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CONDUCTA EMPRESARIAL RESPONSABLE

Chile's National Contact Point Rules of Procedure for the Handling of Specific Instances

Non-official English translation

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I. Introduction

National Contact Points for Responsible Business Conduct (NCPs) are the implementation mechanism for the [OECD Guidelines for Multinational Enterprises on Responsible Business Conduct](#) (OECD Guidelines)¹.

Each country that adheres to the OECD Declaration on International Investment and Multinational Enterprises, and therefore to the OECD Guidelines, must establish a National Contact Point. One of its functions is to contribute to the resolution of issues arising in specific instances related to the implementation of the OECD Guidelines². Chile's National Contact Point for Responsible Business Conduct (NCP) is located in the Responsible Business Conduct Department of the Undersecretariat of International Economic Affairs (SUBREI).

The NCP administers a voluntary non-judicial grievance mechanism through which it seeks to facilitate dialogue between the parties and support them in finding mutually acceptable solutions that are compatible with the OECD Guidelines. This mechanism is governed by the principles of good faith, transparency, and confidentiality, as established in Title VII.

These rules of procedure describe the NCP's mechanism for handling specific instances and are consistent with and complementary to the Procedures contained in Part II of the OECD Guidelines.

In general, the role of the NCP is to promote the effectiveness of the OECD Guidelines, which means it must also operate in handling specific instances in a manner that is visible, accessible, transparent, accountable, impartial, equitable, predictable, and compatible with the OECD Guidelines³. Consequently, the NCP is autonomous, particularly in relation to the handling of specific instances.

During the process, the NCP may review publicly accessible information, as well as consult public agencies, experts, or stakeholders with knowledge or expertise in the matters raised in the specific instance request. It may also consult other NCPs with experience in such matters, the OECD Secretariat, or the OECD Working Party on Responsible Business Conduct (WPRBC). These consultations will be confidential where appropriate. The NCP may request additional information from the parties, if deemed necessary for its assessment of the case.

The NCP does not act *ex officio*, nor does it carry out inspections to identify potential cases of non-compliance with the Guidelines. The NCP is neither a judge nor an arbitrator.

Those considering submitting a specific instance request may seek a meeting with the NCP to make enquiries and receive guidance on how the mechanism operates. Likewise, the NCP will

¹ Guidelines (2023 edition), Foreword.

² Guidelines (2023 edition), Decision of the Council on the Guidelines, paragraph I.1.

³ Guidelines (2023 edition), Procedures, paragraph I.

be available to respond to enquiries and provide guidance to the parties involved in a case.

In-person attendance is not required for the handling of a specific instance. The NCP provides virtual channels both for submitting a specific instance request and for maintaining contact with the parties throughout the process.

Specific instances will be conducted in Spanish. Exceptionally, they may be conducted in English, if justified and agreed upon by the parties and the NCP.

II. Who can submit a specific instance request

Any interested party who considers that a multinational enterprise has not complied with the recommendations contained in the OECD Guidelines may submit a specific instance request. The submitter may be, for example, an individual, a group of people, a trade union, a community or a company directly affected, or a rights defender, a labour organisation, or a non-governmental organisation with a mandate or objectives related to the issue raised.

The specific instance request may be submitted directly by the interested party or through a duly authorised representative. Anonymous complaints are not accepted; however, the identity of the submitter may be protected in cases of threats or risk of retaliation.

If, during the process, a person or group - other than the submitter - expresses to the NCP a genuine and legitimate interest in the case, the NCP will determine the most appropriate way to consider that interest during the process.

III. Issues that may be covered by a specific instance

The issues that may be addressed by a specific instance correspond to the recommendations directed at enterprises in the OECD Guidelines, which are set out in the following chapters of the instrument:

- II. Concepts and Principles
- III. Disclosure
- IV. Human Rights
- V. Employment and Industrial Relations
- VI. Environment
- VII. Combating Bribery and Other Forms of Corruption
- VIII. Consumer Interests
- IX. Science, Technology and Innovation
- X. Competition
- XI. Taxation

IV. Content of the request and means of submission

To submit a request, the NCP provides the [Specific Instance Request Form for the National](#)

[Contact Point](#) (Request Form), which can be completed online or downloaded in electronic format.

The completed Request Form must include the following information:

1. Identity of the submitter and interest in the issues raised (see Title II)
2. Multinational Enterprise⁴ to which the issues are linked
3. Description of the issues⁵ originating the request
4. Recommendations of the Guidelines allegedly not followed by the enterprise
5. Existence and status of any parallel proceedings (see next title)
6. Expected outcomes

The specific instance request must provide sufficient, credible, orderly, and concise information and documentation, so that the NCP can understand the issues raised and carry out its initial assessment. The documents that support the request must be attached to the Request Form, without prejudice to new documents being submitted during the process.

The specific instance request can be submitted through one of the following channels:

1. **Online:** by completing and submitting the [web form](#).
2. **Postal mail:** by downloading, completing, and sending the [form](#) to Chile's National Contact Point for Responsible Business Conduct, Correspondence Office of the Undersecretariat of International Economic Affairs, Teatinos 180, Santiago, Chile.
3. **In person:** by submitting the printed and completed [form](#) at the Correspondence Office of SUBREI, located at Bombero Salas 1345, Santiago.

The NCP will inform the submitter, as soon as possible, whether the specific instance request has been accepted or rejected, providing the reasons for its decision. If the NCP receives an incomplete request, the submitter will be guided on how to address the pending issues. Likewise, if the request is accepted, the company will be notified promptly.

V. Parallel proceedings

In principle, the existence of parallel proceedings - whether available, ongoing, or concluded - does not prevent the NCP from considering the request and offering its good offices.

However, if parallel proceedings exist, the NCP will assess whether admitting the request or continuing the process could: (i) contribute to resolving the issues raised and implementing the Guidelines; (ii) cause serious prejudice to any of the parties involved in the parallel proceedings; or (iii) constitute a situation of non-compliance with judicial or administrative authority. In making this assessment, the NCP may take into account the practices of other NCPs.

⁴ See Guidelines (2023 edition), Chapter I, paragraph 4.

⁵ The issues must be significant and must have occurred in Chile or be related to a multinational company of Chilean origin if they have taken place abroad.

Based on its evaluation, the NCP may – as an alternative - choose to partially admit the specific instance request or suspend its examination while the parallel proceedings are ongoing.

The NCP shall notify its decision regarding parallel proceedings, including the reasoning behind it.

The NCP may request the parties to provide updates on the progress of the parallel proceedings and may consult with the institutions involved in those proceedings. If parallel proceedings are initiated after the submission of the specific instance request, the parties must inform the NCP of such initiation as soon as possible. Likewise, if negotiations outside the specific instance process are initiated, the parties must inform the NCP of this and of the outcome, promptly. In such cases, the NCP will decide - after consulting with the parties - whether to continue, suspend, or terminate the process.

VI. Stages and duration of the specific instance

Once the request has been accepted, the specific instance process begins, which consists of five stages:

1. Coordination between NCPs to designate a lead NCP (in cases involving more than one NCP)
2. Initial assessment
3. Good offices
4. Conclusion of the process
5. Follow-up (if applicable and subsequent to the specific instance)

The NCP will aim to conclude the process (stages 1 to 4) within 12 months from the date the request is declared admissible. If coordination is required to appoint a lead NCP, this indicative period is extended to 14 months.

There are circumstances that may extend the duration of the process, such as when the specific instance involves multiple companies, multiple submitters and/or multiple NCPs; relates to events that occurred in a non-Adherent country; requires multiple actions; or is particularly complex.

1. Coordination between NCPs to designate a lead NCP

In cases involving more than one NCP⁶, they must coordinate to determine which one will lead the process, and which will play a supporting role.

Generally, the NCP of the country where the events occurred will act as the lead NCP, although a different arrangement is possible. The NCPs may designate a lead other than the one to which the case was submitted, following consultation with the parties.

⁶ See Guidelines (2023 edition), Commentaries on the Implementation Procedures, paragraph 29.

The parties will be informed of the outcome of this coordination.

The lead NCP is responsible for handling the specific instance, and its Rules of Procedure will apply to the process. Meanwhile, the supporting NCP will be kept informed of the case's progress and will assist the lead NCP as required and to the extent possible. The nature of support provided by the supporting NCP may vary depending on the case. Examples of such support include: gathering information, reviewing reports and documents, providing translations, and assisting in meetings with the parties or other stakeholders.

The NCP will aim to complete this stage within two months from the date the submitter is notified of the admissibility of the request.

2. Initial assessment

At this stage, the NCP will carry out an assessment to determine whether the issues raised warrant further examination through good offices.

In its initial assessment of the case, the NCP will take into account the following:

- a) **The identity of the submitter and its interest in the matter**, in accordance with Title II;
- b) **Whether the issue raised is material**, that is, whether it is relevant to the implementation of the Guidelines. To be considered relevant, the issue must fall within the scope of the Guidelines, as it involves an alleged breach of their recommendations;
- c) **Whether the issue raised is properly substantiated**, meaning it is supported by sufficient and credible information;
- d) **Whether there seems to be a link between the company's activities and the issue raised;**

The Guidelines recognise three types of links to negative impacts: a company may have "caused" or "contributed to causing" the impact, or the impact may be "directly linked" to the company's activities, products or services through a business relationship

- e) **The extent to which applicable law and/or parallel proceedings, if any, limit the NCP's ability to contribute to the resolution of the issues raised and/or the implementation of the Guidelines**, in light of Title V;

Although the NCP must assess the case in light of the Guidelines and the existence of parallel proceedings is not, in itself, a barrier to offering good offices, the NCP must consider the legal and procedural context of the case to determine whether facilitated dialogue could contribute positively; and

- f) **Whether facilitated dialogue would contribute to the purposes and effectiveness of the Guidelines;**

The objectives of the OECD Guidelines are to encourage the positive contributions that enterprises can make to economic, environmental and social progress, and to minimise

their negative impacts⁷. Effectiveness refers to the ability to achieve those objectives.

Based on the initial assessment of the case, the NCP may decide that:

- a) **The issues raised do not warrant further examination:** because one or more of the criteria mentioned above are not met. The NCP will inform the parties of the reasons for its decision and will indicate that the process is moving to Stage 5 (Conclusion of the process).
- b) **All or some of the issues raised warrant further examination:** the NCP will prepare and send an Initial Statement to the parties, which will include its initial assessment of the case and an offer of good offices to initiate a facilitated dialogue regarding all or some of the issues raised.

In addition, the parties will be asked to communicate - within a specified timeframe - their decision on whether or not to participate in a facilitated dialogue. If both parties agree to participate within the deadline, the process will move to Stage 3 (Good offices). If at least one party declines to participate or fails to respond to the NCP's invitation within the timeframe, the process will move to Stage 4 (Conclusion of the process).

Before issuing its Initial Statement, the NCP will prepare a draft and offer the parties an opportunity to provide comments. However, the statement is the responsibility of the NCP, and it is at its discretion to decide whether to make changes to the draft in response to the comments received.

The Initial Statement will be shared with the parties, the NCP, and any supporting NCPs, if applicable.

- c) **The examination of the specific instance is suspended:** due to parallel proceedings, in accordance with the provisions of Title V.

The decision of the NCP to offer good offices, as well as the company's decision to accept them, should not be interpreted as an assertion that the company has breached any of the OECD Guidelines recommendations. Similarly, the NCP's decision not to offer good offices should not be interpreted as an assertion that the company has complied with them.

The NCP will endeavour to complete the initial assessment within three months from the conclusion of the previous coordination stage between NCPs. However, the NCP may require additional time for its initial assessment, for example, to gather or translate the necessary information to make an informed decision.

3. Good offices

At this stage, a facilitated dialogue will be developed - for example, mediation or conciliation - through which the parties will be assisted in seeking a solution to the issues raised, in a manner

⁷ Guidelines (2023 edition), Preface, paragraph 1.

compatible with the Guidelines.

The facilitated dialogue will be led by one or more facilitators, appointed by the NCP in agreement with the parties. The facilitator may be the NCP and/or an external facilitator. The facilitators will help the parties reach a mutually satisfactory resolution of the dispute and will not impose decisions upon them.

If this stage is conducted with an external facilitator, the NCP will still participate in the dialogue to ensure that any agreements reached are compatible with the OECD Guidelines and will also be available to interpret them if necessary.

If there are any potential conflicts of interest affecting the facilitators, these must be disclosed as soon as possible. Either party may disqualify a facilitator due to conflicts of interest, in which case a new facilitator must be appointed as a replacement.

At the beginning of this stage, the rules governing the facilitated dialogue will be determined in agreement with the parties. These rules must be compatible with the Guidelines and these rules of procedure. To ensure a frank and secure conversation, it is essential that the facilitated dialogue remains confidential. Likewise, efforts will be made - in consultation with the parties - to establish a reasonable timeframe for conducting the dialogue. If the parties do not reach an agreement within that period, the NCP will consult with them on the advisability of continuing the dialogue.

This stage may conclude in the following ways:

- a) The parties reach a full or partial agreement; or
- b) The NCP decides to terminate the process, considering that continuing the facilitated dialogue is unlikely to result in an agreement.

Although the duration of the good offices largely depends on the parties involved, efforts will be made to conclude this stage within a period not exceeding six months.

4. Conclusion of the process

A specific instance will move to the conclusion stage for following reasons:

- a) Decision by the NCP not to offer good offices;
- b) Termination of the good offices, with or without agreement between the parties;
- c) One of the parties ceases to participate in the process, either with or without notice to the NCP or the other party;
- d) The parties reach an agreement outside the facilitated dialogue; or
- e) The NCP determines a lack of good faith by one of the parties (see Title VII)

Once a request has been accepted and, in case of coordination, it has been decided that Chile's NCP will lead the process, the specific instance will always conclude with a Final Statement.

- a) **If the NCP has not offered good offices:** the Final Statement will include, at a minimum, information about the parties, the date of the request, a description of the issues raised, the positions and participation of each party, and the NCP's assessment, including the reasons for its decision not to offer good offices. If an agreement has been reached

outside the NCP mechanism, the Final Statement may include information about it, provided the parties consent and supply that information.

- b) **If at least one of the parties has not accepted the good offices, or if no agreement was reached through them:** the Final Statement will include, at a minimum, information about the parties, the date of the request, a description of the issues raised, the positions and participation of each party, the actions taken by the NCP to assist the parties, and the reasons why the NCP offered good offices. The NCP may include the reasons that prevented the parties from reaching an agreement. If an agreement was reached outside the NCP mechanism, the Final Statement may include information about it, provided the parties consent and supply that information.
- c) **If the parties reached an agreement through the good offices:** the Final Statement will include, at a minimum, information about the parties, the date of the request, a description of the issues raised, the positions and participation of each party, the actions taken by the NCP to assist the parties, and the date on which the agreement was reached. Information about the content of the agreement will be included to the extent that the parties consent to its disclosure.

In any of these cases, the Final Statement may include recommendations regarding the implementation of the Guidelines. If the NCP makes recommendations to the company, this should in no way be interpreted as an assertion that the multinational enterprise in question has breached the Guidelines.

Before issuing its Final Statement, the NCP will prepare a draft and offer the parties an opportunity to provide comments. However, the statement is the responsibility of the NCP, and it is at its discretion to decide whether to make changes to the draft in response to the comments received.

Once issued, the Final Statement will be published on the NCP's website, translated into English, and sent to the OECD Secretariat.

The NCP may inform relevant government entities about the good faith participation of the parties, or the lack thereof, and will notify the parties accordingly.

The NCP will endeavour to complete this stage within a period of three months.

5. Follow-up

In its Final Statement, where appropriate, the NCP will consider follow-up on the implementation of the recommendations it makes and/or the agreement reached by the parties. Follow-up will take place after the conclusion of the specific instance, and to carry it out, the NCP may request information from the parties or hold meetings with them. The NCP will issue a public statement with the results of the follow-up conducted.

VII. Principles of good faith, transparency and confidentiality

The parties involved in a specific instance must always act in **good faith**. Good faith is demonstrated in various ways, such as responding in a timely manner, maintaining confidentiality where appropriate, presenting only truthful and legally obtained information, not unduly delaying the process, not misrepresenting the issues or the process (especially in public communications), not threatening or taking reprisals against another party or the NCP and its team, and engaging constructively with a view to reaching consensual solutions compatible with the OECD Guidelines, including seriously considering the NCP's offer of good offices.

In accordance with the principle of **transparency**, the parties and the NCP may publicly communicate the existence of the specific instance and the stage it is in. Likewise, the Final Statement and the follow-up statement are public, as indicated in the previous section. Additionally, any information that a party shares with the NCP will be shared with the other party and with the supporting NCP, if applicable. However, if a party submits confidential information (commercial or otherwise) to the NCP that cannot be disclosed to the other party, it must clearly indicate this with justification, and efforts will be made to ensure that only the confidential content is excluded from the information shared with the other party.

Likewise, under the principle of **confidentiality**, a party may not disclose to third parties any information or arguments shared by another party, the NCP itself, or an external facilitator, if applicable, that are not in the public domain, without the consent of the other party or the NCP, as appropriate. Information and arguments provided during the process shall remain confidential, unless the party that provided them consents to their disclosure or where non-disclosure would be contrary to the legal framework.

Consequently, the NCP will not provide information about cases to the public. The NCP's main communication channel is its [website](#), where it publishes information about its activities and, to the extent permitted, about its ongoing and concluded cases.

The NCP may protect the identity of those involved in the process if its disclosure could expose them or related individuals to the risk of reprisals. Likewise, if the NCP considers that publicly revealing the identity of one of the parties would be unfair, it may draft its statements in a way that protects their identity.

VIII. Threats and reprisals

Threats and reprisals are unacceptable. If the NCP becomes aware of threats or reprisals against an individual or group involved in a specific instance, it will consult with them to assess the need to arrange, within its capabilities, measures to ensure their protection. Possible measures include, for example, maintaining the confidentiality of the identity of the person or group at risk, suggesting representation, informing the relevant authorities, or assisting the

person or group in reporting or denouncing. Any threat or reprisal against the NCP or its team will be reported to the competent authorities.

IX. Applicable version of the Guidelines in a specific instance

In a specific instance, the applicable version of the Guidelines shall be the one in force at the time the issues raised took place.

If the issues extend in time and fall, wholly or partially, within the validity of more than one version of the Guidelines, the most recent version shall apply.

With regard to the recommendations made by the NCP in its Final Statement, these shall always be based on the version of the Guidelines in force at the time the recommendations are made.

X. Glossary

For the purposes of this document, the following definitions shall apply:

Good offices	Facilitated dialogue offered by the NCP to assist the parties in resolving the issues raised, through agreements consistent with the Guidelines.
Conciliation	A non-judicial facilitated dialogue in which a conciliator proposes various solutions to the parties to resolve the conflict.
Final Statement	A public document through which the NCP concludes a specific instance and communicates the outcomes of the process.
Initial Statement	A document through which the NCP communicates to the parties its initial assessment of the case and its offer of good offices, if the established requirements are met.
Facilitated Dialogue	A consensus-based, non-adversarial grievance mechanism in which a third party facilitates communication between the parties to help them reach an agreement.
Guidelines	OECD Guidelines for Multinational Enterprises on Responsible Business Conduct.
Multinational enterprise	It is the responding party in a specific instance. The Guidelines allow for a broad approach to determining whether a company is multinational, with the main factors being the international nature of the company's structure or activities, as well as its commercial form, purpose, or business operations. Multinational enterprises are usually composed of companies or other entities established in more than one country and linked in such a way that they can coordinate their operations in various ways. While one or more of

these entities may exercise significant influence over the activities of the others, their degree of autonomy may vary widely from one country to another. Ownership may be private, state-owned, or mixed. The Guidelines apply to all entities within the multinational enterprise (parent companies and/or local entities).

Specific instance	A non-judicial, non-adversarial, and voluntary process through which the NCP seeks to facilitate dialogue between the parties and support them in finding mutually acceptable solutions that are compatible with the Guidelines.
Mediation	A non-judicial facilitated dialogue through which the mediator helps the parties reach an agreement to resolve the conflict.
OECD	Organisation for Economic Co-operation and Development.
Submitter	Any individual, legal entity, or group of individuals that submits a specific instance request to the NCP.
NCP	Chile’s National Contact Point for Responsible Business Conduct.
NCPs	National Contact Points for Responsible Business Conduct.
Parallel proceedings	Judicial or non-judicial processes, whether domestic or international, including specific instances before the same or another NCP, that involve the same or closely related issues and which could influence the ongoing specific instance.
Specific instance request	A written submission made through the channels provided by the NCP to raise a complaint regarding an alleged breach of the Guidelines by a multinational enterprise.

XI. Contact details

- Chile’s National Contact Point for Responsible Business Conduct



www.subrei.gob.cl/ejes-de-trabajo/cer/punto-nacional-de-contacto

Annex. Flowchart of the process

