

National Human Rights Commission of Korea (NHRCK)

Decision of Standing Commissioners

**Subject: Recommendations on Improving Operation of the
OECD NCP in the Republic of Korea**

Summary of Recommendations

To the Minister of Trade, Industry and Energy, we submit the following recommendations for enhancing the reliability, professionalism, fairness, and transparency of the OECD NCP in the Republic of Korea.

1. Enhance the diversity and professionalism of the NCP by amending Articles 4 and 6 of the NCP Operating Rules so as to allow the NCP to have more nongovernmental-sector members, and to authorize various sectors of society (businesses, workers, NGOs, etc.) to nominate candidate members for the NCP.
2. Consider amending the NCP Operating Rules so that the NCP Secretariat would handle only the preliminary investigations for initial assessment and the NCP Commissioners would make final decisions.
3. Consider transferring the oversight on the NCP Secretariat from the current private institution (i.e., the Korean Commercial Arbitration Board) to an agency of the state in order to enhance the fairness, accountability and reliability of NCP operations.

4. Establish an advisory body open to participation by a broad swath of stakeholders, including officials of affected state departments and agencies.
5. Establish specific measures, including increases in dedicated manpower and budgets, for strengthening cooperation with NCPs in other countries.
6. Establish criteria for the non-disclosure of NCP meetings as part of the NCP Operating Rules. Otherwise, publish all the details of meetings (dates, topics on the agenda, outcomes, etc.) on the NCP's website. Strengthen access to said website. Establish protocols for allowing the public to view and hear meetings in progress.

Rationale

I. Background

Globalization at all levels have brought the supply chains of businesses together worldwide, with leading companies increasing their overseas investment. The accountable management of multinational corporations (MNCs), particularly in relation to respect for human rights, has thus become a key point in business discourses today.

By releasing the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (hereinafter “the OECD Guidelines”), the Organisation for Economic Co-operation and Development (OECD) has laid down a code of responsible corporate conduct for MNCs to follow in their offshore undertakings. Nations that have endorsed the OECD Guidelines are also to establish and operate their respective National Contact Points (NCPs) to ensure implementation of the OECD Guidelines.

A major function of an NCP is to provide nonjudicial remedies for instances of human rights violation, receiving and handling complaints on “specific instances” of alleged violation of the OECD Guidelines. The NCP in the Republic of Korea, however, has been facing concerns from both domestic and international sources, for its inability to handle such complaints with the required levels of fairness, diversity, cooperation, and so forth.

The National Human Rights Commission of Korea (hereinafter “the NHRCK”) has published its recommendations on two earlier occasions already, in 2011 and 2018, for enhancing the independence of the Korean NCP’s operations, strengthening the diversity of NCP members, and improving access to NCP services. With the Korean NCP still seen as failing to perform the services required of it, the NHRCK has set out to develop recommendations for improvement of the NCP, pursuant to Article 19.1 and Article 25(1) of the National Human Rights Commission of Korea Act (hereinafter, the “NHRCK Act”).

II. Bases and References for Decision-making

In developing their recommendations, the Standing Commissioners of the NHRCK based their decision-making on Articles 10, 32 and 34 of the Constitution of the Republic of Korea; Article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR); the United Nations (UN) Guiding Principles on Business and Human Rights (UNGPs); and the OECD Guidelines. The Commissioners also referenced General Comment No. 24 on State obligations in the context of business activities (2017), the NHRCK’s own recommendations issued in 2011 and 2018, and the Fourth Guidance on National Action Plans (NAPs) on Business and Human Rights (2022).

III. Overview: The OECD Guidelines and NCPs

1. OECD Guidelines

The OECD Guidelines were first unveiled to the world in 1976 as an addendum to the OECD Declaration and Decisions on International Investment and Multinational Enterprises. The document found an independent form in May 2011 to serve as a major reference point for business practices worldwide since then. The guidelines were then expanded in June 2023 to include stronger action on human rights and environmental protection.

The OECD Guidelines provide multiple standards designed to minimize the adverse impacts of business activities. OECD member-states have endorsed and adopted the Guidelines to guide business practices in their respective jurisdictions.

Recognizing the shortfalls of leaving it up to the discretion of companies to follow the Guidelines, the OECD Council adopted the Decision on the OECD Guidelines in 2000, introducing NCPs into member states with the mission of urging implementation of the OECD Guidelines and handling related complaints.

2. NCPs

The main function of an NCP is to receive and handle complaints that may arise over alleged violation of the OECD Guidelines by local businesses. This complaint-processing is essential to ensuring implementation of the Guidelines.

Anyone who suspects that a given business' activity or activities violate the OECD Guidelines can file a complaint with an NCP. In general, these complaints are directed toward the NCP of the country that has jurisdiction over the subject of the complaint.

Once an NCP receives a complaint, it is to conduct an initial assessment of the subject matter, by hearing the opinions of both sides, within three months. The NCP may decide whether to conduct further research and investigation or to bring the matter to a close on the basis of the initial assessment. In the former case, the NCP conducts additional investigation as needed and attempts to bring about reconciliation between the sides. Where such reconciliation cannot be reached, the NCP issues a final statement outlining its recommendations regarding the case.

As of the end of 2024, there were NCPs operating in 51 countries worldwide, including the 38 member states of the OECD and 13 more nations that have voluntarily adopted the OECD Guidelines. The OECD allows significant discretion over how each country is to structure and manage its NCP.

The OECD stresses that, in order for NCPs to function according to the highest standard possible across national borders, each NCP, in whichever form or structure, must satisfy the principles of visibility, accessibility, transparency, accountability, fairness and equity, predictability, and compliance with the OECD Guidelines.

IV. The NCP in the Republic of Korea

1. Composition

Having become a member of the OECD in 1996, the Korean government endorsed the OECD Guidelines. The Ministry of Industry and Resources (predecessor to today's Ministry of Trade, Industry and Energy, or the MOTIE) laid down the basis for establishment and operation of the Korean NCP by introducing the Operating Rules for the National Contact Point on Implementation of the OECD Guidelines in May 2001 (whose title was later changed to Operating Rules for the National Contact Point for Responsible Business Management on January 30, 2024, which hereinafter shall be referred to as "the NCP Operating Rules"). The Korean government designated the Working-Level Committee on Foreign Investment as the Korean NCP and the Investment Policy Division of the MOTIE as the Secretariat.

In September 2013, the MOTIE had the NCP Operating Rules amended to transform its structure into a committee, with four ex officio members and three independent members and chaired by the Officer of Investment Policy at the MOTIE. The NCP Secretariat was also transferred from the MOTIE (Investment Policy Division) to the Korean Commercial Arbitration Board (KCAB).

The MOTIE amended the NCP Operating Rules once again in February 2017 to allow the Korean NCP to appoint up to nine members. As of December 2024, it had a total eight members, with four ex officio members (including the chairperson) and four independent (nongovernmental) members.

2. Complaint-handling by the Korean NCP

The Korean NCP handled a total of 30 complaints from its inception in 2001 to May 2024. Three of these complaints drew to a close after NCP-arbitrated reconciliation; one, before such arbitrated reconciliation; six, without reconciliation and with the NCP's recommendations only; 16, after the initial assessment; and four, over "other" (unspecified) reasons.

3. Peer review findings on performance of the Korean NCP

The OECD introduced peer review among NCPs in 2011 in an effort to facilitate effective implementation of the OECD Guidelines by sharing best-practice examples and reducing disparities in effect and function between NCPs.

As part of peer review, the Korean NCP was subjected to document review and on-site due diligence by delegations of the Australian, German, and Swiss NCPs and the OECD Secretariat in 2019. The peer review report provided eight recommendations concerning the Korean NCP, which are summarized below.

Peer Recommendations for the Korean NCP, 2021

- The Korean NCP ought to strive to improve its relations with stakeholders by internalizing protocols for seeking opinions of diverse stakeholders, such as businesses, workers, nongovernmental organizations, and international organizations, and/or establishing channels in which these stakeholders can meaningfully participate on a regular basis.
 - The Korean NCP ought to demonstrate that it considers the positions of diverse stakeholders when it appoints members.
 - The Korean NCP ought to increase opportunities for direct communication with major stakeholders.
 - The Korean NCP ought to adopt a public relations strategy with measures for effective PR activities.
 - The roles and responsibilities of the Korean NCP ought to be clarified concerning the complaint-handling process.
 - The Korean NCP ought to provide concrete and pragmatic recommendations concerning the complaints it handles, explicitly referencing the OECD Guidelines and the guidelines for due diligence where applicable, and consider adopting follow-up measures recommended by the OECD Guidelines.
 - The Korean NCP ought to increase cooperation with other NCPs in processing and handling its complaints.
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V. Issues with the Korean NCP and Recommendations

1. Composition of the Korean NCP

Since the NCP Operating Rules were amended in February 2017, the Korean NCP has been running as an eight-member committee, evenly divided between government officials and independent members. To qualify as members under Article 4(2)1 of the NCP Operating Rules, government officials must be “mid-level managers of affected departments and agencies who are appointed to the NCP upon request from the Minister of Trade, Industry and Energy.” Independent members are “persons who possess expertise and extensive experience with the subject matter of the OECD Guidelines, who are recognized as capable of fair conduct, and who are appointed by the Minister of Trade, Industry and Energy” under Subparagraph 2 of the same paragraph and article.

In the event of vacancies, Article 6(3) of the NCP Operating Rules requires that a job announcement be posted, while Paragraph (4) of the same article requires the NCP to review candidates to fill in the vacant positions according to the criteria laid down in Article 4(2)2 and nominate them to the Minister of Trade, Industry and Energy.

In spite of Article 6(3) of the NCP Operating Rules, the qualification language of Article 4(2)2 remains vague and is incapable of ensuring the diversity of members appointed. Even if diverse stakeholders were to apply to fill in positions on the NCP Committee, the existing NCP members would review their qualifications under Article 6(4) of the NCP Operating Rules. This increases the risk of the government having itself overrepresented through the four ex officio members.

The diversity of NCP members is essential to the fairness and equity principles that the OECD demands of NCP composition. As criticism and concerns continue, both at home and abroad, that the Korean NCP's composition is incapable of reflecting diverse positions, it is important to revisit this matter in order to restore the public's trust in the Korean NCP and its services.

In 2011, the NHRCK highlighted the isolation of the Korean NCP from any and all segments of civil society. Recognizing the fact that NCPs in other countries had established channels of participation and consultation with the nongovernmental sector, the NHRCK recommended that the Minister of Knowledge Economy “find ways to ensure greater participation and cooperation from businesses, workers, and nongovernmental and international organizations” in the Korean NCP. In 2018, the NHRCK recommended that the Minister of Trade, Industry and Energy also find ways “to ensure the diversity of member composition and independence of the work” of the Korean NCP.

The peer review of the Korean NCP has similarly noted the necessity of accommodating diverse stakeholders through the very composition of the NCP. The Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises in the Republic of Korea (2017) also discussed this failure of the Korean NCP's composition to reflect the diverse perspectives of all stakeholders.

There are numerous examples abroad showing NCPs that strive to ensure diversity through their member compositions. These include the NCPs in the Netherlands and Denmark that are exclusively comprised of independent nongovernmental members; the NCPs in Belgium and Italy that allow for sufficient body sizes so as to ensure representation of diverse stakeholders; and the NCPs in Norway and Denmark that allow different civil society groups—including businesses and workers' unions—to nominate their representatives to the NCPs.

Articles 4 and 6 of the NCP Operating Rules ought to be altered so as to increase participation by independent members in the Korean NCP and to allow diverse groups (representing businesses, workers, civil society at large, etc.) to nominate their representatives as candidates. These changes are necessary to enhance the diversity and professionalism of the Korean NCP.

2. Authority over initial assessment

In January 2024, the MOTIE delegated the power to conduct and conclude initial assessment—part of the complaint-handling procedure of the Korean NCP—to the NCP Secretariat. The NCP Secretariat had been in charge of conducting only the preliminary investigation necessary for initial assessment prior to this change.

Initial statement is the phase where the Korean NCP reviews the claims raised in the given complaint and decides whether to proceed with additional procedures (arbitration and recommendation, for example). In other words, the NCP can decide whether to continue with the received case or bring it to an end by conducting the initial assessment. As initial assessment bears great significance to claimants, it should be conducted by members who possess expert understanding of the OECD Guidelines and professional competencies in matters of business environments, workers' rights and human rights.

In its 2011 recommendation, the NHRCK noted the practice by which the Korean NCP's Secretariat brought complaints to a premature conclusion through its preliminary investigation. Raising concerns over the legitimacy of having the Secretariat make decisions on behalf of the NCP, the NHRCK recommended that the current practice be revisited so that the Secretariat would not “unilaterally make decisions” on the complaints received by the NCP.

The MOTIE responded to the NHRCK's recommendation that it would ensure that the NCP performed its main functions, including initial assessment and arbitration, by having the Secretariat “focus on supporting the NCP” through public relations and training.

The fact that the MOTIE changed the NCP Operating Rules in January 2024 to delegate the authority of initial assessment back to the Secretariat therefore contradicts its own response to the NHRCK's 2011 recommendation. Letting the Secretariat bypass the expertise and authority of NCP members to handle initial assessment itself again raises the risk of arbitrariness in the result of such assessment. The NHRCK therefore recommends a reversal of the NCP Operating Rules so that the NCP Secretariat limits itself to conducting the preliminary investigation necessary for initial assessment, with the NCP members reclaiming their authority over making decisions on such assessment.

3. Nongovernmental operation of the NCP Secretariat

Article 12(2) of the NCP Operating Rules assigns operation of the NCP Secretariat to the KACB pursuant to Article 32 of the Civil Act.

The KACB is a nonprofit, nongovernmental foundation specializing in the mediation, arbitration and intermediation of various disputes involving commercial transactions in and outside the Republic of Korea. Questions regarding the expertise of its members aside, the nongovernmental (private) status of the organization running the NCP Secretariat weakens the public legitimacy of the NCP, compromising its ability to implement its decisions and the willingness of businesses to seek its decisions. Furthermore, the nongovernmental status of the NCP Secretariat limits the extent and effectiveness of communication and cooperation between diverse stakeholders, including businesses, governments, other NCPs abroad, and civil society groups. The MOTIE's decision to delegate much of the vital functions of the NCP to the NCP Secretariat, essentially run by a private organization, has raised concerns in civil society at large over the weakening of NCP accountability.

Recall that the Korean NCP was initially created in May 2001 with the Secretariat in the Investment Policy Division of the NCP. The MOTIE explains the transfer of control over the Secretariat to the KACB in 2013 by citing the NHRCK's recommendation, in 2011, against arbitrary decision-making by the NCP Secretariat on complaints received.

However, the NHRCK expressly advised against having the NCP Secretariat single-handedly conduct initial assessments and recommended that the expert members of the NCP be given authority over that process instead. The MOTIE's claim that it decided to transfer the NCP Secretariat to the KACB is therefore based on a rather skewed and incorrect understanding of the NHRCK's recommendation.

As for other NCPs around the world, those exclusively consisting of ex officio members either lack a secretariat of their own or rely on a state department or agency to function as a secretariat. NCPs with a mixture of ex officio and independent members also mostly rely on state departments or agencies to serve as their secretariats.

In its 2017 report on the Republic of Korea, the Working Group on Business and Human Rights stressed that an NCP ought to be composed and located so that it would earn the trust of all stakeholders, including civil society as a whole and trade unions. Noting that the location of the Korean NCP's Secretariat within the KCAB itself gives an impression to certain stakeholders that the NCP favors businesses over other parties, the Working Group recommended that the Korean government relocate the NCP Secretariat and/or restructure it with a view to strengthening its perceived competency and independence.

As the growing demand for human rights and environmental protection worldwide is increasing the number of complaints received by NCPs, it is important for the MOTIE to revisit its decision to have the KCAB control the Korean NCP Secretariat, not least because the board has failed to demonstrate competency over matters of human rights and the environment, and also because of international concerns that the board might be inclined to favor businesses over other stakeholders.

The fairness, accountability and reliability of Korea's NCP need to be strengthened by retransferring control over its Secretariat from a private organization to an agency of the state.

4. Lack of advisory body

The OECD Guidelines recommend: “Regardless of the structure governments have chosen for their NCP, they are encouraged to establish multi-stakeholder advisory or oversight bodies where useful to assist NCPs in their tasks.” The Korean NCP today, however, lacks such a body. Neither is there any mention of such a body in the NCP Operating Rules.

The 2021 peer review report on the Korean NCP identifies the weakness of relationship between the MOTIE representatives and other stakeholders, the lack of visibility of the NCP due to the dearth of contact between stakeholders and NCP members, and the lack of regular and effective communication between the NCP and other departments and agencies of the Korean government as the main issues with the Korean NCP. The same report therefore recommends integrating stakeholder perspectives into the very structure of the Korean NCP or otherwise creating channels of regular and meaningful stakeholder participation, increasing opportunities for direct communication between the Korean NCP and major stakeholders, and increasing regular and broader cooperation between the Korean NCP and other departments—the Ministry of Justice, the Ministry of Foreign Affairs, the NHRCK, etc.—as solutions.

Other NCPs abroad have either appointed advisory bodies of stakeholders (e.g., the United Kingdom, Belgium, Switzerland) or created an interdepartmental council (e.g., the United States) to institutionalize stakeholder participation.

As the scope and nature of complaints handled by NCPs grow increasingly complex, with the scope of stakeholders itself also broadening, it will be unlikely for the Korean NCP to accommodate the different perspectives of all stakeholders simply by increasing the representation of diversity in its membership.

The Korean NCP ought therefore to establish an advisory body open to diverse stakeholders so that the advisors can assist the NCP with their expertise and also channel the voices of stakeholders from all corners of society. This is one way to combat the criticism of a lack of fairness and professionalism in the Korean NCP and also to overcome the constraints of human and physical resources.

The NHRCK therefore recommends the creation of a broad-reaching advisory body for the Korean NCP in which officials and diverse stakeholders can participate.

5. Cooperation with other NCPs and augmentation in fiscal and human resources

Handling complaints concerning the business structures and activities of MNCs can require coordination and cooperation between two or more NCPs. These situations arise when the given case affects more than one country or the details of the given case hold true across multiple countries.

The OECD Guidelines recognize this complexity and therefore refrain from rigidly setting and defining the jurisdiction of each NCP, by generally leaving it up to the NCP of the given jurisdiction in which the subject of the given complaint arises to handle the complaint. Nevertheless, the OECD attempts to delineate the roles of the NCP in charge and the supporting NCPs in the Commentaries on the OECD Guidelines in an effort to facilitate cooperation between NCPs.

The OECD, moreover, introduced the Guide for National Contact Points on Coordination when Handling Specific Instances in 2019 in an attempt to facilitate the efficient coordination of cooperation between NCPs.

Concerns have been raised, however, over the lack of cooperation between the NCP of Korea and those of other nations. The 2021 peer review report notes the difficulty that the Korean NCP has in engaging in exchange with other NCPs over specific instances and also in coordinating the response of Korean enterprises in preparation for a joint arbitration process. The same report thus recommends that the Korean NCP strengthen its relations with other NCPs on the same network in handling complaints.

As complaints grow multinational and all the more complex, with more and more Korean enterprises making headway into overseas markets and with the overwhelming majority (93 percent) of the complaints handled by the Korean NCP featuring claims that involve two or more countries (with companies based in one country and problems arising in another), it is crucial for the Korean NCP to cultivate a capacity to handle these complaints in a professional, timely and effective manner through cooperation with other NCPs.

The Korean NCP needs to combat the perceived difficulty that other NCPs experience in trying to work with it and actively heed its peers' advice for strengthening relations with other NCPs in order to earn trust from claimants and stakeholders alike in handling increasingly complex and multinational complaints. Increasing cooperation would involve increasing active exchanges of information and communication with other NCPs as well.

The NHRCK therefore recommends that specific measures be established to strengthen cooperation with other NCPs, with greater fiscal and human resources assigned to that end accordingly.

6. Transparency

The OECD Guidelines state: “Transparency is an important criterion with respect to its contribution to the other core effectiveness criteria, and in gaining the confidence of stakeholders, parties to specific instances and the general public. Thus, as a general principle and subject to applicable law, the activities of the NCP will be transparent.”

In the 2011 recommendation, the NHRCK urged the Korean NCP to improve its accessibility so that users can easily access the information they need, including the operating rules, the complaint (specific instance) procedure, annual reports, and officers in charge of the Korean NCP on the website and other such media. The Korean NCP has heeded this advice and now publishes all these forms of information on its website.

As for disclosure of the Korean NCP’s meetings, Article 10 of the NCP Operating Rules require that the minutes of the meetings be disclosed, except in situations where the NCP deliberates on the disclosure and concludes that such disclosure would be inappropriate.

Yet there are no clear rules or criteria as to what minutes should be excluded from disclosure. Notwithstanding Article 10, the NCP Operating Rules also omits discussions of the type of meeting details (dates, issues on the agenda, etc.) to be disclosed and the methods of disclosure. Whether the Korean NCP abides by the principle of transparency disclosure therefore still remains in question.

As the Korean NCP finds itself under persistent criticism at home and abroad over the possible bias of its composition and the lack of initiative on its own part to communicate actively with stakeholders, it will be necessary for the Korean NCP to earn the trust and confidence of both stakeholders and the parties to specific instances. The NHRCK therefore recommends that the Korean NCP explicitly state the criteria for the disclosure and non-disclosure of meeting minutes as part of the NCP Operating Rules, consistently publish the details of disclosed meetings (dates, topics on the agenda, outcomes, etc.) on its website, improve the public's access to its website, and introduce protocols by which people can apply to sit in or watch meetings in progress.

VI. Conclusion

For the reasons explained above, and in accordance with Articles 19.1 and 25(1) of the NHRCK Act, please consider the NHRCK's recommendations.

December 12, 2024

Chair

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Standing
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