

How to handle a Procedure under the OECD Guidelines

- What Companies need to know -

Basics

- More than 77 Specific Instances have been dealt with by NCPs since the revision of the Guidelines in 2000. Many of them have helped companies to cope with difficult situations.
- A majority of Instances deal with labour/industrial relations issues. Trade union rights, notice in case of plant closure, mass dismissals, pay and employment standards are examples.
- The Guidelines guarantee basic 'procedural rights' for companies.

Context – Possible Evolvement of a 'Specific Instance'

- The first option of a company being confronted with an allegation is to **deny participation**, since there is no obligation to participate in a proceeding under the Guidelines with a National Contact Point (NCP).
- However, in practice this is **not an advisable option**. Public pressure will not be appeased by mere non-participation and the NCP could make a public statement highlighting the fact of non-participation.
- Before arguing on the substance of the issues involved, a company can raise the following '*formal*' objections as to the applicability of the Guidelines:
 - Company is **not registered** in an OECD member country.
 - Issue at stake is **purely domestic**.
 - The issue has **no "investment nexus"**, i.e. concerns a pure trade issue.
 - The issue is dealt with already by parallel legal or administrative procedures in investment host country – national law always overrides Guidelines (note: practice may differ amongst NCPs)
 - Any other objection derived from national **administrative laws** the NCP has to apply (data protection, protection of confidence, etc.).
 - The issue does **not merit "further examination"** by the NCP, since it is not "bona fide" or "substantiated" or not relevant to the implementation of the Guidelines.
- Arguments on the **substance** must show that the behaviour of the company is in line with the recommendations of the Guidelines and its Commentary. The BIAC Focal Points can assist companies.
- Throughout the procedure **confidentiality** of proceedings and the materials submitted by the parties must be guaranteed (*see Business Brief, I/2*).
- If there are doubts as to the interpretation of the Guidelines, BIAC can ask the OECD for an official **clarification** on the interpretation of the Guidelines text and Commentary. If the parties do not agree on the substantive issues - and if confidentiality allows - the NCP can issue **public statement** on the case with recommendations on how the Guidelines need to be implemented.

Guidelines Procedures in Practice

A case against a company concerning alleged failure of giving prior notice of a plant closure in a non-OECD country was not accepted by an NCP on the grounds that the issue was still subject to legal and administrative procedures of that country. In practice, many other cases ended with NCP statements that either absolved the accused company or that were highly favourable to it.

The example of Employment/Industrial Relations Issues – Text

*The OECD Guidelines for
Multinational Enterprise, Text and
Commentary*

General Policies:

Several recommendations relating to the treatment of employees by MNEs.

Chapter III on Disclosure:

The Guidelines encourage a set of disclosure practices in areas where reporting standards are still emerging, such as *social*, environmental or risk reporting.

Chapter IV on Employment and Industrial Relations covers:

- Freedom of association and right to collective bargaining
- Child and forced labour
- Discrimination in employment
- Provision of information to employees
- Promotion of consultation and co-operation between employers and employees
- Occupational health and safety and other material standards in employment and industrial relations
- Training and employment of local personnel
- Reasonable notice and consultation in case of major changes in operations
- Unfair influence in bona fide negotiations with employees
- Access of employee representatives to real decision makers when negotiating or consulting with management