

16 November 2016.

## **Rules of procedure of the National Contact Point**

**THE NATIONAL CONTACT POINT**, in the use of its powers,

**Considering** the Brazil's adherence to the Declaration on International Investment and Multinational Enterprises of the Organization for Economic Co-operation and Development (OECD) that covers the OECD Guidelines for Multinational Enterprises (the Guidelines);

**Considering** that the OECD Council Decision on the Guidelines, adopted in its 982<sup>nd</sup> Session on 26 and 27 June 2000 (the Decision), established that the adhering countries to the Declaration should establish National Contact Points (NCPs);

**Considering** that the Brazilian National Contact Point (NCP) was established by Ordinance No.92 of the Minister of Finance on 12 May 2003; which was revoked by the Inter ministerial Ordinance No.37, on 19 Feb 2013, which established the NCP as an Inter ministerial Working Group.

**Recalling that** the Guidelines reaffirm the obedience to the national legislation, that they are not a binding instrument for the Brazilian government and, given its declarative and promotional nature, they do not create either obligations nor rights for individuals under national jurisdiction; and

**Considering the** importance of regulating and standardizing procedures to be followed in conducting the activities of the National Contact Point in the effective implementation of the Guidelines;

**RESOLVES:**

### **Section I**

#### **Presentation of Notifications of Non-observance**

**Art. 1** The National Contact Point will receive Notifications of Non-observance to the Guidelines addressed to multinational companies established in the Brazilian territory or multinational companies whose majority of the ownership is in the hands of Brazilian citizens established in a country that has not adhered to the Guidelines.

**Art. 2** The Notifications of Non-observance can be submitted by a person or entity, including associations and unions of employers and workers.

**Art. 3** The Notifications of Non-observance should not be accepted if:

**I** – they are based on facts whose knowledge have occurred more than twelve (12) months from the date of receipt of the Notification by the NCP;

**II** – they have been object of a NCP declaration as a result of another Notification of Non-observance based on the same fact, except if the new Notification does add new elements as set forth in the single paragraph of Art. 11;

**III** – they do not contain the information set out in Art. 4 below;

**IV** – they have been object of a lawsuit with a final decision.

**Art. 4** The Notifications of Non-observance must contain the following information:

**I** – The identification of the claimant, indicating the name, mailing address, email, phone numbers and the facsimile of the contact person with the NCP;

**II** – The identification of the multinational enterprise that is the object of the Notification of Non-observance, mentioning the name of its representative in Brazil, mailing address, email, telephone number and facsimile;

**III** – The specific articles of the Guidelines that have not been observed by the multinational enterprise;

**IV** – The indication of how the alleged non-observance of the Guidelines affects, even potentially, the claimant or person(s) represented by him;

**V** – If applicable, the description of the efforts undertaken by the claimant with the multinational enterprise to resolve the alleged non-observance of the Guidelines, as well as the results of those efforts;

**VI** – The copy of document or information that may be useful to understand the facts or circumstances that characterize the alleged non-observance of the Guidelines, as well as the efforts referred to at the subheading V;

**VII** – the indication of the material to be considered confidential, in accordance with the provisions of Art. 18, Paragraph 1.

**VIII** – The signature of an instrument of confidentiality, whose model is available at the NCP website, through which the claimant undertakes to maintain confidentiality until the acceptance for further examination or rejection of the Notification of Non-observance.

**§1** The Notifications of Non-observance referred at the *caput* should be formally presented according to the reference form published by the NCP in its webpage.

**§2** The Notifications of Non-observance referred at the *caput* must be sent or delivered to the NCP by correspondence signed by the persons mentioned in Art. 2 to the Ministry of Finance - Coordination of the National Contact Point for the OECD Guidelines - SAUS 03, Block “O” – Edifício Órgãos Regionais, 10th floor – Room 1004, Postal Code 70079-900 – Brasília – DF.

**Art. 5** In addition to the information required by Art. 4, the claimant must inform the NCP if the object of the Notification of Non-observance was launched as a lawsuit in the judicial system, or as a petition in other national or international administrative bodies, or in any international entity; the claimant will submit to the NCP all documents related to such Notification.

**§1** To comply with the requirements set forth in the *caput*, the interested part will have thirty (30) days from the date of submission of the Notification of Non-observance.

§2 The claimant must inform about the progress of the lawsuit or petition submitted to the bodies mentioned in the *caput*, as well as the reaction of such bodies regarding the Notifications.

**Art. 6** In any of the stages described below, the NCP might consult the NCP(s) from other concerned country (ies).

## **Section II**

### **Acceptance for Further Examination of Notifications of Non-observance**

**Art. 7** After receiving a Notification of Non-observance, the coordinator of the NCP will undertake a preliminary analysis of admissibility in which it will be checked whether the Notification of Non-observance meets the conditions of Art. 3.

**Art. 8** If a Notification of Non-observance does not meet the requirements of Art. 3 and this could be solved by the submission of additional information or clarifications, the coordinator will ask the claimant for additional information, which must be provided within thirty (30) days from the date of receipt.

Single paragraph. If the claimant fails to submit the information within the period determined above or if the non-compliance of Art. 3 cannot be remedied by additional information, the NCP will reject the Notification of Non-observance and the claimant will be informed about the reasons.

**Art. 9** After the admission of the Notification of Non-observance, the coordinator of the NCP, following consultations with the members of the NCP, will indicate a rapporteur to a member of the NCP, taking into account the subject of the Notification.

Single paragraph. The rapporteur will preferably be from the agency of the Federal Government responsible for the theme referred in the Notification of Non-observance.

**Art. 10** The rapporteur will present a report on the acceptance for examination of the Notification of Non-observance, which will take into consideration:

I – if there is a direct relationship, even potentially, between the claimant and the object of the Notification of Non-observance;

II – if the Notification has the elements that keep thematic relevance to the topics addressed by the Guidelines;

III – if the Notification of Non-observance contains sufficiently circumscribed focus; and

IV – if the Notification of Non-observance presents detailed and verifiable facts and evidence based on objective criteria.

Single paragraph. The report will be presented at the NCP working group meeting, that will decide on the acceptance of the Notification of Non-observance in question for further examination.

**Art. 11** The decision regarding the acceptance for examination of the Notification of Non-observance will be duly informed to the claimant within ninety (90) days after the date of receipt or, in the event of Art. 8, of the presentation of additional information.

§ 1 The decision of non-acceptance for examination of the Notification of Non-observance does not preclude a new Notification of Non-observance to be presented by the same claimant against the same multinational company, with new factual elements or with a different content from the petition formulated earlier.

§ 2 The decision referred on this article will not be published or disclosed.

**Art. 12** Until the effective acceptance for examination or the rejection of the Notification of Non-observance, the NCP will keep the strictest and judicious confidentiality about the Notification, in order to not unnecessarily affect the image of the company which is the object of the Notification of Non-observance.

### **Section III**

#### **Procedure for Examination of Notifications of Non-observance**

**Art. 13** When the NCP decides to accept the Notification of Non-observance for further examination, it will communicate the fact to the multinational company concerned, describing the Notification of Non-observance against it and the item(s) of the Guidelines allegedly unobserved, taking into account the need to protect the information considered confidential by the parties.

Single paragraph. The multinational company will be asked to express its views within 30 (thirty) days, renewable for the same period at the request of the company.

**Art. 14** The rapporteur will examine the company's response and prepare a report to the NCP with recommendations for the next steps in the conduction of the examination of the Notification of Non-observance. The recommendations may be:

I – closing the examination of the Notification of Non-observance;

II – requesting more information to the parties;

III – establishing a channel for exchanging of arguments and counter-arguments between the parties; or

IV – mediation between the parties.

§ 1 The rapporteur will have the indicative period of thirty (30) calendar days to submit the report with recommendations.

§ 2 If the recommendation referred to in Item I is adopted by the NCP, a statement will be published in conformity with Art. 19.

§ 3 If the recommendation provided for in Items II and III is adopted by the NCP, the rapporteur will see for its implementation and will present a new report in the terms defined at the *caput*.

§ 4 If the recommendation under Item IV is adopted by the NCP, the coordinator of the NCP will inform the parties about the offer for mediation, which will be conducted in accordance with Section IV.

§ 5 The object of the Notification of Non-observance will be defined in the stage of examination by the rapporteur, after the conclusion of the proceedings foreseen in Art. 13 and based on the documents and information presented by the parties.

§ 6 Amendments to the Notification of Non-observance will not be admitted after the beginning of the stage of mediation.

**Art. 15** In the event of existing lawsuits with the same object, the NCP will proceed in order to avoid prejudice to the legal process.

Single paragraph. All information provided to the NCP will be responsibility of the party that presents it.

**Art. 16** If the claimant decides to withdraw the Notification of Non-observance, the multinational enterprise will be consulted on the interest to make an additional statement, which may be part of the Declaration provided for in Art. 19, paragraph (c).

#### **Section IV Mediation**

**Art. 17** Once accepted the offer for mediation by both parties, the NCP will, in consultation with them, elaborate a blueprint of the mediation containing the goals, the identification of the authorized negotiators, the commitment to confidentiality in the handling of information, and the deadline for the closing of the mediation. The document will be signed by the claimant, the multinational company and the mediator.

§ 1 The mediation might be led by the rapporteur or by another member of the NCP to be appointed upon the acceptance of the recommendation for mediation.

§ 2 The mediator may conduct the hearing of the parties with the NCP, if he/she considers useful for the reconciliation of the parties, taking into account the nature of the Notification of Non-observance.

§ 3 The mediation will aim to achieve a common understanding among the parties on the application of the Guidelines to the specific instance, considering the voluntary character of the Guidelines.

§ 4 The efforts of mediation may be discontinued at any time at the request of any party and/or the NCP.

§ 5 The period specified in the *caput* for the conclusion of the mediation process may be extended if the NCP so deems it necessary.

§ 6 At the rapporteur's option, a civil society organization to which the company is associated or partner, may be invited to participate in the mediation process, as a contributing observer, provided that its specialty and mission keep affinity with the object of the Notification of Non-

observance in question and that the rapporteur considers such participation as beneficial for the clarification of the Notification of Non-observance and a possible solution for it, when applicable.

## **Section V**

### **Publicity and Confidentiality of Information**

**Art. 18** The information concerning a Notification of Non-observance accepted for examination provided to the NCP by the parties will be deemed public, and the NCP may disclose it, unless otherwise formally requested at any time by the claimant or by the company.

§ 1 The NCP will refrain from disclosing information deemed confidential by virtue of law or for a reason based on strategic and privilege grounds or on professional ethics, which will be clearly indicated to the NCP by the interested party, by pointing out the reasons of confidentiality and losses incurring from the information disclosure, except the case provided for in § 2.

§ 2 By proper justification, the parties may request to the NCP not to disclose – including to other parties involved in the examination of the Notification of Non-observance – the information sent to it and specified in a formal request; this information will be for the NCP internal use only and its secrecy and confidentiality should be guaranteed.

§ 3 In the cases of the preceding paragraphs, the party that requests confidentiality should provide a non-confidential summary of the information, which will be subject to disclosure.

## **Section VI**

### **Final Results**

**Art. 19** The NCP will publish the final results of the procedures – taking into account the need to protect sensitive information – which may have the form of:

- a) Statement, when the examination of the Notification of Non-observance is closed pursuant to Art. 14, § 2. The Statement will describe the points raised and the reasons for the decision to close the case, taking into account the need to protect sensitive information;
- b) Report, when the parties reach an agreement. The report will describe the issues raised, the proceedings adopted by the NCP in the process of assisting the parties and when the agreement was reached; or
- c) Statement, when there is no agreement or when a part is not willing to participate in the proceedings. This statement describes the issues raised, the proceedings adopted by the NCP in the process of assisting the parties, including a summary of the positions of the parties, if this is the case. The NCP may also include considerations on the application of the Guidelines raised along the case.

§ 1 The statements and the reports of the NCP will be subject previously to the parties, so they can, within fifteen (15) calendar days from receipt of the notification, express their views about their contents and suggest changes they deem appropriate. All suggestions made must rely on a

justification. The NCP will decide whether the suggested changes should appear in the final document.

§ 2 If the NCP considers that, based on the results of its initial evaluation, it would not be appropriate to publicly identify the parties in its closing statement of the examination of the Notification of Non-observance, the statement can be written in order to protect the identity of the party.

§ 3 The statements and the reports of NCP will be public, except for the information for which confidentiality is specifically requested, in accordance with Art.18. The statements and the reports will be duly forwarded to the parties, to the OECD and to the NCPs of the host countries of multinational enterprises that are parties in the Notification of Non-observance and published on the NCP website.

**Art. 20.** Revoke the Resolution NCP No. 1, on 14 September 2012

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