



Comments on the Public Information Interim Policy of the Asian Infrastructure Investment Bank

December 2016

Prepared by:

Toby Mendel
Executive Director
Centre for Law and Democracy

Elizabeth Summers
AIB Campaign Manager
Bank Information Center

Executive Summary

The AIIB signalled a commitment to the principle of transparency when it adopted its Public Information Interim Policy (Interim Policy) just one month after it started operations. The Interim Policy recognised from the outset that it was not a final document, calling for a “comprehensive Policy” to be adopted “in the future” and for its implementation to be reviewed annually.

Despite some strengths, in many areas the Interim Policy fails to meet the minimum information disclosure standards established by international law and the practice of other international financial institutions (IFIs). As a result, there is a clear need for fundamental revision of the rules regarding the disclosure of information at the AIIB, whether this is done by amending the Interim Policy or by adopting a new comprehensive policy. This need is particularly urgent since the AIIB has now begun to finance projects, including stand-alone projects for which it is the primary source of information for affected communities.

Key areas for improvement of the rules include the development of detailed procedures relating to the processing of requests, which is something other IFIs have put in place. The system of appeals also needs development, most importantly because it currently fails to provide for an independent appeal, such as are found in a growing number of IFI information disclosure policies. But the most significant need for reform is the regime of exceptions, which determines the line between what information is public and what is not. Most exceptions in the Interim Policy are unduly broad, and this could give rise to doubts about the AIIB’s commitment to transparency. Finally, the AIIB must also significantly strengthen its steps to implement the Policy in practice, in particular by ensuring that requests are processed in accordance with the rules.

These Comments represent the Centre for Law and Democracy (CLD) and the Bank Information Center’s (BIC) contribution to the first annual review of the Interim Policy, which is due in January 2017. They are based on international standards and the comparative practice of other IFIs in terms of the right of the public to access information held by public bodies or the right to information (RTI). CLD and BIC are ready to work with the AIIB to improve its information disclosure policy and to help it implement that policy in an efficient and fair manner. As a first step, we call on the AIIB to conduct a public consultation as part of the annual review of the Interim Policy, so that all stakeholders have an opportunity to provide input into this process.

Introduction

The Asian Infrastructure Investment Bank (AIIB or Bank) formally came into existence on 25 December 2015 when its Articles of Agreement, signed by all 57 Founding Members, entered into force. It is significant that its Public Information Interim Policy (Interim Policy)¹ was adopted in January 2016, signalling the importance that the AIIB attached to this particular policy issue. The adoption of an information policy is consistent with Article 34(4) of the AIIB's Articles of Agreement, which states in part: "The Bank shall establish a policy on the disclosure of information in order to promote transparency in its operations."

The Interim Policy recognises in several places that it is simply an interim document. Paragraph 2 calls for a "comprehensive Policy on Public Information" to be adopted in the future, "in light of the Bank's early experience", but fails to provide any fixed timeline for the adoption of this comprehensive Policy. The same paragraph presents the Interim Policy as setting out "the Bank's guiding principles on disclosure and confidentiality of information" rather than the full detail which would presumably be contained in the "comprehensive Policy". It also promises a review, by the Bank's management, of the implementation of the Interim Policy on an annual basis, which would make the first review due in January 2017.² Paragraph 11 calls for Guidelines on the processing of requests to be adopted, although this has not yet happened and no maximum time limit for this to happen has been set.

The Interim Policy includes a number of features which conform to better practice standards regarding the right to information. We welcome, for example, the fact that it recognises a presumption in favour of openness and that it commits to release information both on a proactive basis and in response to requests.

However, the Interim Policy also suffers from serious problems and a failure to conform either to minimum international standards or to the practice of other international financial institutions (IFIs) in a number of areas. These include a vastly overbroad regime of exceptions, which substantially undermines its potential for ensuring access by external stakeholders to the information held by the AIIB. The procedures for processing requests need to be substantially developed and there is also a need to put in place an independent appeals body to provide redress to requesters whose requests have not been processed in accordance with the rules.

The AIIB has presented itself as a 'lean' IFI which seeks to limit the bureaucracy and paperwork which it suggests characterise other IFIs. This, of course, remains the AIIB's prerogative. However, neither this nor any desire to operate in an efficient manner and with limited human resource costs in any way mitigate the obligation of the AIIB to respect what has been recognised internationally as a fundamental human right, namely the right to information.

¹ Available at:

http://euweb.aiib.org/html/aboutus/Institutional_Documents/Public_Information_Policy/?show=0.

² See also paragraph 12.

These Comments are intended as a contribution to the first annual review of the Interim Policy. They are based on international standards and better comparative practice on the part of other IFIs in terms of the right of the public to access information held by public bodies or the right to information (RTI). They do not take a position on whether or not the AIIB should move at this point to adopt what it terms a “comprehensive Policy” or whether it should simply amend the Interim Policy. Whichever approach the AIIB decides to take, it is clear that there is an urgent need to make fundamental changes to the rules on information disclosure so as to respect minimum standards in this area.

These Comments analyse and provide recommendations broadly grouped according to the sections of the Interim Policy, namely: A. Guiding Principles and Scope; B. Public Information (i.e. proactive disclosure); C. Confidential Information (i.e. exceptions); D. Implementation and E. Public Information Policy Review.

A. Guiding Principles and Scope

The Guiding Principles

Paragraph 4 of the Interim Policy sets out three guiding principles: Promoting Transparency; Enhancing Accountability; and Protecting Confidentiality.

Principle 1: Promoting Transparency articulates the Bank’s commitment to an underlying presumption that “whenever possible, information concerning the Bank’s activities will be made available to the public in the absence of a compelling reason for confidentiality.” We support this underlying presumption. However, we are concerned that the opening words quoted above mean that the disclosure of information is conditioned on this being “possible”. Although the precise effect of this is unclear, it at least means that information will not necessarily always be disclosed absent a compelling reason for confidentiality. This is an unnecessary qualification of the right to information and one which is inconsistent with the policies of other international financial institutions. These include the World Bank,³ the Asian Development Bank (ADB),⁴ the African Development Bank (AfDB),⁵ the European Investment Bank (EIB)⁶ and the Inter-American Development Bank (IDB).⁷ The policies of AfDB⁸ and IDB⁹ also include a commitment to maximise access to information.

³ Bank Policy: Access to Information, 2015, paragraph III.B.1. Available at: <https://policies.worldbank.org/sites/ppf3/PPFDocuments/Forms/DispPage.aspx?docid=3693>.

⁴ Public Communications Policy 2011: Disclosure and Exchange of Information, paragraph 29. Available at: <https://www.adb.org/sites/default/files/institutional-document/32904/files/pcp-2011.pdf>.

⁵ Bank Group Policy on Disclosure and Access to Information, 2012, paragraph 3.1.2. Available at: http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/Bank_Group_Policy_on_Disclosure_and_Access_to_Information.pdf.

⁶ The EIB Transparency Policy, 2015, paragraph 5.1.a. Available at: <http://www.eib.org/infocentre/publications/all/eib-group-transparency-policy.htm>.

⁷ Access to Information Policy, 2010, paragraphs 2.1 and 3.1. Available at: <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=35167427>.

⁸ Paragraph 3.2.1 of the policy states: “The policy is premised on the principle of maximum disclosure. The Bank Group recognizes that its effectiveness in engaging with key stakeholders is crucial to the attainment

Principle 2: Enhancing Accountability asserts that the Bank is committed to accountability to its shareholders and recognises the importance of public information and communication with those affected by or interested in it. We have no comment on this principle. ADB,¹⁰ European Bank for Reconstruction and Development (EBRD),¹¹ EIB¹² and IDB¹³ also affirm that engagement and dialogue with stakeholders increases their effectiveness and impact.

Principle 3: Protecting Confidentiality recognises that the Bank, as a “financial institution and international organization,” has a responsibility to restrict access to information that could cause harm. We endorse this as a standard, i.e. the idea that information should be withheld where its disclosure would cause harm to a protected interest. However, instead of referring to interests, the list of examples of confidential information refers to categories or types of information, including personal information, information provided in confidence, financial information and deliberative information. As we discuss in Section C, one cannot protect a category of information against harm since no interest is identified which might be harmed. Better practice is for such lists to refer only to interests – such as privacy, national security, the free and frank provision of advice, and fair competition – which the Bank has an obligation to protect or at least a legitimate interest in protecting. The guiding principles of ADB,¹⁴ AfDB¹⁵ and IDB¹⁶ emphasise the importance of narrow and limited exceptions.

of its development mandate. Higher accountability based on information sharing will raise the Bank Group’s credibility, development effectiveness and its attractiveness as a partner.” Note 5.

⁹ Paragraph 2.1 of the policy states: “The Bank reaffirms its commitment to transparency in all of its activities and therefore seeks to maximize access to any documents and information that it produces and to information in its possession that is not on the list of exceptions.” Note 7.

¹⁰ Paragraph 26 of the policy states: “The Public Communications Policy aims to enhance stakeholders’ trust in and ability to engage with ADB, and thereby increase the development impact of ADB operations. The policy promotes transparency, accountability, and participatory development.” Note 4.

¹¹ Paragraph III(C)(3) of the EBRD’s 2014 Public Information Policy states: “Through its commitment to open communication, the Bank demonstrates its willingness to listen to third parties so as to benefit from their contributions to its work in fulfilling its mandate. The Bank will endeavour to identify, raise awareness and engage with a broad range of stakeholders, including civil society groups, organisations, and members of the public, that are affected by or interested in the Bank, its operations and activities, and/or its strategies and policies, taking into account the diverse nature and significance of specific interests and pursuits.” EBRD Policy at Section III(C)(3). Available at: <http://www.ebrd.com/what-we-do/strategies-and-policies/public-information-policy.html>

¹² Paragraphs 2.6 and 2.7 of the policy state: “Through its commitment to open communication, the Group demonstrates its willingness to listen to third parties so as to benefit from their contributions to its work in fulfilling its mission. ... The EIB Group is open to a constructive dialogue and cooperation with all stakeholders based on mutual trust and benefits.” Note 6.

¹³ Paragraph 1.1 of the policy states: “The Bank reaffirms its commitment to transparency in all aspects of its operations as a means of aligning itself with international best practice ... and as a matter of enhancing its accountability and development effectiveness. Through implementation of this policy the Bank seeks to demonstrate its transparent use of public funds, and by deepening its engagement with stakeholders, to improve the quality of its operations and knowledge and capacity-building activities.” Note 7.

¹⁴ Paragraph 32 of the policy states: “Full disclosure is not always possible. ... However, these exceptions are limited. ADB shall disclose all information that it produces or requires to be produced unless such information falls within the exceptions of the policy.” Note 4.

The right to information has been recognised globally as a human right. Despite this, the Interim Policy contains no reference to the right to information, its status as a human right or the importance of giving effect to this right. In contrast, the ADB and the EIB both include statements about the right to information as part of the guiding framework for their policies.¹⁷

Recommendations:

- The reference to “whenever possible” in Principle 1 should be removed so that the commitment to make information public in the absence of a compelling reason for confidentiality remains unqualified.
- Principle 3 should reflect a true presumption of openness absent a risk of harm to a protected interest. As such, the list of examples should either be removed from this Principle or it should be transformed from a list of categories of information into a list of interests which need protection against harm.
- The policy should recognise that the right to information is a human right and state that its goal is to give effect to that right.

Scope

The Interim Policy is unclear as to the scope of information it covers, stating only, in Principle 1, that the AIIB is committed to providing “information concerning the Bank’s activities”. This is problematic both because it is limited and because the term “activities” leaves broad scope for interpretation. For example, bids submitted as part of a tender could be viewed as Bank activities or as “activities” of the corporations submitting those bids.

Better practice, as reflected at the AfDB,¹⁸ EIB¹⁹ and World Bank,²⁰ is for IFIs to provide access to all information that is held by the institution, regardless of who produced it or

¹⁵ Paragraph 3.2.3 of the policy states: “As a general rule, restrictions on disclosure to the public of categories of Bank Group information will be limited. These restrictions are stipulated in the list of exceptions.” Note 5.

¹⁶ Paragraph 2.1 of the policy states: “Any exceptions to disclosure will be predicated upon the possibility, narrowly and clearly defined, that the potential harm to interests, entities or parties arising from disclosure of information would outweigh the benefits, that the Bank is legally obligated to non-disclosure, or has received information with the understanding that it will not be disclosed.” Note 7.

¹⁷ The EIB policy, for example, states that its policy is “consistent with the legal obligations of the EIB in respect of the principle of openness and the right of public access to documents.” Note 6, paragraph 3.5. The ADB policy states: “Freedom of information is recognized as a fundamental human right as set forth in the Covenant on Civil and Political Rights.” Note 4, paragraph 17. Further, paragraph 30 states: “ADB recognizes the right of people to seek, receive, and impart information and ideas about ADB-assisted activities.”

¹⁸ Paragraph 3.2.7 of the policy states: “The policy will strike an appropriate balance between the need to grant the public maximum access to information in the Bank’s possession, and the Bank’s obligation to

the format in which it is held (such as in paper copy, electronically or in video format). The World Bank's policy, for example, states: "The Bank allows access to any information in its possession that is not on a list of exceptions"²¹ and the EIB makes a similar commitment.²²

The Interim Policy refers throughout to "information" as its subject (i.e. what will be disclosed). It is logical to assume that this would automatically cover both a request for a specific document and a request for information contained in a document. It is unclear, however, how far the AIIB would go to compile information from various documents to respond to a request. For example, a request might be for the budget allocated to research by the AIIB over a period of five years. This might be available in the annual reports for those years or it might require the AIIB to spend a bit more time compiling the information. Better practice is to commit to spend at least a reasonable amount of time and effort compiling information in such cases, albeit subject to some overall limits. Ideally, those limits would be expressed in clear terms, for example as a maximum number of hours of work.

Recommendations:

- The policy should state simply that it covers all information held by the AIIB.
- The policy should make it clear that the AIIB will make a reasonable effort to compile information from different documents as necessary to respond to a request.

B. Public Information

Section B of the Interim Policy sets out the types of information that the Bank commits to make public, and the process for disclosing that information. The sections below analyse: 1) the process for disclosing information set out in the Interim Policy; and 2) the categories of information that the Bank routinely discloses.

1. Process of Disclosure

The Interim Policy states that "public information is accessible, wherever feasible, through posting on the Bank's website (www.aiib.org)."¹⁹ It does not provide any additional information about how public information will be disclosed. In addition, we have the following concerns:

respect confidentiality...." Note 5.

¹⁹ Paragraph 5.1(a) of the policy states: "All information and documents held by the Bank are subject to disclosure upon request." Note 6.

²⁰ Paragraph III.B.1 of the policy states: "The Bank allows access to any information in its possession that is not on a list of exceptions." Note 3.

²¹ Note 3, Section III.B.1.

²² Note 6, paragraph 5.1.a states: "All information and documents held by the Bank are subject to disclosure upon request"

- The meaning of “wherever feasible” is unclear. No other IFIs reviewed in these Comments include such a qualification on their commitment to routinely disclose information on their websites.
- The Interim Policy does not establish any presumptive time frames for disclosure. Both AfDB²³ and IDB²⁴ have a general rule that information is disclosed within five working days of its approval, distribution, completion, endorsement, discussion, issuance, receipt or submission, unless noted elsewhere in the policy.
- The Interim Policy does not recognise that communication with individuals affected by the Bank requires disseminating information in multiple languages. The ADB²⁵ and World Bank²⁶ explicitly recognise the importance of publishing information in multiple languages.

Recommendations:

- The qualification of “wherever feasible” on the commitment to disclose information on the Bank’s website should be removed.
- A clear presumptive time frame for disclosure of information should be established.
- A framework for disclosure of information in multiple languages should be developed.

2. Categories of Information

Paragraph 5 of the Interim Policy states that the Bank makes information public in three categories: Institutional, Operational and Financial. As explained below, each of these three categories is narrower in scope than the categories of information that other IFIs

²³ “All information classified as Public will be disclosed on the Bank’s external website within 5 working days of its approval, distribution, completion, endorsement, discussion, issuance, receipt or submission, unless specified otherwise in the DAI Policy (e.g., simultaneous disclosure), or may be released on request.” The African Development Bank, *Disclosure and Access to Information: Staff Handbook* at 2.2.1.

²⁴ “Unless otherwise indicated, either in the Policy, Instruction Manual for Publication of Information or Classification Instructions, all Information subject to Disclosure under the Policy will be published within a maximum of five (5) working days after their approval, clearance or completion of consideration.” The Inter-American Development Bank, *Access to Information Policy Implementation Guidelines*, paragraph 4.3 (1 January 2011).

²⁵ “English is the working language of ADB. However, documents and other information often must be translated into other languages to encourage participation in, as well as understanding and support of, ADB-assisted activities by its shareholders and other stakeholders.” ADB also has established a translation framework and broad criteria for documents that are translated. Note 4 at paragraph 1.1.1.

²⁶ “The Bank also recognizes the importance of translating information that it creates. The Bank’s approach to translations is set out in the Bank’s Translation Framework.” The World Bank, *Bank Directive/Procedure: Access to Information* Section II paragraph A.4 (1 July 2015). Available at: <http://pubdocs.worldbank.org/pubdocs/publicdoc/2015/7/173131435852879745/AI-Directive-Procedure.pdf>.

disclose and other IFIs include more categories of information than are found in the Interim Policy.

Institutional Information

Paragraph 6 of the Interim Policy commits to disclose basic institutional information about: the Board of Governors; Board of Directors; Bank management; strategy, annual plans and budget; annual reports; basic documents; and employment information.

Board of Directors: The Interim Policy commits to disclose the list of Board Directors, Alternates, and their voting groups, as well as the terms of reference and membership of Board Committees. Paragraph 6(B) also states: “The schedule of upcoming Board discussions will be posted in advance, and the minutes will be posted after meetings.”

- The Interim Policy fails to establish a time frame for posting the schedule of upcoming Board meetings or to commit to posting Board meeting agendas in advance of meetings. The ADB demonstrates better practice with its commitment to post “the provisional schedule of items for Board consideration for the forthcoming 3 weeks on a rolling basis.”²⁷ The EBRD commits to post a schedule and agenda that is updated monthly.²⁸ The AfDB,²⁹ EIB,³⁰ IDB³¹ and World Bank³² also post Board meeting calendars with agendas for upcoming Board meetings.
- The Interim Policy does not establish a time frame for disclosure of minutes of Board meetings. The ADB represents better practice by committing to disclose minutes of Board meetings “no later than 60 calendar days after the Board meeting.”³³
- The Interim Policy does not commit to disclose any documents circulated to the Board. The policies of the AfDB,³⁴ ADB,³⁵ IDB³⁶ and World Bank³⁷ require

²⁷ “ADB shall post on its website (i) the provisional schedule of items for Board consideration for the forthcoming 3 weeks on a rolling basis.” Note 4 at paragraph 85.

²⁸ “The Bank will post in a dedicated website location the schedule for Board discussions of forthcoming Country Strategies, Sector Strategies and Policies, and projects. ... The schedule will be updated on a monthly basis.” Note 11, paragraph D.1.1. The schedule is available at <http://www.ebrd.com/strategies-and-policies/board-activity.html#anchor3> (last accessed 25 October 2016).

²⁹ “The Board’s Work Plan and Agenda of the Board Meetings are eligible for disclosure.” Note 5 at paragraph 3.3.1.A(ii), fn 9. The current calendar and agendas are available at http://www.afdb.org/fileadmin/uploads/afdb/Documents/Boards-Documents/BRAG_October_2016_-_January_2017_Final.pdf (last accessed 25 October 2016).

³⁰ Available at <http://www.eib.org/infocentre/events/> (last accessed 25 October 2016).

³¹ Note 24 at Annex III §II (1 January 2011). The schedule and agendas are available at <http://www.iadb.org/en/about-us/board-meetings-agendas-and-minutes,1321.html>

³² Note 25, page 83. The October 2016 calendar is available at <http://documents.worldbank.org/curated/en/420981476765100213/pdf/109238-BR-Calendar-PUBLIC-10-14-idu.pdf> (last accessed 27 October 2016).

³³ Note 4, paragraph 85.

³⁴ “Documents classified as “Public” under the Bank Group’s documents management system and provided by Management to the Board of Directors for information would be simultaneously disclosed to the Public at the time of their distribution to the Board of Directors.” Note 5, paragraph 4.10.1.

³⁵ “ADB shall post on its website documents circulated to the Board for information or approval not cited in the policy, unless Management informs the Board otherwise and the Board agrees.” Note 4, paragraph 93.

- routine disclosure of documents circulated to the Board for information. The AfDB,³⁸ ADB³⁹ and World Bank⁴⁰ also routinely disclose specific types of documents circulated to the Board for consideration or approval.
- The Interim Policy does not commit to disclose any documents that Board committees produce. AfDB,⁴¹ ADB,⁴² IDB⁴³ and World Bank⁴⁴ routinely disclose specific types of documents produced by Board committees, such as reports to the full Board.

Bank Management: The Interim Policy states: “The organizational chart for the Bank, showing its departments and component parts, will be posted.”

- The Interim Policy does not commit to disclose names and contact information for staff. The ADB⁴⁵ demonstrates better practice by committing to disclose the names of senior management, as well as contact information for staff, and the World Bank⁴⁶ discloses the names of senior officials.

Strategy, Annual Plans, and Budget: According to the Interim Policy, “summaries” of “strategies, annual plan, and budget of the Bank” will be posted “after Board approval of the main document.”

- The Interim Policy does not commit to disclose full strategies after Board approval. The AfDB,⁴⁷ ADB,⁴⁸ EBRD,⁴⁹ EIB,⁵⁰ IDB⁵¹ and World Bank⁵² all routinely disclose full strategies (not merely summaries) after their approval by the Board.

³⁶ “Information sent by Management to the Board of Executive Directors for information and classified as ‘Public’ under the Bank’s new information security classification system ... will be disclosed at the time it is distributed to the Board.” Note 7, paragraph 5.1.

³⁷ “Board Papers distributed to the Executive Directors for information are posted upon distribution.” Note 3, paragraph III.B.4.d.

³⁸ Note 23, Appendix 1.

³⁹ “ADB shall post on its website documents circulated to the Board for information or approval not cited in the policy, unless Management informs the Board otherwise and the Board agrees.” Note 4 at paragraph 93.

⁴⁰ “Board Papers distributed for discussion or consideration (decision) by the Board are posted at the end of the Board’s deliberative process, once they are finalized. However, the following Board Papers whose preparation may have involved consultations with affected parties, civil society groups, and other stakeholders are posted before the Board discussion: ... country assistance strategy papers.” Note 3, paragraph B.III.B.4.b-d.

⁴¹ The AfDB discloses reports to the Board from its Committees. Note 23, Appendix 1.

⁴² “ADB shall post on its website reports of Board committees to the full Board if the committee so recommends and the Board approves.” Note 4 at paragraph 86.

⁴³ The IDB discloses the annual reports of Committee Chairs as well as reports of the Board Committee Chairs to the Committee of the Whole. Note 24 at Annex III, paragraph 4.7

⁴⁴ Disclosure includes minutes of Board Committee meetings, reports to the Board from its committees, and annual reports of Board committees. Note 3, paragraph III.B.4.a.

⁴⁵ Note 4 at paragraph 80.

⁴⁶ Note 25 at page 83.

⁴⁷ Note 5 at Annex 1 and Note 23 at Appendix 1.

⁴⁸ Note 4 at paragraph 72.

⁴⁹ Note 11, paragraphs D.2.1 and 2.2.

⁵⁰ Note 6 at paragraph 4.1.

⁵¹ Note 7 at paragraph 5.1.

⁵² Note 3, paragraph III.B.4.III.

- The Interim Policy does not commit to disclose a full budget document. The AfDB,⁵³ ADB,⁵⁴ IDB⁵⁵ and World Bank⁵⁶ routinely disclose their budgets (not merely “summaries” of their budgets).

Annual Reports: Paragraph 6(E) of the Interim Policy commits to posting the Bank’s annual report and also states that the Bank “may produce additional periodic reports on aspects of its operations in the future, such as procurement, and these reports or summaries will also be posted.”

- The Interim Policy does not commit to disclose full versions of future reports. AfDB,⁵⁷ ADB,⁵⁸ EBRD,⁵⁹ IDB⁶⁰ and World Bank⁶¹ routinely disclose full reports that assess institutional operations, impacts and performance.
- The Interim Policy does not commit to disclose papers and reports that internal evaluation units produce. AfDB,⁶² ADB,⁶³ EBRD,⁶⁴ IDB⁶⁵ and the World Bank Group⁶⁶ routinely disclose these documents and the EIB discloses a “synthesis” of these documents.⁶⁷

⁵³ Note 23 at Appendix 1.

⁵⁴ “The following shall be posted on the ADB website upon approval by the Board: (iv) the budget of ADB for each fiscal year.” Note 4 at paragraph 88(iv).

⁵⁵ Note 24 at Annex III, Section III.

⁵⁶ The World Bank, *Bank Directive/Procedure: Access to Information* at 78.

⁵⁷ The African Development Bank, *Disclosure and Access to Information: The Policy* at Annex 1.

⁵⁸ For example, annual reports of ADB’s Office of Anticorruption and Integrity and the annual report on loan servicing of Developing Member Countries. Note 4 at paragraphs 70 and 88(iii).

⁵⁹ EBRD releases specific annual reports on aspects of its operations, subject to removal of confidential material. Note 11, paragraph D.4.3.

⁶⁰ For example, the Annual Report of the Office of Institutional Integrity and the Development Effectiveness Overview. Note 24 at Annex III, Section III.

⁶¹ For example, Country Portfolio Performance Reviews and the annual report for the Trust Funds Note 25 at page 55 and 66.

⁶² “To facilitate transparency, final approach papers, evaluation reports, and other related final documents are disclosed to the public without undue delays.” The African Development Bank Group, *Independent Evaluation Policy* (July 2016) §3.2.

⁶³ “ADB shall post all independent evaluation reports on its website upon circulation to Management and the Board, except for IED annual evaluation reports that will be posted on the ADB website upon discussion by the Board’s Development Effectiveness Committee (DEC).” Note 4 at paragraph 67.

⁶⁴ “The Evaluation Department (EvD) provides public access to its reports except insofar as needed to protect commercial confidentiality concerns.” The European Bank for Reconstruction and Development, *Public Information Policy* at §D.4.2.1.

⁶⁵ Note 24 at Annex III, Section III.

⁶⁶ The World Bank Group’s Independent Evaluation Group has a separate access to information policy that provides for disclosure of IEG documents, with provisions to that allow for disclosure of documents that are distributed to Executive Directors for discussion or for information as well as project-level documents and working paper. Independent Evaluation Group, *Access to Information Policy* (1 July 2011).

⁶⁷ The synthesis report summarises the findings of the evaluation and makes recommendations for direct implementation. The directorates’ responses to the various recommendations are also presented in the report, including whether the recommendations are accepted or rejected; when rejected, the Management Committee will add its own point of view. EV (Operations Evaluation) periodically reports on the implementation of the recommendations. EV’s synthesis reports are presented to the Management Committee who sends them, without change, to the Board of Directors for discussion. EV reports may be accompanied by a reply from the Management Committee. EV synthesis reports are then published under the authority of the Board of Directors, when applicable together with the Management Committee’s reply.” European Investment Bank, *Operations Evaluation (EV) Terms of Reference*, 2 (September 2009).

Employment Information: The Interim Policy states that the Bank will disclose “its basic salary structure” and paragraph 6(G) also states: “In accordance with the Bank’s human resources policy, the Bank will use its website, among other media, for staff recruitment.”

- The Bank does not disclose salaries of senior management or the methodology used to determine Management and staff salary levels and benefits. ADB⁶⁸ and EBRD⁶⁹ routinely disclose the salaries of senior management and Board members. ADB⁷⁰ and World Bank⁷¹ disclose the methodology used to determine Management and staff salary levels and benefits.

Translation of Institutional Information: The Interim Policy does not commit to translate any institutional information. AfDB,⁷² ADB,⁷³ EBRD,⁷⁴ EIB,⁷⁵ IDB⁷⁶ and World Bank⁷⁷ all provide at least basic institutional information in major languages used in regions of Bank operations.

Policy Implementation

- Although the Interim Policy commits to posting “[t]he organizational chart for the Bank, showing its departments and component parts,” this organisational chart has not been posted as of November 2016.
- Although the Interim Policy commits to posting the Bank’s “basic salary structure,” as of November 2016, this information had not been posted.

Recommendations:

⁶⁸ ADB discloses “annual base salaries of Management and Board members.” Note 4 at paragraph 90(iii).

⁶⁹ “The Bank will disclose the salaries of the Presidents, Vice Presidents, the Board of Directors and the range of salaries for senior management. Note 11 at Section D, paragraph 1.6.

⁷⁰ Note 4 at paragraph 90(ii).

⁷¹ Note 25 at Annex 3.

⁷² English and French are the official languages of the AfDB, and website content is available in both languages.

⁷³ The ADB’s website is available in English and Chinese.

⁷⁴ The EBRD’s website is available in English, German, French, and Russian.

⁷⁵ “EIB’s statutory documents are available in all official EU languages. Other key documents with a particular importance for the public, such as this Policy itself, are also published in all official EU languages, while some others are available in English, French and German. Translation into other languages can be considered depending on the type of the document and the public interest.” Note 6 at paragraph 4.3. English and French are the working languages of EIB.

<http://www.eib.org/about/jobs/faq/eligibility/what-are-the-working-languages-of-the-eib.htm>

⁷⁶ The four official languages of the Inter-American Development Bank are English, French, Portuguese, and Spanish. Website content is available in all four languages.

⁷⁷ “Documents and publications that address the institution’s overall business and strategic thinking that are destined for a wide international audience (such as institutional annual reports; operational policies, procedures, and guidelines; and issues and strategy papers) would be translated into six “international languages”: Arabic, Chinese, French, Portuguese, Russian, and Spanish. Business sponsors would have to exercise judgment and adjust these international languages to particular cases and audiences, reflecting demand.” World Bank, *A Document Translation Framework for the World Bank Group* (2003) at ¶40.

- The policy should include commitments to disclose the following information:
 - Board of Directors
 - Board meeting agendas, prior to Board meetings.
 - Documents circulated to the Board for information or approval.
 - Documents produced by Board committees.
 - Bank Management:
 - Names of and contact information for Bank staff.
 - Strategy, Annual Plans, and Budget:
 - Draft strategies prior to Board approval, and full strategies after Board approval.
 - A full budget (as opposed to a summary).
 - Complete (as opposed to summaries of) reports that assess institutional operations, impacts, and performance.
 - Papers and reports that internal evaluation units produce.
 - Employment Information
 - Salaries of senior management and Board members.
 - The methodology used to determine Management and staff salary levels and benefits.
- The policy should include time frames for:
 - Posting the schedule of upcoming Board meetings, and for disclosing minutes of Board meetings.
 - A maximum time frame for disclosure of minutes of Board meetings.
- Basic institutional information, including information about the Bank’s structure and contact information, should be translated into major regional languages of Asian member countries.
- The Bank should implement Interim Policy’s existing commitments by:
 - Publishing the dates of Board meetings prior to those meetings.
 - Publishing an organizational chart for the Bank.

Operational Information

Project Documents: The Bank commits in paragraph 7(A) of the Interim Policy to posting “detailed documents for Sovereign-Backed Financings and summary documents for Non Sovereign-backed Financings, following approval of the Financing.”

- The Interim Policy does not commit to disclose project documents for both sovereign and non-sovereign financings within a specific time frame prior to Board approval. ADB,⁷⁸ EBRD⁷⁹ and EIB⁸⁰ set timeframes for disclosure of

⁷⁸ “The initial PDS for a sovereign project or program shall be posted on the ADB website upon approval of the concept paper” and “ADB shall post on its website the initial PDS ... no later than 30 calendar days before the date of Board consideration. For projects classified as category A for environmental safeguard purposes, ADB shall post the PDS on its website at least 120 calendar days before Board consideration.” Note 4 at paragraphs 43 and 45.

⁷⁹ “For private sector projects, the PSD will be released at least 30 calendar days prior to consideration of the project by the Board of Directors, unless the Bank’s client or co-financing institution provides sound

- project documents prior to Board approval, and ADB reflects better practice by committing to disclose documents at least 30 days prior to Board approval and at least 120 days prior to approval for Category A projects.
- The Interim Policy does not provide any information about the types of documents that will be disclosed or the required components for each document. The ADB⁸¹, AfDB,⁸² EBRD⁸³ and EIB⁸⁴ specify the names of disclosed project documents and include a description of the required components for each type of document.

reasons for not releasing the document. In such cases, the PSD will be released as soon as possible and prior to any disbursement.” Note 11, paragraph D.3.1.4.

⁸⁰ “The Bank shall publish project summaries of all investment projects at least 3 weeks before the project is considered for approval by the EIB’s Board of Directors.” Note 6 at paragraph 4.6 (but this paragraph also states that “a limited number of projects are not published before Board approval and, in some cases, not before loan signature to protect justified interests based on the exceptions to disclosure laid down in this Policy.”)

⁸¹ “ADB shall post project data sheets (PDSs) with summary information on the project or program on its website. Because the PDS is a work in progress, some information may not be included in its initial version but will be added as it becomes available. ... Key information from the draft [design and monitoring] framework will be reflected in the PDS.” Note 4 at paragraph 42. The Procedure states that “PDSs for sovereign and nonsovereign projects will include (i) the project or program name; (ii) sector, and/or subsector and thematic classification and gender mainstreaming category; (iii) project or program number; (iv) type or modality of assistance; (v) country; (vi) project or program description and rationale, including linkage to the country or regional strategy; (vii) impact, outcome, and outputs; (viii) source of funding and amount, financing plan, and loan and/or technical assistance (TA) utilization (for sovereign projects); (ix) executing and, if applicable, implementing agency, or client(s); (x) safeguard categories; (xi) summary of environmental and social aspects; (xii) stakeholder communication, participation, and consultation; (xiii) information for business opportunities on expected procurement and consulting services; (xiv) responsible ADB department, division, and officer; (xv) the date of PDS preparation and most recent update; (xvi) status of loan covenants (for sovereign projects); and (xvii) a timetable for the project or program, including design, processing, approval, and implementation.” The ADB, *Operations Manual Bank Policies Public Communications OM Section L3/BP* at paragraph 8.

⁸² “This summary note will include information from the already prepared Preliminary Evaluation page in the project concept note, including the following fields: (i) Description of the project, description of the lending program of the borrowing bank or description of the fund, as the case may be; (ii) The client; (iii) Cost Structure and Financing Plan (when relevant, check with financing partners if their names can appear), or Funding Sources (LoC or funds); (iv) The Bank’s Role; (v) Implementation Arrangements (if this field reflects sensitive information such as cost of equipment or commercial sales agreements, such information will not be disclosed); (vi) Market; (vii) Strategic Alignment; (viii) Development Outcomes; (ix) Complementarity/added value of the Bank Group. For category 1 and 2 projects, the project summary will also include a “summary of environmental and social aspects.” Note 23 at Appendix 3.

⁸³ “PSDs provide a factual summary of the main elements of a given project and potential investment which includes the following information: (i) the identity of the project company; (ii) total project cost (where applicable); (iii) the project location; (iv) a brief description of the project and its objective; (v) the amount and nature of EBRD’s investment; (vi) the target date for a decision on the project by the Board of Directors; (vii) the anticipated transition impact, and for public sector projects, expected transition impact rating; (viii) a summary of environmental and social impacts associated with the project and agreed mitigation measures; (ix) if applicable, details of project related technical cooperation funding and grant financing; and (x) guidance on how and where information about the project can be obtained, including contact points for the project sponsor and the EBRD Operation Leader.” The European Bank for Reconstruction and Development, *Public Information Policy* at §D.3.1.

⁸⁴ Note 6 at paragraph 4.7.

- The Interim Policy does not commit to disclose documents that the Bank produces during project implementation and upon project completion. The AfDB,⁸⁵ IDB⁸⁶ and World Bank⁸⁷ disclose implementation reports and ADB updates its project documents with information about project implementation at least twice a year.⁸⁸ AfDB,⁸⁹ ADB,⁹⁰ IDB⁹¹ and World Bank⁹² also disclose completion reports.

Environmental and Social Information: The Interim Policy states that “the Bank will post Environmental and Social Information for Projects in accordance with the Bank’s Environmental and Social Policy.” For this reason, these Comments do not analyse the Bank’s commitment to disclosure of environmental and social information.

Procurement: The Interim Policy commits in paragraph 7(C) to “post General Procurement Notices, Special Procurement Notices and Contract Award Notifications for procurement financed by the Bank under its Financings.”

- The Interim Policy does not commit to disclose procurement plans, which the AfDB,⁹³ ADB,⁹⁴ IDB,⁹⁵ and World Bank⁹⁶ routinely disclose.
- The Interim Policy does not require disclosure of information regarding Bank procurement. AfDB,⁹⁷ ADB⁹⁸, EBRD,⁹⁹ EIB¹⁰⁰ and IDB¹⁰¹ routinely disclose documents related to corporate procurement.

Operational Policies and Sector Strategies: The Interim Policy does not contain any reference to disclosure of operational policies and sector strategies.

⁸⁵ Note 5, Annex I.

⁸⁶ Note 24 at Annex III, Section II.

⁸⁷ Note 25 at page 52.

⁸⁸ “ADB shall update the PDS to reflect the project’s status. Updates will be conducted at least twice a year, and whenever necessary, to reflect activities and issues, progress toward outcome, and implementation progress.” Note 4 at paragraph 44.

⁸⁹ Note 23 at paragraph 1.5.

⁹⁰ “ADB shall post project, program, and TA completion reports on its website upon circulation to the Board. The completion report for a nonsovereign project, called an extended annual review report, will be posted in an abbreviated form, excluding commercially sensitive and confidential business information.” Note 4 at paragraph 65.

⁹¹ Note 24 at Annex III, Section II.

⁹² Note 25 at page 52.

⁹³ Note 5 at paragraph 4.11.2, fn 23.

⁹⁴ Note 4 at paragraph 76.(ii), (iii).

⁹⁵ Note 24 at Annex III, Section II.

⁹⁶ Note 25 at page 83.

⁹⁷ The AfDB discloses procurement policies and procurement activities reports related to corporate expenses and real estate (as contained in budget documents). Note 23 at Appendix 1.

⁹⁸ “In respect of ADB’s institutional procurement, invitations to submit bids or proposals, and contract awards for major procurement exercises” will be posted on the ADB website. The Asian Development Bank, *Operations Manual Bank Policies Public Communications* OM Section L3/BP at ¶43(iv).

⁹⁹ Annual Procurement Review. An annual review, subject to the removal of confidential material, will be publicly released and posted on the Bank’s website. Note 11 at Section D, paragraph 4.3.2.

¹⁰⁰ The EIB routinely discloses “[p]rocurement information and tender notices for the Bank’s own account.” Note 6 at paragraph 4.1.

¹⁰¹ The IDB discloses procurement policies and procedures. Note 24 at Annex III, Section II.

- The Interim Policy does not commit to disclose operational policies and sector strategies in draft form before Board approval. It also does not commit to disclose final versions of operational policies and sector strategies after Board approval. AfDB,¹⁰² ADB,¹⁰³ EBRD,¹⁰⁴ EIB,¹⁰⁵ IDB¹⁰⁶ and World Bank¹⁰⁷ routinely disclose operational policies and strategies in draft form before Board approval, and each of those institutions routinely disclose final operational policies and strategies after Board approval.
- The Interim Policy does not commit to providing advance notice about timelines for the development and review of policies and strategies. ADB¹⁰⁸ and EBRD¹⁰⁹ reflect better practice by publishing a list of future strategy and policy reviews and updates.

Bank Procedures and Guidelines: The Interim Policy does not commit to disclose Bank procedures and staff guidelines. ADB¹¹⁰ and World Bank¹¹¹ routinely disclose Bank procedures and staff guidelines, including operational guidelines, staff manuals and instructions (for example for project administration).

¹⁰² “Operational Policies and Sector Strategies provided to any committee of the Board of Directors would be simultaneously disclosed to the Public if some earlier version of the same document under consideration had been previously considered by the Board of Directors. Country and Regional Strategy Papers and Loan Proposals for sovereign-guaranteed operations, would be disclosed simultaneously with their distribution to the Board of Directors, subject to the non-objection of the countries concerned.” Note 5 at paragraph 4.10.1 (ii) and (iii).

¹⁰³ “ADB seeks the participation of its shareholders and other interested stakeholders during the development and review of its safeguard, sector, and thematic policies and strategies... ADB shall post at least one consultation draft of such policy or strategy paper on its website. ADB shall post working papers and final proposals of policies and strategies that have undergone a public consultation process on its website at the same time that they are circulated to the Board.” Note 4 at paragraph 72.

¹⁰⁴ “The draft Sector documents will be publicly released on the Bank’s website for a period of 45 calendar days, during which time the public is invited to send comments to the Bank. ... The *Public Information Policy*, *Environmental and Social Policy*, *Evaluation Policy* and the *Project Complaint Mechanism* are subject to periodic review. In the event of a revision, draft texts will be posted on the Bank’s website for 45 calendar days for public comment.” Note 11 at Section D, paragraph 2.2.1.

¹⁰⁵ “The EIB is committed to engage, on a voluntary basis, in formal public consultation on selected policies ... After completion of the consultation and at least 15 working days prior to approval by the corresponding governing body, the final draft policy will be published on the EIB website.” Note 6 at paragraph 7.10.

¹⁰⁶ “Operational Policies and Sector Strategies will be disclosed at the time of their distribution to the respective committee of the Board, if some earlier version of the document had been previously considered by the Board.” Note 7 at paragraph 5.1.

¹⁰⁷ “The following Board Papers whose preparation may have involved consultations with affected parties, civil society groups, and other stakeholders are posted before the Board discussion: (i) Operational policy papers and sector strategy papers, that are prepared following a public consultation process, if the Executive Directors have already reviewed a draft version of the paper.” Note 3, paragraph III.B.4.

¹⁰⁸ “ADB shall post on its website a list of such policies and strategies to be developed or reviewed over the next 12 months on a rolling basis.” Note 4 at paragraph 72.

¹⁰⁹ Note 11 at Section D, paragraph 1.2.

¹¹⁰ “ADB shall post the Operations Manual sections (bank policies and operational procedures), the Project Administration Instructions, and staff handbooks on ADB operations on its website upon their issuance to staff.” Note 4 at paragraph 75.

¹¹¹ Note 25 at page 84.

Other Operational Documents and Information: The Interim Policy does not commit to disclosing other operational documents and information, including:

- Project pipelines and monthly operational summaries, which the World Bank and IDB routinely disclose.¹¹²
- Legal agreements related to lending operations, including loan agreements, guarantee agreements, project agreements, and cooperation/partnership agreements. AfDB,¹¹³ ADB,¹¹⁴ IDB¹¹⁵ and World Bank¹¹⁶ routinely disclose loan agreements. In addition, AfDB reflects better practice by routinely disclosing general conditions applicable to loan, guarantee and grant agreements.¹¹⁷

Translation of Operational Information:

- The Interim Policy does not require any translation of project documents¹¹⁸ that the Bank produces. ADB¹¹⁹ and EBRD¹²⁰ commit to translating project information documents into relevant national language(s) and the World Bank's translation framework calls for the translation of project documents "into national/local languages as appropriate, taking into account additional factors such as the level of public interest in the project and the literacy level of the population."¹²¹

¹¹² Note 25 at page 55.

¹¹³ AfDB discloses "[l]egal agreements for Sovereign-guaranteed operations signed" -- to be disclosed upon request;" "[l]oan and grant agreements - to be posted on www.AfDB.org after they are declared effective;" "[b]ilateral and multilateral cooperation agreements," and "memoranda of understanding." Note 23 at Appendix 1.

¹¹⁴ ADB shall post on its website all legal agreements for sovereign projects entered into on or after the effective date of the policy upon their signing, after removing any information identified as falling within the exceptions of the policy ... at the time of negotiations." Note 4 at paragraph 59. Note that footnote 16 states: "ADB shall not disclose legal agreements for nonsovereign projects entered into by ADB, or amendments to such agreements. This also includes commercial cofinancing agreements."

¹¹⁵ IDB discloses Sovereign-Guaranteed Loan Contracts; Guarantee Agreements for Sovereign-Guaranteed Operations; Sovereign-Guaranteed Technical Cooperation Agreements; Bilateral and Multilateral Agreements; Cooperation Agreements between the Bank and other Entities; and Framework Agreements between the Bank and Donors. Note 24 at Annex III, Section IV.

¹¹⁶ The World Bank discloses "(a) Loan Agreements (b) Guarantee Agreements (i.e., for guarantees issued by member countries in Bank lending operations) (c) IDA Financing Agreements (previously called Development Credit/Grant/Financing Agreements) (d) Project Agreements (e) Supplemental letters to the abovementioned agreements (f) Preparation Advance Agreements (g) Any amendments to the above mentioned agreements." Note 25 at page 53.

¹¹⁷ Note 23 at Appendix 1.

¹¹⁸ Note that the Interim Policy has separate categories for "project documents" and "environmental and social information" about projects. This statement refers only to "project documents."

¹¹⁹ "For all loan and grant projects and project preparatory technical assistance (TA) projects, ADB will translate the PDS at key milestones into relevant national language(s), post those translated versions on the ADB website, and make them available in-country using appropriate channels." Note 4 at paragraph 42.

¹²⁰ "In order to make information available about the Bank's operations in a given country, the PSD will, as soon as practicable after the posting of the English version, be translated into relevant official national language and publicly released and posted on the Bank's website. ... While the Bank cannot guarantee the accuracy of such translation, every effort will be made to provide reliable translations. PSD updates will also be translated into the relevant official national language." Note 11, paragraph D.3.1.10.

¹²¹ World Bank, *A Document Translation Framework for the World Bank Group* (2003) at page 5.

- The Interim Policy does not commit to translating any operational policies or strategies. ADB,¹²² EBRD,¹²³ EIB¹²⁴ and World Bank¹²⁵ recognise that major institutional policies and strategy documents – including environmental and social standards, access to information policies, and compliance mechanism policies – must be translated in order to reach affected communities in the regions of their operations.

Policy Implementation

- At the Board meeting in September, the AIIB approved financing for the Myingyan Power Plant Project only five days after disclosing documentation for the project.

Recommendations:

- The Bank should commit to disclose the following:
 - Project Documents
 - Project implementation reports produced by the Bank.
 - Project completion reports.
 - Specify the type of project documents that the Bank discloses and include a description of the required components for each type of document.
 - Procurement
 - Procurement plans.
 - Information regarding Bank-related procurement.

¹²² “A number of policies, strategies, and guidelines will help non-English-speaking external stakeholders—be they borrowers, executing agencies, implementing agencies, or nongovernment organizations—engage with ADB.” Criteria for translating such institutional information is: the nature and purpose of the document, literacy level of the audience, demand for translation, lifespan and length of the document, time required for translation, and the cost of the translation and opportunity costs. Asian Development Bank, *Update on the ADB Translation Framework* (December 2012), ¶¶46, 58–65.

¹²³ “The Bank will endeavour to provide translations of the *Public Information Policy*, the *Environmental and Social Policy* as well as its performance requirements, and the *Project Complaint Mechanism*, into a number of official national languages in the region on a demand-driven basis. Requests can be made for translations by clients, institutions, or civil society. While the Bank cannot guarantee the accuracy and authenticity of any such translation, which will carry a disclaimer, every effort will be made to provide reliable translations when need is demonstrated.” Note 11 at Section D, paragraph 2.3.4.

¹²⁴ “EIB’s statutory documents are available in all official EU languages. Other key documents with a particular importance for the public, such as this Policy itself, are also published in all official EU languages, while some others are available in English, French and German. Translation into other languages can be considered depending on the type of the document and the public interest.” The European Investment Bank Group. Note 6 at paragraph 4.3.

¹²⁵ “Documents and publications that address the institution’s overall business and strategic thinking that are destined for a wide international audience (such as institutional annual reports; operational policies, procedures, and guidelines; and issues and strategy papers) would be translated into six “international languages”: Arabic, Chinese, French, Portuguese, Russian, and Spanish. Business sponsors would have to exercise judgment and adjust these international languages to particular cases and audiences, reflecting demand.” World Bank, *A Document Translation Framework for the World Bank Group* (2003) at ¶40.

- Legal Information
 - Legal agreements related to lending operations, including loan agreements, guarantee agreements, project agreements, and cooperation/partnership agreements.
 - General conditions applicable to loan, guarantee and grant agreements.
- Other Operational Documents
 - Draft and final versions of operational policies and sector strategies.
 - A list of planned/upcoming policy and strategy reviews and updates.
 - Bank procedures and staff guidelines, including operational guidelines, staff manuals, and instructions (e.g., for project administration).
 - Project pipelines and monthly operational summaries.
- The Bank should specify time frames for disclosure of:
 - Project documents prior to Board approval.
 - Commit to disclose project documents at least 30 days prior to Board approval. For Category A projects, commit to disclose documents at least 120 days prior to Board approval.
- The Bank should translate the following operational information:
 - Project documents, into relevant national languages.
 - Operational policies and sector strategies, including the Public Information Interim Policy and the Environmental and Social Framework, into languages used in Asian member countries.

Financial Information

- The Interim Policy states: “The Bank’s audited financial statements, including any Special Funds and Trust Funds, will be posted. Upon approval by the Board of Directors, unaudited condensed quarterly financial statements will be posted.”
 - The Policy does not commit to disclose management’s discussion and analysis of annual financial statements. ADB¹²⁶ and World Bank¹²⁷ routinely disclose management’s discussion and analysis of their financial statements along with each Bank’s annual financial statements.
 - The Policy does not commit to disclose public offerings documents. ADB¹²⁸ and IDB¹²⁹ routinely disclose documents related to public offerings on their websites. EIB makes those documents available upon request¹³⁰ and the World Bank provides a link to the U.S. Securities and Exchange website,¹³¹ which contains this information.

¹²⁶ Note 4 at paragraph 89.

¹²⁷ Note 25 at page 75.

¹²⁸ “ADB shall post on its website any documents related to public offerings when the laws or regulations governing the financial market concerned require that they be filed with a government agency.” Note 4 at paragraph 88.

¹²⁹ Note 24 at Annex III, Section III.

¹³⁰ “Documentation (Offering Circulars, Prospectuses and/or Programmes) for public bond issues is available upon request.” Note 6 at paragraph 4.19

¹³¹ Note 25 at page 76.

Policy Implementation

- Although the Interim Policy commits to posting unaudited quarterly financial statements, as of November 2016, this information had not yet been posted.

Recommendations:

- The Bank should commit to disclose the following:
 - Management's discussion and analysis of the Bank's financial statements.
 - Public offerings documents.
- The Bank should implement the Interim Policy's existing commitments by:
 - Posting unaudited quarterly financial statements.

C. Exceptions or Confidential Information

The regime of exceptions to the right to information is a crucial part of any policy or law that seeks to give effect to this right since it defines the dividing line between openness and secrecy. On the one hand, it is essential that the exceptions provide adequate protection to all legitimately confidential interests. On the other hand, an overbroad regime of exceptions will undermine the whole thrust of the policy or law since it will allow for undue secrecy. This is an area where, on balance, the information policies of many IFIs are weak although there are indications that some IFIs will address these problems in the next round of policy reviews.¹³²

This part of the Comments is divided into two sections. The first addresses general or structural issues with the exceptions in the Interim Policy, and the second focuses on individual or specific exceptions. The regime of exceptions to the Interim Policy is found in Paragraph 9 although it is also referenced in Principle 3.

Structural Considerations

Accepted international standards on transparency dictate that information should always be disclosed unless all of the following three conditions are met:

1. The information falls within the scope of a clearly described list of interests – such as privacy and national security – the protection of which is deemed worthy of overriding openness.
2. Disclosure of the information would pose a clear risk of harm to one or more of the relevant interests.
3. The harm posed by disclosure is greater than the overall public interest in disclosure of the information.

¹³² See, for example, Centre for Law and Democracy, *Openness Policies of the International Financial Institutions: Failing to Make the Grade with Exceptions* (2012: Halifax, Centre for Law and Democracy). Available at: <http://www.law-democracy.org/wp-content/uploads/2010/07/IFI-Research-Online-HQ.pdf>.

These three conditions are considered in turn below. Unfortunately, the regime of exceptions in the Interim Policy has serious weaknesses in terms of all three of these conditions.

1. The information falls within the scope of a clearly described list of interests – such as privacy and national security – the protection of which is deemed worthy of overriding openness.

International standards recognise a number of interests that may legitimately be protected through exceptions to the right to information. The interests which may be protected are described in Indicator 29 of the RTI Rating as: “national security; international relations; public health and safety; the prevention, investigation and prosecution of legal wrongs; privacy; legitimate commercial and other economic interests; management of the economy; fair administration of justice and legal advice privilege; conservation of the environment; and legitimate policy making and other operations of public authorities”.¹³³

The problem of exceptions not referring to interests but, rather, categories or types of information, has already been noted above under Guiding Principles with reference to Principle 3 of the Interim Policy. This problem is carried over into many, albeit not all, of the specific exceptions found in paragraph 9 and is even reflected in the introductory part of that paragraph which states: “In line with the practices of other international financial institutions, the Bank does not provide access to the *types of confidential information* listed below.” [emphasis added]

Paragraph 9 lists eight broad categories of information. Of these, only one – safety and security – refers exclusively to an interest and one more – privileged and investigative information – refers in part to an interest (privileged information). A third – violation of national laws or other applicable regulations – reflects the particular position of the Bank, which must respect its Articles of Association and national laws. All of the other exceptions, however, refer to categories of information rather than interests which need to be protected against harm. As such, they may unduly restrict access to information in practice. For example, the first exception is for personal information. However, only

¹³³ The full list of RTI Rating Indicators is available at: <http://www.rti-rating.org/wp-content/uploads/Indicators.pdf>. As a comparison, the EIB's list of categories of exceptions is one of the tightest, protecting: international relations; financial, monetary or economic policy of the EU, its institutions and bodies or a Member State; the environment; commercial interests of a natural or legal person; the Bank's decision-making process; intellectual property; court proceedings and legal advice; and the purpose of inspections, investigations and audits. The ADB recognises the following categories: Deliberative and Decision-Making Process; Information Provided in Confidence; Personal Information; Financial Information; Security and Safety; Legal or Investigative Matters; Internal Audit Reports; and Trust Fund Audit Reports. The AfDB recognises the following: Deliberative Information and Incomplete Reports; Communications involving the Bank Group's President, Executive Directors and the Governors; Legal, disciplinary or investigative matters; Information provided in confidence by member countries, private-sector entities or third parties; Administrative information; Financial information; Safety and security; and Personal information. The IDB: Personal information; Legal, disciplinary or investigative matters; Communications involving Executive Directors; Safety and security; Information provided in confidence; Intellectual property; Business/financial information; Corporate administrative information; Deliberative information; Certain financial information; Country-specific information; and Information relating to non-sovereign guaranteed operations.

some personal information poses a clear risk of harm to an interest, and so needs to be kept confidential to protect an individual's privacy. This problem becomes far more serious, however, for other exceptions, including third-party information, deliberative information, financial information and corporate administration, all of which describe broad categories which are at best tenuously connected to anything like a legitimate interest that need to be protected.

2. Disclosure of the information would pose a clear risk of harm to one or more of the relevant interests.

It is impossible to define properly a harm that relates to a category of information, whereas it is always fairly simple to define a harm relating to an interest. Thus, it is simple for a policy to capture the concept of not disclosing information where this would harm or prejudice security, but one cannot talk about harming or prejudicing categories of information such as “deliberative information” or “third-party information”. The exceptions in the Interim Policy pretty much follow this logic, with the ones referring to interests incorporating harm tests and the ones referring to categories of information failing to do so. The section below on specific exceptions provides more detail on the failure of most of the exceptions to comply with this standard.

3. The harm posed by disclosure is greater than the overall public interest in disclosure of the information.

The Interim Policy does not even refer to the concept of the public interest mandating disclosure of information (often referred to as the public interest override), unlike the disclosure policies of the ADB,¹³⁴ EIB,¹³⁵ IDB,¹³⁶ World Bank¹³⁸ and EBRD,¹³⁹ which all allow for the exceptions to be overridden where this is in the public interest. Numerous

¹³⁴ According to paragraph 3.2 of the policy, the ADB reserves the right to override the policy exceptions if it determines that the public interest in disclosing the information outweighs the harm that may be caused by such disclosure. Note 4.

¹³⁵ Paragraph 5.7 of the policy states: “The exceptions under 5.5 and 5.6 shall apply unless there is an overriding public interest in disclosure. As regards the first, second and fourth bullet points of Article 5.5 with the exception of investigations, an overriding public interest in disclosure shall be deemed to exist where the information/document requested relates to emissions into the environment.” And paragraph 5.8 states: “The grounds for refusal, in particular as regards access to environmental information/documents should be interpreted in a restrictive way, taking into account the public interest served by disclosure and whether the information requested relates to emissions into the environment.” Note 6.

¹³⁶ Paragraph 8.1 of the policy states: “As described in Principle 2, the Bank may decide to provide access to certain specified types of information normally subject to one of the policy's exceptions, in extraordinary circumstances, -if it determines that the benefit to be derived from doing so would outweigh the potential harm that application of the policy might otherwise entail, and so long as the Bank is not legally or otherwise obligated to non disclosure and has not been provided information with the understanding that it will not be disclosed.” Note 7.

¹³⁸ Paragraph III.B.8(b)(i). Note 3.

¹³⁹ Paragraph E.3 of the policy states: “In exceptional circumstances, the Bank reserves the right to disclose confidential information protected by the confidentiality criteria set out above which it would ordinarily not release to third parties. The Bank may exercise this right if, in connection with a project in which the Bank has invested, the Bank's management determines that the disclosure of certain confidential information would be likely to avert imminent and serious harm to public health or safety, and/or imminent and significant adverse impacts on the environment. Any such disclosure by the Bank would be on the most restricted basis necessary to achieve the purpose of the disclosure, such as notice to the appropriate regulatory authorities.” Note 11.

national right to information laws go further and make it mandatory to disclose information where this is in the overall public interest.

There are a number of other general or systemic problems with the regime of exceptions in the Interim Policy, as follows:

- *General Override*: Footnote 1 of the Interim Policy states that nothing in the Interim Policy shall be deemed to override Article 47(2) of the Articles of Agreement. That Article provides: “The archives of the Bank, and, in general, all documents belonging to it, or held by it, shall be inviolable, wheresoever located and by whomsoever held.” This could be interpreted in many ways ranging from a blanket authorisation to refuse to disclose any and all information held by the AIIB, which would render the whole Interim Policy nugatory, to a requirement simply that confidential information not be disclosed.
- *Severability*: Paragraph 9 of the Interim Policy states that to avoid the disclosure of confidential information, documents “may be restricted or redacted accordingly”. This is useful but it is not a proper rule on severability, which would provide that, if only part of a document is sensitive, the rest of the document, to the extent that the sensitive part may reasonably be severed, shall be disclosed.¹⁴⁰
- *Definitions of Categories*: Most of the exceptions incorporate the term “includes” as part of the definition of the exception.¹⁴¹ Where this term is incorporated into the main description of the scope of the exception, it has the effect of creating open-ended exceptions which, by definition, may go beyond the description provided, which is highly problematical. For example, ‘deliberative information’ is defined as including certain types of documents, and so no outer limit of this category of information is provided. In other words, a wide range of information might be classified as “deliberative” and not subject to disclosure.¹⁴²
- *Declassification*: Better practice among IFIs, including the AfDB,¹⁴³ EIB,¹⁴⁴ IDB,¹⁴⁵ ADB¹⁴⁶ and World Bank, is to put in place overall time limits on secrecy

¹⁴⁰ See, for example, paragraph 95 of the ADB Policy, which states: “If a document (or part of it) subject to posting on the ADB website is not posted because the information contained in the document falls under an exception, ADB shall make reference to the document or the information removed therefrom, unless citing the document or the removed information would itself violate an exception. If part of the information contained in a document to be provided upon request falls under an exception, such information shall be removed from the document and the requester shall be informed of the reason of such removal. Note 4.

¹⁴¹ These include: 9A. Personal Information; 9B. Safety and Security; 9C. Privileged and Investigative Information; 9E. Deliberative Information; and 9F. Financial Information.

¹⁴² We note that, where the list which follows the term ‘includes’ or ‘including’ is intended as an elaboration of the general description – as in the case of third-party and proprietary information – this is not as problematical.

¹⁴³ Paragraphs 4.8.1 and 4.8.2 of the policy state: “In recognition of the fact that the sensitivity of information under the list of exceptions may change over time, Management of the Bank Group will also adopt a system for declassification to make most information that was once classified as Restricted available at a later date. Under the declassification system, Restricted information may be made public after 5 years, 10 years, 20 years or more depending on its sensitivity and harmful effect. Information subject to

or historical disclosure provisions, in recognition of the fact that the sensitivity of almost all types of information declines over time. Thus, paragraph III.B.6.b of the World Bank policy provides for declassification after five, ten or twenty years of much of the information covered by the regime of exceptions.¹⁴⁷

- *Notice*: Paragraph 11 of the Interim Policy provides that where information cannot be made available, “the requester will be provided with an explanation”. This is useful but better practice (ADB,¹⁴⁸ AfDB¹⁴⁹, EBRD,¹⁵⁰ EIB¹⁵¹ and IDB¹⁵²) is to indicate that, in cases of refusal, the requester should be provided with reasons and notice of their right to lodge an appeal against the refusal. ADB¹⁵³ demonstrates

declassification will be defined in the Information Disclosure Handbook. Some Restricted information will not be declassified.” Note 5.

¹⁴⁴ Paragraph 5.14 of the policy states: “The exceptions will only apply for the period during which protection is justified on the basis of the content of the document. The exceptions may apply for a maximum period of 30 years. After 30 years, a document becomes subject to review for public archiving. In the case of documents covered by the exceptions relating to the protection of personal data or commercial interests of a natural or legal person including intellectual property, the exceptions may, if necessary, continue to apply after this period. In general, information shall only be held by the Bank until the end of the retention requirements has been reached.” Note 6.

¹⁴⁵ Paragraphs 7.1 and 7.2 of the policy state: “The Bank recognizes that the classification of information as non-public under the exceptions listed in Section 4 of this policy may change over time, thus the implementation of this policy will also include a system for declassification to be developed by Management and disclosed prior to the policy’s effective date. The classification level assigned to information/documents will determine the schedule for disclosure, including the declassification of records under a three-tier timeline after five, ten or 20 years. Information classified under the strictest confidentiality standard of the classification system will not be disclosed even after 20 years.” Note 7.

¹⁴⁶ Paragraph 98 of the policy provides for historical disclosure after 20 years. Note 4.

¹⁴⁷ Note 3.

¹⁴⁸ Paragraph 134 of the policy provides: “In its response, ADB shall either provide the requested information or the reasons why the request has been denied, indicating the particular provision(s) in the policy that justifies the refusal. In case ADB denies requested information, it shall inform the requester of the right to appeal in accordance with paras. 136–141 of the policy.” Note 4.

¹⁴⁹ Paragraph 3.1.2 of the policy provides: “If staff determines the requested information is confidential (and not yet subject to declassification), or strictly confidential and therefore cannot be released under the DAI policy, they must send a denial response based on the applicable policy exception. If applicable, they will also indicate when the information will be eligible for declassification.” Note 5.

¹⁵⁰ Paragraph 2(vi) of the policy provides: “The Bank’s response shall either provide the requested information or a denial of the request in whole or in part. In the case of a denial, the reasons for the decision will be given.” Note 11.

¹⁵¹ Paragraph 5.25 of the policy provides: “If, for reasons of confidentiality, the Bank is unable to divulge the information requested, in full or partially, the reason(s) why such information cannot be provided shall be stated and the applicant will be informed of the right to make a voluntary confirmatory application or lodge a complaint.” Note 6.

¹⁵² Paragraph 8.7 of the policy provides: “Upon receipt of a request for Information that is classified as “Confidential,” or “Disclosed over Time” where Information is not eligible for Declassification, PIC will inform the requester that the Information is not subject to Disclosure under the Policy, providing an explanation to the requester.” Note 7.

¹⁵³ Paragraph 134 of the policy provides: “In its response, ADB shall either provide the requested information or the reasons why the request has been denied, indicating the particular provision(s) in the policy that justifies the refusal. In case ADB denies requested information, it shall inform the requester of the right to appeal in accordance with paras. 136–141 of the policy.” Paragraph 74 also states: “In its response, the department concerned or the InfoUnit, as the case may be, will either provide the requested information or the reasons why the request has been denied, indicating the particular provision(s) in the

even better practice by providing the requester with an indication of the particular rule in the policy that justifies the refusal.

Recommendations:

- As a general matter, all of the exceptions should be reviewed to ensure that they identify interests which need to be protected, rather than categories of information, and that they apply only where disclosure of the information would pose a risk of harm to that interest.
- The policy should incorporate a broad and mandatory public interest override so that information would need to be disclosed whenever the public interest in disclosure outweighed the harm to the protected interest that would cause.
- The policy should clarify what the implications of Article 47(2) of the Articles of Agreement are in terms of the disclosure of information and this should be based on a narrow interpretation of the meaning of Article 47(2).
- The policy should include a proper severability rule.
- The term “includes” should be replaced by a closed term such as “means” or “is” in those cases where it forms part of the main definition of an exception.
- The policy should incorporate a rule on declassification so different categories that information get declassified after a certain period of time.
- The policy should require the AIIB to provide proper notice to requesters when their requests are refused.

Specific Exceptions

Below, we analyse the different exceptions individually to identify areas for improvement to align with international standards and better practice among IFIs.

A. Personal Information

It is legitimate, indeed necessary, to protect individuals’ privacy. However, the Interim Policy’s use of the term ‘personal information’ in paragraph 9A is problematic both because it is normally understood to include all information from which an individual may be identified (personally identifying information), much of which has no privacy value, and because it defines a category of information rather than an interest.¹⁵⁴ It is, as noted above, also problematic to define this interest only by reference to an open-ended list of examples (“includes”), although at least in this case the term “personal information” and even more so “privacy” do benefit from strong external definitions.

policy that justifies the refusal, and, as applicable, the harm that could be caused by disclosing the information.” Note 4.

¹⁵⁴ In contrast, paragraph 5.4 of the EIB policy states: “Notably, access shall be refused where disclosure would undermine the protection of: b. privacy and the integrity of the individual, in particular in accordance with EU legislation regarding the protection of personal data.” Note 6.

There are also serious problems with the list of examples of personal information provided in this clause. While medical information is almost always private, the same is not true of staff appointment and selection processes which include, for example, eligibility criteria and the nature of the selection process, which should always be public. Elements of staff records, internal conflict resolution mechanisms, and internal investigations of misconduct and conflict interest should also be public, whereas the way the exception is currently drafted it appears to place all of this out of bounds. Other IFIs that restrict disclosure of “personal information” also include important caveats. For example, IDB allows for disclosure of “personal information which can be disclosed in accordance with Bank Staff Rules,”¹⁵⁵ and both IDB¹⁵⁶ and EBRD¹⁵⁷ allow disclosure of information concerning investigations and allegation of staff misconduct by disclosing decisions of the their administrative tribunals.

B. Safety and Security

This exception refers to an interest, and includes a harm test and so is in many ways an ideal exception. However, the use of the term “includes” suggests that information beyond what is described in the exception may also be covered.

C. Privileged and investigative information

It is common to exempt legally privileged information from disclosure. However, as it is currently worded, the exception for privileged and investigative information appears to cover all communications with the General Counsel, internal Bank counsel and external legal advisors, which goes far beyond the scope of legitimate legal privilege. In the context of public authorities like the AIIB, it is important to limit this exception to information which properly falls within the scope of legal privilege. For private individuals, legal privilege normally covers all communications with their lawyers. But public authorities may obtain views from their lawyers on a wide range of policy and other non-litigation related matters, much as they might from any other expert. The scope of the exception should, therefore, be limited to “attorney-client privilege”, “matters in legal dispute or under negotiation” or information the disclosure of which would expose the AIIB to “undue litigation risk”, as provided for in some IFI disclosure policies.¹⁵⁸

This exception also covers information “relating to internal investigations as well as the independent accountability function and the evaluation function”. As with other

¹⁵⁵ Note 7, Annex I(A).

¹⁵⁶ Note 7, Annex I(A).

¹⁵⁷ Note 11, paragraphs E.1.9 and D.1.7.

¹⁵⁸ Paragraph 97 of the ADB policy, note 4, includes as an exception: “Any information subject to the attorney–client privilege (including communications to or from ADB counsel or its external legal advisors)”. Paragraph 3.3.1.C(i) of the AfDB policy, note 5, provides: “The Bank Group will not provide access to information subject to attorney-client privilege, including, among other things, communications provided and/or received by the General Counsel, the Bank Group’s legal counsel, and other legal advisors.” Paragraph 5.5 of the EIB policy, note 6, states: “Access to information/documents shall also be refused where disclosure would undermine the protection of: ... court proceedings and legal advice”. And paragraph E.1.3 of the EBRD policy, note 11, states: “Privileged information such as legal advice and correspondence with legal advisers or any information the disclosure of which might prejudice an investigation or any legal or regulatory proceedings, or subject the Bank to an undue risk in any contested matter, eg litigation or arbitration”.

exceptions, this fails to define an interest, such as the integrity or success of an investigation, and instead defines a category of information. As a result, it also lacks a harm test. As such, it would cover much information that was not remotely sensitive or the disclosure of which would pose no risk to an investigation.¹⁵⁹ It is clear, for example, that the reports of the independent accountability function following an investigation need to be made public.

D. Third-party information and proprietary information

Paragraph 9D of the Interim Policy states that the Bank will not disclose information provided by any third party “on the understanding of confidentiality” unless that third party consents in writing to the disclosure. This fails to identify an interest and to protect that interest against harm. Instead, it effectively gives third parties a veto over the disclosure of information, regardless of its actual sensitivity.

It is accepted that information disclosure rules need to provide protection to the legitimate interests of third parties, which are essentially privacy, in limited cases legally privileged information and legitimate commercial interests. Since privacy and legal privilege are the subject of other exceptions (discussed above), that leaves commercial interests for this exception. This should be applied in an objective manner, namely when disclosure of the information would directly (i.e. as a direct result of the disclosure) harm the competitive or negotiating position of the third party. The views of the third party as to any risk of harm are relevant, inasmuch as they may help the AIIB assess whether such a risk does in fact exist, but they should never be determinative or constitute a veto.

It is recognised that public authorities like the AIIB have a legitimate interest in maintaining good relations with States and other intergovernmental organisations (IGOs), and that disclosure may be refused where the release of the information would cause harm to those relationships. This is a substantially stricter test than simply having a confidentiality stamp on a document, since there is a tendency among many States and IGOs to vastly over-classify even non-sensitive information, the release of which would in no way harm relations with the originating body.

Limiting confidentiality in these ways is standard in national laws and it has not caused problems for the public bodies to which it applies or for either the entities with which

¹⁵⁹ In contrast, paragraph 5.5 of the EIB policy, note 6, states: “Access to information/documents shall also be refused where disclosure would undermine the protection of: the purpose of inspections, investigations and audits. Disclosure of information and documents collected and generated during inspections, investigations and audits shall be presumed to undermine the protection of the purpose of the inspections, investigations and audits even after these have been closed, or the relevant act has become definitive and the follow-up action has been taken. Without prejudice to the above, the Bank may disclose a summary of investigations that have been closed, notably taking into account and in compliance with the principles and rules provided for in (i) European Union data protection legislation and European Data Protection Supervisor opinions and (ii) European Union legislation concerning investigations conducted by the European Anti-Fraud Office (OLAF) and EIB Anti-Fraud Policy.” And paragraph E.1.3 of the EBRD policy, note 11, covers: “any information the disclosure of which might prejudice an investigation or any legal or regulatory proceedings”.

they do business or other States and IGOs. It is also the practice of a number of IFIs.¹⁶⁰ If these sorts of standards were built into the AIIB's disclosure policy, it would simply put third parties on notice that doing business with the AIIB – an international public entity committed to best governance practices – entails certain minimum transparency obligations.

Paragraph 9D also provides a blanket exception for “communications among Governors and Directors”. Once again, this fails to identify any interest and does not include a harm test. To provide for the confidentiality of communications only where disclosure of the information would inhibit the free and frank exchange of information between Governors and Directors would be a far more tailored and appropriate approach.

E. Deliberative Information

Part of paragraph 9E of the Interim Policy states: “Deliberative information includes all documents that, if disclosed, would or would be likely to compromise the integrity of the Bank's own deliberative and decision-making processes....” This defines an interest – the “integrity of the Bank's own deliberative and decision-making processes” – and then protects it against harm, which is an ideal way to approach exceptions. The rest of the exception, however, is highly problematic. It effectively gives Bank staff and the Board broad discretion to determine the scope of deliberative information, which is defined as including information which is “*intended for internal purposes only, or classified as confidential, and Board documents not authorized for release.*” [emphasis added] This provision in particular is inconsistent with the practice of other IFIs, which do not have such references in their policies. Since anything the Bank produces could be classified as confidential, this effectively renders the whole disclosure policy subject to the discretion of Bank staff. The exception also contains a vastly overbroad list of types of information, including “internal documents and communications”, whatever that might mean, “communications with member countries or other co-financiers, drafts of reports and agreements, and emails”.

¹⁶⁰ Paragraph 97 of the ADB policy, note 4, also follows this approach, covering: “(iv) Information provided to ADB in confidence by a member or international organization and that, if disclosed, would or would be likely to materially prejudice ADB's relations with that party or any other member. (v) Information (including proprietary information) provided to ADB by a party and that, if disclosed, would or would be likely to materially prejudice the commercial interests, financial interests, and/ or competitive position of such party or another party that was the source of the information, or any confidential business information (information covered by a confidentiality agreement or nondisclosure agreement that ADB has entered into with clients and/or other related parties). The EIB also largely follows this approach in its policy, note 6, which provides, at various paragraphs: “5.4 Notably, access shall be refused where disclosure would undermine the protection of: a. the public interest, as regards: o international relations o the financial, monetary or economic policy of the EU, its institutions and bodies or a Member State. 5.5 Access to information/documents shall also be refused where disclosure would undermine the protection of: ...commercial interests of a natural or legal person. 5.9 As regards third-party documents (including EU Member States and EU institutions and bodies), the Bank shall consult with the third party whether the information in the document is confidential according to this Policy unless it is clear that the document shall or shall not be disclosed. 5.10 A Member State may request the Bank not to disclose a document originating from a Member State without its prior agreement, setting out the reasons for its objection by reference to the exceptions referred to in the present Policy.”

Public authorities need to protect what is sometimes referred to as their ‘space to think’ and this need is reflected in ‘deliberative’ or ‘internal’ information exceptions in access to information laws and policies around the world. However, if cast too broadly, such exceptions can seriously undermine the right of access. Better practice is to identify relevant interests – such as the free and frank provision of advice, the process of developing policies or the likely success of policies – and then to tailor exceptions to protect these interests against harm. The policies of the EIB¹⁶¹ and ADB¹⁶² represent better practice in this area.

F. Financial Information

As with other exceptions, although some of the information covered by this exception should be kept confidential, this exception is worded far too broadly. For example, the term “data on the Bank’s financial transactions” could be subject to an enormous range of interpretations, as could the term “information used to execute financial and budgetary transactions”, which would formally include all loan agreements and contracts.

As with all exceptions, better practice here is to define an interest which needs to be protected. Given that private information is already protected (which, for example, would cover the banking information of third parties), as are the commercial interests of third parties (which would cover a lot of what is presumably meant to be included here), the main interests to protect here would be the Bank’s own legitimate commercial interests and perhaps precluding a risk of others obtaining undue financial or other advantages through ‘early’ disclosure. Once again, the policies of the EIB¹⁶³ and ADB¹⁶⁴ represent better practice in this area.

¹⁶¹ Paragraph 5.6 of the EIB’s policy states: “Access to information/documents, drawn up by the Bank for internal use or received by the Bank, which relates to a matter where the decision has not been taken by the relevant organ of the Bank, shall be refused if disclosure of the document/information would seriously undermine the Bank’s decision-making process. Access to information/documents containing opinions for internal use as part of deliberations and preliminary consultations within the Bank or with Member States/other stakeholders shall be refused even after the decision has been taken if disclosure of the information/document would seriously undermine the Bank’s decision-making process.” Note 6.

¹⁶² Paragraph 97 of the ADB policy states: “Deliberative and Decision-Making Process (i) Internal information that, if disclosed, would or would be likely to compromise the integrity of ADB’s deliberative and decision-making process by inhibiting the candid exchange of ideas and communications, including internal documents, memoranda, and other similar communications to or from governors and their alternates, Board members, directors’ advisors, members of Management, ADB staff, and ADB consultants. (ii) Information exchanged, prepared for, or derived from the deliberative and decision-making process between ADB and its members and other entities with which ADB cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ADB and its members and other entities with which ADB cooperates by inhibiting the candid exchange of ideas and communications, particularly with respect to policy dialogue with DMCs. (iii) Proceedings of the Board of Directors, with the exception of verbatim transcripts (as provided in para. 84), minutes of Board meetings (para. 85), and chair’s summaries of certain Board meetings (paras. 40 and 74). Note 4.

¹⁶³ Paragraph 5.12 of the EIB’s policy states: “5.12 The Bank discloses certain aggregate information on investor activity. Confidential information, in line with exceptions laid down in this Policy, relating to individual investors or banks will not be disclosed. The Bank will, however, seek to encourage transparency regarding its securities issues wherever possible. 5.13 Exceptions also cover information on individual allocations made by local banks to support investment by their own customers under credit lines established with the EIB. This information falls within the competence of the intermediary bank as part of

G. Violation of National Laws or Other Applicable Regulations

Better practice at the national level is for the right to information law to override other laws to the extent of any inconsistency. As long as the right to information law provides protection to all secrecy interests, this does not cause any problems. However, this is one area where the situation of IFIs is different, because they do need to operate in compliance with relevant national laws. As a result, even though this exception does not technically protect a defined interest, it is legitimate.

H. Corporate Administration

It is not entirely clear what is intended by this exception, which is not found in the disclosure policies of ADB, EBRD or EIB. As described, corporate administrative matters would appear to cover a potentially vast range of essentially harmless information, especially taking into account the fact that other exceptions protect much of what would be sensitive here. The specific examples provided do not suggest that this exception would be interpreted narrowly. There is no reason, for example, to place “corporate expenses” off limits (beyond what might fall into the scope of privacy and legitimate commercial confidences) and the strong trend globally is to impose ever greater openness in relation to such expenses. Even the policies of AfDB¹⁶⁵ and IDB¹⁶⁶ – the two IFIs that have an exception for “administrative information” – allow for disclosure of such information in programme and budget documents.

“Procurement” is another potentially vast area which would not appear to need protection beyond what is already afforded by other exceptions. Undue secrecy in this area could also exacerbate the risk of corruption in Bank dealings. The AfDB discloses this tender information after the bid has been completed.¹⁶⁷

the normal business relationship between the respective bank and its customers. However, the EIB encourages the intermediary bank to make information covering its relationship with the EIB available.”

Note 6.

¹⁶⁴ Paragraph 97 of the ADB policy states: “(viii) Financial information that, if disclosed, would or would be likely to prejudice the legitimate financial or commercial interests of ADB and its activities, or financial information to which capital and financial markets may be sensitive. This may include estimates of ADB’s future borrowings, financial forecasts, data on individual investment decisions for ADB’s treasury operations, credit assessments, analyses of creditworthiness, credit ratings, and risk assessments of its borrowers and other clients. (ix) Financial information that, if disclosed, would or would be likely to prejudice the ability of a member to manage its economy. (xii) (a) Internal audit reports of ADB’s Office of the Auditor General, as such reports may contain sensitive information about internal systems, which could be exploited by third parties to the detriment of ADB; and (b) certain audit reports of ADB’s external auditors on ADB-administered trust funds, where the public disclosure of these reports would violate the applicable auditing standards. Note 4.

¹⁶⁵ Paragraph E(j) of the AfDB policy provides: “The Bank Group will not provide access to information relating to the Bank Group’s corporate administrative matters, including, but not limited to, corporate expenses and real estate, except as contained in the Bank Group’s Program and Budget Document.” Note 5.

¹⁶⁶ Annex I(F) of the IDB policy provides for an exception for: “Corporate administrative information: The Bank will not disclose information related to corporate expenses, including real estate and other activities, except as contained in the annual program and budget document.” Note 7.

¹⁶⁷ Paragraph E.2 of the AfDB policy provides: “(ii) The process of bid evaluation shall be confidential until the publication of contract award, in accordance with the Bank Group’s Rules and Procedures for the

Recommendations:

- Exception 9A, in favour of personal information, should be redefined to protect privacy, the term ‘includes’ should be removed, and the list of examples should either be removed or substantially narrowed down.
- The term ‘includes’ should be removed from exception 9B, in favour of safety and security.
- Exception 9C, in favour of privileged and investigative information, should, in its first part, apply only to legally privileged information and the term ‘includes’ should be removed. In its second part, the exception should identify an interest in need of protection against harm, such as the integrity of investigations, rather than a category of information and, once again, the term ‘includes’ should be removed.
- Exception 9D, in favour of third-party information and proprietary information, should be amended in various ways. The part relating to private third parties should not provide for a third party veto but, instead, only protect the legitimate commercial interests of third parties. The part relating to States and IGOs should be triggered only where release of the information would damage the Bank’s relationship with those actors. Finally, the part relating to communications should identify an interest – such as free and frank discussions – and then protect that interest against harm.
- Exception 9E, in favour of deliberative information, should identify interests which need protection – such as the free and frank provision of advice and the development of policy – and be limited to protecting those interests against harm while, once again, the term ‘includes’ should be removed.
- Exception 9F, in favour of financial information, should, as with other exceptions, identify an interest which needs protecting and then protect that interest against harm, while the term ‘includes’ should be removed.
- Exception 9H, in favour of corporate administration, should either be removed entirely or be limited to the protection of a legitimate interest against harm.

D. Implementation

Processing Requests

The Interim Policy only addresses matters relating to the processing of requests very briefly. It indicates that requests should be submitted to the Director General, Communications and Development, and that they may be submitted via the website or by mail or fax. Email is not mentioned as a means of filing requests and no address or contact details are provided in the Interim Policy for mailing or faxing requests for

information. ADB,¹⁶⁸ AfDB,¹⁶⁹ EBRD¹⁷⁰ and IDB¹⁷¹ provide email addresses, online forms, fax numbers and mailing addresses for submitting information requests. EIB provides an email address and also states that requests can be submitted to any EIB address.¹⁷²

No other rules on the processing of requests are set out in the Interim Policy. As noted above, paragraph 11 of the Interim Policy states that Guidelines will be adopted on the processing of requests, “including time limits”. These rules should be prepared and published, be binding on the AIIB and its staff, and at least include the following:

- Presumptive maximum processing time for requests: ADB,¹⁷³ AfDB,¹⁷⁴ EBRD,¹⁷⁵ EIB¹⁷⁶ and World Bank,¹⁷⁷ have established twenty working days or less as the presumptive maximum processing time for requests, while IDB has established a presumptive time frame of thirty days for responding to requests.¹⁷⁸ These are also common limits at the national level. It is common practice to allow for these limits to be extended in particularly complex cases (for example where retrieval of the information requires searching through a large number of records or where extensive consultation with other parties is required),¹⁷⁹ but better practice (EBRD,¹⁸⁰ EIB¹⁸¹) is to establish an overall time limit, for example of another twenty working days, for such extensions. Better practice (EBRD,¹⁸² EIB¹⁸³) is also to require the Bank to notify the

¹⁶⁸ Paragraph 131 of the ADB policy. Note 4.

¹⁶⁹ Paragraph III.3.1 of the AfDB policy. Note 5.

¹⁷⁰ Paragraph 2(i) of the Annex to the EBRD policy. Note 11.

¹⁷¹ Paragraph 8.2 of the IDB policy. Note 7.

¹⁷² Paragraph 5.16 of the EIB policy. Paragraph 2(i) of the Annex to the EBRD policy. Note 11.

¹⁷³ Paragraph 134 of the ADB policy. Note 4.

¹⁷⁴ Paragraph 4.4.1 of the AfDB policy. Note 5.

¹⁷⁵ Paragraph 2(vi) of the Annex to the EBRD policy. Note 11.

¹⁷⁶ Paragraph 5.22 of the policy states: “Requests are normally processed by the EIB’s Infodesk and are replied to without delay, and in any event no later than 15 working days following receipt. Note 6.

¹⁷⁷ The World Bank, for example, commits to providing information within 20 working days (see paragraph III.C.1 of note 26.

¹⁷⁸ Paragraph 8.4 of the policy states: “EXR’s Public Information Center (PIC) is responsible for receiving, acknowledging and providing responses to requests within thirty (30) calendar days. Requests for Historical Information will be responded to within 45 calendar days.” Note 7.

¹⁷⁹ Paragraph 74 of the ADB policy, note 4, provides: This period may be extended in the case of a request for historical information, if the information requested is difficult to retrieve.” Paragraph 4.4.1 of the AfDB policy provides: “However, more time may be needed in some special circumstances and in cases of complex requests, or requests requiring review by or consultations with internal Bank Group departments, units, stakeholders, the Information Disclosure Committee, or the Board. Note 5.

¹⁸⁰ Paragraph 2(vi) of the Annex to the EBRD policy, note 11, provides: “The Bank will normally respond within 20 working days after receiving the request or clarification or, if a timely explanation for a further delay is provided (within 10 working days following receipt), no later than 40 working days.”

¹⁸¹ Paragraph 5.23 of the policy states: “In exceptional cases, for example in the event of an application relating to a very long document or when the information is not readily available and complex to collate, the time-limit may be extended and the correspondent shall be informed accordingly no later than 15 working days following receipt.” Note 6.

¹⁸² Paragraph 2(vi) of Annex to the policy states: “ The Bank will normally respond within 20 working days after receiving the request or clarification or, if a timely explanation for a further delay is provided (within 10 working days following receipt), no later than 40 working days.” Note 11.

requester if additional time is needed, with such notice indicating the new time limit and the reasons for it. Finally, better practice (ADB,¹⁸⁴ EIB¹⁸⁵) is to include a commitment to process requests as soon as possible, rather than simply within the maximum time limit. In many cases, requests can be processed within days, and there is no need to wait until the end of the time limit to answer such requests.

- Content of requests: A request should only need to contain a description of the information sought and an address for delivery of that information. The rules should make it clear that requesters should never be asked for the reasons for their requests or even to identify themselves personally.¹⁸⁶
- Language of requests: The Bank should commit to receiving requests in languages other than English, given that many people living in the region of operations of the Bank do not speak English. ADB,¹⁸⁷ AfDB,¹⁸⁸ EBRD¹⁸⁹ and EIB¹⁹⁰ all accept requests in languages other than English. Ideally, like the ADB and EBRD,¹⁹¹ the Bank should make a commitment to receive requests in the national languages of requesters living in Asian countries. At a minimum, the Bank should commit to receiving requests in the national languages of requesters living in Asian countries subject to resource and capacity constraints.
- Assistance for requesters: The AIIB should provide reasonable assistance to requesters who need such assistance for whatever reason, for example because they are having difficulty describing the information they are seeking

¹⁸³ Paragraph 5.23 of the policy states: “In exceptional cases, for example in the event of an application relating to a very long document or when the information is not readily available and complex to collate, the time-limit may be extended and the correspondent shall be informed accordingly no later than 15 working days following receipt.” Note 6.

¹⁸⁴ According to paragraph 134 of the policy, the ADB shall notify the requester as soon as a decision has been made, and, in any event, no later than 20 working days after receiving the request. Note 4.

¹⁸⁵ Paragraph 5.22 of the policy states: “Requests are normally processed by the EIB’s Infodesk and are replied to without delay.” Note 6.

¹⁸⁶ For example, paragraph 4.4.2 of the AfDB policy states: “Bank Group staff shall not inquire into the identity or intent of a person requesting access to a Bank Group document, unless such an inquiry is necessary to allow the Bank Group to judge whether there is any obstacle as per the list of exceptions to release of the document.” Note 5.

¹⁸⁷ Paragraph 135 of the policy states: “Requests may be submitted to ADB in English or in any of the official or national languages of ADB members.” Note 4.

¹⁸⁸ Paragraph 3.1 of the procedure states: “Requests should be submitted to AfDB in English or French. However the Bank has the discretion to accept requests made in another official language of a regional member country.” Note 5.

¹⁸⁹ Paragraph 2(iii) of the Annex to the policy states: “Requests should preferably be submitted to the Bank in one of the Bank’s four working languages – English, Russian, German or French– in which case the response will be in the language of the request. Alternatively, requests for information covered by the PIP may be submitted in any of the official national languages of the Bank’s countries of operations. In such cases, requests will, in the first instance, be referred to the relevant Resident Office for the purpose of translation and the time required to obtain such translation will be taken into account when processing the request.” Note 11.

¹⁹⁰ Paragraph 5.27 of the policy states: “Members of the public writing to the Bank in one of the official languages of the EU shall receive a reply in the same language.” Note 6.

¹⁹¹ See, respectively, notes 187 and 189.

sufficiently clearly, or they face challenges producing a request in English or in written form, including because of a disability.

- Bank's response to requests:
 - Requesters should be provided with a receipt acknowledging their requests within a set time limit of five working days, as is the case with AfDB,¹⁹² ADB,¹⁹³ and World Bank,¹⁹⁴ as well as the EBRD's general practice.¹⁹⁵ This provides evidence that the request was made and also provides a yardstick against which time limits can be measured.
 - Information should be provided in any language in which it is available (i.e. the AIIB would not be required to engage in translation to answer a request). However, the Bank should go further and make a commitment to translate some key documents into other languages, given the Bank's recognition, in Principle 2 of the Interim Policy, of "the importance of public information and communication with other stakeholders that are affected by or interested in the Bank."
 - Information should normally be provided in the form preferred by the requester (such as a physical or electronic copy), where such a preference has been expressed, unless this would harm the record containing the information (see EBRD¹⁹⁶ and EIB¹⁹⁷).
- Fees: It should be free for requesters to make requests and at least a certain amount of information, say 50 pages, should also be provided for free. While the possibility of levying a charge for larger requests could be envisaged, such a charge should be limited to the reasonable (i.e. competitive) costs of photocopying and sending information, as is the case with the EIB.¹⁹⁸ Even in this case, fee waivers should be available in cases of need (see paragraph III.C.4 of the World Bank Information Procedure).

Recommendations:

- The policy should make it clear that requests may be made by email, as well as via the website, and the modalities for making requests should be clarified directly in the policy (i.e. this should specify the URL for making requests via the website)

¹⁹² Paragraph 4.4.1 of the policy states: "The Bank Group will acknowledge receipt of written requests for information within 5 working days," Note 5.

¹⁹³ Paragraph 134 of the policy states: "ADB shall acknowledge receipt of a request within 5 working days of receiving the request." Note 4.

¹⁹⁴ See paragraph III.C.1 of the World Bank Information Procedure, note 177.

¹⁹⁵ Paragraph 2(iv) of the Annex to the policy states: "The Bank will acknowledge receipt of a request and other correspondence covered by the PIP generally within 5 working days, but in any case not more than 10 working days." Note 11.

¹⁹⁶ Paragraph 2(ii) of the Annex to the policy states: "Mode of Communication: Responses will be transmitted in the same mode as the request unless the requester stipulates a different form of communication." Note 11.

¹⁹⁷ Paragraph 5.26 of the EIB policy provides: "Information shall be supplied in an existing version and format, or, if feasible, in a format according to the specific needs of the requester." Note 6.

¹⁹⁸ Paragraph 5.28 of the EIB policy provides: Only the costs of producing and sending copies may be charged to the applicant. The charge shall not exceed the real costs of producing and sending the copies. Note 6.

and the relevant contact details for the other means of making requests).

- Binding guidelines for requests should be adopted and published that set out timelines for processing requests; minimum standards for the content of requests; languages in which requests can be submitted; assistance for requesters; standards for the Bank to respond to requests; and fees for responding to information requests, in line with the above.

Appeals

Paragraph 11 of the Interim Policy provides that a requester who believes that a request has “been unreasonably denied” may lodge an appeal with the Corporate Secretary who, in turn, is tasked with making “appropriate arrangements for impartial review of the appeal by a designated review officer”. The recommendations of the review officer will be reviewed by the Corporate Secretary, in consultation with the General Counsel and senior management, and the Corporate Secretary will then make a final decision on the matter.

Although it is appropriate for the AIIB to have an internal review system along these lines which gives the Bank the opportunity to reconsider its initial refusal to provide information, the Interim Policy does not establish an independent review mechanism. This is a serious failing of the Interim Policy as compared to other IFIs, which have moved forward in important ways in this area in recent years. ADB,¹⁹⁹ AfDB,²⁰⁰ IDB²⁰¹ and World Bank²⁰² establish a two-tier system of appeals, first to a more senior internal body and then to an independent external body, so as to ensure that requesters can obtain an objective and impartial review of their complaints. Thus, the World Bank has the Access to Information Committee, an internal body which advises management on access to information issues, and the Access to Information Appeals Board, an external body comprised of independent experts.²⁰³

¹⁹⁹ ADB has an internal public disclosure advisory committee and independent appeals panel. Paragraph 128 of the policy provides: “The IAP will comprise three external experts on access to information matters. The IAP members will be engaged to work on an intermittent basis and only when called upon to consider an appeal of a decision made by the PDAC.” Note 4.

²⁰⁰ AfDB has an internal Information Disclosure Committee (which represents management) and an Appeals Panel “comprise[d] of three Members, with at least two being external from the Bank. Members of the Appeals Panel will be appointed by the President of the Bank Group, in consultation with the Board.”

²⁰¹ Paragraph 9.1 of the policy provides: “This policy creates a two-stage review mechanism for requesters who are denied access to information in the form of a) an interdepartmental Access to Information Committee and b) in the event that the interdepartmental Committee were to deny the request, a three-member external panel.” Note 7.

²⁰² The World Bank has the Access to Information Committee, an internal body which advises management on access to information issues, and the Access to Information Appeals Board, an external body comprised of independent experts.

²⁰³ See paragraph III.B.8.b of the policy, note 3.

The Interim Policy limits the right of appeal to cases where a requester has been denied access to information. Better practice Better practice (EIB,²⁰⁴ ADB²⁰⁵) is to provide for an appeal whenever a requester feels that his or her request has not been dealt with in accordance with any of the rules set out in the policy regarding the processing of requests, rather than just when a request has been refused. As it stands currently, the Interim Policy does not allow for appeals when a requester did not receive any response to their request (which is technically not a denial of the request) or when time limits or fee maximums were exceeded.

Finally, the Bank should set out at least a basic procedural framework for the processing of appeals. This should include the time limits for processing appeals (ADB,²⁰⁶ AfDB,²⁰⁷ EBRD²⁰⁸) and the obligation on the appellate body to provide reasons for its decisions (ADB²⁰⁹, EBRD²¹⁰).

Recommendations:

- The policy should establish an independent body before which requesters may lodge appeals.
- Requesters should be able to lodge an appeal for any breach of the policy relating to the processing of requests rather than just cases of where access to information was denied.
- At least a basic framework of rules regarding the processing of appeals should be

²⁰⁴ Paragraph 6.2 of the policy provides: “Any natural or legal person affected, or feeling affected, by a decision and/or action of the EIB, which includes failure to deliver according to its Transparency Policy, may lodge a complaint with the EIB's Secretary General.” Note 6.

²⁰⁵ Paragraph 9.1 of the policy provides: “The IAP will consider appeals alleging that ADB violated the policy by restricting access to information that it would normally disclose under the policy.” Note 4.

²⁰⁶ Paragraphs 138-139 of the policy provide: “The PDAC shall notify the requester of ADB’s decision in writing, giving the reasons, as soon as a decision has been made and, in any event, no later than 20 working days after receiving the appeal, unless the Board has made a decision under para. 99. In such case, the requester shall be notified upon the Board’s decision. 139. If the PDAC upholds the initial decision to deny a request for information, the requester may file an appeal to the IAP. ... The IAP will be required to consider all appeals no later than 45 calendar days after receiving the appeal.” Note 4.

²⁰⁷ Paragraph 4.5.5 of the policy provides: “The decision on appeals will be provided within 40 working days of receiving an appeal unless delays and pertaining reasons are communicated in writing to the requester before the expiry of the 40 day period.” Note 5.

²⁰⁸ Paragraph 3(v) of the Annex to the policy provides: “The Secretary General will notify the appellant in writing of his or her decision on the appeal, giving the reasons, no later than 20 working days after receiving the appeal or clarification.” Note 11.

²⁰⁹ Paragraph 141 of the policy provides: “Requesters shall be notified if the appeal is dismissed (i) for a failure to file within the required time, (ii) for a failure to provide sufficient information that would reasonably support the appeal, or (iii) because the PDAC or the IAP does not have authority to consider the matter being appealed. If ADB or the IAP upholds the prior decision to deny access to the information requested, ADB shall notify the requester of the decision and specify the reasons. If ADB or the IAP reverses the prior decision to deny access, ADB shall notify the requester of the decision and provide the requested information.” Note 4.

²¹⁰ Paragraph 3(v) of the Annex to the policy provides: “The Secretary General will notify the appellant in writing of his or her decision on the appeal, giving the reasons, no later than 20 working days after receiving the appeal or clarification.” Note 11.

included in the policy.

Policy Implementation

- Beyond the theoretical rules relating to implementation, we note that practical barriers exist to making requests. As of December 2016, no guidelines on processing requests had been published. Bank Information Center and other members of civil society have reported that they have submitted requests to the Bank and yet have received no response. These problems cannot be remedied merely through improving the policy.

Recommendations:

- The Bank should put in place practical systems for receiving and processing requests, and should make sure that this happens in accordance with the rules.

E. Public Information Policy Review

Paragraph 12 of the Interim Policy states that Bank management “will provide a review of the implementation of this Interim Policy to the Board of Directors annually” and the Interim Policy “will be updated regularly and posted on the Bank’s website.” It also states that the Board of Directors will adopt “a comprehensive Policy on Public Information ... in the future, in light of the Bank’s early experience.”

- The Interim Policy does not commit to disclose management’s review of the implementation of the Interim Policy. In contrast, the ADB,²¹¹ EBRD²¹² and EIB²¹³ all commit to disclose annual reports on implementation of their respective access to information policies. As a matter of practice, the World Bank also discloses an annual report on the implementation of its access to information policy.²¹⁴

²¹¹ Paragraph 142 of the ADB policy states: “ADB will monitor the implementation of the policy and evaluate its impact. ADB will post on its website an annual report showing the monitoring results.” Appendix 4 describes the results framework for the policy. Note 4.

²¹² Paragraph F.4 of the policy states: “The Secretary General will report to the Board on implementation of the Policy on an annual (calendar year) basis and the Report will be publicly released and posted on the Bank’s website.” Note 11.

²¹³ Paragraph 9.4 of the policy states: “The Bank shall publish annually a report for the preceding year on the implementation of this Policy.” Note 6.

²¹⁴ The 2015 annual report, *The World Bank Annual Report and Five Year Retrospective: Moving Forward on Transparency and Accountability*, is available at: <http://documents.worldbank.org/curated/en/836081467999089075/pdf/105102-AR-PUBLIC-Access-to-Information-FY-2015-Annual-Report-and-Five-Year-Retrospective.pdf>.

- The Interim Policy does not provide any detail about the information that will be contained in management’s annual review of policy implementation. EBRD²¹⁵ and EIB²¹⁶ specify that annual reviews of policy implementation will include the number of requests received, the Bank’s response to those requests, the number of appeals, the outcomes of appeals, and compliance with the time frames specified in the policies. ADB also commits to disclose a list of requests and the Bank’s response to those requests, as well as a list of all appeals received and the outcomes of those appeals,²¹⁷ while the World Bank includes this information in practice in its annual report.²¹⁸
- The Interim Policy does not provide any details about the process for updating the Interim Policy. It also does not provide any detail on the time frame for adoption of the “comprehensive Policy on Public Information” or commit to conducting a public consultation on the Interim Policy. In contrast, the AfDB,²¹⁹ ADB,²²⁰ EBRD²²¹ and EIB²²² specify time frames for regular, comprehensive reviews of their access to information policies. ADB,²²³ EBRD,²²⁴ and EIB²²⁵ also commit to conducting public consultations as part of the formal review process.

²¹⁵ Paragraph 4 of the Annex to the policy states: “In the annual Public Information Policy: Report on the Implementation, which is posted on the EBRD website, the Bank will endeavour to report on its handling of requests and will provide a record of responses. The reports would typically cover the correspondence received by the Bank via the information request on-line form or forwarded to the Civil Society Engagement Unit for the coordination of responses, and such matters as: the number of requests made, granted in full or part, or refused; compliance with response time frames; the number of appeals against refusal of requests and the outcome of those appeals; other facts which indicate efforts made to abide by the spirit and intentions of the PIP.” Note 212.

²¹⁶ Paragraph 9.4 of the policy states: “The Bank shall publish annually a report for the preceding year on the implementation of this Policy, including e.g. the number of information requests handled, the number of cases in which the Bank refused to grant access to information, the reasons for such refusal, the type and number of appeals filed with different appeal mechanisms, the adherence to the deadlines specified for responding to information requests and for publishing project related information on the website.” Note 6.

²¹⁷ Paragraphs 134 and 141 of the ADB policy state: “ADB shall post on its website the list of requests reviewed, and the corresponding decisions, i.e., fulfilled or denied, with the reason for the latter. ... ADB shall post on its website a list of all appeals received, the nature of each appeal, and the decision taken in each case.” Note 4.

²¹⁸ Note 214, pp. 11-14, 31-33.

²¹⁹ Paragraph 3.5.3 of the policy states: “Three years following the coming into effect of this Policy, Management will carry out a review on its implementation.” Note 5.

²²⁰ Paragraph 144 of the policy states: “ADB shall conduct a comprehensive review after a period of time, not to exceed 5 years from the effective date of the policy. The review will engage interested individuals and organizations.” Note 4.

²²¹ Paragraph F.5 of the policy states: “The Policy will be subject to review in parallel with the Environmental and Social Policy on a five year cycle, with a public consultation process.” Note 212.

²²² Paragraph 9.3 of the policy states: “Formal reviews, including public consultations, are envisaged to take place every 5 years, or can otherwise be initiated in case of changes to the EU’s policy and legislative framework on transparency and disclosure of information, changes to policies and procedures within the EIB that require an alignment of this Policy, and any other changes the EIB judges necessary and appropriate.” Note 6.

²²³ Paragraph 144 of the policy states: “ADB shall conduct a comprehensive review after a period of time, not to exceed 5 years from the effective date of the policy. The review will engage interested individuals and organizations.” Note 4.

Recommendations:

- The AIIB should commit to disclose management's annual reviews of the implementation of the Interim Policy, which should at least contain the number of requests received, the Bank's response to those requests, the number of appeals, and the outcomes of appeals.
- The AIIB should specify a time frame for adoption of a comprehensive Policy on Public Information and make a commitment to undertake a public consultation process prior to adoption of this Policy.

Conclusion

The AIIB signalled a strong commitment to the idea of openness when it adopted the Interim Policy as part of the early policy framework for its operations. It recognised from the outset that the Interim Policy was limited in terms of detail, and perhaps more oriented towards general principles, and called for a “comprehensive Policy” to be adopted “in the future”.

The Interim Policy includes a number of features which conform to better practice standards regarding the right to information. We welcome the fact that it recognises a presumption in favour of openness and that it commits to release information both on a proactive basis and in response to requests. We also welcome the fact that it includes a commitment to conduct a review of its implementation on an annual basis.

At the same time, it is clear that there is an urgent need for fundamental revision of the Interim Policy so as to bring in more fully into line with international standards regarding the openness of public bodies, as well as better practice among other IFIs. The need to develop far more detailed procedures relating to the processing of requests is particularly urgent, whether these are incorporated into the policy, as is the case for most IFIs, or included in an accompanying set of guidelines. Another area which needs development is the system of appeals, which for the moment is limited to internal appeals and which lacks an independent appeal system, such as are provided for in a growing number of IFI information disclosure policies.

Perhaps the most significant need for reform, however, is in terms of the regime of exceptions, which determines the line between what information is public and what is

²²⁴ Paragraph F.5 of the policy states: “The Policy will be subject to review in parallel with the Environmental and Social Policy on a five year cycle, with a public consultation process.” Note 212.

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not. The current regime of exceptions is fundamentally flawed, with most exceptions not only being significantly overbroad but also failing to respect key international standards in this area, which involve protecting key interests against harm rather than rendering whole categories of information secret.

The Centre for Law and Democracy and Bank Information Centre remain ready to work with the AIIB to improve its information disclosure policy, as well as to help it implement its policy in an efficient and fair manner.

For further information, please contact:

Toby Mendel
Executive Director
Centre for Law and Democracy
Email: toby@law-democracy.org
Tel: +1 902 431-3688
www.law-democracy.org
Twitter: @law_democracy

Elizabeth Summers
AIIB Campaign Manager
Bank Information Center
Email: esummers@bankinformationcenter.org
www.bankinformationcenter.org