GUIDELINES FOR THE ATTENTION OF SPECIFIC INSTANCES IN ACCORDANCE WITH THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

Mexico’s National Contact Point
Directorate General for Foreign Investment
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CONTENTS

Chapter I. General Provisions ............................................................................................................ 1

Objective ........................................................................................................................................... 1

Abbreviations .................................................................................................................................... 1

Purpose of the specific instances ...................................................................................................... 2

NCP function with regards to the attention of specific instances .................................................... 2

Guiding principles of specific instances .......................................................................................... 2

Interpretation of the Guidelines ..................................................................................................... 3

Notifications in the procedure .......................................................................................................... 3

Transparency .................................................................................................................................... 4

Chapter II. Submission of requests .................................................................................................. 5

Who can request the development of a specific instance? ................................................................. 5

To whom is the beginning of a specific instance requested? ............................................................... 5

What information must the request for specific instance contain? .................................................. 5

Chapter III. First stage: Initial assessment ....................................................................................... 7

What happens when the NCP receives a request of specific instance? ........................................... 7

What happens when the MNE gives its response to the request or the term for it elapses without the MNE providing a response? ......................................................................................... 8

What happens when the application relates to events that occurred in another country or that involve another country? ........................................................................................................... 8

How does this stage conclude? ......................................................................................................... 9

What criteria does the NCP take into account during the initial assessment ................................... 9

Chapter IV. Second stage: Facilitation of dialogue ......................................................................... 11

What happens after the NCP admits the specific instance? ............................................................ 11

What happens if the Parties decide to accept the PNC’s offer of good offices to solve the situations presented in the specific instance? .................................................................................... 11

Specific considerations for the facilitation of dialogue .................................................................... 12

How does this stage conclude? ....................................................................................................... 13
Chapter V. Third Stage: Final statement

What happens after the closure of the second stage?
Chapter I
General Provisions

Objective

1. The objective of the instrument herein is to lay the foundations for a specific instance to be developed before the National Contact Point of Mexico, according to OECD Guidelines for Multinational Enterprises.

Abbreviations

2. For the purposes of the this instrument, the following shall be understood:

   i. Guidelines, OECD Guidelines for Multinational Enterprises;
   ii. MNE, a foreign multinational enterprise located in Mexican territory or a Mexican multinational enterprise located abroad;
   iii. Procedural Guidance, to Procedural Guidance of Guidelines;
   iv. Specific Instance, to the procedure in which one or many individuals request the good offices of the NCP in order to find a solution to problems that could arise from the alleged breach of the Guidelines by a MNE;
   v. Claimant, individual person or legal entity requesting the development of a specific instance;
   vi. LFTAIPG; Mexican Federal Law of Transparency and Access to Public Governmental Information;
   vii. OECD, the Organization for Economic Cooperation and Development;
   viii. Parties, the claimant and the MNEs involved in the specific instance, jointly;
   ix. NCP, the National Contact Point of Mexico.
**Purpose of the specific instances**

3. The specific instances that are developed before the NCP shall aim to promote constructive dialogue and understanding between the Parties to adjust, in the best way, the behavior of the MNE to the principles and recommendations contained in the Guidelines.

**NCP function with regards to the attention of specific instances**

4. The role of the NCP will be to foster that specific instances develop in a friendly environment, which facilitates the adoption of agreements, and favors the voluntary adoption of the Guidelines.

5. In order to appropriately perform its function, the NCP will:

   i. Convene and hold meetings with the Parties, together or separately;
   ii. Request additional information from the Parties or the opinion of public organizations regarding the situations presented in the corresponding specific instances;
   iii. Seek advice of specialists in alternative means of dispute settlement or, when appropriate, of other National Contact Points; and,
   iv. Issue recommendations to the Parties in order to facilitate the development of the specific instance and its resolution, or promote the adoption of corporate social responsibility standards.

**Guiding principles of specific instances**

6. In addition to the fundamental criteria to be observed in the exercise of its functions¹, during the development of specific instances, the NCP shall respect and promote the respect to following principles:

   i. **Good faith**: A behavior that facilitates the development of the specific instance and the adoption of agreements between the Parties shall be observed at all times. Good faith conduct includes the performance of actions such as responding in a timely manner; maintaining due confidentiality; refraining from misrepresenting facts or acts, threatening with retaliation or

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¹ In accordance with the Procedural Guide, said fundamental criteria are those of visibility, accessibility, transparency and accountability to promote compliance with the objective of functional equivalence.
carrying out such retaliations; and genuinely engaging with the desire to reach a resolution of the situations that produced the specific instance;

ii. **Equity and fairness:** The Parties shall be treated on an equal footing and therefore no unduly favor shall be given to any of them;

iii. **Predictability:** The Parties shall be provided with clear, accurate and complete information about the development of the specific instance, and also on the scope of the function of the NCP and its possible role in monitoring the implementation of the agreements that the Parties had reached; and,

iv. **Utility:** NCP will only offer its good offices when this would generate a positive contribution to the resolution of the issues that gave rise to the specific instance and would not produce a serious detriment to any of the Parties involved therein.

**Interpretation of the Guidelines**

7. The interpretation of the Guidelines herein corresponds to the NCP. It will privilege the adoption of an approach towards the resolutions of the problem that allows taking actions that contribute, in a better way, to promote constructive dialogue between the Parties, to find an amicable and consensual solution to situations arising within a specific instance, and to favor the adoption of the Guidelines.

8. No provision in this instrument may be interpreted in a way contrary to the text or spirit of the Guidelines and the Procedural Guide.

**Notifications in the procedure**

9. All notices to the Parties shall be made at the address that the Parties may have indicated in their respective initial brief.

10. Nonetheless, at any time during the procedure, the Parties can notify to the NCP of their intention to receive their notifications through email to facilitate the development of the specific instance.
Transparency

11. The development of specific instances and the results will be transparent. However, the NCP and the Parties are obliged to take the necessary measures so as to maintain the reserves or confidentiality of information, as applicable, pursuant to the applicable legislation.

12. For the purposes of the paragraph above, when the Parties submit information that has reserved or confidential status, they must indicate so to the NCP and, when appropriate, authorize this information to be shared with the other Party and those who prove to have a legitimate interest in the matter. In any case, the NCP shall grant the appropriate treatment to such information in accordance with the provisions of Articles 18 and 19 of the LFTAIPG\(^2\).

\(^2\) Article 18 of the LFTAIPG. Confidential information shall be considered as:

\(\text{I. Information given as such by individuals to obliged parties, in accordance with the provisions of Article 19, and}\)

\(\text{II. The personal data that requires the consent of individuals for its dissemination, distribution or marketing in terms of this Act.}\)

It shall not be considered as confidential, the information found in public records or publicly available sources.

Article 19 of the LFTAIPG. When individuals deliver the obliged parties the information referred to in Section I of the preceding article, they must indicate which documents contain confidential, classified or commercial information, provided that they have the right to reserve the information, in accordance to the applicable provisions. In the case that there is an access request that includes confidential information, the obliged parties will communicate it provided that they obtain the express consent of the individual owner of the confidential information.
Chapter II
Submission of requests

Who can request the development of a specific instance?

13. Any person, individual or juridical, who has been or can be affected by the performance of a MNE may request the initiation of a specific instance to the NCP, when such action would be contrary to the content of the Guidelines.

14. Also the civil society organizations that have a legitimate interest in the matter can request the initiation of a specific instance.

To whom is the beginning of a specific instance requested?

15. The request to start a specific instance must be made, in working days and hours, to the NCP.

What information must the request for specific instance contain?

16. The request to initiate a specific instance must be in writing and contain at least the following information:
   
i. Claimant Identity: Name of individual or, where appropriate, name of the relevant organization or legal entity;
   
ii. Contact data: Phone, address and email address;
   
iii. Identity of the MNE: Name and address of the MNE whose actions are allegedly contrary to the text of the Guidelines. If possible, include telephone number, email and website;

iv. Description of events, acts or omissions allegedly contrary to the text of the Guidelines, briefly narrating them clearly and precisely;

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3 The NCP is attached to the Directorate General of Foreign Investment of the Ministry of Economy in Mexico, which is located on Insurgentes Sur 1940, 8th Floor, Colonia Florida, Delegación Álvaro Obregón, Zip 01030, Distrito Federal.

To facilitate the submission of an application, the claimants may arrange a meeting with public officials in charge of NCP, with at least 24 hours in advance. To this end, you may call to the telephone numbers +52 (55) 5229-6100, extensions 33402 and 33426.
v. Principles, chapters and paragraphs of the *Guidelines* that have been reportedly breached, relating them to the events, acts or omissions exposed;

vi. Description of previous approaches between the claimant and the MNE in order to resolve the situation. In particular, it is necessary to indicate whether the problem has been tried to be solved directly with the company or if judicial, administrative or out-of-court procedures have been recurred to, and the results that have been obtained. Also, it should be stated whether the specific instance has been presented to the National Contact Point of another country adhering to the Guidelines.

vii. Interest of the claimant in the case, specifying its relation with the MNE, the purpose of the presentation of the case to the NCP and particular expectations for the specific instance.

17. The claimant must attach to the application, the documentation supporting the facts related\(^4\). If the information is available online and is free, it will be sufficient to indicate the website where it can be consulted. Where there is any impediment to submit documentation\(^5\), the claimant must state clearly what are the circumstances that prevent access to the same and indicate, if possible, the place or source where it can be obtained.

\(^4\) For example: research studies, media reports, results of soil or water samples, correspondence with the company, internal documentation of the company, evaluations of social and environmental impact.

\(^5\) For example, that the claimant lacks the necessary resources to obtain the information and present it to NCP, or is afraid of reprisals that could be set against the claimant due to the request of the specific instance.
Chapter III
First stage: Initial assessment

What happens when the NCP receives a request of specific instance?

18. If the request to initiate a specific instance does not contain the information and the documentation referred to in points 16 and 17 hereof, the NCP will have ten working days, counted from the reception of the application, to require claimants to correct their omission.

19. Depending on the circumstances of the case, the NCP shall determine the period that the claimants will have to vent the prevention. However, under no circumstances will this term be less than five working days starting on the notification of prevention.

20. If claimants do not vent the prevention in the given terms, the NCP will consider whether the available information allows to:

i. Identify and verify the existence of facts, actions or omissions that may be contrary to the text of the Guidelines; and,

ii. Know the specific interest and good faith of the party in the procedure.

21. If the information available complies with the provisions of paragraph 20 hereof, within the ten days following the submission of the request or, in its case, the conclusion of the terms referred to in point 19 hereof, the NCP will notify the FME in writing about the request received.

22. For purposes of the notification referred to in the paragraph above, the NCP shall send to the FME a simple copy of the application and its annexes, and confer a suitable period which in no case shall be less than 15 working days, to issue its response, submit documentary evidence deemed as relevant. Also, it will briefly explain the nature of the specific instance, the way in which it develops and the treatment to be given to confidential information, so that the MNE can indicate if they wish to participate in good faith in the procedure.

23. The NCP cannot dismiss an application that does not comply with the provisions of paragraph 20 of the Guidelines herein if there are elements in it to consider that there are potentially valid concerns.
about the Guidelines and these concerns may be founded through additional investigations by the NCP.

**What happens when the MNE gives its response to the request or the term for it elapses without the MNE providing a response?**

24. Upon receipt of the response of the MNE, or having elapsed the period given for such purpose without having received it, the NCP will analyze the available information and, if deemed necessary, it may:

   i. Request additional information from the Parties or offer them the opportunity to hold individual meetings to explain or detail the information provided;
   ii. Obtain complementary information that allows to better support the specific instance; or,
   iii. Refer to other relevant national and international authorities, and request their opinion on the issues presented by the Parties, within the scope of their respective powers.

**What happens when the application relates to events that occurred in another country or that involve another country?**

25. If the application refers to events that took place in the territory of another country adhering to the Guidelines or involving it, the NCP will contact its counterpart in such country for the purpose of establishing joint coordination mechanisms to address the specific instance.

26. If the application relates to events that took place in the territory of a non-adhering country to the Guidelines or involving it, the NCP shall adopt pertinent measures for the proper development of the specific instance, with strict adherence to the guiding principles of Mexican foreign policy.\[6\]

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\[6\] For example, in these situations the NCP may contact the Foreign Representation of Mexico, as well as the authorities to the non-adhering country.

Guía para la atención de Instancias Específicas de conformidad con las Líneas Directrices de la OCDE para Empresas Multinacionales
**How does this stage conclude?**

27. During the three months counted since the receipt of the application or, when applicable, the expiration of the prevention period which had been granted to the claimant, the NCP will issue a resolution that:

   a) Accepts to continue the development of the specific instance; or,
   b) Declines to continue with the specific instance.

**What criteria does the NCP take into account during the initial assessment?**

28. To decide whether to continue with the specific instance, the NCP will consider the following criteria:

   i. If the claimant has shown its interest in the instance and its good faith. In applying this criterion, the NCP should adopt a wide criteria that provides/gives/grants less weight to the formal identity of the claimants and more weight to the utility of the specific instance to benefit society as a whole;

   ii. If facts are sufficiently substantiated and could be susceptible of being resolved through the specific instance. In applying this criterion, the NCP should analyze if there is a proven relation between the activities of MNE and the issue raised in the specific case. Otherwise, it will be necessary to verify whether the specific instance suggests potentially valid concerns about the Guidelines and if the instance can be supported through additional research or there are other reliable sources of foundation available;

   iii. If the question presented is likely to be resolved through the legal framework. In applying this principle, it should consider whether the current legal framework allows the situation that motivates the specific instance to be solved through the good offices of NCP, and if the latter can make a positive contribution to the solution of the problems encountered. The existence of legal processes available or in progress does not necessarily motivate the conclusion of the specific instance, except on those cases in which the good offices of NCP could interfere or cause serious damage to the Parties involved in said procedures;

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7 According to paragraph 25 of the Comment about the implementation procedure of the Guidelines.
iv. If similar issues have been or are being addressed in other local or international processes. The
NCP may not decline to continue the specific instance exclusively under the argument that no
judicial administrative or extraordinary proceedings exist where similar issues were dealt with,
or because the latter had been discarded in such procedures; and,

v. If consideration of the specific instance will contribute to the purpose and effectiveness of the
Guidelines. In applying this criterion it should be considered if the resolution of the problem
through the specific instance will help to promote the adoption of the Guidelines, raise
standards of corporate social responsibility or set a beneficial precedent.

29. The decision of the NCP shall be in writing where the reasons that motivated its decision are pointed
out, accurately and comprehensively.

30. Such decision shall be notified to the Parties and a public version thereof will be made available to the
general public through electronic media.
Chapter IV
Second stage: Facilitation of dialogue

What happens after the NCP admits the specific instance?

31. In case that the NCP had decided to continue with the development of the specific instance, it will arrange a preliminary meeting with the Parties that will be held within the next fifteen working days after the notification of the resolution.

32. In that meeting, the NCP will:

   i. Point out the areas where it has identified the existence of converging and diverging points of view between the Parties;
   ii. Explain the procedure to be followed if the Parties reiterate their commitment to continue with the specific instance;
   iii. Present, again, the treatment that will be provided to the confidential information that the Parties have provided, or may provide, during the development of the specific instance; and,
   iv. Offer its good offices to find a solution to the situations presented in the specific instance through conciliation or mediation as agreed by the Parties.

What happens if the Parties decide to accept the PNC’s offer of good offices to solve the situations presented in the specific instance?

33. If the Parties agree to use the good offices of the NCP, the latter shall draw up a proposal for terms of reference, pursuant to which the specific instance will be developed.

34. The terms of reference shall contain, at least:

   i. A brief statement of the situations to be treated, emphasizing those areas in which it would be more likely to agree;
   ii. The identification of the Parties involved, their representatives and, where appropriate, the mechanisms for their representation;
iii. The indication of other Parties whose participation could be beneficial for the development of the specific instance, including the involvement of other National Contact Points;

iv. The rules of procedure for the development of specific instance; and,

v. The challenges that might arise during the process.

35. The proposed terms of reference shall be notified to the Parties within a period that shall not exceed of fifteen working days following the preliminary meeting, in order to issue their comments thereto.

36. The deadline for Parties to make their comments will be posted appropriately by the NCP. However, in no case will such term be less than ten working days starting on the date of notification.

37. In case of not receiving any comments, the NCP will approve the terms of reference set forth in the proposal and initiate the process of dialogue according to them.

Specific considerations for the facilitation of dialogue

38. Facilitating the dialogue will aim to achieve mutual agreements between the Parties which allow to provide consensual solutions to the situations presented in the application. Consequently, the terms of reference for the development of the specific instance shall be subject to the following:

i. The NCP could seek advice from other authorities as well as representatives from the business sector, labor organizations, and other non-governmental organizations and experts, when this could facilitate the adoption of agreements between the Parties, in order to resolve the issues raised in the instance;

ii. The NCP shall at all times act as an impartial body. This will not limit, however, its faculties to convene individual meetings or to make recommendations or suggestions when this aims to facilitate dialogue between the Parties;

iii. The Parties shall ensure that their representatives have the authority to make decisions on their behalf, for the purpose that the agreements reached have due recognition and are implemented effectively;

iv. In order to promote smooth discussion between the Parties, the dialogue will be developed in a flexible environment. Also, the forms and mechanisms that best accommodate both Parties will be favored;
v. In order to promote transparency during the process, the NCP will have a record of the conversations with the Parties and their respective progress ensuring, where appropriate, the confidentiality of sensitive information for the Parties.

39. The NCP will promote, at all times, that none of the Parties use information obtained along the specific instance to the detriment of the other.

*How does this stage conclude?*

40. This stage will conclude:

   i. Because the Parties, or one of them, have rejected the offer of the good offices of NCP or, in its case, have decided to abandon the procedure;

   ii. Because it wasn’t possible to reach an agreement between the Parties within six months since the NCP notified its resolution to continue the specific instance. Nonetheless, this period could be extended if circumstances so require it;

   iii. Because the NCP considers that meetings between the Parties do not lead to productive outcomes; or,

   iv. Because the Parties had reached an agreement.

41. In the case of fractions i, ii and iii above, the NCP will notify the Parties of the closure of the second stage within ten working days after the corresponding hypothesis has occurred.

42. In the case that the Parties have reached an agreement to resolve the situations that led to the specific instance, the NCP will support them to elaborate an agreement where the commitments made by each of the Parties to solve the situations that originated the specific instance shall be expressed. If the agreement were partial, the agreement will also point out the issues that have not been susceptible to be solved by this way.
Chapter V
Third Stage: Final statement.

What happens after the closure of the second stage?

43. Within the fifteen days after the NCP has declared closed the second stage or the Parties have signed the agreement referred to in paragraph 42 hereof, the NCP will prepare a draft final statement which shall contain at least:

i. A summary of the case;
ii. The reasons that motivated the NCP to accept the specific instance;
iii. A description of the most relevant aspects of the mediation process;
iv. The results achieved; and,
v. In its case, the reasons given by the Party that has decided not to participate or to abandon the procedure.

44. The final statement of the specific instance shall be public and, therefore, may only include specific information related to the content of the agreement if the Parties give their consent thereto.

45. In its final statement, the NCP may include recommendations on the implementation of the Guidelines.

46. NCP will send to the Parties the draft final statement, so that they issue their comments within a period no longer than 10 working days from the date of receipt. Once this period concludes, the NCP will issue and notify the final declaration.

47. Although the final statement finishes the specific instance, the NCP may serve as an auxiliary body to follow-up on the implementation of the agreements and commitments reached, if the Parties agree so.