



A Guide to Specific Instances submissions of Improper Business Behavior according to the OECD Guidelines for Multi-National Enterprises "Your Resource for Responsible Business Conduct"

This document was produced by the Responsible Business Conduct Unit at the Foreign Trade Administration in the Ministry of Economy and Industry, which serves as the National Contact Point (NCP) in Israel for the OECD's Guidelines for Multinational Enterprises – 2011. The OECD Guidelines on corporate responsibility for multinational enterprises propose a "non-binding provisions" for responsible business conduct in the global context. These guidelines are not intended to circumvent local law or bring about situations of dispute due to uncoordinated expectations, but rather to encourage and direct towards responsible business conduct in a manner that is fair and compatible with the principles and standards of the Guidelines.

National Contact Point

All OECD member states and the states that adhered to the OCED Investments Declaration must establish a National Contact Point for promotion of such Guidelines and contribute to implementation of the guidelines. The National Contact Point examines, among other matters, specific instances submitted according to the Guidelines. Additional information regarding the Responsible Business Conduct Unit and the Guidelines may be found on the website of the Responsible Business Conduct Unit.

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Objective of the Document

The objective of the document is to explain the process for submission and handling of "specific instance" regarding improper business conduct according to the OECD's Guidelines for Multinational Enterprises. In order to solve issues pertaining to implementation of the Guidelines, the NCP will offer a forum for discussion and assist the business community, labor unions, other NGOs and stakeholders, in handling the issues raised, efficiently and within reasonable time.

Definitions

- *NCP (National Contact Point)*: The National Contact Point of the State of Israel for the OECD's Guidelines on Corporate Responsibility for Multinational Enterprises.
- *The Guidelines*: The OECD's Guidelines on Corporate Responsibility for Multinational Enterprises (2011).
- *Specific Instance*: Complaint submitted to the NCP regarding alleged breaches of the Guidelines ("Specific Instance" = "complaint").
- *Request Submitter*: The person that submitted a specific instance according to the Guidelines.
- *Multinational Enterprise*: Any international entity that maintains business activity in Israel and is the subject of a specific instance according to the Guidelines.
- *The Parties*: The request submitter and the multinational enterprise against which a specific instance was submitted.
- *Steering Committee*: The inter-ministerial committee established in order to supervise over the activity of the NCP and composed of relevant government ministries and personnel.
- *Assistance to the Parties*: Assistance offered by the Israeli NCP to the parties through non-legal means, such as joint consultation and mediation.





- *Final Declaration*: Publication of the final report of the Israeli NCP regarding the specific instance.

Stages of the Proceeding and Guiding Timetable

The process of the inquiry by the Israeli NCP is composed of three main stages:

1. initial assessment.
2. Inquiry of the request and assistance to the parties.
3. The final declaration.

The Israeli NCP will act, to the extent possible, to complete its initial assessment regarding the specific instance within 3 months after receipt of the request and will seek to complete any specific instance within one year after receipt of the specific instance. There might be delays due to circumstances not under the Israeli NCP's control. In such cases, the Israeli NCP will update the parties regarding the circumstances of the delay in handling of the request and will specify updated dates for completion of handling.

The parties are required to cooperate with the Israeli NCP and provide all required information as soon as possible, in order to meet the timetables. Lack of cooperation in this respect will lead the Israeli NCP to take a decision in the absence of the requested information.

Confidentiality:

During the proceedings regarding the specific instance, there shall be absolute confidentiality on all matters between the Israeli NCP and the parties to the inquiry. The Israeli NCP will update all persons involved (including the submitter of the specific instance, the multinational enterprise that is the subject of the specific instance and the members of the steering committee) that they must ensure confidentiality, especially as to sensitive business information. The Israeli NCP will refer to any information in its possession regarding the specific instance as confidential information (including the parties' identity, the enterprise that is the subject of the specific instance and relevant third parties). It is noteworthy that information received by the Israeli NCP from one party will be provided to



the other party – unless the reason for non-transfer of such information has been specified and explained.

The Israeli NCP will inform the parties that at the end of the proceedings, if the parties do not arrive at an agreement regarding the matters included in the specific instance, they are free to discuss these matters at any suitable forum. It is noted that any information exposed and discussed during the handling of the specific instance will remain confidential unless the parties agree as to its exposure or if non-exposure thereof is in contrast to Israeli law.

The Israeli NCP is subject, as an entity within the Ministry of Economy and Industry, to the provisions of the Freedom of Information Law, 5758-1998. Therefore, information held by the NCP may be the subject to a request for disclosure according to law. The NCP will notify the parties to the specific instance if a request for disclosure of information submitted thereby as part of the proceeding has been submitted.

Non-fulfillment of the confidentiality requirements will be considered as lack of good faith and might involve sanctions such as termination of handling of the specific instance by the Israeli NCP. Termination of handling by the Israeli NCP does not prevent publication of final declaration.

Initiation of a Specific Instance

According to the Guidelines, each party may submit the specific instance in case it is interested in doing so. The submitters might be, among others, members of a community harmed by the activity of a certain company, employees or labor union, as well as any NGO.

The Israeli NCP will examine the specific instance received, based on the evidence. For submission of the specific instance, the submitter must provide the Israeli NCP with detailed information. For that sake, it is important that the request submitter have a link to the case that is the subject of the specific instance and that it has the possibility of providing information regarding the specific instance. In addition, according to the principles of the Guidelines, the submitter must submit the specific instance along with clear view of the





result it aspires to obtain. For example – if the specific instance involves breach of the Guidelines in respect of environment and climate, then a desirable result might be change of the multinational enterprise's policy so that the policy meets the Guidelines.

The submitter of the specific instance must specify, in the request, in its opinion which of the chapters or paragraphs of the Guidelines are relevant, to the specific instance and constitute sufficient basis for the submission of the specific instance to the Israeli NCP.

Specific instances that are not in the scope of the Guidelines or requests that have no real value or are illegitimate or are petty requests, will not be examined and will be disqualified in advance.

First Stage – Initial Assessment

After receipt of the specific instance, the Israeli NCP will:

- Notify the submitter that the specific instance has been received (by sending a message to the email address provided by the submitter, or by mail and/or fax). The submitter will be requested to appoint relevant contact person/s for further handling of the specific instance and provide the Israeli NCP with the full contact details thereof.
- Contact the multinational enterprise that is the subject of the specific instance, and will update it about the submission of the request, along with a copy of the complaint. The enterprise will be requested to appoint a contact person/s for the further handling of the complaint and to specify their full contact details. In addition, it must respond and state its position regarding the specific instance. In its application of the multinational enterprise, the Israeli NCP will specify the expected timetable for receipt of information from the multinational enterprise.
- Inform the steering committee of the Israeli NCP and any other government authority that might be relevant to the case that is the subject of the specific instance of the submission. The authorities will examine whether there are pending proceedings





relevant to the specific instance submitted as regarding any other information that is relevant, and will update the NCP accordingly.

- Notify other NCPs (host states or the origin state of the enterprise) as to the receipt of the specific instance. Also, the Israeli NCP will determine, along with the other relevant NCPs, which of the NCPs is to lead the proceeding. In case it is decided that the Israeli NCP shall not lead the proceeding, then the Israeli NCP will notify the relevant parties (the submitter of the specific instance and the enterprise that is the subject of the specific instance) of the decision and refer them to the NCP chosen to lead the handling of the specific instance.

After consultation with the steering committee, the Israeli NCP will decide whether the specific instance meets the threshold conditions set forth in the Guidelines and justifies further examination.

Threshold Conditions for Acceptance of the Specific Instance

The decision whether to examine the request will be made after examination of the following criteria:

- A. The specific instance deals with an issue included in one or more of the chapters of the Guidelines.
- B. The issues raised in the request are material and substantiated.
- C. The identity of the party that submitted the specific instance and its link to the case that is the subject of the specific instance.
- D. The link between the enterprise's activity and the issue(s) raised in the specific instance.
- E. Existence and application of local laws and regulations as the case may be, including court rulings.
- F. The manner by which similar matters were handled or are handled in other local or international proceedings.





G. Whether examination of the specific instance will contribute to the purposes and effectiveness of the Guidelines.

Regarding the threshold conditions for acceptance, the administration of proceedings simultaneously with the specific instance will not, in itself, constitute a cause for termination of the request examination process. The Israeli NCP must assess whether its services for examination of the request will contribute to solution of the issues raised and will not lead to significant bias in the other simultaneous proceedings.

In case the Israeli NCP determines that the threshold conditions are not met, it will notify the parties in writing and specify the reasons for the decision. The decision of the Israeli NCP's not to accept the specific instance means that there is not sufficient proof of breach of the Guidelines to an extent that justifies further examination, that the complaint is petty and valueless, or that it does not meet the threshold conditions. Decision to accept the specific instance means that there are basis for continuing to handle the specific instance. It is noted that decision to accept the specific instance **does not mean** that the Israeli NCP has concluded, at this stage, that there was indeed a breach of the Guidelines.

In case the specific instance does not meet the threshold conditions and it is decided to reject the specific instance, then the Israeli NCP will publicize an initial assessment. The information included in the assessment:

- Nature of the specific instance, including principles of the Guidelines breach of which is alleged according to the specific instance.
- Summary of the proceedings conducted by the Israeli NCP by the date of publication of the assessment.
- Grounds for rejection of the specific instance.

In publication of the assessment, the Israeli NCP will consider the need to maintain confidentiality of the parties or other information.

The Israeli NCP is entitled to propose meetings with each party separately. At these meetings, the Israeli NCP will describe the proceedings and answer questions, if any. The





Israeli NCP may request from the parties, at such time, any additional information as required in order to handle the specific instance. The Israeli NCP may seek external advice regarding the specific instance.

In case the parties reach an arrangement and the submitter of the specific instance withdraws the specific instance before the Israeli NCP concludes the handling of the matter, the identity of the parties will not be disclosed by the Israeli NCP unless both parties agree thereto.

The Israeli NCP has discretion to decide on publication of initial assessment also if the specific instance is accepted for further handling.

Second Stage – Examination of the Request and Assistance to the Parties

The Israeli NCP will propose and, with the parties' consent, assist the parties to seek non-legal means, such as joint consultation and mediation, and offer its services in order to assist the parties in reaching agreement.

Mediation or assistance for the proceeding will be conducted in any framework as agreed by the parties and the Israeli NCP in order to reach an agreed solution.

The parties are not obligated to agree to the Israeli NCP's offer for assistance, through the Israeli NCP's final declaration will specify the reasons for failure of the proceeding, including due to refusal by the parties to participate in the proceeding.

In case the parties do not reach agreement, then the Israeli NCP will examine the specific instance in order to determine whether it is justified. If the parties reach agreement only as to part of the specific instance, the agreement will be enclosed to the Israeli NCP's final declaration as an appendix – and the Israeli NCP will examine only the matters regarding which no agreement was reached.

As part of examination of the specific instance, the Israeli NCP might be required to gather additional information from the parties, as well as require assistance and consultation by other governmental entities.





Third Stage – Final Declaration

In cases where the parties reach an agreement, then the Israeli NCP will publicize its final declaration in a public report, through consultation with the parties and the steering committee. The report will describe the matters raised, the proceedings initiated by the Israeli NCP in order to assist the parties and when the parties reached an agreement. Information on the content of the agreement, as well as the parties' identity, will be included only if both parties agreed to expose them.

One year after the agreement, the parties are requested to submit to the Israeli NCP a privileged report on the agreement status.

The final declaration of the Israeli NCP, in cases where the parties have not reached an agreement, will include the identity of the parties, the date of submission of the specific instance, the matters raised, the reasons for which the Israeli NCP decided there was need for additional examination of the matter pursuant to the Guidelines, and the proceedings undertaken by the Israeli NCP in order to assist the parties. If relevant, the declaration will also include recommendation as to the manner of implementation of the Guidelines. If it is fit and proper to do so, the final declaration will also include the Israeli NCP's analysis as to the reasons due to which the parties could not reach agreement.

Before the declaration is publicized, the Israeli NCP will send the format of the declaration to the parties for comments regarding the factual description only. The parties must respond within 10 working days. Afterwards, the final declaration of the Israeli NCP will be publicized on the website: ncp-israel.

Following up Conclusions after the procedure

After conclusion of the proceedings, the Israeli NCP may consider the parties' requests for follow-up or supervision over performance of the agreement or the Israeli NCP's recommendations. However, such follow-up will only be done according to the Israeli NCP's discretion, and will be done extraordinarily, if the Israeli NCP determines there is need for the same, and only if the resources of the Israeli NCP allow for it.