

Directive No. 003-2015- PROINVERSION

ATTENTION TO SPECIFIC INSTANCES RELATED TO THE IMPLEMENTATION OF THE OECD GUIDELINES

1. OBJECTIVE

This document regulates the submission procedure, admission for processing, evaluation and conclusion by the Peruvian National Contact Point before the Organization for Economic Cooperation and Development (OECD) of the specific instances raised by the interested natural and legal persons before an alleged breach of OECD Guidelines by the Multinational Enterprises of member and adherent countries of OECD.

2. SCOPE

This document is for the application of all public servants working in PROINVERSION.

3. OBLIGATIONS

3.1. Investor Services Division

- To issue notifications to persons who have submitted the Specific Instance reporting about its receipt and admission.
- To execute the initial evaluation of the Specific Instances and decide if it needs further analysis or not.
- To issue and publish an Initial Evaluation Report of the Specific Instance.
- To act as a facilitator for dialogue between the parties.
- To guide in order to facilitate, the parties, the access to agreed consensual procedures initializing in order to achieve a solution for the Specific Instance.
- To participate in meetings for dialogue, in light of the provisions set forth between the parties.
- If it is the case, coordinate with the corresponding national organizations and/or internationally with OECD experts and/or other national contact points that may be relevant for the Specific instance.
- If it is the case, issue and publish a Final Evaluation Report of the Specific instance.

3.2. Executive Directorate:

- To approve and send the Initial and Final Evaluation Reports of the Specific Instance.

4. LEGAL BASIS

- OECD Guidelines for Multinational Enterprises (2011 review) that constitute part of International Investments and Multinational Enterprises of the OECD Declaration, signed by the Peruvian state in July 2008.
- PROINVERSION'S Board of Directors Agreement N° 294-01-2009 dated July 1st 2009.

5. DEFINITIONS

- 5.1. **OECD:** the Organization for Economic Co-operation and Development, which includes 34 member countries and 12 adherent countries, among which is Peru. The mission of this organization is to promote politics that improve the economic and social welfare of people around the world.
- 5.2. **Guidelines:** It refers to OECD Guidelines for Multinational Enterprises.
- 5.3. **National Contact Point – NCP:** This is the entity responsible for promoting and implementing OECD Guidelines for Multinational Enterprises and for addressing the Specific instances relating to the implementation of the Guidelines. In case of Peru, it refers to the Private Investment Promotion Agency-PROINVERSION.
- 5.4. **Specific Instance:** It refers to the request raised before the NCP related to the alleged breach of OECD Guidelines by a multinational enterprise.

6. GENERAL PROVISIONS

- 6.1. Both, the interested party that presents a Specific Instance and the multinational enterprise that has allegedly breached the Guidelines, shall consider the transparency principle and the importance of sharing the information presented by the parties with the other party, in order to build trust in the procedure and to achieve a solution in the Specific Instance. In this regard, all the information provided by the interested party and the multinational entity to NCPs shall be sent to the other party, unless the party that provides the information, as an exception, identifies certain information as confidential and explain this fact.
- 6.2. The NCP can, if considered relevant, in order to collaborate with a solution to the Specific Instance presented, at any stage of the procedure; consult public institutions, other National Contact Points, or experts in the subjects under analysis in the Specific Instance.
- 6.3. When the Specific Instance involves the participation of more than one NCP, the NCP, if appropriate, shall report and coordinate with the other national contact points in order to define roles, competences and tasks during the procedure.

7. PROCEDURE

7.1. Presentation of the Specific Instance and the Initial Evaluation Stage

- 7.1.1. Any legal or natural person who feels himself or herself affected, directly or indirectly, can present a Specific Instance before the NCP alleging a breach of the OCDE Guidelines by a multinational enterprise.

The Specific Instance shall be presented in the PROINVERSION'S Reception Desk through a document addressed to its Executive Director, or whoever is acting in his or her behalf. The document shall include the following information:

- a. Full name, national identity card number and address of the natural person who presents the Specific Instance. If not Peruvian, he or she should include the corresponding identity card. Additionally, it should also indicate if the presentation of the Specific Instance is in his or her own behalf or on behalf of any third party. In the latter case, it should also include the proper identification data relating to the represented third parties, as well as the power of attorney with general powers of representation, or a simple notarized power of attorney that certifies the powers for such representation.
- b. Email address in which they authorized the receipt of the corresponding notifications of the Specific Instance.
- c. The explanation about the specific interest of the raised Specific Instance.
- d. The corporate name and address for notification purposes of the multinational enterprise, which has allegedly, breach the Guidelines, as well as the information about the organizational structure of the multinational enterprise, in case it is important for the Specific Instance.
- e. The detailed description of facts that are causing the breach of the Guidelines including the existing supporting documents.
- f. Location(s) identification where would be produce the breach of the Guidelines.
- g. Identification of the specific provisions of the Guidelines that would breach including the corresponding supporting declarations.
- h. The request relating to the conducts or actions, which are considered that, the multinational enterprise should take, in order to solve the alleged breach of the Guidelines.
- i. The purpose and reasons of the presentation of the Specific Instance before the NCP.
- j. The indication of the other instances, where the specific case or the facts that support it, are being analyzing, including administrative and court procedures, as well as, their conditions/states.
- k. The express declaration of its intention to pursue a solution in a possible specific case in accordance with the established procedures in the Guidelines and in the present regulation.
- l. Any additional information considered important for the analysis of the Specific Instance.

7.1.2 The Specific Instance will be considered, as presented, once all the minimum information indicated in Paragraph 7.1.1 is submitted in writing to the NCP. In that case, the NCP will contact the individual who presented the Specific Instance informing him/her that the documents were received and admitted, starting the initial evaluation phase.

If once the submitted information has been reviewed, the NCP determines that it is not completed; they shall inform the interested party so that within a 10 business-day-period the interested party can submit the remaining information. If within the given period the remaining information is not submitted the NCP may return the file declaring it as inadmissible.

7.1.3 Once the Specific Instance is admitted, the NCP shall have a 10 business-day-period to send it to the multinational company, which allegedly breach the Guidelines, with exception of the information identified as confidential, if any. Counting from the reception date, a 20 business-day-period is granted to the multinational company in order for them to make a written statement about the established matters and to include the evidence deemed convenient regarding every aspect explained in the Specific Instance, taking into account the indication in Paragraph 6.1.

7.1.4 In case that, from the reading of the said Specific Instance, it is concluded that a coordination with other NCPs is required in order to determine who shall lead the attention procedure of the Specific Instance, NCP shall proceed to make the coordination. Depending on the results of said coordination, the NCP shall proceed according to the indication on the previous Paragraph 7.1.3 or shall issue its Initial Evaluation Report, as appropriate.

7.1.5 During the Initial Evaluation phase, at the NCP discretion, they may request additional information or to call all the Parties for separate reunions in order to clarify any case related to the specific matter.

7.1.6 The NCP shall perform an initial evaluation to establish whether the Specific Instance needs further review or not, for which the criteria established in Paragraph 25 and 26 in “Comments on the implementation procedures of the OECD Guidelines for Multinational Enterprises” will be considered.

Considering the information included in the file presented by the interested party that submitted the Specific Instance, the information sent by the multinational enterprise, the criteria previously mentioned and, in general the Guideline terms, among others that the NCP deems convenient; the NCP will decide whether or not the Specific Instance needs further consideration and analysis and shall inform to the parties its decision.

7.1.7 The decision shall be released by the NCP through the issuance of the Initial Evaluation Report that shall include the parties’ identification, a summary of the facts and arguments from both parties and reasons to consider whether the Specific Instance needs further evaluation and analysis or not. It shall be noted that in the Initial Evaluation Report it is not determined the breach of the Guidelines from the multinational enterprise. It only states whether the Specific Instance needs further evaluation and analysis or not.

In case that the Initial Evaluation concludes that the Specific Instance does not need further analysis, the Initial Evaluation Report shall be written in a way that protects the parties’ identities and the Specific Instance shall be closed.

The NCP may decide if the Specific Instance needs partially further analysis, if it considers at least one of the behaviors described may constitute a breach of the Guidelines.

Once the Initial Evaluation Report is issued with regard to the Specific Instance, it shall be sent to the parties and published on the PNC webpage.

7.1.8 If one of the parties informs that they have meet an agreement and the interested party withdraws the Specific Instance before the NCP publishes their Initial Evaluation Report, the Specific Instance will be closed and the identity of the Parties will be published only if there is a mutual agreement of the parties.

7.2 The Assistance to the Parties and Good Offices Offering

7.2.1 Once the NCP has issued the Initial Evaluation Report where it concludes that the Specific Instance shall have further evaluation and analysis, it shall provide assistance to both Parties offering their good offices in order to provide a scenery and opportunity where the Parties may dialogue about the aspect involving the Specific Instance and achieve a consensual solution.

7.2.2 As part of the assistance to the Parties and good offices offering, the NCP shall meet with the parties in order to:

a) Initiate a consensual procedure where the NCP provides the Parties with a dialogue and negotiation forum and the NCP shall perform as facilitator. The discussions taking place during the procedure shall be of a confidential level.

b) Provide orientation in order to facilitate the Parties to access to consensual procedures such as external conciliation or mediation initiated with the purpose of achieving a solution for the Specific Instance. In this case, having notified the NCP with the decision from both Parties to be subject to an external mediation or conciliation process or similar procedure, the NCP shall suspend the Specific Instance analysis and depending on the conversations with both Parties, may close the Specific Instance or shall make a follow-up to the Parties during the procedure.

In both cases, the NCP shall converse with the Parties in order to establish a proper period for the dialogue and negotiation. If the Parties involved shall not come to an agreement within the specified period, the NCP shall ask them about the current added value in the provision of assistance. If the PNC states that the ongoing procedure is not productive, it shall be concluded.

7.2.3 If the agreed procedure continues as described in the section a) of the Paragraph 7.2.2 before mentioned:

a) The NCP shall meet each of the Parties to discuss the procedure and establish the main topics about the Specific Instance and then it shall meet both Parties together to determine the basic rules in order to have a dialogue with the Parties.

b) The NCP will participate in the meetings according to the agreed terms with the Parties. It is important to mention that the NCP shall have the facilitator role in all the meetings it attends, generating the dialogue and the proposal of formulas that may help to solve the Specific Instance. The NCP will not act as a conciliator or mediator in the procedure.

c) If the Parties enter into an agreement, the Parties, with the NCP assistance, shall draft and sign the document containing the agreement reached. The parties shall decide if the document shall be published or if it is kept in reserve and the only published a summary of it.

d) If there is no agreement entered into after the procedure, the NCP shall place on record in writing the conclusion of the procedure and shall inform the Parties the analysis procedure that follows for the purpose of the matter of the Specific Instance Final Evaluation Report.

e) If some aspects of the Specific Instance are agreed, a summary of these agreements shall be included in the Specific Instance Final Evaluation Report and the NCP shall evaluate the aspects that were not considered.

When most of the matters of the Specific Instance are agreed, the Parties may request the NCP by mutual consent not to analyze the pending matters, which shall be recorded in the Final Evaluation Report.

7.3 Specific Instance Final Evaluation Report

7.3.1. The NCP shall submit a Final Evaluation Report of the Specific Instance if its Initial Evaluation Report has concluded that such Specific Instance merited more evaluation and analysis; and therefore, the Specific Instance has passed to the Assistance to the Parties and Provision of Good Offices phase.

For the purpose of the elaboration of the Final Evaluation Report, the NCP shall analyze the Specific Instance following the directions established in the Guidelines and may include the recommendations that it consider appropriate and relevant. For the analysis, the NCP may consult and coordinate considering what is stated in Section 6.2 and 6.3 aforementioned.

7.3.2. The Final Evaluation Report will include the parties identification involved in the Specific Instance, a summary of the facts and the provisions of the Guidelines apparently breached, the actions performed by the NCP and Parties over the procedure and the final result thereof, among other aspects the NCP considers relevant to include.

7.3.3. Before its disclosure, the NCP shall send the project of the Final Evaluation Report to both Parties in order for them to review the accuracy of the facts included in the text in accordance with the information submitted to the NCP. The Parties will have 10 working days to include their comments. The NCP shall decide whether to include the comments or not.

7.3.4 The NCP shall send the Final Evaluation Report of the Specific Instance to the parties and shall publish it on their website.

7.3.5 In accordance with the indications in the provisions of these Guidelines, the NCP shall issue its Final Evaluation Report within the 3 subsequent months to the conclusion of the assistance procedure to the Parties and good offices offered. It shall be noted that the NCP will try to conclude this procedures within 12 months after receiving the Specific Instance.