

This is an unofficial English version. The Danish version is the original version.

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The full text

Executive Order on a Mediation and Complaints-Handling Institution for Responsible Business Conduct

Pursuant to Section 1(5) and Section 9 of Act no. 546 of 18 June 2012 on a Mediation and Complaints-Handling Institution for Responsible Business Conduct, the following is laid down:

Part 1

Competence and organisation

Section 1. On the basis of a complaint, or at its own instigation, the Mediation and Complaints-Handling Institution shall consider cases concerning non-compliance with the OECD's Guidelines for Multinational Enterprises, when such non-compliance has either taken place in Denmark or concerns:

- 1) a Danish private or public company, cf. subsection (2), or the company's business associates, cf. subsection (4);
 - 2) Danish government or regional authorities, or the authorities' business associates, cf. subsection (4); or
 - 3) Danish private or public organisations, cf. subsection (3), or the organisations' business associates, cf. subsection (4).
2. A Danish private or public company is a company that is domiciled in Denmark.
3. Danish private or public organisations are private or public organisations that are domiciled in Denmark.
4. By business associates are meant business partners, entities in the supply chain, and other non-public or public entities that can be related directly to the business activities, products or services of the company, authority or organisation.

Section 2. The Institution shall consist of a chairman, one member nominated by LO (the Danish Confederation of Trade Unions), one member nominated by DI (the Confederation of Danish Industries), one member nominated by the Danish 92 Group (the Forum for Sustainable Development), and one expert member.

2. As far as possible, the chairman and the expert member shall have qualifications in the form of a relevant social science or legal background, knowledge of Corporate Social Responsibility (CSR) and knowledge of recognised international guidelines in this area. The chairman shall furthermore, as far as possible, have experience from mediation, business experience, including from the global business world, and personal integrity.

3. Each organisation's representative shall have qualifications that enable the person concerned to consider cases brought before the Mediation and Complaints-Handling Institution, including knowledge of CSR and of one or several of the areas that cases brought before the Institution may concern.

Part 2

Consideration of cases

General

Section 3. Complaints to the Institution shall be submitted in writing and may not be anonymous.

2. Any member of the Mediation and Complaints-Handling Institution may furthermore request the Institution to raise a case at its own instigation.

Section 4. The chairman may determine whether, at a given stage of the consideration of the case, a case is to be subject to verbal proceedings or written consideration.

2. If a case is to be subject to verbal proceedings, the petitioner, the responding party, and any advisers, representatives and special experts, shall be informed of the time and place of the verbal proceedings.

3. The chairman shall determine the nature of the verbal proceedings, including the order in which the attending parties will be able to speak, and when the proceedings are to be concluded.

4. There shall be no access to the verbal proceedings for the general public, or for parties other than those stated in subsection (2), unless the complaining and responding parties so agree, and this is permitted by the chairman.

5. When a case is to be considered in writing at a given stage of the consideration of the case, a decision may be taken on the basis of a written ballot, in order to facilitate the consideration of the case.

Section 5. With due consideration of the nature of each case, the chairman may appoint one or several experts to participate in the Mediation and Complaints-Handling Institution's consideration of the case, but without voting rights.

2. The chairman may appoint one or several advisers if this is necessary in order to safeguard a party's interests on an adequate basis. The Mediation and Complaints-Handling Institution selects and pays the adviser in question.

3. If the Mediation and Complaints-Handling Institution raises a case at its own instigation, after hearing any infringed party, the chairman may appoint a representative for any such infringed party. The Mediation and Complaints-Handling Institution shall pay the representative in question.

Section 6. The Mediation and Complaints-Handling Institution shall be legally competent when all members are present, cf. subsection (2), however.

2. The matters considered by the Mediation and Complaints-Handling Institution shall be decided by simple majority vote. In the event of a parity of votes, the chairman shall hold the casting vote. If the chairman is legally disqualified from participating in the consideration of the case, the expert member shall hold the casting vote in the event of a parity of votes.

Section 7. In order to ensure the investigation of a concrete case, the Mediation and Complaints-Handling Institution may set specific deadlines, including for the parties to the case.

Section 8. Grounds shall be given for the decisions of the Mediation and Complaints-Handling Institution, and the statements made.

2. If the decision has not been taken unanimously, the decision and the statement shall include the minority viewpoint.

3. If one or both parties have been assisted by an adviser, this must be stated in the decision and the statement, just as it shall also be stated whether either of the parties has been represented by a third party.

4. The statements of the Mediation and Complaints-Handling Institution will be published on the Institution's website for maximum five years from the date of the publication of the statement, or until the parties have complied with the mediation result or with the recommendations of the Mediation and Complaints-Handling Institution, cf. Section 13(7) and Section 14(4). The parties shall be notified prior to publication.

Section 9. The Mediation and Complaints-Handling Institution shall draw up more detailed rules of procedure for the performance of the Institution's duties.

Initial assessment

Section 10. When a complaint has been brought before the Mediation and Complaints-Handling Institution, the case shall be subject to an initial assessment.

2. After an initial assessment of the case, the Mediation and Complaints-Handling Institution, or the chairman on the Institution's behalf, may reject a complaint on formal grounds, among other reasons because the complaint has not been made in writing, has been submitted too late, cf. Section 6 of the Act on a Mediation and Complaints-Handling Institution for Responsible Business Conduct, or is not subject to the Institution's competence. Complaints may furthermore be rejected if objective grounds and reasonable documentation for the claimed non-compliance with the OECD's Guidelines for Multinational Enterprises are not presented.

3. At this stage of the consideration of the case, it is not the responsibility of the Mediation and Complaints-Handling Institution to ensure the investigation of the case.

4. If the Mediation and Complaints-Handling Institution rejects the case, the Institution shall notify the parties accordingly.

Opportunity to resolve the case between the parties

Section 11. If the case is not rejected after an initial assessment, cf. Section 10, the Mediation and Complaints-Handling Institution will call on the parties themselves to find a solution and thereby close the case.

2. At this stage of the consideration of the case, the Mediation and Complaints-Handling Institution shall not be subject to any obligation to ensure the investigation of the case.

3. The Mediation and Complaints-Handling Institution must have received notification that a solution has been found, and that the case has thereby been concluded, no later than two months after the Mediation and Complaints-Handling Institution has called on the parties themselves to find a solution, cf. subsection (4), however.

4. The Mediation and Complaints-Handling Institution may determine another deadline than stated in subsection (3), should there be special reasons to do so.

Preliminary investigation of the case

Section 12. The Mediation and Complaints-Handling Institution undertakes a preliminary investigation of the case if the parties themselves do not find a solution, and thereby conclude the case, or if the deadline in accordance with Section 11(3) and (4) is exceeded without any notification being received by the Mediation and Complaints-Handling Institution.

2. The Mediation and Complaints-Handling Institution is obliged to ensure the investigation of the case to the extent necessary to determine whether the case is to be considered further by the Institution, or is to be rejected.

3. The Mediation and Complaints-Handling Institution decides whether the case is to be rejected, whether mediation can be offered, cf. Section 13, or whether the Mediation and Complaints-Handling Institution is to perform an actual investigation of the case, cf. Section 14. The parties shall be consulted before the Mediation and Complaints-Handling Institution takes a decision to this effect.

4. In the event of the rejection of the case, the Mediation and Complaints-Handling Institution will publish a brief statement with the grounds for the rejection of the case, but without stating the names of the parties. The Mediation and Complaints-Handling Institution's statements in the event of rejection will be published on the Institution's website, where they will be accessible until the Institution's annual report has been published, cf. Section 17.

Mediation

Section 13. The Mediation and Complaints-Handling Institution may offer the parties mediation on the basis of a preliminary investigation of the case, cf. Section 12. Mediation requires the consent of both parties.

2. If both parties have consented to mediation, the Mediation and Complaints-Handling Institution publishes a statement that the parties have requested the Mediation and Complaints-Handling Institution to mediate in the case. The statement shall include that it has not been considered whether non-compliance with the OECD's Guidelines for Multinational Enterprises has taken place or not.

3. The Mediation and Complaints-Handling Institution is not subject to any obligation to investigate the case further during the mediation process.

4. The chairman holds the overall responsibility for the mediation, including ensuring that the mediation results are in accordance with the OECD's Guidelines for Multinational Enterprises. In principle, the chairman acts as mediator. If the Mediation and Complaints-Handling Institution is mediating in several cases at once, the chairman is legally disqualified, or other special conditions apply, the chairman may delegate the mediation of a concrete case to another member of the Mediation and Complaints-Handling Institution.

5. The mediation process is concluded when a mediation result has been achieved that is endorsed by both parties, and approved by the chairman, or the mediator decides that the mediation process has been concluded without any outcome.

6. If the case is resolved by mediation, the Mediation and Complaints-Handling Institution publishes a statement with a brief description of the case and the mediation result. The Mediation and Complaints-Handling Institution's statement must include how the mediation result is in accordance with the OECD's Guidelines for Multinational Enterprises. The parties shall be consulted prior to the publication of the statement.

7. The Mediation and Complaints-Handling Institution follows up on whether any agreements set out in the mediation result have been complied with one year after the conclusion of the case, and makes a new statement by either acknowledging that the parties concerned have complied with any agreements in the mediation result, or by stating that this is not the case. If the parties have complied with the mediation result, the statement is deleted from the Institution's website, and the parties are informed thereof. If the parties have not complied with the mediation result, the statements remains on the website for maximum five years from the date of its publication. The Mediation and Complaints-Handling Institution may furthermore delete the statement from the Institution's website if there is no longer any basis for publication. The Mediation and Complaints-Handling Institution performs an annual follow-up on the statement.

Investigation by the Mediation and Complaints-Handling Institution

Section 14. The Mediation and Complaints-Handling Institution performs an actual investigation of the case if:

- 1) the Mediation and Complaints-Handling Institution does not offer mediation;
- 2) the parties do not consent to mediation in the case;
- 3) the parties do not manage to find a solution after a mediation attempt; or
- 4) in the event of gross non-compliance with the OECD's Guidelines for Multinational Enterprises.

2. The Mediation and Complaints-Handling Institution may request the parties to the case to provide information that is deemed to be of significance to the assessment of the case. The Mediation and Complaints-Handling Institution, or the chairman on behalf of the Institution, may moreover obtain information where this is deemed to be appropriate. The Mediation and Complaints-Handling Institution, or a third party appointed by the Institution for this purpose, may perform inspection at the site where the alleged non-compliance is taking place, or has taken place.

3. On the basis of the investigation by the Mediation and Complaints-Handling Institution, the Institution publishes a statement on the case, with any recommendations as to how the OECD's Guidelines for Multinational Enterprises may be complied with. The parties shall be consulted prior to the publication of the statement, and shall be notified in good time before its publication.

4. One year after the publication of the statement, the Mediation and Complaints-Handling Institution follows up on whether any recommendations in the statement have been complied with, and will make a new statement by either acknowledging that the parties concerned have complied with the recommendations of the Mediation and Complaints-Handling Institution, or by stating that this is not the case. If the parties have complied with the recommendations, the statement is deleted from the Institution's website, and the parties are informed thereof. If the parties have not complied with the recommendations, the statement remains on the website for maximum five years from the date of its publication. The Mediation and Complaints-Handling Institution may furthermore delete the statement from the Institution's website if there is no longer any basis for publication. The Mediation and Complaints-Handling Institution performs an annual follow-up on the statement.

The Mediation and Complaints-Handling Institution raises cases at its own instigation

Section 15. If the Mediation and Complaints-Handling Institution has raised a case at its own instigation, the Institution shall investigate the case at all stages of the consideration of the case, and to the extent that is necessary in order to be able to conclude a given stage of the consideration of the case.

2. The rules of this Executive Order shall moreover apply, subject to the required adjustments.

Re-consideration of a case

§ 16. The Mediation and Complaints-Handling Institution may decide that a case that has been considered by the Institution, of which the consideration has been concluded, may be re-considered if special grounds apply, including if new factual information has emerged that is of material significance to the outcome of the case. The same shall apply, with the necessary adjustments, if there have been significant procedural errors in the consideration of the case.

2. The rules of this Executive Order shall moreover apply, subject to the required adjustments.

Part 3

Annual report, etc.

Section 17. The Mediation and Complaints-Handling Institution shall prepare an annual report on the activities of the Institution. The report shall be published on the Institution's website.

2. After the annual report has been published the chairman will take the initiative to discuss the report with the Danish Council on Corporate Social Responsibility, and with the OECD's Investment Committee, in order to improve the work of the Institution.

Provisions concerning entry into force

Section 18. The Executive Order shall enter into force on 21 September 2012.

The Danish Business Authority, 18 September 2012.

Victor Kjær

/ Marie Voldby