

Final Statement on a specific instance involving Emirates in relation to the OECD Guidelines for Multinational Enterprises

20 September 2022

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

1 OECD Guidelines for Multinational Enterprises

(1) The OECD Guidelines for Multinational Enterprises (hereinafter referred to as the “Guidelines”), adopted by the Organisation for Economic Co-operation and Development (OECD) in 1976, are recommendations addressed by governments to multinational enterprises. The Guidelines provide the principles and standards for responsible business conduct in a wide range of fields, including disclosure, human rights, employment and industrial relations, the environment, combating bribery, consumer interests, science and technology, competition, and taxation.

(2) Governments adhering to the Guidelines establish National Contact Points (NCPs). In Japan, the Ministry of Foreign Affairs, the Ministry of Health, Labour and Welfare and the Ministry of Economy, Trade and Industry jointly constitute the NCP for Japan (hereinafter referred to as the “Japanese NCP”), which promotes activities to disseminate the Guidelines and handles issues raised based on the Guidelines.

(3) While the Guidelines are not legally binding, the Japanese NCP encourages enterprises to observe the Guidelines.

(4) According to the Guidelines, it is not required that the NCP determine whether the activities of enterprises are consistent with the Guidelines or not, therefore the Japanese NCP does not determine whether the enterprise’s activities are consistent with the Guidelines. Moreover, regarding the assertions by each party on the issues raised, the Japanese NCP does not make factual findings or judgements on its legitimacy.

(5) The Japanese NCP can make recommendations as appropriate on the implementation of the Guidelines and any observations the Japanese NCP deems appropriate to include on the reasons why the proceedings did not produce an agreement.

2 Submission of a specific instance

(1) Date of the submission

On 20 July 2018, the Osaka Branch of Skynetwork (hereinafter referred to as the “complainant”) filed a complaint with the Japanese NCP as per Guidelines regarding certain actions of Emirates (hereinafter referred to as the “enterprise involved”).

(2) Detailed description of issues which the complainant deemed the enterprise’s non-adherence to the Guidelines.

Summary of the issues alleged by the complainant was as follows:

In September 2014, the enterprise involved dismissed three union members who worked for the Reservation and Ticketing office at the Western Japan Branch of Emirates for reasons including the closure of the workplace due to the relocation of the department to Guangzhou, China. In October 2016, the Osaka Prefectural Labour Relations Commission ordered the enterprise involved to withdraw the dismissal of the three people. In October 2017, the Osaka District Court determined the dismissal to be invalid and delivered the court decision to confirm the labour contractual status of the three people, and this judgement became final and binding in April 2018. Although the enterprise involved paid monthly salaries, the complainant requested the enterprise involved to reinstate the three people to their desired workplace.

(3) How the issues are in breach of the Guidelines

The complainant alleged that the behaviours of the enterprise involved violated article 1 and 2 of IV. Human Rights and article 1 a), e), 4 a), 6 and 7 of V. Employment and Industrial Relations.

IV. Human Rights

States have the duty to protect human rights. Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:

- 1. Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.*
- 2. Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.*

V. Employment and Industrial Relations

Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices and applicable international labour standards:

1. a) Respect the right of workers employed by the multinational enterprise to establish or join trade unions and representative organisations of their own choosing.

e) Be guided throughout their operations by the principle of equality of opportunity and treatment in employment and not discriminate against their workers with respect to employment or occupation on such grounds as race, colour; sex, religion, political opinion, national extraction or social origin, or other status, unless selectivity concerning worker characteristics furthers established governmental policies which specifically promote greater equality of employment opportunity or relates to the inherent requirements of a job.

4. a) Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country.

6. In considering changes in their operations which would have major employment effects, in particular in the case of the closure of an entity involving collective lay-offs or dismissals, provide reasonable notice of such changes to representatives of the workers in their employment and their organisations, and, where appropriate, to the relevant governmental authorities, and co-operate with the worker representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects. In light of the specific circumstances of each case, it would be appropriate if management were able to give such notice prior to the final decision being taken. Other means may also be employed to provide meaningful co-operation to mitigate the effects of such decisions.

7. In the context of bona fide negotiations with workers' representatives on conditions of employment, or while workers are exercising a right to organise, not threaten to transfer the whole or part of an operating unit from the country concerned nor transfer workers from the enterprises' component entities in other countries in order to influence unfairly those negotiations or to hinder the exercise of a right to organise.

(4) Requests by the complainant

The complainant alleged that the dismissal is invalid because it constitutes an unfair labour practice and is contrary to the Japanese law, and that even though the status of the three people had been confirmed and they were paid, the situation where the reinstatement to the desired workplace of these three people had not yet realised constitutes a violation of human rights and an unfair labour practice. The complainant requested the enterprise involved to reinstate all of them to their desired workplace. The complainant also requested that the enterprise involved recognises that compliance with laws where it operates is needed as a multinational enterprise.

3 Examination of the Initial Assessment

The Japanese NCP, in accordance with the Guidelines and the Procedural Guidance of the Japanese National Contact Point under the OECD Guidelines for Multinational Enterprises (2011 edition), examined the Initial Assessment as described in Section (1) to (6) below and gave a conclusion as described in (7) below on 19 November 2018.

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

The complainant is the Osaka Branch of Skynetwork, which is a Japanese labour union. The enterprise involved is Emirates whose headquarters are located in Dubai, the United Arab Emirates. According to the judgement of the Osaka District Court dated 23 October 2017 which the complainant submitted to the Japanese NCP, the three people who were dismissed by the enterprise involved joined Skynetwork in January 2013 and formed the Osaka Branch Emirates Chapter of the union.

(2) Whether the issue is material and substantiated

In the Initial Assessment the Japanese NCP does not determine validity of any matter described in the complaint and the other submitted documents as well as the involved parties' claims. However, the Japanese NCP notes at least that there is evidence presented by the complainant that the issues raised are related to the Guidelines. On the other hand, the enterprise involved explained about why the three people have not returned to their desired workplace and presented a different view with that of the complainant. Therefore, the Japanese NCP considers that the issues exist practically and are concrete, thus material and substantiated.

(3) Whether there seems to be a link between the enterprise's activities and the issues raised in the specific instance

The issues raised are related to the employment of the enterprise involved. Therefore, there seems to be a link.

(4) The relevance of applicable law and procedures, including court rulings

According to the complainant, as described in Section 2(2) above, the Osaka Prefectural Labour Relations Commission issued an order in October 2016 and the Osaka District Court rendered the judgement in October 2017. Moreover, the enterprise involved mentioned at the meeting with the Japanese NCP in September 2018 that the re-examination was proceeding under the Central Labour Relations Commission, Japan (hereinafter referred to as the "CLC").

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

proceedings

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

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

The specific issues can be associated with the provisions of the Guidelines. The Japanese NCP considers that further examination of the issues would contribute to the purposes and effectiveness of the Guidelines.

(7) Conclusion of the Initial Assessment

Based on the consideration in Section 3(1) to (6) above, the Japanese NCP concluded that the specific instance merits further examination.

4 Japanese NCP's assistance in dealing with the issues

(1) On 19 November 2018, the Japanese NCP sent the Initial Assessment to the complainant and the enterprise involved on a confidential basis and asked both parties if they were willing to participate in a dialogue through the Japanese NCP's good offices as regards the issues raised in the specific instance.

(2) On 26 November 2018, the complainant expressed its willingness to participate in a dialogue with the enterprise involved through the good offices of the Japanese NCP.

(3) In January 2019, the enterprise involved expressed its intention to focus on finalisation of the CLC proceedings as the best chance for achieving a swift resolution, and to reach out to the Japanese NCP in case the enterprise involved would require further assistance at a later stage. In September 2019, the enterprise involved informed the Japanese NCP that they were awaiting the outcome of the CLC proceedings as the case outcome was to be released in a short time. The CLC outcome was delivered in January 2020.

On 21 February 2021, the enterprise involved indicated to the Japanese NCP that it considered the necessity for accepting mediation was low as it believed that it would be able to reach a complete and final agreement and total resolution of this matter in the near future through mutual discussions between the parties, even if it could not participate in the good offices of the Japanese NCP.

(4) On 7 October 2021, the complainant informed the Japanese NCP that the enterprise involved and the labour union had reached a full resolution.

(5) The Japanese NCP considered that the issue raised had been fully resolved by the parallel proceedings, and therefore decided to conclude the consultation on this specific instance.

(6) The Japanese NCP made the draft of its final statement available to the complainant and the enterprise involved and requested for comments on this draft on 31 January 2022.

5 Conclusion

After the submission of this specific instance, dialogues between the parties involved proceeded and they reached a final resolution acceptable to the both parties. The Japanese NCP therefore concludes the handling of this specific instance.

The Japanese NCP welcomes that the issues have been successfully settled thanks to the constructive efforts between the enterprise involved and the complainant, and expects that the enterprise involved will continue to act respecting the Guidelines.

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