

Approved  
by decision of the National  
Contact Point  
dated August 25, 2020  
No. 1

## **Procedure for considering complaints on violations of the Guidelines of the Organization for Economic Cooperation and Development for Multinational Enterprises**

### **Chapter 1. General Provisions**

1. The Procedure for considering complaints on violations of the Guidelines of the Organization for Economic Cooperation and Development (hereinafter – OECD) for Multinational Enterprises (hereinafter – Procedure) has been developed in accordance with the Regulations on the National Contact Point approved by the order of the Minister of National Economy of the Republic of Kazakhstan dated June 18, 2020 #124, OECD Declaration on International Investment and Multinational Enterprises, and defines the procedure for submitting and considering by the National Contact Point of the Republic of Kazakhstan of complaints on violations of the OECD Guidelines for Multinational Enterprises.

2. The following basic terms are used in this Procedure:

1) OECD Guidelines for Multinational Enterprises (hereinafter – OECD Guidelines) shall mean recommendations developed and adopted by OECD member countries that set standards for responsible business conduct for multinational enterprises;

2) responsible business conduct shall mean actions of enterprises in compliance with applicable legal norms and international standards aimed at contributing to economic, environmental and social development in order to achieve sustainable development and at preventing or mitigating negative consequences that may arise as a result of their activities;

3) multinational enterprise shall mean enterprises (companies, organizations) of any form of ownership, including parent companies and/or local units (branches, representative offices) operating in all sectors of the economy, and established in several countries in a way that allows them to coordinate their activities, which is suspected violator of OECD Guidelines.

4) National Contact Point of the Republic of Kazakhstan (hereinafter – the NCP) shall mean a collegial advisory body that makes decisions on complaints on violations of the OECD Guidelines provisions, including on disclosure of

information, human rights, labor and industrial relations, bribery control, corrupt practice and extortion, environmental protection, consumer interests, science and technology, competition and taxation;

5) NCP Secretariat (hereinafter – the Secretariat) shall mean a body established to effectively ensure the NCP's activity management;

6) Complainant shall mean an individual or legal entity affected by the activities of multinational enterprises, who submitted a corresponding complaint about violation of the OECD Guidelines, including the employees or group of employees of multinational enterprises, persons or group of persons, not being employees, trade unions, non-governmental organizations.

The Complainant may not be a person directly affected by the activities of a multinational enterprise, but he/she must demonstrate his/her connection with the case in the complaint;

9) complaint shall mean a message from the Complainant about an alleged violation of the OECD Guidelines by a multinational enterprise submitted to the NCP in accordance with the requirements of this Procedure;

8) anonymous complaint shall mean a complaint for which the Complainant cannot be identified, it lacks signature, postal address of the Complainant;

9) repeat complaint shall mean a complaint from one and the same person on the same issue;

10) OECD National Contact Point (hereinafter – OECD NCP) shall mean structures established in countries that promote the OECD Guidelines and disseminate the OECD standards on responsible business conduct, and consider notifications of alleged violations of the OECD Guidelines for Multinational Enterprises arising from the activities of enterprises;

11) NCP website shall mean the official page of the NCP on the website of Economic Research Institute Joint Stock Company.

## **Chapter 2. Complaint submission and consideration**

3. Complaint shall be submitted

1) to the administrative office of the NCP Secretariat;

2) to NCP website;

3) to NCP Call Center.

4. Complaint shall contain:

1) full name, address, email address and phone number of the Complainant;

2) full name, address, email address and phone number of the multinational enterprise;

3) indication of the OECD Guideline that have been allegedly violated;

4) circumstances through which a violation of the OECD Guidelines was discovered.

5. If the Complainant does not provide complete information and/or data contained in clause 4 hereof, the Secretariat of the NCP shall request missing information and/or data from the Complainant not later than 3 (three) business days from the receipt of complaint.

The Complainant shall provide the Secretariat of the NCP with missing information and/or data not later than 15 (fifteen) calendar days from the receipt of the above request.

6. The Complainant may attach supplements (documents confirming the factual circumstances of the case), which in his/her opinion relate to violations of the OECD Guidelines.

7. A complaint submitted to the NCP may concern a Kazakhstan multinational enterprise or a foreign multinational enterprise operating in the Republic of Kazakhstan, if the head office of the foreign multinational enterprise is located in one of the countries implementing the OECD Guidelines.

8. Submitted complaints shall be subject to formal registration with the Secretariat.

9. In order to ensure a uniform approach to filing complaints, the Secretariat is developing a complaint form in Kazakh, Russian and English, which is posted on the NCP website.

The Secretariat ensures complaint submission in electronic format via the NCP website.

10. In order to ensure the accessibility of the NCP, the procedure of filing complaint is posted on the website of the NCP in Kazakh, Russian and English.

11. Reasons for the complaint rejection:

1) failure to provide the missing information within the period specified in clause 5 hereof;

2) repeat complaint if the final statement on the complaint was received earlier or the complaint was rejected for non-compliance with the OECD Guidelines;

12. If the complaint is subject to rejection, the Secretariat of the NCP notifies the Complainant within 5 calendar days, indicating the reason.

13. The complaint may be withdrawn by the Complainant;

14. No anonymous complaints will be considered by NCP.

### **Chapter 3. Procedure on handling with complaints submitted to the NCP**

15. Procedure on handling with complaints submitted to the NCP includes:

1) preparation of an initial assessment of the complaint;

2) acceptance of the case for initiation of proceedings;

3) preparation of the final statement on the complaint.

16. Within 5 (five) business days from the date of official registration of the complaint, the Secretariat shall:

1) confirm the receipt of the complaint by sending the appropriate notification to the Complainant;

2) send a copy of the complaint to the relevant Multinational Enterprise with a request to express a written position on the case;

3) if the Head Office of the Multinational Enterprise is located (or the Multinational Enterprise operates) in another country, inform the OECD NCP in another country of receiving a complaint about alleged violation of the OECD Guidelines.

17. The Secretariat verifies the complaints within 2 (two) months from formal registration according to the following criteria:

1) identification of the Complainant;

2) materiality and validity of the complaint;

3) presence of link between the activities of the Multinational Enterprise and the complaint;

4) applicability of other legal procedures (including court proceedings) in the situation described by the Complainant;

5) if the proceedings on the same complaint are conducted in another body – verification of the possibility of conducting proceedings in the NCP;

6) consideration of similar complainants as part of other internal or international procedures;

7) analysis of similar cases reviewed by the OECD NCP in other countries;

8) whether the participation of the NCP in consideration of the complaint contributes to the introduction of new best practices in responsible business conduct.

18. If necessary, the Secretariat will arrange separate meetings with each Party during the verification period, during which the Parties can provide initial arguments.

19. At the end of the verification period, the Secretariat submits the results of such verification to the NCP meeting.

20. The NCP analyzes information collected on the complaint and makes one of the following decisions:

1) decision to accept the complaint for initiation of proceedings and making an initial assessment;

2) decision not to accept the complaint for proceedings and making an initial assessment that closes the procedure in the NCP.

21. If the complaint is accepted for initiation of proceedings, the Secretariat of the NCP makes the initial assessment with:

1) name of the Parties and their details;

2) description of the subject of the complaint, together with an indication of the chapters of the OECD Guidelines to which the notification relates;

3) summary of actions taken by the NCP since receiving the complaint;

4) justification of the decision of the NCP to accept the complaint for initiation of proceedings;

5) description of the next stages of proceedings in the NCP.

Acceptance of the complaint for initiation of proceedings does not mean that the NCP confirms a violation of the OECD Guidelines.

22. If the complaint is rejected for initiation of proceedings, the initial assessment is made with:

- 1) name of the Parties and their details. Depending on the circumstances, the NCP may decide not to disclose the names of the Parties;
- 2) description of the subject of the complaint together with an indication of the chapters of the OECD Guidelines to which the complaint relates;
- 3) summary of the actions taken by the NCP since the notification was received;
- 4) justification of the NCP's decision not to accept the complaint for initiation of proceedings.

23. The draft initial assessment shall be prepared by the Secretariat and sent to the Parties for agreement.

The Parties shall submit written comments or suggestions (if any) to the Secretariat within 10 (ten) business days from the receipt of the draft initial assessment.

If the Parties do not provide comments or suggestions after the specified period, the draft initial assessment is considered agreed.

The draft initial assessment is considered received by the Parties after 7 (seven) calendar days from the date of its sending.

24. The initial assessment agreed by all Parties is subject to approval by the NCP.

25. The total period of consideration of the complaint and preparation of an initial assessment cannot exceed 3 (three) months from the date of official registration of the complaint.

In the event of circumstances requiring further clarification or force majeure, the specified period may be extended, but not more than for 3 (three) months.

26. The Parties provide necessary information to the NCP and the Secretariat in a timely manner with the aim of ensuring smooth procedures for the consideration and initial assessment of the complaint.

27. If the complaint has been notified to the OECD NCP in another country, the approved initial assessment shall be sent to the OECD NCP in that country.

28. The approved initial assessment is subject to publication on the NCP website in Kazakh, Russian and English.

The Secretariat ensures that information about the publication of the initial assessment is sent to the OECD Secretariat.

29. In special cases, the NCP decides that it is not necessary to publish the initial assessment on the NCP website.

If the NCP makes such a decision, the initial assessment becomes a confidential document of the NCP, intended only for the Parties, and remains in the case file.

At that, such initial assessments shall not be subject to submission to the OECD Secretariat.

30. If the Parties come to an agreement at the stage of initial assessment, the proceedings on the complaint are terminated, and the subsequent stages of consideration of the complaint are not carried out.

31. After accepting the complaint for proceedings, the NCP makes effort to reach a mutual agreement between the Parties.

When considering a complaint, the NCP invites the Parties to hold meetings, explains the procedures for considering the complaint and how to resolve the dispute, including, but not limited to:

1) holding consultations regarding the complaint with government authorities, business representatives, labor organizations, non-governmental organizations, and experts;

2) holding consultations regarding the complaint with the OECD NPCs operating in the countries related to such complaint;

3) seeking an interpretation from the OECD Investment Committee in order to provide a detailed interpretation of the OECD Guidelines in a specific situation;

4) requesting additional information from the Parties and third parties, if necessary.

32. Depending on the conclusions drawn from the analysis of the complaint, the NCP may offer mediation or conciliation to the Parties with the NCP support.

33. Mediation conducted by the NCP is subject to the following conditions:

1) the Parties participate in any form of mediation on a voluntary basis;

2) the mediation procedure is confidential;

3) the NCP supports the Parties in their efforts to reach an agreement in accordance with the OECD Guidelines.

34. Mediation services for the Party choice can be provided by:

1) an employee of Institute of Economic Research JSC who has the appropriate qualifications and skills provided for by the legislation of the Republic of Kazakhstan in the field of mediation, free of charge;

2) an external intermediary who has the appropriate qualifications and skills provided for by the legislation of the Republic of Kazakhstan in the field of mediation, the cost of which is covered by the Parties.

35. As a result of mediation, an agreement or a summary of conciliation agreed by the Parties is drawn up.

36. Conciliation with the support of the NCP are conducted using mediation and conciliation methods, while:

1) the NCP provides effective communication between the Parties and a space for conciliation;

2) the NCP supports the Parties in reaching an agreement that is consistent with the OECD Guidelines;

3) conciliation is confidential;

4) if the Parties and the NCP agree, conciliation process may be held without the NCP's participation. In this case, the Parties consistently informs the NCP of the progress of the conciliation.

37. Based on the results of conciliation, the minutes of conciliation shall be drawn up, with a mandatory indication of the mutually beneficial solution reached by the Parties.

38. If the Multinational Enterprise refuses to participate in mediation or conciliation, the NCP independently reviews the complaint.

39. The NCP may re-offer mediation or conciliation. In case of repeated refusal of mediation or conciliation, the NCP continues to independently review the complaint.

40. Based on the results of an independent review of the complaint, the NCP forms appropriate conclusions and submits them to the Parties.

41. The total duration of proceedings on complaint shall not exceed 5 (five) months.

42. The procedure for proceedings on the complaint sent to the NCP is completed by the preparation and publication of the final statement on the complaint.

43. The final statement on the complaint contains:

- 1) the date of receipt of the complaint;
- 2) name of the Parties and their details;
- 3) the chapters of the OECD Guidelines that have been identified as the subject of complaint;
- 4) summary of actions taken by the NCP when considering the complaint;
- 5) summary of the complaint;
- 6) opinion of the Enterprise in respect of which the complaint was submitted;
- 7) assessment of the NCP's complaint;
- 8) information that the Parties had acceded to the mediation or conciliation conducted with the support of the NCP;
- 9) results of mediation and conciliation;
- 10) conclusions of the NCP;
- 11) information on planned monitoring and the deadline for the Parties to provide information on the progress made and the status of implementation of the concluded mutual agreement;
- 12) additional information (if necessary).

44. If the Parties have entered into a mutual agreement, the NCP describes this in the final statement on the complaint. The text of the agreement or its fragments may be published together with the final statement on the complaint only if the Parties expressed consent to such publication.

45. If the Parties have not reached mutual agreement, the NCP describes it in the final statement on the complaint.

46. The final statement on the complaint also includes recommendations for the Enterprise for further actions to avoid future violations of the OECD Guidelines.

The decision to include recommendations for the Enterprise in the final statement on the complaint is made by the NCP.

47. The draft final statement shall be prepared by the Secretariat and sent to the Parties for agreement

The Parties shall submit written comments or suggestions (if any) to the Secretariat not later than 10 (ten) business days from the receipt of the draft final statement.

If the Parties do not provide comments or suggestions after the specified period, the draft final statement is considered agreed.

The draft final statement is considered received by the Parties after 7 (seven) calendar days from the date of its sending.

48. The final statement on the complaint agreed by all Parties is subject to approval by the NCP.

49. The total term of drawing up the final statement on the complaint does not exceed 2 (two) months.

In the event of circumstances requiring further clarification or force majeure, this period may be extended, but not more than for 2 (two) months.

50. The Parties provide necessary information to the NCP and the Secretariat in a timely manner with the aim of ensuring smooth procedures for final statement on the complaint.

51. If the complaint has been notified to the OECD NCP in another country, the approved final statement on the complaint shall be sent to the OECD NCP in that country.

52. The approved version of the final statement on the complaint is subject to publication on the NCP website in Kazakh, Russian and English.

The Secretariat ensures that information about the publication of the final statement is sent to the OECD Secretariat.

#### **Chapter 4. Monitoring of the agreement of the Parties**

53. The Parties shall provide the NCP with information on the progress made and the status of implementation of the concluded mutual agreement within the time period specified in the final statement.

54. The NCP may invite the Parties to consultations to discuss the details of implementing the mutual agreement or to assess the progress of the Enterprise in implementing the OECD Guidelines.

55. After receiving information on the progress made and the status of implementation of the mutual agreement, the NCP Secretariat prepares a draft notification that contains:

- 1) basic information about the complaint and Parties to proceedings,
- 2) information about the mutual agreement concluded between the Parties;
- 3) information on the steps taken by the Parties to implement it;



4) explanation of the situation if the implementation of the mutual agreement was different from the intended one, or if the Multinational Enterprise did not fulfill the arrangements contained in the agreement.

56. The draft notification is prepared by the Secretariat and sent to the Parties for agreement.

The Parties shall submit written comments or suggestions (if any) to the Secretariat not later than 10 (ten) business days from the receipt of draft notification.

If the Parties do not provide comments or suggestions after the specified period, the draft notification is considered agreed.

The draft notification is considered received by the Parties after 7 (seven) calendar days from the date of its sending.

57. The notification agreed by all Parties is subject to approval by the NCP.

58. If the complaint has been notified to the OECD NCP in another country, the approved notification shall be sent to the OECD NCP in that country.

59. The approved notification is subject to publication on the NCP website in Kazakh, Russian and English.

The Secretariat ensures that information about the publication of the notification is sent to the OECD Secretariat.

## **Chapter 5. Final Provisions**

60. The NCP ensures the protection of confidential information obtained during the proceedings on the complaint.

61. Details of the proceedings on the complaint conducted in the NCP may not be disclosed to third parties in any way without the consent of the Parties and the NCP subject to provisions of this Procedure.

62. Current information on the complaint and the status of its consideration is posted on the official website of the NCP.

63. All documentation related to the proceedings on the complaint conducted in the NCP is stored in the Secretariat.

64. The document drawn up as a result of mediation is an agreement or a summary of conciliation process agreed by the Parties.

The agreement or summary of the conciliation process may be published by the NCP as part of the final statement on the complaint, if the Parties have expressed their consent.

The documentation on the complaint considered by the NCP, other than the documents that are publicly available on the NCP website, is confidential and shall not be subject to disclosure, including the mode of access to information.

65. Consultations on the activities of the NCP, the OECD Guidelines, as well as the procedure for submitting and reviewing complaints are carried out by the Secretariat of the NCP through a single Call-center and a question-and-answer system of the NCP.

66. Depending on the needs, the NCP may interact with the OECD NCP in other countries, as well as request clarification of the OECD Guidelines from the OECD Investment Committee.