



Background Paper on the Public Information Interim Policy Review (Jan. 22, 2018)

Overview

1. AIIB recognizes that, as the recipient of public funds, transparency is very important. Pursuant to Article 34-4 of the Bank's Articles of Agreement, AIIB is required to establish a policy on information disclosure to promote transparency in its operations. In accordance with this disclosure obligation, the Board of Directors adopted the Public Information Interim Policy (PIIP) in January 2016. The PIIP initiated the framework for AIIB's current public information disclosure.
2. Given the interim nature of the PIIP, AIIB has begun transitioning toward a new, comprehensive policy—a Policy on Public Information (PPI)—with the aim to learn from the Bank's experience since January 2016 and the experiences of other multilateral development banks (MDB).

Process

3. AIIB's new approach will have three tiers, consistent with its internal legal framework: (i) the PPI, to be adopted by the Board of Directors, which provides the overarching guiding principles, exceptions and key elements of a public information request process; (ii) a directive that provides details on how the policy will be implemented, to be adopted by the President and (iii) an administrative guidance that outlines the procedural steps AIIB personnel will follow, to be issued by the Bank's Communications and Development Department (CDV).
4. In June 2017, AIIB's Board of Directors' Committee on Policy and Strategy approved the commencement of a review of the PIIP and the objective of the Board of Directors adopting a new policy in the near future.

Benchmarking, stakeholder comments and lessons learned

5. In its first two years of operations, AIIB's efforts were largely spent responding to basic queries from the public and media and working to comply with the PIIP's disclosure requirements. In August 2017, the first [Directive \(Public Information Requests Processing Directive\)](#) to accompany the PIIP was posted publicly. This marked the beginning of AIIB's efforts to track and monitor its ability to respond to information requests within a set timeframe. Under the Directive, requests to the Bank shall be submitted to CDV in English through the Bank's website (via an electronic request form), by mail or via email (information@aiib.org). Requests should indicate with reasonable specificity the information that is being sought to enable AIIB to locate the information. The Bank shall acknowledge receipt of initial requests within five working days and provide a determination of such requests within 30 working days. If the Bank determines that the information requested cannot be made available under the Policy, the requester will be provided a written explanation together with information on the right to submit an appeal to the Vice President, Corporate Secretary.

6. To benefit from the experiences of other long-standing MDBs, a benchmarking exercise was conducted with six MDBs: African Development Bank (AfDB), Asian Development Bank (ADB), European Bank for Reconstruction and Development (EBRD), European Investment Bank (EIB), Inter-American Development Bank (IaDB) and World Bank (WB). AIIB staff also participated in the International Financial Institution's meeting on information disclosure and stakeholder engagement held in Thessaloniki, Greece, Oct. 19-20, 2017.
7. Prior to the review, comments and recommendations were received from civil society and nongovernmental organizations, which included CEE Bankwatch Network, Both ENDS, Re:Common (comments of June 2016); Centre for Law and Democracy & Bank Information Center (report of December 2016); Green Alternative (letter on April 19, 2017) and NGO Forum on ADB (Concerns & Suggestions of April 2017). Recommendations were also received from the Office of the United Nations High Commissioner for Human Rights (OHCHR) in May 2017. All stakeholder inputs were welcomed and duly considered as part of this review.

Key changes in the draft PPI

8. The draft PPI reflects an interest-based approach to exceptions to disclosure, instead of a positive and negative list. Such an approach has been recommended by a number of stakeholders.¹ This approach is also consistent with that of many other MDBs, in particular AfDB and WB. Applying exceptions on the basis of interest and not specific information creates a more sustainable policy and, more importantly, will require AIIB to undertake a qualitative assessment of each request for information. Such an approach will assist in ensuring transparency.
9. AIIB's current PIIP classifies public information into three broad categories: institutional, operational and financial. Some stakeholders recommend expanding the scope of the policy to cover all information held by AIIB.² Through the benchmarking exercise, it was discovered that only WB defines "information" in their policy on information disclosure. As AIIB is required by Article 34-4 to promote transparency in its operations, it was decided that the scope of information should be inclusive, which is more closely aligned with the spirit of the Articles.
10. To state more expressly the commitment to make information public, the PIIP principle of *Promoting Transparency* is replaced with *Principle 1: Presumption in Favor of Disclosure* in the draft PPI. This same presumption is present in the policies of ADB, AfDB, EIB and EBRD and is consistent with the commitments of WB and IaDB to maximize access to information. This adoption of a presumption in favor of disclosure results in the absence of qualifiers in the draft PPI (such as "whenever possible" and "where feasible"), which is in line with the requests of a number of stakeholders.³
11. The draft PPI introduces a new principle, *Principle 2: Duty of Proactive Disclosure*, that is not found in the PIIP. This change reflects a practice that is already in place.

¹ Submissions by the Centre for Law and Democracy & Bank Information Center and the Office of the United Nations High Commissioner for Human Rights.

² See footnote 1.

³ Submissions by the Centre for Law and Democracy & Bank Information Center and the Office of the United Nations High Commissioner for Human Rights.

12. To provide further clarity to the public, AIIB will proactively disclose information within three event categories. The first category covers financial information, such as financial statements and the auditor's report. The second category covers institutional events, which comprises information related to the management of the Board of Governors and Board of Directors, including policies, strategies, the Articles of Agreement and Codes of Conducts, as examples. The final category is operational events, which covers all project information such as project summary information documents and environmental and social assessments. Requirements for disclosure of environmental and social assessments are specified in the [Environmental and Social Policy](#) (ESP), adopted by the Board of Directors in January 2016. Details on the trigger for the release of information listed in the ESP will also be included in the Directive that will follow the PPI once adopted by the Board of Directors.
13. All information in these three categories will be bound by events and processes to determine when they will be disclosed, as is the current practice at AIIB. A detailed list of information to be disclosed, including which events or processes will trigger a given disclosure, will be available in the Directive, to be approved by the President. Following the new *Principle 1: Presumption in Favor of Disclosure*, AIIB commits to releasing information as long as it does not fall under an exception. This approach is being proposed in the new policy because it allows for more flexibility and responsiveness to client needs while still ensuring key information will be shared with the public in a timely fashion. The Directive, which will be available to the public, will follow the new PPI once adopted by the Board of Directors. The case study below illustrates how this approach works in practice.

Case study: India Gujarat Rural Roads Program

On March 28, 2017, promptly following concept decision approval by AIIB's Investment Committee, the first Project Summary Information document for the India Gujarat Rural Roads Program was posted on the website as a Proposed Project. On May 5, 2017, prior to the Appraisal Decision on May 17, 2017, the first drafts of the Environmental and Social Impact Framework and Tribal Population Planning Framework were posted online. The Environmental and Social Impact Assessment was posted prior to the Board of Directors' consideration of this project.

The project was approved by AIIB's Board of Directors on July 4, 2017, 103 days after AIIB's participation in the project was first announced. Following Board of Directors approval, the Project Summary Information was updated and the Project Document for Sovereign-backed Loans was disclosed. At this time, the project was reclassified on the website as an approved project and it was announced via a press release on July 5, 2017.

14. *Principle 3: Non-discrimination and Equal Treatment of Disclosure Requests* is also introduced as a new principle in the draft PPI. This reflects a practice that is already in place at AIIB. Such a principle is implied in the policies of ADB, AfDB, EBRD, IaDB and WBG, and is expressly stated in EIB's policy.
15. Another new principle, *Principle 4: Due Regard to the Efficiency of the Bank*, was introduced to enable AIIB to reject requests that are repeated, frivolous, malicious, commercially motivated or which would require the development or compilation of data that does not already exist. Certain other MDBs have language within their policies that speak to this protection, but AIIB would be the first to include it as a

guiding principle. This positioning is in line with AIIB's "Lean" core value to ensure all activities remain focused on the Bank's mission.

16. The interest-based exception of *Protecting the Functional Integrity of the Bank* (Exception 3) will replace three exceptions currently listed in the PIIP (9.C. *Privileged and Investigative Information*, 9.E. *Deliberative Information* and 9.H. *Corporate Administration*). Most other MDBs against which AIIB benchmarked also protect these interests. With respect to the deliberative and decision-making process, this exception will ensure AIIB personnel are given space away from public scrutiny to explore ideas, share information and undertake full and candid internal debate. To support an open and candid culture that promotes ideas, AIIB shall not disclose any information that, if disclosed, would undermine that process. This exception will also ensure AIIB retains the freedom to seek legal advice without concern that such advice may be disclosed and it will also protect the integrity of the Bank's internal investigative and review processes.
17. A further interest-based exception of *Protecting the International Character of the Bank* (Exception 5) is intended to ensure AIIB does not disclose information that would be contrary to its international character, including its obligation not to interfere in the political affairs of any member state.
18. Positive and negative override provisions have been added, similar to provisions in the policies of ADB, AfDB, IaDB and WB. The addition of a positive override is consistent with requests from stakeholders who have made recommendations to include language governing instances where the public interest of disclosure outweighs the potential harm to the protected interest.⁴
19. All requests by external parties to disclose information shall be dealt with in accordance with a timetable under a directive adopted by the President. If the disclosure of requested information is found to be inconsistent with this policy, the requester will be given a written explanation to that effect, and they will be provided with information on how to submit an appeal. An interim directive, posted publicly in August 2017, sets out deadlines for AIIB to process public information disclosure requests.
20. To ensure requesters have a chance to appeal if they believe the policy has been violated by AIIB, a new post of *Chief Information Disclosure Officer (CIDO)* will be appointed by the President. This approach was chosen largely due to the lack of external appeals mechanisms at other MDBs. AIIB recognizes the need for an appeals process and will examine the implementation of the CIDO to determine if it meets the public's needs. All recommendations to the President made by the CIDO, and the President's final decisions, will be reported to the Board of Directors in an annual report. This will provide the Board with the necessary oversight on the implementation of the Policy.
21. As a new organization, AIIB is in the process of implementing an approach to the declassification of information it holds. Once finalized, this process will be incorporated into future revisions of the PPI. Documents are not expected to qualify for declassification within the next three years, which is the recommended timeframe for AIIB to revisit the policy and its implementation. AIIB notes that a

⁴ Centre for Law and Democracy & Bank Information Center and the United Nations High Commissioner for Human Rights.

number of stakeholders have asked the Bank to undertake regular reviews in this manner.⁵

Public consultation

22. AIIB considers public consultations to be an integral part of its review of the PIIP and wishes to solicit views from a diverse range of external stakeholders. The PPI will be posted for public comments for an eight-week period.

⁵ Submissions by the Centre for Law and Democracy & Bank Information Centre; Office of the United Nations High Commissioner for Human Rights; CEE Bankwatch Network, Both ENDS, Re:Common and NGO Forum on ADB.