



# Brazilian National Contact Point

## Procedure Manual for Specific Instances

\*\*\* This is a courtesy translation, the Portuguese version prevailed and must be consulted if there is any question regarding language use. Original version – March 2020.

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## 1. Background and Application

1.1. The Executive Secretariat of the Foreign Trade Council of the Ministry of Economy presents the 1st edition of the Manual of Procedures for Specific Instances.

1.2. The **Brazilian National Contact Point** (hereinafter called the Brazilian NCP) for Responsible Business Conduct (hereinafter RBC) is responsible for promoting the Organization for Economic Co-operation and Development – OECD Guidelines for Multinational Enterprises (hereinafter the OECD Guidelines) and for handling specific instances of non-compliance with these Guidelines. The procedures and guidelines described in this document will be applied to new instances filed from the date of its publication. For ongoing specific instances, see section 12, which deals with transitional arrangements.

1.3. The **OECD Guidelines** are recommendations approved and applied by governments to multinational companies operating in or from adhering countries. The Guidelines represent a global understanding for RBC, covering all areas of corporate responsibility, including transparency, human rights, employment and labor relations, environment, anti-corruption, consumer interests, science and technology, competition, and taxation.

1.4. Companies operating in Brazil and Brazilian companies operating abroad should act following the principles set out in the OECD Guidelines, which complement Brazilian domestic law. Although not legally binding, these Guidelines provide a comprehensive framework for companies setting an RBC policy.

1.5. According to the OECD, the RBC principles serve as a parameter for business behavior that enables economic growth to be combined with respect for environmental and social values. In other words, the RBC objective is to encourage economic sustainable development as much as possible. In its full application, companies take responsibility for preventing and dealing with adverse impacts associated with their operations.

1.6. Unlike the concept of Corporate Social Responsibility (often associated with philanthropic actions unconnected with the company's operations), RBC is broader as it emphasizes the integration of responsible practices into internal operations and all their business relationships and supply chains. Thus, the

corporate commitment is not limited to its organizational limits but also covers all its suppliers, creating a supervisory duty for transnational companies.

1.7. The Brazilian NCP is a collegiate body, named Interministerial Working Group (hereinafter IWG-NCP), coordinated by the Ministry of Economy, composed of public agencies that are directly related to the OECD Guidelines' chapters. The NCP may also count on the support and participation of other public administration and civil society bodies and entities, which may be invited to attend meetings, whenever the topic demands. The work performed by the Brazilian NCP does not imply the payment of fees.

1.8. Therefore, aiming at complying with the OECD's key criteria for NCPs' activities - visibility, accessibility, transparency and accountability - this Manual presents the procedures for handling the specific instances that are presented to the Brazilian NCP.

1.9. This Manual was subjected to public consultation for two months. Several suggestions, including from the OECD, have been incorporated into the document and, after approval by the IWG-NCP, resulted in this first edition.

1.10. Improvements and updates will be made as needed. To this end, questions, criticisms or suggestions can be sent to the email [pcn.ocde@economia.gov.br](mailto:pcn.ocde@economia.gov.br)

1.11. The OECD Guidelines, including implementation procedures and associated comments, are available in several languages at [mneguidelines.oecd.org](http://mneguidelines.oecd.org)

Brazilian NCP legal basis: Decree No. 9,874, of June 27, 2019.

## 2. Glossary

2.1. The following key terms are defined for a better understanding of this document:

<b>Admissibility</b>	The evaluation of elements described in Section 4 by the NPC Coordinator. It precedes the Initial Assessment.
<b>Brazilian NCP</b>	Brazilian National Contact Point
<b>Complainant</b>	The individual or entity that submits a Specific Instance to the NCP.
<b>Final Declaration</b>	A document issued to finish a Specific Instance, which may include recommendations to the Parties.
<b>Good Faith</b>	The principle of good faith in the context of the OECD Guidelines means responding promptly, maintaining confidentiality where appropriate, and genuinely engaging in procedures to find a solution to the issues raised under the Guidelines.
<b>Good Offices</b>	The phase in which the NCP seeks to facilitate dialogue between the Parties aiming at reaching a mutual agreement on the resolution of the problems raised. Good Offices may include mediation conducted by the NCP or professional mediators.
<b>Initial Assessment</b>	The phase where the NCP decides, based upon substantive consideration, if the complaint must be accepted, rejected, or transferred to other NCP.
<b>IWG-NCP</b>	Interministerial Working Group (Decree no. 9.874 / 2019)
<b>NCP Coordinator</b>	The member of the IWG-NCP responsible for coordinating the NCP in its technical issues, – for instance, assessing a claim's admissibility - and administrative activities.
<b>OECD</b>	Organization for Economic Co-operation and Development

<b>OECD Guidelines</b>	The OECD Guidelines for Multinational Enterprises are a document validated by adhering countries, which presents international standards of best practices for responsible business conduct.
<b>Parties</b>	Complainant and Respondent
<b>Procedimental Orientations and Comments</b>	A OECD document that describes how government should create their NCPs and how the NCPs operate and take decisions related to the implementation of their mandate. This Orientations aim at facilitating cooperation between NCPs and helping interested Parties to better understand how NCP works.
<b>Respondent</b>	The multinational company against which the complaint is made.
<b>Specific Instance/Complaint</b>	Specific Instance is the common word used by OECD referring to a complaint submitted to NCP about company conduct concerning the OECD Guidelines. In this Manual, the expression "Specific Instance" and the word "Complaint" are synonyms.

### **3. Introduction**

3.1. This Manual seeks to provide predictability to the activities of the Brazilian NCP, when dealing with the Specific Instances.

3.2. In general, the rules described in this document may be relaxed by the NCP in consultation with the interested Parties (Complainant and Respondent). An example is the possibility of deadlines extension.

3.3. The template form for submitting a Specific Instance to the NCP is available in the Annex.

3.4. The Good Offices services offered by the NCP aim at providing a negotiating table and a solution proposal to settle the dispute through administrative mediation. The goal is to temper differences and overcome obstacles between the interested Parties. If Parties decide to establish a private mediation, there will be no prejudice to the participation of the Brazilian NCP as an observer.

3.5 Mediation takes place peacefully and neutrally, seeking to make possible points of agreement between the Parties. They are invited to adopt the consented points to reach a solution.

3.6. In addition to the principles provided in art. 2 of Law No. 13.140/2015 (which provides for mediation between individuals as a means of resolving disputes and the self-composition of conflicts within the scope of public administration), the main characteristics of the Good Offices offered by the NCP are as follows:

- a) it is an out-of-court method of conflict resolution and does not determine applicable law according to subsection II, section III, of Law No. 13,140/2015;
- b) it is neutral and impartial. The Brazilian NCP assists Parties in seeking to solve a conflict involving available entitlements and may suggest alternatives, never imposing a solution, leading the Parties to find a non-contentious solution;
- c) it is a voluntary mechanism for peaceful settlement;
- d) it does not interfere in the Judiciary Branch's jurisdiction;
- e) it aims to bring together the Parties and facilitate dialogue, helping them to resolve their issues by consensus, building a mutually agreed decision. If Parties fail to reach an agreement, the NCP may, in its Final Declaration, issue recommendations considered appropriate;

- f) due to its collaborative nature, the NCP may adopt fewer formal mechanisms than judicial processes, applying fast and flexible procedures, taking into consideration the guidelines established in this Manual;
- g) the work of the NCP does not imply payment of any fees.

## 4. Presentation of a Specific Instance

4.1. This section refers to the admissibility of a Specific Instance.

4.2. The Complainant may be any natural or legal person, such as businesses, unions, or non-governmental organizations. In any case, the Complainant must show the connection or relevance between one's interests and the object of the Complaint.

4.2.1. Complainants acting on behalf of others must demonstrate their representative ability to do so, as well as submit all the information requested by the NCP.

4.3. Specific Instances may be submitted to the NCP when concerns to:

- a) multinational companies operating from adhering countries<sup>1</sup> operating in Brazil; or
- b) Brazilian multinational companies operating outside Brazil, in countries adherent or not to the OECD Guidelines.

4.4. The NCP will adopt a broad definition of the concept of multinational company to receive Specific Instances. Valuation factors such as corporate identity, the management, or shareholder control in the country may be considered.

4.5. The Complainant may file a Specific Instance through a request in the Electronic Information System of the Ministry of Economy (SEI-ME), available at <http://www.fazenda.gov.br/sei/usuario-externo>. It should be filed according to the Template Form to Submit a Specific Instance to the National Contact Point (See Annex).

4.6. If the Complainant is unable to use the SEI-ME platform, the NCP will provide alternatives to ensure accessibility to the mechanism (e.g. use of e-mail or even physical delivery of documents). Improvements needed to ensure accessibility can be made at any time.

4.7. After the presentation of the Specific Instance, the Complainant will not be able to raise new questions regarding the same situation, except for the

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<sup>1</sup> A list of adhering countries is available at <https://mneguidelines.oecd.org/about/>



presentation, during the Initial Assessment period, of new or unknown facts at the time of submission of the Complaint.

4.8. The presentation of a Specific Instance should clearly demonstrate the relationship between the issue raised, the company's (Respondent) activities or responsibilities, and the OECD Guidelines, as well as the direct involvement of the Complainant with the breach of the Guidelines concerning available rights.

4.9. Information related to a Specific Instance provided to the NCP by Parties will be considered public and may be disclosed unless the Parties formally request otherwise when submitting the information. The confidentiality will be maintained until acceptance or rejection of the Specific Instance, excepted for information and data that is protected by legal confidentiality (banking, industrial, commercial, personal information, tax, etc).

4.10. Upon formal request (stating the reasons for confidentiality and the prejudice resulting from its disclosure), the Parties may request to the NCP that information sent to it and specified in a requirement be for its sole knowledge, ensuring secrecy and confidentiality.

4.11. The Party requesting confidentiality shall provide a non-confidential summary of the information provided, which may be disclosed.

4.12. For the admissibility, Specific Instance shall contain the following information, without prejudice of others requested by the NCP:

- I. identification of the Complainant(s) and, where applicable, the organization represented, specifying names, CPF or CNPJ (passport or I.D, if foreign), addresses (physical and electronic) and telephone numbers (baseline and mobile, when applicable);
- II. identification of the multinational company(ies) Respondent, specifying the name of the representative in Brazil with a mailing address (physical and electronic) and telephone number;
- III. indication of the country(ies) in whose territory the issues arose;
- IV. a detailed description of the facts, indicating the article(s) of the Guidelines that would not have been or are not being observed by the multinational company(ies) regarding this Specific Instance;
- V. indication of how the alleged non-observance of the Guidelines affects, even potentially, the Complainant(s) or the persons represented by them;

- VI. a description, if applicable, of the efforts made by the Complainant(s) aiming at the Respondant(s) to deal with the alleged non-compliance with the Guidelines and the results of those efforts;
- VII. copy of document or information that may serve to understand the facts or circumstances that would characterize the alleged non-compliance with the Guidelines, as well as the efforts referred to in item VI;
- VIII. indication of data considered confidential;
- IX. information related to the analysis of the Complaint object by the Brazilian Judiciary branch, other national or international administrative bodies, or any international entity. The Party(ies) shall submit to the NCP any documentary evidence of these proceedings relevant to the Specific Instance; and
- X. electronic signature(s) of the person(s) submitting the Specific Instance.

4.13. During the course of a Specific Instance, if a Party has access to information from other proceedings presented to the bodies mentioned in item 4.12, IX, one should inform its existence as well as the position of the Complainant and the Respondent concerning the question.

4.14. Incomplete submissions will be considered invalid and closed if the Complainant does not provide the required information within the set deadline.

4.15. Specific Instances already concluded by the Brazilian NCP or another NCP will not be accepted, except for the presentation of new or unknown facts at the time of the submission of the previous Complaint.

4.16. The Specific Instance will not be accepted if it is based on facts known which occurred more than **60 (sixty) months** from the date of receipt of the Complaint by the NCP.

4.17. If the same elements of the Specific Instance (the Parties, the facts that leads to the Complaint and the request from the Respondent) are already being processed in courts, this information shall be written in the Specific Instance. It could be agreed by the Parties that they will communicate a possible mediation to the Judiciary branch, with possible suspension of the judicial process.

4.17.1. A copy of the request for suspension of proceedings shall be submitted by one of the Parties to the NCP.

4.17.2 If the court case reaches a final decision, the Specific Instance will not be accepted. If there is a final judgment during the procedure by the NCP, the Complaint will be filed.

4.18. The Coordinator of the Brazilian NCP will verify the admissibility of the Specific Instance within **45 (forty-five) consecutive days** from the submitting of the documentation.

4.18.1. If the documents provided do not meet the formal requirements and the Coordinator evaluate that it possible to solve the issue by presenting additional information, one will request the Complainant to provide it. It shall be sent within **30 (thirty) consecutive days**, counting from the resquest date.

4.18.2. If the Complainant does not present the additional information up to the deadline or if the non-compliance with the formal requirements is not solved by the additional information presented, the Brazilian NCP Coordinator will reject the Specific Instance and the Complainant will be duly informed.

4.19. The receipt of documentation submitted by the Parties will be confirmed within **5 (five) business days**.

## 5. Initial Assessment

5.1 Once the admissibility criteria have been met, as per item 4.12, the objectives of the Initial Assessment are to verify whether the issues raised in the Specific Instance comply with the provisions informed in item 5.7; and to decide if it should be accepted, rejected or transferred to another NCP.

5.2 Until the acceptance or rejection of the Specific Instance, the Brazilian NCP will maintain confidentiality regarding it, under penalty of extinction and filing, in order to not affect the image of the alleged company. The same duty of confidentiality is imposed to the Complainant(s).

5.3 In accordance with paragraphs 23 and 24 of the 2011 Comments for Procedural Guidance for the OECD Guidelines<sup>2</sup>, the Specific Instance will be handled by the NCP of the country where the issues have arisen. Among adhering countries, these issues will be discussed first on the national level and, where appropriate, pursued at the bilateral level. The NCP of the host country should consult with the NCP of the (multinational company's) home country in its efforts to assist the Parties in resolving the issues.

5.3.1 In some circumstances, it may be appropriate for the Brazilian NCP to work with one or more NCPs from other countries throughout the Specific Instance process. In such situations, the conduct and coordination will be agreed between the relevant NCPs, the Parties will be informed, and the procedures of the lead NCP will be applied.

5.4. If the Brazilian NCP considers that it is not the most appropriate and competent to deal with the Specific Instance, it may transfer the Complaint to another NCP at any time during the Initial Assessment. In this case, the Brazilian NCP will inform the Complainant(s).

5.5. The Coordinator of the Brazilian NCP, after consulting with the members of the IWG-NCP, will appoint the rapporteur of the Specific Instance, according to its matter.

5.6. The rapporteur will preferably be the representative of the IWG-NCP member responsible for the matter addressed in the Specific Instance.

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<sup>2</sup> OECD Guidelines for Multinational Enterprises (2011) em <http://www.oecd.org/daf/inv/mne/48004323.pdf>

5.7. The rapporteur will indicate to the IWG-NCP whether the Specific Instance should be accepted or not, within **30 (thirty) consecutive days**. This report will consider, without prejudice to other information provided:

- I. the identity of the party(ies) concerned and its interest in the matter;
- II. whether the issue raised is legitimate, presented in good faith and relevant to the interpretation of the Guidelines;
- III. whether the issue is relevant and substantiated;
- IV. whether there is a direct link, albeit a potential one, between the Complainant and the issue raised;
- V. whether there seems to be a link between the company' (ies) activities and the issue raised in the Specific Instance;
- VI. whether the Specific Instance gathers elements that hold thematic pertinence with the chapters addressed by the Guidelines;
- VII. whether the Complaint contains sufficiently delimited focus;
- VIII. whether the Specific Instance presents facts and evidence, verifiable by objective criteria;
- IX. the relevance of applicable laws and procedures, including court rulings;
- X. how similar issues have been or are being treated in other domestic or international proceedings; and
- XI. whether the consideration of the specific issue would contribute to the purposes and effectiveness of the OECD Guidelines.

5.7.1. The report will be submitted to the IWG-NCP, which will decide if the Specific Instance will be accepted or not. The needed quorum for the meeting is an absolute majority. The decision on acceptance will be taken by a simple majority, i.e half plus one of the total votes of the members attending the meeting.

5.8 The decision of IWG-NCP concerning the acceptance or not of the Specific Instance will be dully informed to the Parties.

5.8.1 After the acceptance of the Specific Instance, the Brazilian NCP will disclose on its website a summary of the Complaint, informing what are the Parties and clarifying that the acceptance does not imply a value judgment on the conduct described by the Complainant in relation to the OECD Guidelines.

5.9. The acceptance of the Specific Instance does not result in an immediate call of the Parties to a mediation meeting, but it is the first step for Brazilian NCP to offer its good offices.

5.10. The company (ies) (Respondent) identified in the Specific Instance will be notified and will be given access to the documents (provided by the Complainant). It will also have the opportunity to comment on the Complaint, after its acceptance.

5.11. In the communication to the Respondent(s), the Brazilian NCP will describe the points raised by the Complainant and the article (s) of the Guidelines allegedly not complied with, taking into account information considered confidential.

5.12. The Respondent(s) will be requested to present their answers within **15 (fifteen) consecutive days**, extendable, at the company's request, for an equal period.

5.13. Furthermore, the Brazilian NCP may request specific information from government agencies (members or not of the IWG-NCP) with experience in the issues presented at the Specific Instance.

5.14. The rapporteur will analyze the Respondent(s)'s answers and make recommendations on the next steps of the procedure. Recommendations could be:

I - closure of the Specific Instance. In this situation, a Final Declaration will be written and published, according to the procedures defined in this manual;

II - request more information from the Parties. Therefore, the NCP's Executive Secretariat will take the necessary measures;

III – offer of Good Offices, including mediation between the Parties. To this end, the Coordinator of the Brazilian NCP will inform the Parties about the Good Offices (and mediation, if applicable) offering;

IV - other recommendations.

5.14.1. The rapporteur will have an indicative timeframe of **30 (thirty) consecutive days** to present the recommendations to the IWG-NCP.

5.15. The non-acceptance of the Specific Instance does not prevent the Complainant to file a new one in relation to the same multinational company, with new data or different content from the petition previously formulated.

5.16. The decision of non-acceptance of the Specific Instance will be disclosed by the Brazilian NCP, through a Final Declaration, as provided in Section 7.

5.17. In accepting or rejecting the Specific Instance, the Brazilian NCP will not make a judgment about the conduct described by the Complainant in relation to the OECD Guidelines.

5.18. The Parties will be responsible for all information they provide to the Brazilian NCP .

5.19. In case the Complainant decides to withdrawal the Specific Instance during its analysis, the Respondent will be consulted on the interest in making an additional statement, which will be added to the Final Declaration.

## **6. Good Offices and Mediation**

6.1 During this phase, the Brazilian NCP will facilitate the dialogue to assist Parties in reaching a common agreement on questions raised in the Specific Instance, in accordance with the OECD Guidelines. The Good Offices will also include a mediation process conducted by the NCP or professional mediators.

6.2 For all Specific Instances accepted by the IWG-NCP, the Brazilian NCP will offer its Good Offices to the Parties.

6.3. The Good Offices' offering by the NCP will be preceded by a preparatory phase, in which the NCP will inform the Parties on the Specific Instance and prepare a plan for conducting it. This will be followed by a phase in which the issues raised will be discussed, towards a mutually satisfactory solution.

6.4. The Good Offices will be conducted on a case by case basis and may maintain a flexible approach to the preparation and the following stages, obeying, as appropriate, Law No. 13.140/2015.

6.5. In order to begin the preparatory phase, the NCP will meet with each Party separately to explain the process and options, including mediation.

6.6 The NCP will seek the agreement of each party to continue the discussions:

6.6.1. In cases where more than two Complainants and/or more than two Respondents are involved, the mediation offer must be accepted by all Parties, and neither Party may be forced to participate in the mediation. In this case, mediation will continue with the interested Parties and the Final Declaration will explain the reasons alleged by the non-participants.

6.6.2. When there is no agreement or when a Party is not willing to participate in the proceeding, the NCP will prepare a Final Declaration, as provided in Section 7.

6.7 Mediation is a negotiation that seeks, in a structured way, a non-judicial resolution of conflicts. It is conducted by a mediator – appointed by the IWG-NCP members, and previously accepted by the Parties -, who will seek to facilitate and organize communication between them.



6.7.1 Alternatively, the Brazilian NCP may invite qualified third Parties to conduct the mediation. In this case, the mediator may be chosen from professionals on a list maintained by the NCP or appointed by one of the Parties, as long as accepted by the counterparty.

6.8 When the mediation is offered by the Brazilian NCP, it will be considered provision of relevant public service, unpaid.

6.9. Once Parties accept the mediation, the Brazilian NCP will prepare a work plan containing the objectives sought with the mediation, deadlines, means of communication, confidentiality requirements, identification of authorized negotiators and a confidentiality agreement in handling the information provided, among other information. The Parties may propose adjustments to the plan. The final version will be signed by both Parties and the mediator. Work plans may vary in format and will be defined for each Specific Instance, observing any practical restrictions that may exist.

6.10. The mediation may be interrupted at any time at the request of either Party and/or the NCP.

6.11. At the discretion of the rapporteur and the Parties, and previously agreed, observers may be invited to participate in the mediation process, provided that they maintain a link with the object of the Specific Instance. The duty of confidentiality should also apply to observers.

## 7. Final Declaration

7.1. When closing a Specific Instance, the NCP issues a Final Declaration, previously approved by the IWG-NCP, considering the need to protect sensitive or confidential information, if so informed by the Parties.

7.2. During the preparation of the Final Declaration, the IWG-NCP may use documents submitted by the Parties, available public information, and other information that may have arisen throughout the process. The IWG-NCP may also be supported by other NCPs, the OECD Secretariat, and experts on the subject.

7.3 The Brazilian NCP will submit a preliminary version to the Parties **within 15 (fifteen) consecutive days** from the receipt of the notification, so they can comment on its content, and suggest any amendments they may consider relevant. All suggestions made must be justified.

7.4. Once approved by IWG-NCP, the Final Declaration will be public and duly forwarded to the Parties, the OECD and the NCPs of the host countries of the multinational companies that are Parties to the process and disclosed on the Brazilian NCP website.

7.5. The Final Declaration will include a specific instance overview, a description of the process conducted by the NCP and recommendations to the company(ies) and the complainant(s), when appropriate.

a) In case the specific instance has been rejected, the Final Declaration will also include an explanation of how the allegation was assessed, without judgment and merit assessment, according to item 5.17.

b) If the specific instance is accepted but the offer of good offices does not result in an agreement, or a Party does not engage in the proceedings, the Final Declaration will describe the issues raised, the assistance provided by the NPC to the Parties, the Parties' positions, when expressed, and, if applicable, the reason why it was not possible to reach an agreement.

c) When Parties reach an agreement, the Final Declaration will describe the procedures adopted in assisting the Parties. In accordance with Section 8, information about follow-up commitments agreed between the Parties and/or the NCP recommendations will also be provided. The content of the agreement will

be included in the Final Declaration only to the extent that both Parties agree to its public disclosure.

7.5.1 The Brazilian NCP, due to its nature and because it is a mechanism for concertation, makes no judgment about the conduct of companies in relation to the OECD Guidelines.

7.6. After consultation with the Parties, the NCP may initiate or resume the mediation process at any time during the preparation of the Final Declaration of a Specific Instance.

## **8. Post completion: Follow-up**

8.1. The Brazilian NCP, when necessary and in accordance with the Parties, will specify in the Final Declaration a schedule for monitoring the commitments assumed on the specific instance, as long as it is appropriate in the context of its recommendations and/or initiatives agreed between the Parties.

8.2. To this end, the NCP will request updates from the Parties on the agreed.

8.3. The NCP may publish an additional statement summarizing the updates received. It may also recommend an additional follow-up period in circumstances the NCP considers necessary.

8.4. The accompanying statement will also be published on the Brazilian NCP website.

## 9. Deadlines

9.1 As a general principle, the OECD establishes that NCPs should seek to complete the procedure within 12 (twelve) months after receiving a Specific Instance, as well as it recognizes that this deadline may be extended if circumstances warrant.

9.2. The following table describes the deadlines recommended by the OECD for each procedural phase of the Specific Instances. As stated, these are indicative of ideal scenarios and some procedures may require the extension of the prescribed deadlines, depending on the complexity of the subject.

<b>PHASE</b>	<b>Duration</b>
Initial Assessment	3 months
Good Offices and Mediation	6 months
Final Declaration	3 months
<b>TOTAL</b>	12 months

## 10. Confidentiality

10.1. Transparency is one of the general principles of conduct of National Contact Points and its website ([www.pcn.economia.gov.br](http://www.pcn.economia.gov.br)) is its the main channel for the dissemination of information about it. The Brazilian NCP also informs the OECD about the progress of the Specific Instances and this information is published on the OECD website and in its database<sup>3</sup>.

10.2. Before beginning a Specific Instance, during the process and after its conclusion, the NCP, the Parties and any other third Parties involved must respect in good faith the confidentiality of the proceedings, under Law No. 13.140/2015, with due regard. Therefore, they should not disclose documents, facts, arguments and any other information sent or arising during the procedure, in order to protect the privacy of the Parties.

10.2.1. The Parties must assure that the ones they represent, if applicable, will comply with the confidentiality duties, when informing about the progress of the Specific Instance. During the Good Offices phase, the Parties will also have to refrain from publicizing the issues addressed within the scope of the Good Offices in order to maintain a peaceful and collaborative space for resolving the issues.

10.3. Information provided to the Brazilian NCP and classified as confidential will not be publicly disclosed by the NCP and will only be shared - also respecting confidentiality principles - with those who have a direct role in supporting the NCP's work (for example, IWG-NCP, mediators, public administration).

10.4. At the end of the process, if there is an agreement on the issues raised, the Parties should decide how and to what extent the content of the agreement may or may not be publicly available.

10.5. Violation of any confidential obligation by either Party represents non-cooperation and the Brazilian NCP may close its good offices immediately.

10.6. If a party does not agree to share the forwarded information, it shall submit:

- I. a full version, identified on the first page with the term "**CONFIDENTIAL VERSION**"; and

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<sup>3</sup> <http://mneguidelines.oecd.org/database/#d.en.217490>

- II. a version identified on the first page with the term "**PUBLIC VERSION**", edited with marks, erasures or deletions, to strictly omit numbers, words, or any other elements considered confidential.

10.7. The duty of confidentiality applies not only to the Parties, but also to the members of the IWG-NCP and its Executive Secretariat, the mediator and its staff, and others who have directly or indirectly participated in the proceedings. The duty of confidentiality also extends to private sessions held by the mediator, who may disclose them only with the authorization of the Parties.

10.8. The Parties should be aware that non-confidential information and documents provided to the NCP will be subject to the Law for Access to Information (Law No. 12.527/2011) and may be released in accordance with the provisions of this Law, except in the case of secrecy contained in the Law itself, the Law No. 13.140/2015 and other legal hypotheses of secrecy.

10.8.1. The Law for Access to Information regulates the constitutional right to access public information and establishes a process to ensure the public's right to access documents held by the government.

10.8.2. The NCP will release the information in compliance with the Federal Executive Branch's policy of active transparency and open data.

10.9. Specific Instance involving public or state-owned companies will not be covered by the duty of confidentiality, except in cases where Law No. 12.527/2011, Law No. 13.140/2015, and Law No. 13.303/2016 and other legal hypotheses preserve confidentiality information.

10.9.1. Until the actual acceptance or rejection of the Specific Instance, the NCP shall maintain confidentiality regarding it, under penalty of extinction and filing, in order not to affect the image of the company object of the complaint. The same duty of confidentiality is imposed to the complaining party.

10.10. If one of the Parties violates the confidentiality, it will be subject under national law to:

- a) In case the information is used in judicial or arbitral proceeding, there is a violation of the duties of good faith and loyalty, making evidence inadmissible, according to paragraph 2 of art. 30 of Law No. 13.140/2015.
- b) Possibility of indemnification in the judicial sphere, if the information causes damage to one of the Parties.

10.11. The request for confidentiality may be reviewed at any time at the request of the Party concerned.



## **11. Specific Instance withdrawal**

- 11.1. The Complainant(s) may request in writing the withdrawal of their Specific Instance. If this occurs, the NCP will consult the company(ies) and close the Complaint. The NCP will provide, on a case-by-case basis, public acknowledgment of the Complaint withdrawal.

## **12. Transitional Provisions**

12.1. The present procedures and guidelines are effective for all Specific Instances submitted to the NCP as of the date of publication of this document.

12.2. The Complaints submitted before the date of publication will be subject to these procedures in their subsequent phase, in consultation with the interested Parties.

### 13. Annex: Template Form to Submit a Specific Instance to the National Contact Point

#### Form to Submit a Specific Instance to the National Contact Point

This document provides the minimum elements required to submit a Specific Instance to the Brazilian National Contact Point (NCP) for Responsible Business Conduct.

For further information and details, please consult the NCP Procedures Manual at [www.pcn.economia.gov.br](http://www.pcn.economia.gov.br)

The Complaint shall contain:

- I. The identification of the Complainant(s) and, where applicable, the organization represented, specifying the names, CPF or CNPJ (passport or I.D., if foreign), addresses (physical and electronic) and telephone numbers (landline and mobile, when applicable);
- II. The identification of the multinational company(ies) object of the Complaint, specifying the name of the representative in Brazil with mailing address (physical and electronic) and telephone number;
- III. The indication of the country or countries in whose territory the issues arose;
- IV. A detailed description of the facts object of the complaint, indicating the article(s) of the Guidelines that would not have been observed by the multinational company(ies), applicable to the Specific Instance;
- V. An explanation of how the alleged non-compliance with the Guidelines affects, even potentially, the Complainant(s) or the persons represented by them;
- VI. A description, if applicable, of the efforts undertaken by the Complainant(s) with the aim of making the multinational company(ies) deal with the alleged non-compliance with the Guidelines and the results of those efforts;
- VII. A copy of documents or information that may help understand the facts or circumstances that would characterize the alleged non-compliance with the Guidelines, as well as a copy of the documents related to the efforts referred to in item VI;

- VIII. An indication of data/information considered confidential
- IX. Information if the object of the Complaint is being processed by the judiciary, in other national or international administrative bodies, or in any international entity. Whenever possible, the Party(ies) shall submit to the NCP the documents that prove this situation and that are related to the presented Specific Instance; and
- X. The signature(s) of the person(s) submitting the Specific Instance.

**1) Identification of the Complainant(s):**

<p><b>a) From the Complainant(s):</b></p> <p>Names, CPF or CNPJ (passport or I.D., if foreign), addresses (physical and electronic) and telephone numbers (landline and mobile, when applicable)</p>	
<p><b>b) Affected party(ies):</b></p> <p>If the Specific Instance is presented on behalf of a third party (individuals, organizations, groups, associations, etc.), please provide details of the affected party(ies).</p>	
<p><b>c) Link:</b></p> <p>Specify the link between the Complainant(s) and the affected party (ies)</p>	

**2) Identification of the multinational company(ies) object of the Complaint**

<p>a) Name of representative in Brazil or abroad (where applicable), address (physical and electronic), and telephone number</p>

b) Indicate the country(ies) where the alleged non-compliance occurred

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c) Is the company(ies) already aware of the Complaint?

Yes

No

If YES, what was the reaction of the company representative(s)?

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**3) Identification of any interested third party that the Brazilian NCP should consult for more information.**

a) Provide all useful details and/or contact details for the Brazilian NCP to identify and contact any interested third party

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**4) Description of the problem(s) which is the subject of the Complaint**

a) Indicate the Chapter(s) and/or Paragraph(s) of the Guidelines that the multinational company(ies) is(are) not complying with		
Chapters		Paragraphs
<input type="checkbox"/> I.	Concepts and Principles	
<input type="checkbox"/> II.	General Policies	
<input type="checkbox"/> III.	Disclosure	
<input type="checkbox"/> IV.	Human rights	
<input type="checkbox"/> V.	Employment and Industrial Relations	
<input type="checkbox"/> VI.	Environment	
<input type="checkbox"/> VII.	Combating Corruption, Bribery Solicitation and Extortion	
<input type="checkbox"/> VIII.	Consumer Interests	

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<input type="checkbox"/> IX.	Science and Technology	
<input type="checkbox"/> X.	Competition	
<input type="checkbox"/> XI.	Taxation	

b) A detailed description of the object facts of the complaint, possibly linking the allegations to the above-mentioned Chapter and Paragraph of the Guidelines. Please also state how the alleged non-compliance with the Guidelines affects, even if potentially, the Applicant(s) or the persons represented by it.

c) Indicate the expected results of a possible mediation



## 5) Parallel Proceedings

a) Is there any pending or completed process on the matter before other national / international public / private authorities? (administrative, judicial, public safety authority)

**Note:** The documents referring to these complaints that prove this situation and that are related to the allegation presented must be sent to the Brazilian NCP

Yes

No

I don't know

If YES, please inform which authority the Specific Instance was submitted to:

Is the case pending a decision?

Yes

No

I can't inform

b) Is there any National Contact Point (NCP) from another country aware of or has been triggered in relation to this Complaint?

Yes

No

I don't know

If the Specific Instance has been submitted to other NCP(s), please indicate which NCPs are involved and which NCP is responsible for assistance to the Party (leading NCP):

## 6) Confidentiality

Indicate the information and/or documents that should be treated confidentially:

### 7) Documentation

Please list the documents attached to this form that support the Allegation

### 8) Other relevant information

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By this submission form, I request the Brazilian NCP to provide its good offices for the resolution of the issue stated above.

- I authorize the use of the data and information contained in this document, in accordance with the provisions of Decree No. 9,874, of 06/27/2019, and the Brazilian NCP Procedures Manual.
- I promise to maintain confidentiality regarding<sup>88</sup> the submission of this Specific Instance until its effective acceptance or rejection, as provided in the Brazilian NCP Procedures Manual.

**Date and Signature** \_\_\_\_\_