

Final Statement

GO4REX & NATURAL PERSON (2020)

Non-official English translation

9 August 2023

CHILE'S NATIONAL CONTACT POINT | RESPONSIBLE BUSINESS CONDUCT DIVISION |
UNDERSECRETARIAT OF INTERNATIONAL ECONOMIC AFFAIRS

FINAL STATEMENT Go4rex & Natural person

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I. Introduction

1. Chile's National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (Guidelines), located in the Responsible Business Conduct Division of the Undersecretariat of International Economic Affairs, issues this Final Statement.
2. The Final Statement describes the process and the results of the analysis of the specific instance to which it refers. It is based on information received from the parties and the steps taken by the NCP. If there was confidential information submitted to the NCP in the course of the procedure, it has not been disclosed in this statement. According to the NCP's rules of procedure, the NCP will always issue a Final Statement, which is public, whether or not it has been preceded by an Initial Statement or good offices.
3. The Final Statement marks the closure of the NCP procedure, without prejudice to the possibility of a follow-up stage.

II. Parties

a) Identification of the submitter

4. The submitter is Chilean natural person who used the financial and online trading services offered by the digital platform go4rex.com.

b) Identification of the company

5. Go4rex is a financial services provider operating through the website go4rex.com, which is managed by FX Capital Limited, an investment firm authorised and regulated by the Financial Services Authority (FSA) of the Republic of Seychelles.
6. On 14 December 2021, the Chilean Financial Market Commission (CMF) publicly announced on its website that Go4rex is not a regulated entity under its supervision¹.

III. Issues raised

a) Summary of the specific instance request

7. On 19 September 2020, the submitter submitted a specific instance request to the NCP, identifying alleged non-compliance with the Guidelines, in several of its chapters, by the company. According to the information provided by the submitter, the alleged violations mentioned would refer to misleading advertising, customers feeling defrauded, and lack of response to a formal complaint.
8. The submitter states that, on 20 February 2020, she made her first deposit into the company's platform account. She claims that from that moment on, she was urged to continue depositing into the account, with the aim of investing. The submitter had several advisors from the company, from 28 February to 9 August 2020.
9. When the submitter requested her advisors to withdraw the invested money and the profits earned, she reportedly faced obstacles from them, as they either did not respond or gave evasive answers, such as saying that withdrawal was not possible at that moment and should be requested after a certain period, that a penalty would apply for the

¹ <https://www.cmfchile.cl/portal/prensa/615/w3-article-49926.html>

unauthorised closure of investment operations, or that she had to pay a certain amount to close certain contracts or still open investment operations.

10. The submitter is said to have carried out the investment operations based on financial commitments she had made. These debts would have increased due to fines and interest, as they were not paid within the established deadlines, due to the impossibility of withdrawing the invested and earned money through the company. On 9 August 2020, when reviewing her account, the submitter is said to have discovered the loss of the invested money and profits.
11. In response to what happened, the submitter submitted a formal complaint to the Go4rex Customer Service Department on 24 August 2020, and to the Financial Services Authority of Seychelles (FSA), the regulatory body for non-banking financial services in that country. In both cases, at the time of submitting the specific instance request, she had not received a response.
12. The submitter then decided to report the company on social media, for which she received a letter, dated 23 September 2020, from a law firm representing its client, FX Capital Limited. In the letter, the submitter was asked to withdraw her social media complaints or, otherwise, the company had instructed the law firm to take all legal measures within its reach, both criminal and civil, in order to exercise its rights and claim damages against her.
13. In the specific instance request, the submitter identifies alleged non-compliance by the company with the following chapters of the Guidelines:
 1. Chapter II. General Policies.
 2. Chapter III. Disclosure.
 3. Chapter IV. Human Rights.
 4. Chapter VII. Combating Bribery, Bribe Solicitation and Extortion.
 5. Chapter VIII. Consumer Interests.
14. The expected outcomes by the submitter through the NCP procedure is as follows:
 1. That the company correct its actions and comply with its advertising.
 2. That the company compensate all the clients who have been affected by its advertising.
 3. That the company compensate the submitter for the damages caused by the multiple unmet financial commitments, due to her inability to withdraw the invested and earned money.
 4. That the company compensate the damage caused by the loss of credibility suffered and the inconvenience caused.
 5. That the company refund the investment made, pay the profits earned, and provide compensation.

b) Summary of the company's response

15. On 18 February 2022, the company was notified about the specific instance request, but there was no response from them. On 26 July 2023, after receiving the draft final statement for comments, the company responded as follows:

16. It assured that the terms and conditions that apply to each client, along with additional documents, can be found on its website to ensure that its clientele understands its policies correctly. These terms and conditions would explicitly state that the client, upon opening an account, accepts the policies established by the company.
17. Additionally, after verifying the client and the deposits they make, the company would provide documentation that must be signed, proving that the client's decisions are independent and that they approve the company's policies.
18. It stated that once a client opens an account with Go4rex, they could receive free training to operate on its platform. Its website would also offer additional educational guidance information to ensure that its clients make properly informed decisions. Therefore, its clients would always be solely responsible for their actions.
19. It added that, in some cases, clients may feel they have been victims of a supposed scam and demand refunds. This type of accusation is unacceptable to the company and, therefore, it reserves the right to defend itself through any legal action it deems appropriate.
20. It concluded by stating that it believes it maintains very strict ethical standards, keeping a long-term business and professional vision, and doing everything possible to ensure that its clientele is aware that operations involve certain risks.

IV. NCP evaluation of the specific instance

a) Preliminary issues

21. The preliminary issue is whether the NCP has jurisdiction to hear the case. For this, two requirements must be verified: (1) the requested company must be a multinational enterprise, and (2) the events must have occurred in Chilean territory or, if they occurred in a foreign country without an NCP, the multinational enterprise must be Chilean.
22. Regarding the first requirement, the requested company is multinational in nature, as it operates in several countries, including Chile, through a digital platform. Therefore, the first requirement is fulfilled.
23. As for the second requirement, the issue also arose in Chile, as it affected a person who was using the company's services from Chile. Therefore, the second requirement is met, and as a result, the NCP is competent to hear the case.

b) Initial assessment

24. In determining whether the issue raised merits further consideration, the NCP must establish whether the issue is bona fide and whether it relates to the Guidelines. In this context, the NCP takes into account the following criteria:
 1. The identity of the party concerned and its interest in the matter.
 2. Whether the issue raised in the specific instance request is material and justified.
 3. Whether the company's activities are linked to the issues raised in the specific instance.
 4. The relevance of concurrent legislation and procedures to the case, including court decisions.

5. How similar or the same issues have been, or are being, addressed in other local or international processes.
 6. Whether the review of the specific instance will contribute to the purpose and effectiveness of the Guidelines.
25. Subsequent to the submission of the request, the NCP maintained communication with the applicant and made inquiries, in Chile, with the National Consumer Service (SERNAC) and the Financial Market Commission (CMF). On 3 February 2022, before completing the initial assessment by the NCP, the submitter informed that they had reached a solution with the company. Therefore, there are no grounds to give further consideration to the issue raised.

V. Conclusion

26. In light of the above, the NCP issues this Final Statement, concluding the specific instance and making recommendations to the parties, based on the circumstances and available information.

a) NCP Observations and Recommendations

27. Recommendations from the NCP to the company:

1. Implement the highest international standards in terms of regulation and good financial practices, subjecting itself, for example, to the regulations of the Financial Industry Regulatory Authority (FINRA) and the Securities and Exchange Commission (SEC) of the United States, the Financial Conduct Authority (FCA) of the United Kingdom, and the Australian Securities & Investments Commission (ASIC) of Australia. To provide financial services to residents in Chile, comply with the regulations of the Financial Market Commission (CMF) of Chile.
2. In its relationship with clients, act in accordance with fair business, marketing, and advertising practices, and adopt all reasonable measures to ensure the quality and reliability of the goods and services it provides (Heading, Chapter VIII, 2023 Guidelines).
3. Provide accurate, verifiable, clear, and sufficient information, so that consumers can make their decisions with all the necessary information, including relevant information for e-commerce, such as privacy issues and information about available options for dispute resolution and complaint channels. The information must be presented in a comprehensible and easily accessible manner, using plain language and taking into account the accessibility needs of consumers with disabilities. (Paragraph 2, Chapter VIII, 2023 Guidelines).
4. Facilitate consumer access to extrajudicial dispute resolution mechanisms and remedies that are easy to use, quick, and effective, without unnecessary costs or burdens (Paragraph 3, Chapter VIII, 2023 Guidelines).
5. Refrain from omissions, statements, or other actions that constitute deceptive, misleading, fraudulent, or unfair practices, or that undermine consumer choice

(Paragraph 4, Chapter VIII, 2023 Guidelines).

6. Promote consumer education in areas related to their business activities, in order to improve their ability to, among other things, make informed decisions about goods, services, and complex markets (Paragraph 5, Chapter VIII, 2023 Guidelines).
7. Exercise close cooperation with public authorities to prevent and fight against deceptive business practices, including misleading advertising and commercial fraud (Paragraph 7, Chapter VIII, 2023 Guidelines).
8. Take into account the needs of vulnerable and low-income consumers and the specific issues that e-commerce may present to consumers (Paragraph 8, Chapter VIII, 2023 Guidelines).
9. Implement risk-based due diligence processes, in accordance with the Guidelines (particularly with respect to Chapter VIII) and the OECD Due Diligence Guidance for Responsible Business Conduct. These processes are ongoing and involve identifying, preventing, and mitigating the actual or potential negative impacts of the company's activities and business relationships, and reporting on how these negative impacts are addressed (Paragraphs 10, 11, and 12, Chapter II; Paragraph 5, Chapter IV, 2023 Guidelines).

If the NCP offers its good offices or, in its Final Statement, makes recommendations to the company, this should in no way be interpreted as an assertion that the requested multinational has failed to comply with the Guidelines.

The Guidelines state that confidentiality of the proceedings shall be maintained throughout its duration. Information and opinions provided during the proceedings shall be kept confidential, unless the party concerned consents to the disclosure of such information or opinions or where non-disclosure would be contrary to the provisions of national law.

In accordance with the principle of transparency that governs the functions of the NCP, the final statements are published on the NCP's website and are translated into English and sent to the OECD Working Party on Responsible Business Conduct.

Before the Final Statement is issued, the parties are given the opportunity to comment on the draft statement, bearing in mind that the drafting of the statement is always the responsibility of the NCP, which will define the final version of the document.

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Non-official English translation²

² In case of discrepancy, the Spanish version of this Final Statement shall prevail.