

# **Advisory and Mediation Panel Guidelines**

## **on Business Engagement with Stakeholders**

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**Business and Human Rights Lawyers Network Japan**

### **Purpose and Background of the Guidelines**

Business enterprises are facing the need to conduct human rights due diligence (HRDD) and establish a grievance mechanism to promote responsible business conduct and supply chains under the UN Guiding Principles on Business and Human Rights (UNGPs), the OECD Guidelines for Multinational Enterprises, the ILO's declaration of principles concerning multinational enterprises, and other international norms (collectively, "International Norms").

However, when a business enterprise receives a grievance from a stakeholder or recognizes any significant issues on responsible business conduct, supply chains, value chains and investment chains ("supply chains, etc."), and if it tries to respond to the grievance on its own, it would not be able to gain full understanding of stakeholders or even could fail to sufficiently engage with suppliers, etc.

In such case, it would be beneficial for the business enterprise to seek engagement and remedy support from the Advisory and Mediation Panel, receive advice consistent with International Norms independently from the business enterprise, and gain support in facilitating dialogue with stakeholders and engaging with suppliers. The Engagement and Remedy Guidelines, which provide practical guide to establish effective operational level grievance mechanisms, also mentions the benefits of using the Advisory and Mediation Panel.

The Guidelines sets out clear standards on which the Advisory and Mediation Panel provides engagement and remedy support in a manner that will enhance the effectiveness of grievance procedures, while maintaining its independence from business enterprises.

## **Article 1. Composition of Advisory and Mediation Panel**

### **1. Number of panel members**

A person who receives a request for stakeholder engagement and remedy support from a business enterprise (“business enterprises” shall include other types of groups, organizations and industry groups: the same shall apply hereinafter) may serve as the Advisory and Mediation Panel comprised of one or more members, as necessary and appropriate.

### **2. Key considerations for particularly significant and complicated cases**

Particularly significant and complicated cases shall be handled through sufficient discussions and deliberations, and the person who received the request shall advise the business enterprise to select three or more members for the Advisory and Mediation Panel to enable decision making by majority vote.

### **3. Key considerations for disputable cases**

For cases that could lead the business enterprise to any dispute with stakeholders, suppliers or other parties, members of the Advisory and Mediation Panel who are attorneys shall be responsible for dispute-related advisory and mediation matters in terms of compliance with the Japanese Attorney Act. Other members of the Advisory and Mediation Panel, who are not attorneys, shall be responsible only for advice in non-legal areas for the business enterprise.

## **Article 2. Independence of Advisory and Mediation Panel**

### **1. Exclusion of interested parties**

To ensure the independence of the Advisory and Mediation Panel from business enterprises, a person who has a vested interest in the business enterprise involved in the grievance or the claimant shall not serve as a member of the Advisory and Mediation Panel.

### **2. Definitions of interested persons**

A “person who has a vested interest” shall include:

- (i) a member of the Advisory and Mediation Panel who has filed the grievance;
- (ii) a member of the Advisory and Mediation Panel who is currently acting or acted in the past as an agent for the business enterprise or the claimant with regard to such grievance or any related case;
- (iii) a member of the Advisory and Mediation Panel who is a business executor<sup>1</sup> of the business

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<sup>1</sup> A “business executor” shall mean a director, officer, division manager or other person responsible for business execution.

enterprise or the spouse, a direct lineal ancestor or descendant, a sibling or relative living together of the claimant; or

(iv) a member of the Advisory and Mediation Panel who has a continued contractual relationship, including that of a corporate or personal attorney of the business enterprise or the claimant.

### **3. Factual circumstances**

A member of the Advisory and Mediation Panel who is not deemed to have a vested interest, but who has any factual circumstances which might cause doubts as to the impartiality and neutrality of his or her duties, including the acceptance of any obligation in the past from the business enterprise involved in the grievance or the claimant, the member shall explain the fact to the business enterprise and the claimant.

## **Article 3. Standards of Conduct for Advisory and Mediation Panel**

### **1. Preservation of impartiality and neutrality of duties**

The Advisory and Mediation Panel shall not receive any order or direction from a third party, but shall preserve the impartiality and neutrality of its duties and execute procedures in an impartial manner.

### **2. Confidentiality**

No member of the Advisory and Mediation Panel shall disclose to any other person, with no due cause, the pendency, details or outcome of the procedure or any other fact that may come into his or her knowledge during the course of his or her duties. The aforementioned provision shall apply even after the member leaves the post.

### **3. Compliance with International Norms, etc.**

In providing advisory and Mediation services in relation to grievance procedures, the Advisory and Mediation Panel shall consider whether the business enterprise involved in the grievance carry out activities in conformance with applicable laws and regulations, its code of conduct, procurement standards, International Norms, international human rights standards (collectively, “International Norms, etc.”).

### **4. Constructive and practical advisory activity**

The Advisory and Mediation Panel shall strive to facilitate constructive dialogue between the business enterprise and stakeholders and explore practical solutions, based on the understanding that promoting

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and supporting responsible business conduct in conformance with International Norms, etc. for the sake of the business enterprise will bring about mutual benefit for both the business enterprise and stakeholders from a medium-to-long-term perspective.

## **Article 4. Description of Duties of Advisory and Mediation Panel**

### **1. Description of duties**

The Advisory and Mediation Panel shall place itself in an expert position independent of the business enterprise to provide it with advice on individual grievance cases in accordance with International Norms, etc., facilitate dialogue between the business enterprise and the claimant, present solutions, and assist the business enterprise in taking action on supply chains, as needed.

### **2. Sorting out of facts**

With the assistance of the business enterprise's responsible division, the Advisory and Mediation Panel shall conduct a fact-finding investigation in relation to the grievance to look into whether the alleged misconduct specified in the grievance actually took place or not, and to find out about other relevant circumstances. The investigation shall involve the business enterprise's concerned persons, including the business enterprise and its officers and employees, group companies and supplies (the same shall apply hereinafter), as well as the claimant.

However, if the grievance is so significant and complicated that the Advisory and Mediation Panel and the business enterprise's responsible division alone cannot perform an adequate investigation, or if there is a serious conflict between the parties in relation to the facts on which the grievance is based, the Advisory and Mediation Panel shall advise the business enterprise to ask an independent investigation agency, individual or entity to conduct an investigation.

### **3. Facilitation of dialogue**

With the assistance of the business enterprise's responsible division, the Advisory and Mediation Panel shall take the lead in facilitating dialogue between the parties.

In facilitating dialogue between the parties, the Advisory and Mediation Panel shall encourage each party to explore corrective measures consistent with internationally recognized International Norms, etc. on human rights and responsible business conduct. The panel shall also encourage each party to explore constructive and practical corrective measures which would bring about mutual benefit from a medium-to-long term perspective, regardless of its position or claim.

#### **4. Presentation of a mediation plan**

The Advisory and Mediation Panel shall present a mediation plan as an expert body independent of the business enterprise and grievance processors.

The Advisory and Mediation Panel shall propose solutions which are consistent with internationally recognized human rights, environment, biodiversity and other norms. The panel shall also explore constructive and practical solutions which would bring about mutual benefit to the parties from a medium-to-long term perspective.

#### **5. Assistance in taking action on suppliers**

If the grievance is about an issue concerning supply chains, value chains, and investment chains, the Advisory and Mediation Panel shall provide advice and support to the business enterprise in taking effective action on suppliers and other relevant parties.

#### **6. Consideration for attorney-client privilege**

The Advisory and Mediation Panel shall perform its duties in a manner that protects the business enterprise's attorney-client privilege, as needed.

### **Article 5. Documentation of Engagement Contracts**

A person who shall take the post of a member of the Advisory and Mediation Panel shall sign engagement contracts and other documents with the business enterprise stating his or her commitment to performing his or her duties in compliance with the Guidelines, in principle.

However, the person may reach agreement with the business enterprise as to any matter that is different from what is described in the Guidelines, only if such agreement does not undermine the effectiveness of the grievance processes, such as when the claimant gives consent.

### **Article 6. Compensation for Advisory and Mediation Panel Members**

The amount of expert compensation paid by the business enterprise for each member of the Advisory and Mediation Panel shall be determined on an individual basis, based on discussions between the business enterprise and the panel member.

For cases for which working hours are predictable to some extent, it would be beneficial to set a fixed amount of compensation for services per case (including the sorting out of facts, facilitation of

dialogue and presentation of a mediation plan) in order to ensure predictability for the business enterprise. For cases for which working hours are difficult to predict, it is possible to set an hourly charge rate.

It is often the case that the compensation system based solely on the prominence of the member proves inappropriate. The success-fee system may sometimes motivate the business enterprise to lead to investigation findings as desired, which could affect neutrality and should be avoided.

## Acknowledgments

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