

**PROCEDURAL GUIDELINES
FOR HANDLING SPECIFIC INSTANCES
WITH THE COSTA RICAN NATIONAL CONTACT POINT**

GENERAL INFORMATION

In accordance with the Procedural Guidance on Implementation of the OECD Guidelines for Multinational Enterprises (the Guidelines), the National Contact Point (NPC) will contribute in the resolution of issues that arise from the implementation of the Guidelines, acting in an impartial, predictable and equitable manner, compatible with the principles and standards of the Guidelines.

The NCP provides a forum for dialogue and assistance to the business sector, worker organizations, other non-governmental organizations, and other interested parties, to deal with the issue(s) raised in an efficient and timely manner and in accordance with applicable law.

The NCP is not, and does not act as, a judicial body. It aims to resolve issues related to the implementation of the Guidelines that generate differences, offering its good offices and facilitating access to consensual and non-litigious procedures. Resolutions that result from instances submitted to the NCP are deemed to be recommendations and, therefore, non-binding for the parties. Analysis is based on the Guidelines.

This document outlines the steps involved in handling specific instances filed before the NCP and according to the Executive Decree No. 40970 “*Establishment of the National Contact Point for the OECD Guidelines on Responsible Business Conduct*”,

PROCEDURE TO FILE SPECIFIC INSTANCES

Any physical or legal person can submit a specific instance before the NCP, to solve issues regarding the alleged non-observance of the Guidelines for Multinational Enterprises of the Organization for Economic Cooperation and Development (OECD). The party filing a request for review must comply with the following requirements:

I. Submitting a specific instance.- The specific instance shall be submitted in writing, physically, to the NCP’s Technical Secretariat offices located at the Ministry of Foreign Trade (COMEX), or through electronic means, to pnc.costarica@comex.go.cr. Requests will be filed using the form attached as the only Annex to this procedure, indicating the following information and providing the required supporting documents:

1. Information on Form:

- a. Name or business name, and identification and contact information of the natural or legal person filing the specific instance.
 - i. In the case of natural persons, the name and family names, personal identification card number, address, phone number and a primary e-mail address must be indicated.
 - ii. In the case of legal persons, the name or business name and business identification number, as well as name and family names, personal identification card number, address, phone number, and email address of the legal representative must be indicated.
- b. Name or business name, identification number and address of the company cited in the specific instance.

- c. Detailed description of the alleged fact, related to the observance of the Guidelines. This would include the corresponding background, as well as relevant information on the company structure and its country of origin, if known.
 - i. Place where the interested party considers the issue related to the specific instance has occurred, indicating whether it is the national territory or abroad.
 - ii. Identification of the specific provisions in the Guidelines related to the specific instance.
 - iii. List the chapter(s) and paragraph(s) in the Guidelines the business allegedly breached.
 - iv. Actions that the interested party believes the business should adopt for the correct application of the Guidelines.
 - v. Express intent of pursuing a solution to the specific instance filed, through the use of dialogue and in conformity with the Guidelines and this document.
 - vi. If applicable, the list of administrative, judicial or other alternative dispute settlement mechanisms where the issue that led to the specific instance is under national or international analysis, as well as the state of progress of the process and, if applicable, the conclusions or resolutions.

2. Documents:

- a. Identification of the natural or legal person filing the specific instance:
 - i. In the event of natural persons, a copy of their personal identification document.
 - ii. In the event of legal persons, certificate of its existence.
- b. Any other information or additional document considered relevant for the analysis of the specific instance.
- c. The party filing the specific instance shall bring a complaint on behalf of a person who is directly affected by the issue related to the application of the Guidelines, and must submit an express authorization in writing, detailing all the information requested in this section..

The specific instance will be considered as filed once all the information indicated in this provision is duly submitted to the NCP's Technical Secretariat.

The Secretariat will notify the interested party within a maximum period of five working days from the receipt of the specific instance, as follows:

- a. That all the requirements established in point I have been met.
- b. That one or more of the requirements established in point I has not been met. In this case, the interested party will be granted a period no longer than ten business days, starting from the working day after the notification to complete the required information. If the deadline has not been met with prevention, or if the contribution does not comply with the requirements, the Secretariat will consider the management inadmissible and proceed with its filing.

II. Functional equivalence.- In the different requirements contemplated in the present procedure where the presentation of physical documents is required, it will be understood that, if the technological means allow it, the electronic document may replace the physical document. This is without prejudice to the verification of the original document that may be requested by the NCP.

III. Transferring the specific instance.- Once notified to the interested party that all the information was presented correctly, the Secretariat will have a term of ten working days to:

- a. Notify the legal representative of the company by e-mail, that the specific case has been received. The email will contain a description of the steps to follow for the management of the specific case. The company will be requested to acknowledge receipt, which must be sent to the Secretariat using the same means, within a period of five days from the next working day of the notification.
- b. Inform by email, to the focal points of each of the following institutions that integrate the NCP that a specific case has been received: Ministry of Economy, Industry and Commerce, Ministry of Labor and Social Security, Ministry of Environment and Energy, Ministry of Justice and Peace. Other relevant institutions can be notified, depending on the nature of the specific instance.

IV. Parallel processes.- When the NCP is aware of other ongoing administrative or judicial procedures or other alternative dispute settlement mechanisms, or mechanisms that could be used by the parties involved to settle a specific instance or related issues, the NCP will assess whether its good offices could make a positive contribution to the resolution of the issue raised and would not create a serious prejudice for either of the parties involved in the other proceedings nor derive in administrative or judicial contempt. The parties shall cooperate with the NCP to examine these situations, providing all relevant information on parallel legal or administrative actions.

V. Confidentiality of information.- During the processing a specific case, confidentiality will be maintained (i) with respect to what is provided by the national legislation or (ii) if any or both of the parties duly justify the confidentiality of all or part of the information.

Upon filing of the information for a specific case, the NCP will evaluate the justification and inform its decision on said confidentiality in writing to both parties.

Good offices indicated in Stage II of this procedure will be confidential.

VI. Additional consultations: the NCP's Technical Secretariat will assess whether it is convenient to consult with one or more of the following instances, as appropriate:

- a. Other National Contact Points.
- b. Collegiate bodies related to the provisions contained in the Guidelines.
- c. Experts with knowledge in the areas of the Guidelines or the specific case.

STAGE I- INITIAL ASSESSMENT OF A SPECIFIC INSTANCE

VII. Initial assessment of the specific instance.- The NCP will undertake an initial assessment to determine whether the specific instance should be reviewed in detail, or be totally or partially dismissed.

To do this, it will verify if the matter was presented in good faith and if it complies with the following aspects

- a. The identity of the party affected and its interest in the matter.
- b. Whether the issue is significant and justified.
- c. Whether there seems to be a link between the enterprise's activities and the issue raised in the specific instance.
- d. If the business related to the specific instance has operations in more than one country.
- e. The relevance of applicable legislation and procedures, including judicial decisions.
- f. The way in which this issue, or similar matters, have been relevance of applicable law and procedures, including court rulings.
- g. If the review of the specific instance will contribute to the object and effectiveness of the Guidelines.

To carry out the initial assessment, the Secretariat will meet with the focal points of the ministries that integrate the NCP, that are related to the issue which according to the nature of their functions are related to the case.¹

This meeting shall be held within a maximum period of 10 working days after the notice of the Secretariat, and with it will begin the initial assessment stage. The NCP, through the Secretariat, may convene any other entities, when deemed necessary based on the nature of the specific case.

VIII. Communication of the details of the specific case to the business. - The NCP, through the Secretariat, will send via email to the company, a report with the details of the specific case received, which are not confidential. The enterprise will have a term of twenty business days starting from the next working day of the communication, to respond to each of the issues raised, and provide the information it deems necessary on each aspect indicated in the specific case.

IX. Meetings with the parties. - If the NCP considers it relevant, it may request additional information or summon the parties to joint or separate meetings to clarify any aspect related to the specific case.

X. Acceptance or rejection of a specific instance and schedule of initial stage.- Based on the information presented by the parties and the criteria expressed above, the NCP will proceed with the initial assessment of the specific instance and will inform of its decision to the parties in writing, within two months counted from the meeting convened by the Secretariat with the focal points, as explained in point VII. The NCP may:

- a. Accept the specific instance, in which case it will offer good offices to the parties.
- b. Accept the specific instance partially, when it considers that at least one conduct described can eventually constitute non – compliance with the Guidelines, offering its good offices to the parties in writing.
- c. Reject the specific instance, in which case it will notify rationale for such rejection, and thereafter close the case.

¹ These will be the members designated by the NCP to carry out and participate in the following phases of a specific case, as well as any other entity considered relevant to the nature of the instance. The focal points may be accompanied by the advisors they deem necessary.

XI. Communication of the initial assessment by the NCP to the parties.- The communication of the initial assessment by the NCP to the parties will contain, at least, the following aspects:

- a. Identification of the parties.
- b. A summary of the facts and arguments presented by the parties regarding the alleged non-observance of the Guidelines.
- c. A summary of the efforts made by the NCP.
- d. The rationale for the acceptance or rejection, total or partial, of the specific instance.
- e. A statement indicating that the acceptance of the specific instance does not mean that the NCP has determined a non-observance of the Guidelines by the business.
- f. A schedule proposal for next steps in the process.

If the parties reach an agreement or withdraw from the specific instance before the NCP publishes its initial assessment, the case will be closed.

Prior to notifying the initial assessment, the NCP will send a draft text to the parties, requesting their comments in writing within the following ten business days from the date of its notification. The NCP will determine whether the comments received will proceed or otherwise.

After this, the NCP will have a period of ten business days to communicate the initial evaluation of the specific instance, and send it to the parties via email. In the event that the NCP does not accept the specific instance, it will examine the relevance of posting the names of the parties and an extract on the NCP website.

STAGE 2.- DIALOGUE AND GOOD OFFICES

XII. Dialogue and good offices.- When the NCP, in its initial assessment, decides to accept a specific instance, it will enable an opportunity for dialogue so the parties can discuss its contents.

The NCP may organize, as convenient, the following meetings:

- a. Meetings with each party, separately, to analyze the specific instance filed.
- b. Meeting with the parties, jointly, to hear their views on the contents of the specific instance and to facilitate a dialogue between them.

The NCP will agree with the parties on a calendar and terms of reference to be used during the dialogue. In turn, the NCP, through the Secretariat, will compile the meeting reports with the outcomes of the sessions and share them with the parties.

In the cases that the NCP considers it necessary and with the agreement of the parties, it can choose a third party to assist in reaching a solution that is mutually satisfactory between the parties.

XIII. Outcome of the dialogue. - If during the dialogue the parties reach an agreement on the specific instance, the NCP will conclude using a final communication. In the event the parties reach an agreement with the assistance of the NCP, a document will be drafted and signed indicating mutual satisfaction with the agreement reached. In the event the parties do not reach an agreement, the NCP will begin the final review of the specific instance.

XIV. Dialogue schedule. - The NCP will strive to carry out and conclude the dialogue process in a period of six months from the conclusion of the initial assessment stage. The agreement of the dialogue and good offices will be finalized in no more than two months from ending the last meeting in accordance with Article XII

STAGE III.- FINAL REVIEW

XV. Precedence. -A final review of the specific instance by the NCP will proceed in the following cases:

- a. When the NCP decides that the issues in the specific instance do not justify a more comprehensive review.
- b. When the parties have reached an agreement regarding the issues arisen.
- c. When no agreement has been reached, or a party is not willing to participate in the procedures.

XVI. Final communication.- The NCP will examine the specific instance as provided in the Guidelines and will make the relevant recommendations to ensure compliance. The final communication will contain, at least, the following information:

- a. Summary of the facts and issues filed regarding the application of the Guidelines.
- b. Identification of the parties involved in the specific instance.
- c. Summary of the process followed by the NCP.
- d. Rationale for decision of the NCP to review the specific instance.
- e. Details of any relevant aspect of the specific instance not identified in the initial review.
- f. Conclusions of the dialogue and good offices stage.

The confidential information will not be used for the writing of the final communication. If the parties so decide, the main elements of the agreement will be published as part of the final examination of the specific case on the NCP website.

XVII. Notifying the parties of the final communication. - Prior to its final issuance, the NCP will send the final communication to the parties for comments within the following ten business days. The NCP will decide whether to incorporate the comments sent by the parties.

XVIII. Signature and publication of the final communication.- The NCP Director will sign the final reports that are prepared as part of the specific cases that arise in relation to the application of the Guidelines, together with the institutional focal points competent in the subject matter of consultation that represented the NCP during the specific case . The Secretariat will notify the final communication to the parties and will publish the final statement on the specific case on its website.

XIX. Term for the final assessment phase. - The NCP will strive to conduct and conclude the procedure described in a period of three months from the conclusion of the phase of facilitated dialogue and good offices.

XX. Follow-up to final recommendation. - When the NCP provides specific recommendations to the parties in the final communication, it may follow up on the response and compliance therewith.

XXI. Effects of NCP decisions. - The recommendations issued by the NCP on a specific instance are not binding. Therefore, they are merely recommendations to the parties involved.