

(Provisional Translation)

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

25 November 2011

Revised 30 September 2016

Revised 14 February 2020

Revised 8 July 2022

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 National Contact Point (NCP)

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, Minister's Secretariat) and Ministry of Economy, Trade and Industry (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.

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

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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
- Email address

(b) Information on the multinational enterprise involved

- Name of the enterprise
- Location of the enterprise (country and address)
- Contact information (Contact person, telephone and, 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.)

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- 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 I. C. of the Procedural Guidance , as well as taking into consideration Paragraphs 25 to 26 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 parallel proceedings have been conducted, are under way or are available to the parties

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concerned, the Japanese NCP handles that specific instance considering Paragraph 26 of the Commentary on the Implementation Procedures. 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.

(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 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, after hearing the views of the enterprise involved on the initial assessment, provides assistance to the parties involved based on I.C.2 of the Procedural Guidance and paragraphs 28 to 30 of the Commentary on the Implementation Procedures. Specific procedures must be carried out according to the "Rules for Mediation", attached to this Guidance.

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 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.

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(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. 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 Japanese NCP requires all related parties to

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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.

D. Advice from experts

1. Advice

In handling a specific instance, the Japanese NCP may, after notifying the parties involved, ask the advice from experts having knowledge in the relevant fields.

2. Non-disclosure

Under the II.C.3, the expert referred to in II. D.1. shall, based on a pledge of non- disclosure to be submitted separately, ensure confidentiality and information security so that information obtained in the course of handling specific instances, regardless of whether it is during the period of assignment or after its completion, is not divulged or used for any other purpose.

III. Enforcement of this Document

This Procedural Guidance is to be enforced from 8 July 2022.

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Rules for Mediation

Chapter 1 General Provisions

(Purpose)

Article 1 The purpose of these Rules is to stipulate necessary matters for providing assistance (conducting mediation) for parties involved (complainant and enterprise involved) according to II.B.3. of the Procedural Guidance for the Japanese National Contact Point (NCP) under the OECD Guidelines for Multinational Enterprises (revised in 2011) (hereinafter referred to as "Procedural Guidance for the Japanese NCP").

(Secretariat)

Article 2 Affairs for conducting mediation shall be dealt with by the Ministry of Foreign Affairs (OECD Division, Economic Affairs Bureau), Ministry of Health, Labour, and Welfare (International Affairs Division, Minister's Secretariat) and Ministry of Economy, Trade and Industry (Investment Facilitation Division, Trade and Economic Cooperation Bureau), which constitute the Japanese NCP.

(Mediator)

Article 3 In principle, mediation shall be conducted by members of the Japanese NCP.

(Language)

Article 4

- 1 In principle, the Japanese NCP shall use the Japanese language for conducting mediation. Documents and materials submitted for mediation shall be written in Japanese or English.
- 2 A party involved who needs an interpreter shall make necessary arrangements and bear its cost.
- 3 A party who submits documents or materials written in any language other than Japanese or English for mediation shall offer their Japanese or English translations at its own risk and on its own account.

(Mode of Communication)

Article 5 When agreed to by both parties involved, the mode of communication for mediation may include remote measures such as teleconference and videoconference.

(Hours for Carrying out Mediation Proceedings)

Article 6 In principle, mediation proceedings shall be carried out between 9:30 a.m. and 6:15 p.m. (Japan Standard Time) during the operating days of the Japanese NCP.

Chapter 2 Procedures for Mediation

(Commencement of Mediation)

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Article 7

- 1 When having decided that the complaint "merits further examination" at an initial assessment, the Japanese NCP shall explain to the parties involved the purpose of mediation and its procedures within 15 operating days and ask whether or not they will participate in mediation proceedings.
- 2 Within three weeks from the day when they were given explanations mentioned in the preceding paragraph, each of the parties involved must reply to the Japanese NCP in writing whether or not they will agree to participate in mediation.
- 3 When either of the parties involved refuses to participate in mediation, the Japanese NCP shall indicate to that effect in a final statement together with reasons for their refusal to the extent possible.
- 4 Having confirmed that both parties involved have the intention to participate through the procedures mentioned above in paragraph 2, the Japanese NCP shall decide the date when mediation will commence and notify the parties of such date.

(Mediation)

Article 8

- 1 In principle, mediation shall be conducted in the presence of both parties involved. However, in cases where applicable as follows and the Japanese NCP acknowledges that equity between the parties concerned would not be undermined, mediation may be conducted in the absence of one of the parties:
 - (1) Where one of the parties involved who replied they would attend fails to do so; or
 - (2) Where the Japanese NCP recognizes the need to conduct a separate interview with one of the parties involved.
- 2 After an interview with one of the parties involved in the absence of the other, the Japanese NCP shall provide, on or before the date of the next mediation meeting, the latter party a summary of the interview it was absent from.
- 3 Having obtained the consent of both parties involved, the Japanese NCP may ask one of them to leave the room temporarily and hear claims and opinions of the other.
- 4 The Japanese NCP may ask the parties involved to present their claims in writing and provide supporting evidentiary materials.
- 5 Prior to conducting an interview with one of the parties involved, the Japanese NCP shall notify the other party of that effect.

(Securing of Impartiality and Fairness)

Article 9 According to paragraph 22 of the Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises ("Commentary on the Implementation Procedures"), the Japanese NCP shall conduct mediation in an impartial, fair and equitable manner.

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(Confidentiality)

Article 10

- 1 According to II.C.3 of the Procedural Guidance for the Japanese NCP, the parties involved, as well as any stakeholders and experts pledge on the "Pledge of Confidentiality", Form 1 attached to these Rules, that not only while the mediation is underway but also after its conclusion, any information obtained through the mediation be administered in an appropriate manner, kept confidential, and used only for the purpose of mediation. Confidentiality shall not be maintained when disclosure of information is agreed by both parties involved or the refusal of disclosure may be a violation of domestic law of Japan.
- 2 When the Japanese NCP notes an act of breach in the preceding paragraph, the Japanese NCP shall immediately terminate NCP procedures for the specific instance in question.

(Period)

Article 11 In principle, the duration of mediation by the Japanese NCP shall be six months. In case mediation extends beyond the six months period, the parties involved shall present a definitive reason.

(Closed to the Public)

Article 12 Unless agreed by both parties otherwise, mediation proceedings shall, in principle, be closed to the public.

(Minutes)

Article 13

- 1 In principle, no minutes of mediation shall be produced. Instead, the Japanese NCP shall make a summary of outcome of the mediation and ask both parties involved to confirm it.
- 2 Any and all summary of mediation results or other documents shall not be released to the public without agreement of both parties involved.

(Participation of Stakeholders)

Article 14 When deemed necessary, the Japanese NCP may select appropriate stakeholders to participate in mediation after considering the opinions of the parties involved. However, no stakeholder is to participate in mediation without the consent of both parties involved.

(Expert Opinion)

Article 15 Under Article 10, the Japanese NCP may, during the course of mediation, ask the advice of experts, business associations, labor organizations, NGOs or any party related to the complaint brought forth. However, without agreement of both of the parties involved, such the experts, business associations, labor organizations, NGOs or any other party may not participate in mediation.

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(Agent)

Article 16 Each of the parties involved may appoint an attorney or other persons as their agent for mediation by submitting the "Notice of Appointment of Agent", Form 2 attached to these Rules, to the Japanese NCP.

(Agreement)

Article 17 When an agreement is reached between the parties involved, a written agreement shall be produced, to which their representatives shall sign their names. In a final statement, the Japanese NCP shall describe details of said agreement to the extent that both of the parties involved agree.

(Failure to Reach Agreement)

Article 18 When the parties involved fail to reach an agreement, the Japanese NCP shall describe reasons for the failure to the extent possible.

(Termination of Mediation with a Request from a Party Involved)

Article 19 When the Japanese NCP receives a "Request for Termination of Procedures", Form 3, from either of the parties involved, mediation shall be terminated.

(Termination of Mediation by the Japanese NCP)

Article 20

- 1 In addition to the provisions under Article 10, the Japanese NCP may terminate mediation in the following cases and shall, according to II.B.4 of the Procedural Guidance for the Japanese NCP and paragraph 35 of the Commentary on the Implementation Procedures, promptly notify the parties involved of that effect and issue a final statement.
 - (1) Where both of the parties involved agree to terminate mediation;
 - (2) Where either parties involved fails to follow instructions of the Japanese NCP on the progress of mediation;
 - (3) Where the parties involved have reached an agreement in terms of the specific instance independent of mediation conducted by the Japanese NCP; or
 - (4) In other cases where mediation is found to be difficult to continue, such as where parties involved fail to, or are unlikely to, reach an agreement.
- 2 When mediation is terminated under the preceding paragraph, the date of notification shall be that of termination.

(Parallel Proceedings)

Article 21

- 1 The parties involved are free to communicate voluntarily between them while mediation is underway.

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- 2 Each of the parties involved may choose to bring a lawsuit or take other forms of dispute resolution while mediation is underway.
- 3 When a dispute is resolved through proceedings under paragraph 2, the parties involved must file a request for termination of mediation to the Japanese NCP without delay.

(End of the document)

Pledge of Confidentiality

/ /
(DD / MM / YYYY)

To: The Japanese NCP

Name of the organization (Blank for individuals):

Address:

Name & Position:

Seal

(Name of the organization, or "I" for individuals) pledge to abide by all the rules stated below to preserve confidentiality for mediation conducted with the assistance of the Japanese NCP. We/I will make no complaint on any damage or disadvantage we/I might suffer when we/I might turn out to have made false pledge here or have broken this pledge.

We/I pledge to:

- 1 Use none of the confidential information we/I obtain during the course of the mediation for any purpose other than the mediation;
- 2 Disclose or leak none of the confidential information to any third party not only while the mediation is underway but also after its conclusion under Article 10, paragraphs 1 and 2; Deal with any copy and reproduction of the confidential information as such, and make no complaint when the mediation is terminated due to us/myself having leaked any confidential information;
- 3 Manage confidential information with necessary security measures to prevent the information from being accessed or taken out by any unauthorized person;
- 4 Limit the range of officers and executives who are allowed to share confidential information only to those who have need to;
- 5 Take action mentioned below for any confidential information when requested by a provider of the information or when the mediation is terminated. When having destroyed any confidential information, we/I will notify the Japanese NCP of that effect:
 - (a) Delete electronically stored data in a manner whereby they cannot be restored; and
 - (b) Destroy or return documents and storage media containing any confidential information in such a manner as instructed by the information provider;
- 6 Make no complaint when the mediation is terminated as we/I have broken this pledge or the information provider and the Japanese NCP reasonably conclude that we/I are/am likely to break this pledge; and
- 7 (Only parties involved) Agree that any violation by an agent stated in Article 16 of confidentiality obligations will be regarded as that by the receiving party.

*Foreign organizations who file a complaint may put their signature instead of their seal.

Form 2

Notice of Appointment of Agent

/ /
(DD / MM / YYYY)

To: The Japanese NCP

(Complainant)
(Enterprise involved)]

Name of the organization (Blank for individuals):

Address:

Name & Position:

Seal

We/I appoint the person below as our/my agent for mediation conducted by the Japanese NCP.

(Agent) Address:

Name:

*Foreign organizations who file a complaint may put their signature instead of their seal.

Form 3

Request for Termination of Procedures

/ /
(DD / MM / YYYY)

To: The Japanese NCP

(Complainant)
Name of the organization (Blank for individuals):

Address:

Name & Position: Seal

(Enterprise involved)
Name of Organization:

Address:

Name & Position: Seal

For the mediation which the Japanese NCP is now conducting, [*Choose one of the following statements] (we/I have decided to bring a lawsuit or take other dispute resolution proceedings/an agreement has been reached between the parties involved through a lawsuit or other proceedings outside of the mediation) under Article 21, paragraph 3 of the Rules for Mediation, attached to the Procedural Guidance for the Japanese National Contact Point (NCP) under the OECD Guidelines for Multinational Enterprises (2011 version). Here, under Article 19 of the Rules, we/I request that the mediation be terminated.