

Procedural Guidance for the Japanese National Contact Point (NCP)
under the OECD Guidelines for Multinational Enterprises

25 November 2011
Revised 30 September 2016
The Japanese NCP

I. OECD Guidelines for Multinational Enterprises

A. OECD Guidelines for Multinational Enterprises

The OECD Guidelines for Multinational Enterprises (hereinafter referred to as the Guidelines) are recommendations addressed jointly by governments to multinational enterprises. They provide principles and standards of good practice consistent with applicable laws and internationally recognized standards. Observance of the Guidelines by enterprises is voluntary and not legally enforceable. Nevertheless, some matters covered by the Guidelines may also be regulated by national laws or international commitments.

B. Japanese NCP (National Contact Point)

The Japanese NCP is composed of the Ministry of Foreign Affairs (OECD Division, Economic Affairs Bureau), Ministry of Health, Labour, and Welfare (International Affairs Division, the Office of the Minister) and Ministry of Economy, Trade and Industry (Trade and Investment Facilitation Division, Trade and Economic Cooperation Bureau).

In addition to Japanese NCP, in order to effectively implement the Guidelines, the Japanese NCP Committee has been established. The Japanese NCP Committee is comprised of the Japanese NCP, Keidanren (Japan Business Federation, which is Japanese Committee of the Business and Industry Advisory Committee (BIAC) to the OECD), and Rengo (Japanese Trade Union Confederation, which is a member of the Trade Union Advisory Committee (TUAC) to the OECD). Keidanren and Rengo are required to maintain confidentiality on issues of specific instances the Japanese NCP Committee deals with.

C. Glossary of this document

- Guidelines: OECD Guidelines for Multinational Enterprises
- Japanese NCP: Japanese National Contact Point for the OECD Guidelines for Multinational Enterprises

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- Complainant: Individuals or groups who filed a specific instance with the Japanese NCP based on the Guidelines
- Enterprise involved: The enterprises regarding which the complainant filed a case with the Japanese NCP

II. Handling of Specific Instances

A. Basic Principles

In accordance with the Guidelines, along with “Implementation Procedures of the OECD Guidelines for Multinational Enterprises” (hereinafter referred to as “Implementation Procedures”), the Japanese NCP is to provide a place for discussion and to support the resolution of specific instances with the implementation of efficient and timely measures by the parties involved, in compliance with any applicable laws. The effectiveness of the specific instances procedure depends on good faith behavior of all parties involved in the procedures. Good faith behavior in this context means responding in a timely fashion, maintaining confidentiality where appropriate, refraining from misrepresenting the process and from threatening or taking reprisals against parties involved in the procedure, and genuinely engaging in the procedures with a view to finding a solution to the issues raised in accordance with the Guidelines (paragraph 21 of “Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises” (hereinafter referred to as “Commentary on the Implementation Procedures”)).

B. Concrete Procedure

1. Receipt of Submitted Complaints

All complaints are to be submitted in writing. The following information should be clearly provided in Japanese or English.

(a) Information on complainant

- Name of the complainant and/or name of the representative of the complainant’s organization
- Contact address
- Telephone and fax number
- Email address

(b) Information on the multinational enterprise involved

- Name of the enterprise
- Location of the enterprise (country and address)

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- Contact information (Contact person, telephone and/or fax number, email address)
- Reasons why the complainant considers the enterprise a multinational enterprise
- (c) Contents of complaint
 - Contents of issues raised which describe the enterprise's non-adherence to the Guidelines
 - Descriptions with reference to the paragraphs of the Guidelines which have been breached
 - Background of the issues raised (such as past and present circumstances of the issues and reason(s) why the complainant decided to submit a complaint to the Japanese NCP)
 - Outcomes complainant wishes to achieve through the NCP procedure (requests to the enterprise involved)
- (d) Attachments of relevant documents supporting the complaints, where applicable. (If the original documents are written in languages other than Japanese and English, translation in Japanese or English should be attached.)
 - Text of relevant laws and regulations of the country where the issues occurred
 - If the specific instance is also dealt with by other domestic or international proceedings (hereinafter referred to as "a parallel procedure"), documents on the identity of the country or organization conducting the parallel procedure, the issues raised, the progress of the situation and future prospects.

2. Conducting an Initial Assessment (indicative time frame: three months)

(a) Issuances of receipt letter

When the Japanese NCP receives a complaint document, after checking whether all the information mentioned II B. 1 of this document is clearly provided, the Japanese NCP sends a receipt letter to the complainant.

In parallel, the Japanese NCP sends a copy of the receipt letter and documents presented by the complainant to the enterprise involved and other NCPs in other relevance country, if applicable.

The Guidelines, the Procedural Guidance for the Japanese NCP (Japanese and/or English version), are to be enclosed in the receipt letter from the Japanese NCP.

(b) Making an initial assessment

After receiving the submitted complaint, in accordance with "C. Implementation in Specific Instances" of the Procedural Guidance of the Implementation Procedures, as well as taking into consideration Paragraphs 23 to 25 of the Commentary on the Implementation Procedures, the Japanese NCP makes an initial assessment regarding

whether the complaint “merits further examination”. Specifically, the Japanese NCP examines the following points and notifies the parties involved (the complainant and the enterprise involved) in writing, in the name of Japanese NCP. In principle, The Japanese NCP does not publish the Initial Assessment for the purpose of smooth implementation of the due procedures.

- Whether the Japanese NCP is the correct entity to assess the complaint. (Generally, issues are dealt with by the NCP of the country in which the issues take place.)
- The identity of the parties concerned and their interest in the matter.
- Whether the issue is material and substantiated.
- Whether there seems to be a link between the activities of the enterprise involved and the issue raised in the specific instance.
- Relations with applicable law and procedures, including court rulings.
- How similar issues have been, or are being, treated in other domestic or international proceedings.
- Whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines.

(c) Parallel proceedings

If the specific instance is also dealt with in a parallel procedure, the Japanese NCP handles that specific instance considering Paragraph 26 of the Commentary on the Implementation Procedures. Especially, in a case where the issue raised is in a judicial proceeding, the Japanese NCP deals with it with a due consideration on the independence of the judiciary system.

Even in a case where the complaint is already in a process of examination under the laws and regulations and/or systems of relevant countries, the specific instance may still be considered as deserving further examination, if it is deemed that there is space for the Japanese NCP to work within. At the same time, in a case where judicial proceedings have already been concluded, the complaint is considered as deserving no further examination by the Japanese NCP.

(d) Relation with domestic law

If the complaint is considered problematic in the context of Japanese laws and regulations, the Japanese NCP may notify in written form the complainant and the enterprises involved on the necessity to follow domestically prescribed procedures (including judicial proceedings).

(e) In a case where the complaint does not merit further examination

In a case where the Japanese NCP decides that the complaint is considered not to merit further examination for specific instances, based on C.3 a) of the Procedural Guidance

of the Implementation Procedures and paragraphs 27 and 32 of the Commentary on the Implementation Procedures, the Japanese NCP issues a statement which describes, as a general rule, the parties involved, issues raised, and the reasons for the NCP's decision.

3. Provision of Assistance to the Parties Involved (indicative time frame: six months)

When the Japanese NCP decides that the complaint is considered to merit further examination for specific instances, the Japanese NCP provides assistance to the parties involved based on C.2 of the Procedural Guidance of the Implementation Procedures and paragraphs 28 to 30 of the Commentary on the Implementation Procedures.

The Japanese NCP may conduct the following actions, where necessary, when providing assistance to the parties involved.

(a) In a case where a specific instance is relevant with ministries other than those that constitute the Japanese NCP, the Japanese NCP may inform the relevant ministries of the complaint and request to provide their views and opinions.

(b) When hearing views of the enterprise involved, consult beforehand with the enterprise regarding which contents the enterprise do not wish to be shared with the complainant.

(c) Conduct interviews with the business community and labour organizations where necessary.

(d) Gather related information via relevant Japanese embassies and/or consulates.

4. Issuances of Final Statements or Reports (indicative time frame: three months)

The Japanese NCP issues a final statement or report when concluding the NCP procedure based on C.3 of the Procedural Guidance of the Implementation Procedures and paragraphs 31 to 37 of the Commentary on the Implementation Procedures.

(a) In a case where the parties involved have reached an agreement, the Japanese NCP issues the report after the parties involved agree on what extent of the agreement is to be made publicly available. In accordance with the agreement of the parties, the Japanese NCP issues a report which describes, as a general rule, the parties involved, issues raised, the procedures the NCP initiated in assisting the parties and when agreement was reached.

(b) In a case where no agreement is reached or when a party is unwilling to participate in the NCP procedures, the Japanese NCP issues a statement which describes, as a general rule, the parties involved, issues raised, the reasons why the Japanese NCP decided that the issues raised merit further examination at an initial assessment and the procedures the NCP initiated in assisting the parties.

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An opportunity is provided to the parties involved for them to express opinions on the draft statement or the report. However, the Japanese NCP has discretion to decide whether to change the draft statement or report according to the opinions of the parties involved.

(c) After producing the statement or the report, the Japanese NCP closes the NCP procedure by sending the statement or the report to the parties involved and by making it as a publicly available outcome of the procedure.

The result of the procedure will be published on the OECD website and Japanese NCP website in Japanese and English.

C. Transparency and Confidentiality

1. Complaints

As mentioned in II.B.2 (a) of this document, while sending a receipt letter to the complainant, Japanese NCP sends a copy of the receipt letter and documents presented by complainant to the enterprise involved and other related NCPs. Therefore, if the complainant does not wish to share specific information in the complaint with the parties involved, the complainant should specify the corresponding part with reasons (for example, if the complainant does not want to share their identities with the parties involved, it is preferable that the complainant send the edited version of the complaint with their identities struck out in addition to the original version). Unless such specification occurs, the complaint and related documents are shared with the enterprise involved and related NCPs.

2. Other Related Documents

In general, once a specific instance is submitted, related documents (written materials, letters etc.) presented to the Japanese NCP by the parties involved (complainant or enterprises involved) are shared with the other parties involved unless the submitter express its opposition. If the submitter does not want to share all or a part of the information with the parties involved, the submitter should specify the part with the reasons.

3. Confidentiality

Once a specific instance is submitted, the parties involved are expected to appropriately manage the related information; especially they are expected to strictly respect the confidentiality of all communications received during the NCP process as mentioned II C. 1~2 of this document. In order to maintain effectiveness of the NCP procedure, the

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Japanese NCP requires all related parties to abide by the principle of good faith. If Japanese NCP considers that a party is not acting in good faith, it may terminate the process.

The Japanese NCP does not contest if the parties involved publicly reference the fact of the filing of the specific instance, but asks the parties to carefully consider that publicizing such information and/or the manner of publishing could influence the possibility of finding resolution of the issues through the NCP procedure.

III. Enforcement of this Document

This procedural guidance is to be enforced from 30 September 2016. Specific instances raised after 30 September 2016 are to be dealt with this Procedural Guidance.

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