

**Specific Instance between**  
**Friends of the Earth Japan and Wahana Lingkungan Hidup Indonesia,**  
**and**  
**Marubeni Corporation and JERA Co., Inc.**  
**Final Statement**

February 13, 2024

Japanese National Contact Point (NCP)  
for the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct

**1. OECD Guidelines for Multinational Enterprises on Responsible Business Conduct**

- (1) The OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (hereinafter referred to as the “Guidelines”), adopted by the Organisation for Economic Co-operation and Development (OECD) in 1976, are voluntary, non-binding recommendations addressed by governments to multinational enterprises operating in or from their territories. 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 and other forms of corruption, consumer interests, science, technology and innovation, 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 awareness and uptake of the Guidelines and contribute to the resolution of issues that arise in relation to the implementation of the Guidelines in specific instances.
- (3) While the Guidelines are not legally binding, the Japanese NCP encourages enterprises to observe the Guidelines.
- (4) According to the Guidelines, it is not required that the NCP determine whether the activities of enterprises are consistent with the Guidelines or not. Therefore, the Japanese NCP does not determine whether the enterprises’ activities are consistent with the Guidelines. Moreover, regarding the assertions by each party on the issues raised, the Japanese NCP does not make factual findings or judgements on its legitimacy.
- (5) The Japanese NCP may make recommendations on the implementation of the

Guidelines and any observations the Japanese NCP deems appropriate to include on the reasons why the proceedings did not produce an agreement, if relevant.

## **2. Submission of a Specific Instance**

### **(1) Date of the submission and the parties concerned of the specific instance**

On 24 May 2017, Friends of the Earth Japan (hereinafter referred to as “FoE”) and Wahana Lingkungan Hidup Indonesia (hereinafter referred to as “WALHI”, and collectively with FoE, “the Complainants”) filed a complaint with the Japanese NCP as per the Guidelines regarding activities of Marubeni Corporation and JERA Co., Inc (hereinafter collectively referred to as “the Enterprises Involved”).

### **(2) The Issues raised by the Complainants**

(a) The Complainants alleged that the conduct of the Enterprises Involved was inconsistent with paragraph 2. of I. Concept and Principles and paragraph A. 5 of II. General Policies of the Guidelines (2011 Edition).

(b) The outline of the issues raised by the Complainants is as follows. The Complainants alleged that implementing the Cirebon Coal-fired Power Plant Project – Unit 2 (hereinafter referred to as the “Unit 2 Project”) in West Java province in Indonesia would cause adverse impacts on the local community. Bandung Administrative Court required to revoke the environmental permit for the Unit 2 Project issued by West Java provincial government in the verdict dated 19 April 2017, but the provincial government lodged an appeal. Under these circumstances, the Complainants alleged that it was highly concerned that the land clearing work would be continued and, then, the main construction work to build the Unit 2 power plant would be started even before the final court decision, which would cause adverse impacts on the local community.

### **(3) Requests by the Complainants**

To ensure that substantial damages and problems related to the Unit 2 Project are prevented in the community, the Complainants would like to request through the NCP procedure that the Enterprises Involved observe paragraph 11 and 12 of II. General Policies of the Guidelines and make sure that;

(a) PT. Cirebon Energi Prasarana (hereinafter referred to as “PT. CEPR”), a company implementing the Unit 2 Project with investment by shareholders including the Enterprises Involved, would not continue or push through any project activity related to the Unit 2 Project, including its land clearing work and its construction work at the

project site, until the final court decision is rendered and the compliance of the Unit 2 Project with laws and regulations is assured;

- (b) PT. CEPR refrains from seeking or accepting exemptions and would not support West Java provincial government lodging an appeal to the high court or the Supreme Court; and
- (c) PT. CEPR encourages West Java provincial government to withdraw its appeal to the high court or the Supreme Court and makes efforts to comply with the Indonesian laws and regulations.

(4) Receipt of the complaint

Having received the specific instance, the Japanese NCP examined the complaint and issued the letter of receipt on 24 June 2017.

### **3. Feedback from the Enterprises Involved**

The Japanese NCP held a meeting with the Enterprises Involved on 2 August 2017. The Enterprises Involved explained that although Bandung Administrative Court had decided to revoke the environmental permit, PT. CEPR made an application and obtained another environmental permit in accordance with the new government regulation.

### **4. Initial Assessment**

The Japanese NCP, in accordance with the Guidelines (2011 edition) and the Procedural Guidance of the Japanese National Contact Point under the Guidelines, conducted the initial assessment as described below and issue it with a conclusion as described in 4. (7) below on 2 February 2018.

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

The Complainants and the Enterprises Involved are identified in the complaint. The Complainants are Japanese and Indonesian NGOs (FoE and WALHI), whereas the Enterprises Involved are Marubeni Corporation and JERA Co., Inc.. The Enterprises Involved invest in the PT. CEPR, which executes the Unit 2 Project. According to the complaint, the two NGOs as the Complainants support the local community coalition, RAPEL (Rakyat Penyelamat Lingkungan: People Environment Safer) Cirebon, which has continued to raise their concerns about the adverse impacts of the Unit 2 Project and submitted the complaint on behalf of them.

(2) Whether the issue is material and substantiated

While not determining validity of any matter described in the complaint and the other submitted documents or in the involved parties' explanations, the Japanese NCP notes that

evidence is presented by the Complainants to prove the relevance between the issues raised and the Guidelines and that the Enterprises Involved are presenting different views on the issues. Therefore, the Japanese NCP considers the issues material and substantiated.

- (3) Whether there seems to be a link between the activities of the enterprises involved and the issues raised in the specific instance

The issues raised are related to the implementation of the Unit 2 Project executed by PT. CEPR., and the Enterprises Involved are the shareholders of PT. CEPR. Therefore, there seems to be a link.

- (4) Relations with applicable laws and procedures, including court rulings

The issues raised include those concerning domestic laws and legal procedures in Indonesia. Also, this specific instance was submitted subsequently to the filing of the objection to the Unit 2 Project based on the Japan Bank for International Cooperation Guidelines for Confirmation of Environmental and Social Considerations. Although the issues raised in the specific instance are related to the objection above, the procedure of the Japanese NCP is not related directly to the objection above.

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

Similar issues are treated in domestic and foreign courts or proceedings.

- (6) Whether the consideration of this specific issue would contribute to the purposes and effectiveness of the Guidelines

The complaint is generally related to the Guidelines (2011 edition). Therefore, consideration of these issues would contribute to the purposes and effectiveness of the Guidelines (2011 edition).

- (7) Conclusion of the initial assessment

The Japanese NCP considered that the issues raised merit further examination under paragraph I.C.1 of the Procedural Guidance of the Guidelines (2011 Edition) and decided to offer good offices to the parties concerned. This conclusion does not mean that the Japanese NCP considers that the Enterprises Involved have acted inconsistently with the Guidelines.

## **5. Japanese NCP's Assistance in Dealing with the Issues**

- (1) By sending the initial assessment to the parties concerned on 2 February 2018, the Japanese NCP asked if they were willing to participate in dialogue through the Japanese NCP's good offices as regards the issues raised in the specific instance.

- (2) After several contacts with the Enterprises Involved, on 14 December 2018, the Japanese NCP received a reply from them that the trial was still ongoing with the Complainants, and

under such circumstances, the Enterprises Involved were not in a position to decide whether or not to accept the good offices and engage in dialogue with the Complainants.

- (3) On 6 March 2019, with receipt of the judgment statement from the Supreme Court in February 2019 and finalisation of the series of trials in favour of the Province of West Java, the Enterprises Involved notified the Japanese NCP of the following answer. Although the Supreme Court ruled in favour of the defendant in the trial, in view of Indonesia's particular court system, the Enterprises Involved do not expect constructive discussions until the Complainants confirm that their own legal dispute has been terminated. Therefore, the Enterprises Involved would like to refrain from making a decision on whether or not to accept mediation in the meantime.
- (4) On 23 August 2019, the Japanese NCP received the notification from the Complainants that they have filed a request for a retrial against the Supreme Court decision.
- (5) On 4 December 2019, the Japanese NCP met with the Complainants, who explained that the administrative lawsuit regarding the alleged bribery of local project personnel and environmental licensing was in the process of retrial by the Supreme Court, and that the case was scheduled to conclude around February or March 2020. Alleging that this new bribery issue was linked to the issue initially raised, the Complainants also requested to hear the views of the Enterprises Involved regarding the allegations of bribery.
- (6) Following the inquiry from the Japanese NCP on 19 December 2019, the Enterprises Involved answered to the Japanese NCP on 27 December 2019 that they have conducted research but did not find any bribery or other misconduct at that time, but they were closely monitoring future situations, and that they refrained from giving an opinion on the impact of the bribery issue on the Unit 2 Project at that time. Subsequently, the Enterprises Involved have consistently maintained their position that they would refrain from making a decision on whether or not to accept good offices until the Complainants themselves confirm the termination of the legal dispute, in view of the particular Indonesian court system. Since then, the Japanese NCP has continuously sounded out the position of the Enterprises Involved on the possible acceptance of the mediation. However, they have kept their position to hold their answer on their intention until 2023.
- (7) Meanwhile, the Complainants informed the Japanese NCP of the local situation including the situation on the alleged bribery and the conviction of the former Regent of Cirebon, through e-mails and at the occasion of an in-person meeting held in May 2023. The Japanese NCP has also regularly updated the Complainants on the status of consideration of the Enterprises Involved. On 7 May 2021, the Japanese NCP sounded out the Complainants' view as to whether the Japanese NCP should proceed to terminate the process by setting a certain

timeline for the Enterprises Involved to reply. On 19 May 2021, the Complainants replied that they would withhold their position regarding acceptance or declination of good offices until local investigations related to corruption are completed. The Japanese NCP had maintained contact with the Complainants, including an in-person meeting held in May 2023, during which the Complainants explained their situation.

- (8) During the whole process, both parties concerned regularly updated the Japanese NCP on their state of consideration and the circumstances in Indonesia including parallel proceedings and replied to the Japanese NCP with sincerity. However, given the situation described in 4(6) and (7) above, the Japanese NCP concluded that such situation falls within "when a party is unwilling to participate in the proceedings" as provided in I.C.4.c) of the Procedures of the Guidelines (2023 edition) (I.C.3.c) of the 2011 edition) and the provision of paragraph 43 of the Commentaries on the Implementation Procedures (paragraph 35 of the 2011 edition), "if the NCP finds that one or more of the parties to the specific instance is unwilling to engage or to participate in good faith, the NCP will issue a statement, on the implementation of the Guidelines in relation to the issues raised."

Given the above, on 19 September 2023, the Japanese NCP issued the notification that since the Japanese NCP finds that both of the Enterprises Involved and the Complainants are unwilling to engage in the procedure in the near future, and the Japanese NCP could not contribute to the resolution of this specific instance. In the notification, providing both parties involved with a final opportunity for discussion with a period of 2 months, the Japanese NCP stated that if there would be no apparent progress within the said timeframe, it would be appropriate to terminate the process and issue a final statement. The Japanese NCP received no objection from either of the parties concerned until the deadline.

- (9) In view of the background above, the Japanese NCP recognised that there was no agreement of the parties concerned on the NCP's assistance for solving the issue in this specific instance and decided to terminate the handling of this specific instance in accordance with paragraph 43 of the Commentaries on the Implementation Procedures (2023 edition) (paragraph 35 of the 2011 edition.)
- (10) In the preparation of this final statement, the Japanese NCP made the draft of it available to the Complainants and the Enterprises Involved and requested for comments on this draft on 4 January 2023. The Complainants and the Enterprises Involved submitted their comments to the Japanese NCP. The Japanese NCP considered their comments and finalised the statement.

## **6. Conclusion**

- (1) While the Japanese NCP recognises that the several parallel proceedings prevent both parties concerned from being involved with the good offices process offered by the Japanese NCP, the NCPs' assistance in solving the issues should be based on agreement of the parties concerned, and the Japanese NCP finds that the parties concerned to the specific instance are unwilling to engage or not in a position to engage in the NCP process in near future. Therefore, it concludes the process regarding this specific instance in accordance with paragraph 43 of the Commentaries on the Implementation Procedures (2023 edition) (paragraph 35 of the 2011 edition.)
- (2) The Japanese NCP, noting that there is a difference of opinion between the Complainant and the Companies Involved, recommends that the Enterprises Involved continue to ensure the observance of the Guidelines, and to engage with the local community and residents, including the Complainants

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