the independent environmental and social consultant conducted an independent review of the assessment documentation in accordance with Principle 7 of the EP. The Enterprises Involved are also encouraging the project sponsors to honor the environmental and social considerations as well as stakeholder engagement and have confirmed compliance with EP respectively.

(3) Dialogue between the Complainant and the Enterprises Involved

In response to the views of the Enterprises Involved as mentioned above, the Complainant requested the evidence-based explanation on actions which were, regarded by the Complainant regards as taken in violation in the specific projects, not limited to generalities.

Whereas, on the disclosure of information on individual cases, the Enterprises Involved indicated that they made efforts to provide concrete explanations to the extent that it is not inconsistent with despite the strong restrictions imposed by confidentiality agreements with customers.

In addition, the Complainant requested to consider a review by an independent environmental and social consultant in accordance with Principle 7 of the EP and share the outcomes of its review, and confirm measures to be taken by the Enterprises Involved in order to encourage borrowers to comply with the covenants when they are not taking appropriate actions in accordance with Principle 8 of the EP.

In response to this, the Enterprises Involved explained that they provide loans by taking into the account the outcomes of the review by the independent environmental and social consultants, under Principle 7 of the EP, which confirmed that the project proponents appropriately consulted local communities, in accordance with Principle 7 of the EP. The Enterprises Involved also explained that they are unable to disclose the due diligence reports

which includes the contents of the assessment due to restrictions imposed under the confidentiality obligations.

Through these dialogues, the Complainant and the Enterprises Involved agreed on the direction of complying with the EP and conducting appropriate due diligence, but there was a gap in their position regarding disclosure on specific cases.

In light of the above dialogue, the Japanese NCP urged both parties to make proposals for an agreement, as there was a gap between the views of the Complainant and the Enterprises Involved.

(4) Proposals from both parties concerning the agreement

In response to (3) above, the Complainant expressed regret that, due to the confidentiality obligation of the Enterprises Involved with the clients, the opportunity for the dialogue did not lead to open discussions. The Complainant asked for the final statement to have a very clear explanation of why the Enterprises Involved were not able to respond to the issues raised this time. Further, the Complainant proposed that the Enterprises Involved shall have an independent environmental and social consultant conduct another review, and based on the results of the review, as needed, the Enterprises Involved shall reconsider financing for Nghi Son 2 and Van Phong 1, and if not possible, an alternative plan should be discussed.

For this, the Enterprises Involved explained again that they made their best efforts to provide information to maximum degree possible with the restriction of confidentiality obligation with the clients. On the proposal of the Complainant, the Enterprises Involved insisted that they will not retain a new independent environmental and social consultant as reviews by independent environmental and social consultants have been conducted, will not contract with a new consultant but they would like to solve issues, if any, through efforts within the current framework.

(5) Conclusion of this mediation

The parties did not reach agreement during this mediation with gaps in views between the parties involved remaining unfilled, in terms of the issues raised and requests and proposals made by the Complainant. On the other hand, both parties agreed that they have expressed their straightforward opinions each other, that the Complainant will continue to provide necessary information, and that the Enterprises Involved will respect the vision of the OECD Guidelines for Multinational Enterprises and conduct suitable due diligence in accordance with the EP, etc. and continue their policy of engagement towards future EP revisions. In conclusion, both parties agreed to go ahead with the procedures for issuing the final statement without conducting a second dialogue.

6 Conclusions

The NCPs' assistance in solving issues is based on agreement of the parties concerned. One outcome of the dialogue provided by the Japanese NCP was that both parties agreed the direction as described in 5(5) while, it is regrettable that both parties were unable to reach a conclusion with which both parties could be satisfied. We would like to express our gratitude to the Complainant and the Enterprises Involved that participated in the dialogue.

Since there is no such an agreement in this specific instance, the Japanese NCP concludes the process as regards this specific instance in accordance with paragraph 35 of Commentary on the

Implementation Procedures of the Guidelines.

(End)