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The Office of the Extractive Sector Corporate Social Responsibility (CSR) Counsellor

The Review Process Participant Guide

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Views expressed herein are those of the Office of the Extractive Sector CSR Counsellor.

April 2011

What is the Office of the Extractive Sector CSR Counsellor and how does it work?

The Office of the Extractive Sector CSR Counsellor is part of the Government of Canada's strategy on corporate social responsibility. As part of its role, the Office launched a dispute resolution mechanism, called "the Review Process" on October 20, 2010. The objective of the Review Process is to foster dialogue and to create constructive paths forward for all parties. Requests may be brought to the Office by individuals, groups or communities who wish to raise issues regarding the overseas activities of Canadian mining, oil and gas companies. The issues must relate to the endorsed performance guidelines in the Government of Canada's CSR strategy (the International Finance Corporation's Performance Standards on Social & Environmental Sustainability, the Voluntary Principles on Security and Human Rights, and the Global Reporting Initiative). Canadian mining, oil and gas companies who believe they are the subject of unfounded allegations concerning their overseas corporate activities may also bring requests to the Office. You can find out more about the Review Process in this Guide and on the Office's website: www.international.gc.ca/csr_counsellor-conseiller_rse.

Our guiding principles:
Accessible, Effective, Independent, Transparent,
Responsive, Predictable.

How to use this Participant Guide

This Guide contains a lot of information. It is not meant to be read all at once. Some information will be helpful to you at different steps of the Review Process, from considering making a Request for Review to deciding with the other party which kinds of problem-solving activities might be best in the situation. Read the parts of the Guide that will be most helpful to you at a given moment.

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Your privacy is important to us.

Personal information collected for the Review Process will be used to establish contact between the Office of the Extractive Sector Corporate Social Responsibility (CSR) Counsellor and the Requester and the Responding Party, to assess the eligibility of the Request for Review (written submission), and to carry out the review to completion. The identity of the Requester and the Responding Party will be made public in the online Request for Review Registry. A Requester can ask that their identity not be included in the online Registry. The identity of the Requester will be provided to the Responding Party, subject to a request for confidentiality. The identity of parties to the Review Process will be shared with Canada's National Contact Point. This information will be protected in accordance with the federal Privacy Act and may be accessed referring to the personal information bank described in InfoSource as DFAIT PPU 906.

Introduction to the Office of the Extractive Sector CSR Counsellor

Background to the establishment of the Office

As part of the Government of Canada's Strategy on Corporate Social Responsibility (CSR) for the Extractive Sector, the Office of the Extractive Sector CSR Counsellor was established in October of 2009. Broadly speaking, the CSR strategy is designed to help Canadian mining, oil and gas companies meet their social and environmental responsibilities when operating abroad.

Part of the mandate of the CSR Counsellor is to review the CSR practices of Canadian extractive sector companies operating outside Canada. The CSR Counsellor will carry out this review mandate in the context of three endorsed performance guidelines (the International Finance Corporation's Performance Standards on Social & Environmental Sustainability, the Voluntary Principles on Security and Human Rights and the Global Reporting Initiative). The review process for the OECD Guidelines will remain under the mandate of the Canadian National Contact Point and not the CSR Counsellor.¹ In fulfilling the review mandate, the Office will act as an impartial advisor and facilitator, an honest broker that brings parties together to help address problems and disputes. This approach is based on the view that a credible, impartial and transparent process with appropriate checks-and-balances may find win/win options to resolve disputes.

The Office has established Key Guiding Principles. They are: *Accessible, Effective, Independent, Transparent, Responsive, Predictable*.

Purpose of this Participant Guide

During the formal public consultations period, over 300 individuals and organizations, in Canada and abroad, participated directly in the development of the CSR review mechanism. Contributors expressed substantial support for a review mechanism that could foster dialogue and constructive problem solving. The Office's rules of procedure for the dispute resolution mechanism respond to cross-sector calls for a predictable, useful process that ensures accessibility. (The rules are available on the Office's website.)

However, the rules of procedure require fleshing out. This Guide has been created to help potential participants better understand the dispute resolution mechanism, called the Review Process, which is the process facilitated by the CSR Counsellor following the submission of a written request to the Office (called a Request for Review). Also, this Guide serves to provide some suggestions on preparing Requests for Review and explains the responsibilities of requesters.

In preparing this Guide, we reached out to both civil society and industry. In October 2010 we held a workshop with representatives from three civil society organizations and two industry associations to gather input on a first draft of this Guide. Since then, these individuals have continued to provide us with valuable feedback on subsequent drafts.

¹ Visit the National Contact Point's website at <http://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn>.

Steps in the Review Process

Step 1: A Request for Review is submitted to the Office.

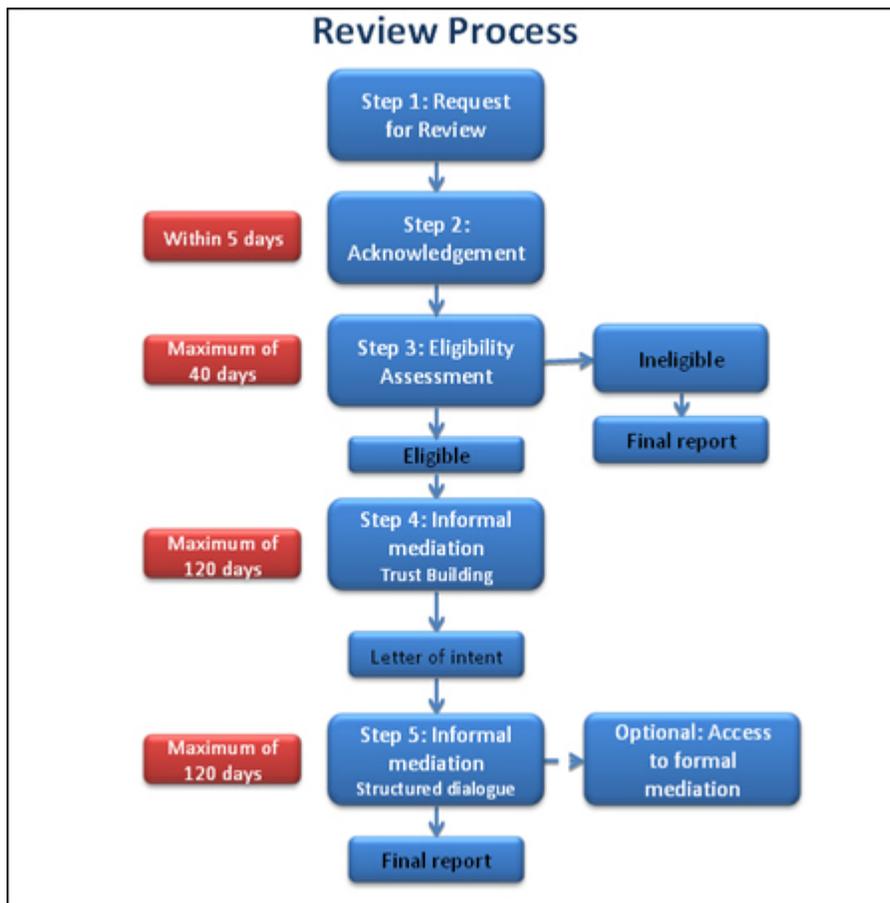
Step 2: The Office will send an acknowledgement to the person(s) making the Request.

Step 3: The Office will assess eligibility.

Step 4: The CSR Counsellor will work with the parties in building trust.

Step 5: The CSR Counsellor and the parties may engage in a structured dialogue. The parties might also work with a formal mediator outside of the Office to resolve any issues of concern.

The CSR Counsellor will write reports about requests for review, including final reports at the end of the process.



Definitions

There are certain definitions that you will need to be familiar with when using this Guide. These definitions are drawn from the rules of procedure.

Term	What it means...
“Requester”	the author(s) of the written submission to the CSR Counsellor
“Responding Party”	the party to which the Request for Review pertains
“Participants”	the Requester and the Responding Party together
“Canadian extractive sector company”	an oil, gas or mining company that has been incorporated in Canada or that has its head office in Canada
“Fact-finding”	the activities undertaken by the CSR Counsellor, third parties and/or the Participants, to better understand the issues raised in the Request for Review or during the Review Process
“Informal Mediation”	the activities undertaken by the CSR Counsellor to assist the Participants in the resolution of the dispute, excluding formal mediation
“Initial Assessment”	the process of determining eligibility of a Request for Review, which is carried out by the CSR Counsellor
“Letter of Intent”	the written document following the Participants agreement on terms of reference for structured dialogue and/or formal mediation
“NCP”	the Canadian National Contact Point relating to the OECD Guidelines
“OECD Guidelines”	the Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises
“Performance Guidelines”	the International Finance Corporation Performance Standards [the International Finance Corporation’s Performance Standards on Social & Environmental Sustainability], the Voluntary Principles on Security and Human Rights, the Global Reporting Initiative and the OECD Guidelines for Multinational Enterprises as of 20 October 2010 (the date on which the rules of procedure were approved)
“Reporting”	the activities of the CSR Counsellor undertaken pursuant to a Request for Review in the preparation of written documents, for publication on the Office’s website

Part I: About the Review Process

In this section you will be given a brief orientation to the Review Process and information to help you decide if this process is right for you.

Understanding the Review Process: The Review Process is a dispute resolution mechanism. The objective of the Review Process is to resolve conflicts and promote a workable path forward for those involved. There is a great deal of flexibility in the process for parties to seek ways and means to resolve their disputes in a constructive manner. In working with the CSR Counsellor, the Participants could be expected to agree to a problem-solving exercise, enter into a dialogue with one another, and engage in mediation if they agree to do so.

The Review Process is voluntary, meaning that Participants can withdraw from it at any time. The CSR Counsellor, however, will work with the Participants to try and avoid this situation.

The Review Process is subject to a set of rules of procedure. You should refer to the rules as you read through this Guide. They are on the Office's website.

The Review Process begins with the submission of a complete Request for Review. This is the written document that describes the dispute. The CSR Counsellor then makes a decision on whether the Request is eligible. The Office is funded by Canadian taxpayers and it is important that the resources of the Office be directed to those situations where we are likely to have a positive impact.

What is the Office's mandate?

The mandate of the Office is underpinned by a law called an Order-in-Council which imposes certain limitations on what the CSR Counsellor is permitted to do. The CSR Counsellor –

Can

- Exercise a significant degree of discretion in the Review Process.
- Ensure that there is sufficient flexibility in the process to accommodate the unique situation at hand and the needs of the particular Participants involved.
- Refuse to deal with a Request for Review.
- Determine how a review is to be conducted.
- Determine at what stage to conclude a review.
- Determine whether a review should be terminated before completion.

Cannot

- Carry out investigations.
- Adjudicate on a matter.
- Make binding decisions.
- Change or enforce the laws of another country.
- Make binding recommendations.
- Make policy or legislative recommendations.
- Create new performance standards.
- Apply standards other than the Performance Guidelines.

Below are a number of key questions and answers about the Review Process to consider *before* you submit a Request for Review. ***Note that not all Requests are suitable for this dispute resolution mechanism, and not all Requests will be accepted by the Office.***

Question 1: What information do I share with the CSR Counsellor and with the Responding Party?

Transparency *and* confidentiality are important to the potential success of a review, but they exist in tension with one another. To manage the potential concerns Participants may have about confidential information, the Office requires that only publicly available information be included in Requests for Review.

Do not send the Office confidential information in your Request for Review.

If a Request is eligible, during the early stages of the Review Process, again only publicly available information is to be shared. Serious consideration may be given to the sharing of confidential information during later stages of the Review Process. You will not be expected to share any confidential information before you are fully informed of the potential consequences of doing so.

The Office is subject to the laws of Canada. As such, all records kept by the CSR Counsellor could be the subject of requests under Canadian access to information or privacy legislation. But this does not necessarily mean that all information will be released into the public domain – certain information may qualify for exemption and/or exclusion under the legislation. We are also required to protect your “personal information”, as defined in the legislation. Personal information means your name, address, date of birth, religion, etc.

The Office has prepared a guidance note to more fully answer your questions regarding confidentiality. Refer to ***Guidance Note No. 1: Transparency and Confidentiality*** which is available on our website.

Question 2: Do I have to disclose my identity?

The Office can keep your identity confidential. Please notify the Office in your Request for Review if you would like the Office to keep your identity confidential. This means we will not post information about your identity on our website or use it in public documents. However, we will normally share your identity with the Responding Party. If you ask us to keep this information confidential from the Responding Party at the outset we will do so – however, it is unlikely that there will be a successful outcome to your Request for Review unless you are willing to share your identity with the Responding Party at some point during the Review Process. The Office will therefore most likely ask that you share your identity with the other party early in the process.

Question 3: Can I bring a Request for Review to the Office?

There are two groups which can submit a Request to the CSR Counsellor, and you must fall into one of these two groups:

You are an individual, group or community

-and-

You reasonably believe that you are being or may be adversely affected by the activities of a Canadian extractive sector company

-and-

You believe that the activities of the Canadian company are inconsistent with the endorsed performance Guidelines

-or-

You are a Canadian extractive sector company

-and-

You believe that you are the subject of unfounded allegations concerning your conduct abroad in relation to the endorsed performance guidelines

-and-

You can identify a suitable responding party.

To participate in the Review Process, you are required to provide enough information for the Office to determine whether the Request falls under the Office’s mandate.

You are also expected to name a proper Responding Party. The party you name will normally be one of the two groups described above (an “individual, group or community” -or- a “Canadian extractive sector company”). In cases where the Request names a company as Responding Party, that company must be a “Canadian extractive sector company”.

Question 4: On which basis can I bring a Request for Review to the Office?

The activity that is the cause of the dispute must relate to one of the endorsed Performance Guidelines. You do not need to cite a particular Performance Guideline in order to bring a Request for Review, but the Request must be connected in some way with issues that the Performance Guidelines address.

Endorsed Performance Guidelines falling under the authority of the CSR Counsellor

- International Finance Corporation's Performance Standards on Social & Environmental Sustainability (IFC Performance Standards)
- Voluntary Principles on Security and Human Rights (VPs)
- Global Reporting Initiative (GRI)

The Canadian National Contact Point (NCP) will remain the primary authority concerning the OECD Guidelines. If the CSR Counsellor receives a Request for Review that pertains solely to the OECD Guidelines, the CSR Counsellor will forward the Request to the NCP for consideration. Reviews of the same situation cannot take place under both the CSR Counsellor and NCP processes.

A protocol between the NCP and the Office governs situations where Requests for Review raise issues falling under both the OECD Guidelines and the other Performance Guidelines. This document is posted on the Office's website.

Question 5: What doesn't qualify?

Not all Requests for Review submitted will proceed to the eligibility screening stage. There are certain Requests that will be excluded immediately, as the CSR Counsellor does not have the authority to review them.

Be sure that your Request will not be excluded from the Review Process by confirming the following:

- ✓ The activities you are concerned about took place after 19 October 2009.
- ✓ You have made some effort to resolve the situation, for example by contacting the Responding Party.
- ✓ You have not previously submitted a Request for Review on this issue (if you have, you must provide new information for consideration).
- ✓ You are not submitting your Request for Review anonymously (keeping in mind we can keep your name confidential).
- ✓ Your Request for Review is related to one of the endorsed Performance Guidelines.
- ✓ Your Request for Review does not relate solely to the OECD Guidelines (and, if it does, we will send it the National Contact Point in Canada).
- ✓ Your concerns fall within the mandate of the CSR Counsellor (for instance, the company is Canadian).

Question 6: Can I get help to bring a Request for Review to the Office?

You may bring general questions about submitting Requests for Review and the Review Process to the Office. We will do our best to provide you with the necessary basic information. To maintain our neutrality, we are not able to walk you step-by-step through the development of a Request.

Another party may aid or assist you in bringing a submission to the Office, as long as you have authorized them to do so. This authorization must be demonstrated to the Office in your written submission. For example, the authorization could be a confirmation letter from you.

The party aiding or assisting you will be subject to the Office's rules of procedure and this Guide, and you assume the responsibilities of a Requester.

Question 7: Can I aid or assist a party to bring a Request for Review to the Office?

You may be a party that has been asked to or wishes to aid or assist a party to bring a Request for Review to the Office. This is permissible in the Review Process, but your aid or assistance will have to be approved by the party you are aiding or assisting. As well, proof of the authorization (for example, a confirmation letter) will have to be provided to the Office in the Request.

If you aid or assist a party, you will be subject to the Office's rules of procedure and this Guide.

Question 8: Do I have to exhaust all other options before I can bring a Request for Review to the Office?

No. However, before you bring a Request for Review to our Office, it is expected that you have made some effort to resolve your dispute with the Responding Party.

For example:

You contacted (via letter, fax or telephone) or met with the other party

-or-

You raised the issue with the company's on-site grievance mechanism or to an organization's internal complaints process (e.g. for breaching that organization's code of conduct)

-or-

You raised the issue with a local ombudsman

-or-

You raised the issue with an international institution or body

-or-

You took some other action to try and resolve the problem.

Our Office is neither a first nor a last resort mechanism. In your Request for Review, you will need to give information about how you tried to resolve the problem. These may be judicial (through the courts) or non-judicial processes (such as contacting the other party directly or using an in-house grievance mechanism).

Question 9: How do I know if the Review Process is right for me?

The Office is one of many forums providing the assistance of a credible, objective third party in a dispute resolution process. However, the Office provides just one possible avenue for you to have your situation addressed. There may be others that are more suitable.

You should think about what outcome you would like to have from the Review Process. Can this Office assist you in meeting your desired outcome? If not, you should consider whether another mechanism is better.

The Review Process is meant to provide Participants with space to have a dialogue and to resolve their dispute. If you believe the Responding Party has violated the laws of Canada or another country, you may wish to make a complaint to the proper authorities. For example, the Office will not accept Requests that raise issues of corruption. Corruption is criminalized in Canada under the *Corruption of Foreign Public Officials Act*. Such issues should be raised directly with the Royal Canadian Mounted Police (RCMP).

Question 10: How much does this process cost?

There is no charge for making a Request for Review or for using the services of the Office.

Question 11: What are my responsibilities as a Requestor?

The Office is funded by Canadian taxpayers. If you choose to use this Office to resolve your issue, you should know that you have some responsibilities. You must be willing to enter into, and maintain, a constructive dialogue with the Responding Party. You must also provide additional information when requested by the CSR Counsellor.

Part II: Preparing and Submitting a Request for Review

In this section you will learn about how to submit a Request to the Office.

Below are a number of key questions and answers about preparing and submitting Requests for Review.

Question 12: What is the purpose of the Request for Review Cover Form and do I need to complete one?

The Cover Form has been created to make it easier to submit a **complete** Request for Review to the Office. It takes a lot of resources to prepare a Request for Review and we want to avoid ineligible Requests. The Cover Form must be filled out completely, and included with your submission. The Cover Form template is found on the next pages, and is available on our website.

Incomplete submissions

If your submission is incomplete, we will return it to you and let you know what information is missing. We will not register incomplete Requests and we will not include them in our online registry of Requests for Review. You are welcome to resubmit your completed Request at any time.

Question 13: What information do I need to include in my Request for Review?

In your submission, you must provide a completed Cover Form with supporting documents.

NOTE: The Cover Form requests all of the information we need to determine eligibility. It asks for:

- Your name, organization and contact information
- Whether you want your identity to be kept confidential (we will not post it on our website or in any public communications)
- Proof of authorization for any aid or assistance being provided (for example, a confirmation letter)
- The name and contact information of any individual or organization providing aid or assistance
- Relevant background information and documents (limited to what is publicly available) – this could include attachments and supporting material, such as photos, reports, etc.
- To the best of your ability, the Performance Guidelines at issue (you are not required to cite specific clauses)
- The name of the Responding Party
- A description of previous efforts you have made to resolve the issue
- Confirmation that you have read the Office’s rules of procedure
- Confirmation of your willingness to engage in a dialogue with the Responding Party.

Avoid making demands that the Responding Party is unable or unlikely to consider, and which are outside of the mandate of the CSR Counsellor.

**Review Process of the
Office of the Extractive Sector Corporate Social Responsibility (CSR) Counsellor**

Accessible, Effective, Independent, Transparent, Responsive, Predictable

Request for Review Cover Form

Please complete both the front and back of this form and submit it with your written submission.

All documents must be submitted in English or French.

Incomplete applications will NOT be registered and will be returned to parties for completion.

The Office acts as an impartial advisor and facilitator, an honest broker that brings parties together to help address problems and disputes. This approach is based on the view that a credible, impartial and transparent process can help identify workable solutions to disputes. In order to effectively build space for dialogue, the process is not adjudicative or investigative. The overall objective of the process is the promotion of constructive dialogue and creative problem-solving.

Step 1: Confirm that you meet the criteria to submit a Request for Review to the Office:

- You are an individual, group or community AND
- You reasonably believe that you are being or may be adversely affected by the activities of a Canadian extractive sector company AND
- You believe that the activities of the Canadian company are inconsistent with the endorsed performance guidelines

- OR -

- You are a Canadian extractive sector company AND
- You believe that you are the subject of unfounded allegations concerning your conduct abroad in relation to the endorsed performance guidelines AND
- You can identify a suitable responding party

Step 2: Please answer yes (Y) or no (N) to the following questions:

- Y N Did the activity you are concerned about take place after 19 October 2009?
- Y N Do the activities relate to a Canadian company in the oil, gas or mining sectors?
- Y N Does the issue relate to the overseas operations of a Canadian extractive sector company?
- Y N Did you take action within a reasonable period of time after you found out about the issue?
- Y N Is the activity in question more than trivial in nature?
- Y N Are you willing to enter into constructive dialogue with the responding party?

Y N Have you made some effort to engage the responding party, or have you tried a local grievance mechanism, with a view to resolving the dispute?

Y N Does your request include information directly from an affected party?

Y N Have you read the Office's rules of procedure?

If you answered NO to any of the questions above, it is likely that your request will not be found eligible for this process.

Step 3: Please provide us with the following information:

Your name, organization and contact information.

Note: We can keep your identity confidential at this time, but we cannot accept anonymous requests.

The organizational name of the responding party.

If any organization is assisting you, please provide their name and contact information.

Note: Please provide proof of authorization for any aid or assistance being provided.

To the best of your ability, the endorsed CSR standards at issue (you are not required to cite specific clauses, but tell us which ones you believe are relevant).

Note: If your Request for Review relates solely to the OECD Guidelines for Multinational Enterprises, please send it to the Canadian National Contact Point.

In your written submission, please provide us with a summary of the situation and any relevant background information and documents. Please also provide us with a description of previous efforts made to resolve the issue. If you have previously submitted a Request for Review on the same issues, make sure that you have included sufficient new information, or your Request for Review will not be accepted.

Personal information collected for the Review Process will be used to establish contact between the Office of the Extractive Sector Corporate Social Responsibility (CSR) Counsellor and the Requester and the Responding Party, to assess the eligibility of the Request for Review (written submission), and to carry out the review to completion. The identity of the Requester and the Responding Party will be made public in the online Request for Review Registry. A Requester can ask that their identity not be included in the online Registry. The identity of the Requester will be provided to the Responding Party, subject to a request for confidentiality. The identity of parties to the Review Process will be shared with Canada's National Contact Point. This information will be protected in accordance with the federal Privacy Act and may be accessed referring to the personal information bank described in InfoSource as DFAIT PPU 906.

CONTACT US

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Email: csr-counsellor@international.gc.ca

Visit: www.international.gc.ca/csr_counsellor-conseiller_rse



Government of Canada
Gouvernement du Canada

Canada

Question 14: In what language can I submit my Request for Review?

The submission must be in one of Canada's official languages, English and French. We will communicate with you in your choice of Canada's official languages.

Question 15: How do I ensure that my Request will be considered for eligibility?

Not all Requests for Review submitted will proceed to the eligibility screening stage. There are certain Requests that will be excluded immediately, as the CSR Counsellor does not have the authority to review them.

Be sure that your Request will not be excluded from the Review Process by confirming the following:

- ✓ The activities you are concerned about took place after 19 October 2009.
- ✓ You have made some effort to resolve the situation, for example by contacting the Responding Party.
- ✓ You have not previously submitted a Request for Review on this issue. And, if you have, you are providing new information for consideration.
- ✓ You are not submitting your Request for Review anonymously (keeping in mind we can keep your name confidential).
- ✓ Your Request for Review is related to one of the endorsed Performance Guidelines.
- ✓ Your Request for Review does not relate solely to the OECD Guidelines (and, if it does, we will send it the National Contact Point in Canada).
- ✓ Your concerns fall within the mandate of the CSR Counsellor (for instance, the company is Canadian).

Question 16: How do I prepare a Request for Review?

Make sure that you complete the Cover Form and attach it with your other documents and materials. The Cover Form template is on the previous pages and on the Office's website.

There is no limit on the potential length of your submission. However, we urge you to be as clear and to the point as possible. Irrelevant information will make it more difficult for the Office to complete the eligibility screening.

Your goal should be to provide enough information to ensure that your Request is found eligible by the Office.

Once your submission has been made, please do not send us any other documentation unless we request it.

Requesters are liable for statements made in Requests for Review. You are expected to use respectful and temperate language in your correspondence with this Office.

Question 17: Where can I get help to prepare a Request for Review?

You may bring general questions about submitting Requests for Review and the Review Process to the Office. We will do our best to provide you with the necessary basic information. We are not able to walk you step-by-step through the development of a Request.

An individual or group may aid or assist you in bringing a submission to the Office, as long as you have authorized them to do so.

You should ensure that you have adequate resources and capacity to follow the process through to completion.

Question 18: How do I submit my Request for Review?

Requests for Review must be made in writing and submitted to the Office via electronic or regular mail, by courier, or by fax:

The Extractive Sector CSR Counsellor
Government of Canada
1 Front Street West, Suite 5110
Toronto, Ontario M5J 2X5
CANADA
Tel: +14169732064
Fax: +14169732140
Email: csr-counsellor@international.gc.ca

Question 19: What happens after I submit my Request for Review?

The first thing we will do is determine whether your submission is complete. If there is any mandatory information that has not been provided, we will return your submission to you and let you know what information is missing. We will not register incomplete Requests and we will not post any information about incomplete Requests in our online registry.

You can resubmit a complete submission at any time.

The following steps will be followed by the Office after we receive your completed Request for Review:

- (a) The Office will register the Request, meaning we will open an internal file and assign a file number to the submission.
- (b) The Office will acknowledge receipt of your Request within five (5) business days.

This does not mean that the Request has merit or that the Office will proceed with the Review Process.

- (c) The Office will call the Responding Party and will send the Request to the Responding Party at the same time as sending you an acknowledgement letter.

(d) Only limited information about your Request will be published in the online registry on our website:

- Name of the Requester, subject to requests for confidentiality
- Name of the Responding Party
- Date that the Request for Review was received by the Office
- Status of the Request for Review.

The original Request for Review will never be published on our website.

Question 20: What happens after you send me an acknowledgement letter?

We will conduct an eligibility screening, and let you know within 40 business days whether your Request is eligible for the Review process.

SECTION SUMMARY

What you need to know about preparing and submitting a Request for Review to the Office:

- ✓ Provide all of the required information and supporting documentation (this must be publicly available information).
- ✓ Indicate whether another party is providing aid and assistance and give contact and other relevant information about that party.
- ✓ Ensure that the Request is submitted in one of Canada's official languages.
- ✓ Submit the Request to the Office by email, regular mail, courier or fax.

Part III: What to Expect After Submitting a Request for Review

In this section you will learn how the Office determines the eligibility of a submitted Request and when you can expect to hear back from the Office.

Below are a number of key questions and answers about what you should expect after submitting a Request for Review.

Some things to keep in mind when you submit a Request for Review to the Office:

- Submitting the Request is only the first step. If your request is found eligible, you should understand that the Process could take months to unfold.
- The Process is voluntary and Participants can withdraw from it at any time. The Office will then issue a Final Report including the reasons for the termination of the process.
- Keep in mind that you will be asked to provide information on an ongoing basis to the CSR Counsellor and to engage in a dialogue with the Responding Party.
- The CSR Counsellor will issue reports based on the problem-solving process.

Question 21: How does the Initial Assessment process work?

The Initial Assessment is a determination of whether the Request is eligible for the Review Process. Another term for this stage is “eligibility screening”. The eligibility screening by the Office does not result in a finding about the merits of the Request for Review.

Question 22: How long does it take to find out the results of the eligibility screening?

The process will be completed within 40 business days. You will be notified in writing of the results of this eligibility screening and you will get reasons for our decisions. We will also notify the Responding Party of the results at the same time. Then, the status of the Request for Review will be indicated on the Office’s website in the registry of Requests for Review.

Question 23: What is considered during the eligibility screening?

The CSR Counsellor will consider all of the information provided by the Requester, and examine it in light of the eligibility criteria. This will be done based on the overall goal of constructive collaboration and dialogue, and with a view to the effective use of public resources. In this way, the CSR Counsellor will make a reasoned determination whether the Request is eligible to proceed to the next stage in the Review Process.

Also, consideration will be given to whether other redress mechanisms may be more effective or efficient, or perhaps less time and resource intensive. The Office will try to identify those mechanisms where they exist.

Eligibility criteria:

The Office will consider the following:

...Did the activity take place after 19 October 2009?

...Did the Requester take action within a reasonable period of time after finding out about the issue?

...Is the activity in question a substantive issue?

...Is the Requester willing to enter into and maintain a constructive dialogue with the Responding Party?

...Has the Requester made some effort to try and resolve the dispute?

...Does the Request for Review include information from the people directly affected?

FICTIONAL CASE STUDY

An international NGO brought a Request for Review to the Office on behalf of 75 residents of a community in country Y, naming a mining company. The company has an operating gold mine and has a headquarters in a major Canadian city. The submission raised several issues, including relocation, health and working conditions. Many of these issues had first arisen in January 2010 and many were ongoing. The NGO had received a letter of permission from the community to allow it to bring the Request on their behalf. The Request included copies of emails previously sent to the company, which they claim had gone unanswered. The Request included a stated desire on the part of the community to seek a meeting with the company and an independent technical assessment.

Result: The Request is eligible.

SECTION SUMMARY

What to expect after submitting a Request for Review:

- ✓ The Office will receive the Request. If complete, the Request will be registered.
- ✓ Incomplete submissions will be returned to the sender and will not be registered.
- ✓ You will receive an acknowledgement that the complete Request has been received by the Office.
- ✓ The Office will inform the Responding Party by telephone that it has been named in a Request.
- ✓ The Request will be made available to the Responding Party.
- ✓ A determination on eligibility will be made within 40 business days.
- ✓ If your request has been excluded, you will be informed of the reasons why it is excluded.
- ✓ The results of the eligibility screening will be published in the Office's website registry.

Part IV: Information for Responding Parties

In this section, parties named in a Request for Review will find out what they can expect. If you are a Responding Party, be sure to read the next two sections of the Guide.

Below are a number of key questions and answers for a party that has been named as a Responding Party in a Request for Review.

Question 24: What do I do if I am named in a Request for Review?

If you are named as a Responding Party, you will receive a phone call from the Office within 24 hours of receipt of the Request, and you will be sent a copy of the Request for Review.

Once the Office has made a decision on eligibility, you will be notified at the same time the Requester is notified.

Note that the Office will never post the original Request on our website.

Question 25: What happens if I am named in a Request for Review that is eligible for the process?

You will be asked to participate in a constructive dialogue, as conducted by the CSR Counsellor. Refer to the section below for more information.

Question 26: What if I decide not to participate?

This is a voluntary process and you are free to decline participation.

If you decide not to participate in the Review Process, this will be noted in the CSR Counsellor's public report about the Request. Reporting is discussed in the next Part of this Guide (Part VI).

Part V: Participation in Constructive Collaboration and Dialogue

In this section both parties to the dispute in the Review Process will learn how they can work together and with the Office to resolve any issues of concern.

Below are a number of key questions and answers for both the Requester and Responding Party about the period of constructive dialogue, which involves informal mediation, and possibly formal mediation with a third-party mediator.

Question 27: What happens if the Request is not eligible for the Review Process?

If the Request is not eligible, both the Requester and Responding Party will be notified by the Office at the same time and will be provided with reasons in writing. The matter will be considered closed once the parties are notified, and the status of the Request for Review will be updated on the Office's online registry.

Question 28: What happens if the Request is eligible?

If eligible, the parties will be notified by the Office. The status of the Request for Review will be updated on the Office's online registry.

If the Request for Review is eligible, keep in mind that the Review Process has only just begun and that it could take months for appropriate solutions to unfold. We allow 120 business days for the two stages of an Informal Mediation process, although this period could be shorter. We also permit for extensions of the 120 business day window, should the situation warrant.

The Requester and Responding Party will be asked to enter into the Informal Mediation process, as facilitated by the CSR Counsellor. The CSR Counsellor has discretion in promoting creative and innovative solutions to resolve the dispute between the parties.

Informal Mediation will be determined by the CSR Counsellor based on the issues raised in the Request for Review. This process could involve desk research, interviews, information-gathering, discussions with the parties, discussions with other relevant parties including Canadian diplomatic missions, or other steps. The CSR Counsellor may ask for information from the Participants at any time.

Informal Mediation is divided into two phases: (a) trust-building and (b) structured dialogue. The trust-building phase is aimed at building the conditions for more formalized engagement between the parties.

Fact-finding is a part of this period of constructive collaboration and dialogue, and may happen at any time. Fact-finding is discussed in greater detail in Question 34 below.

There is an option in the Review Process for the parties to use formal mediation services. If this is a desirable option for the parties, the CSR Counsellor will assist in making the arrangements. Formal mediation is discussed in greater detail in Question 35, below.

Question 29: Is it necessary to participate in Informal Mediation?

The Review Process is voluntary and both parties have the option to withdraw from the process at any time. However, the CSR Counsellor will try to avoid this situation. Both parties are asked to raise any concerns they have which arise during this period with the CSR Counsellor so that they can be addressed and the dialogue can continue.

Question 30: What happens during ‘trust-building’?

The trust-building phase provides an opportunity for the Participants to voice their concerns, respond to the issues raised by the other party, exchange information with the other party, and meet with the CSR Counsellor and/or each another in an informal setting (if so desired).

The CSR Counsellor will work with the Participants to try and achieve a deeper understanding of the issues and generate creative options for moving forward.

Trust-building may take up to about six (6) months, and may be extended if progress is being made.

If the trust-building phase reveals a potential for a resolution to the dispute, the parties may be asked to provide formal written consent to advance to the next phase in Informal Mediation, structured dialogue. This consent might form part of a Letter of Intent that will be signed by both parties (discussed further in Question 33 below).

Question 31: What happens during ‘structured dialogue’?

The structured dialogue phase is more formal and involves more planning. It is organized around the parties’ agreement on a plan of action for their dialogue. During this time, there may also be a discussion about the involvement of a third party mediator.

Structured dialogue may take up to about six (6) months, and may be extended if progress is being made.

Question 32: Do I have to give my consent to participation in the Review Process?

Yes. The express written consent of the parties will be asked for during the Informal Mediation stage. This will typically happen before the parties enter the structured dialogue phase. In most cases, consent will be given in the Letter of Intent.

Question 33: What is the Letter of Intent and what might it include?

It is important that the parties have a basis on which to proceed with their discussions. The goal of the Letter of Intent is to have the parties develop a firm basis for their collaboration.

In most cases, the Letter will be structured with the assistance of the CSR Counsellor. The parties could choose to work with a third-party mediator in developing the Letter.

The Letter may address issues of confidentiality, desired outcomes and remedies, cost-sharing, the involvement of third party experts, timelines and action plans, to name a few examples.

Question 34: What is Fact-finding and when does it occur?

Fact-finding is intended to support the dialogue process that is underway. It is meant to improve the understanding of the issues giving rise to the dispute between the Participants. Fact-finding is intended to clarify the issues under dispute, find areas of common ground, improve the understanding of how various stakeholders view the situation, and help determine how the issues may be resolved through constructive dialogue, including determining alternatives for resolving the dispute.

Fact-finding may be carried out at any point during the Review Process.

Fact-finding may be conducted by the Office as well as the Participants. It may involve independent experts and may include a site visit by the Office. The CSR Counsellor would work with the Participants to ensure that any activities effectively contribute to problem-solving.

Question 35: How does Access to Formal Mediation work?

The involvement of a third party mediator may sometimes support the parties to resolve their dispute. The Office does not conduct formal mediation. The Office will help the parties understand the pros and cons of entering into formal mediation. The Office is unable to provide funding for formal mediation.

Question 36: During Informal Mediation, what role does the Office play?

Throughout the Informal Mediation stage, the CSR Counsellor will facilitate the engagement of the parties. The CSR Counsellor's role is to be an 'honest broker' between the parties.

The aim of the CSR Counsellor is to work with the parties in ensuring they have a 'safe space' in which to voice their concerns. The parties will have an opportunity to assess whether the process is working for them on an ongoing basis.

The CSR Counsellor will work with any parties who may wish to withdraw from the process to address their concerns. The goal is for the parties to see the process through to completion.

The CSR Counsellor issues public reports on progress made during the Review Process. Reporting is discussed in the next Part of this Guide.

What to expect during constructive collaboration and dialogue:

- ✓ Active communication and facilitation of dialogue by the CSR Counsellor
- ✓ Informal communication and information exchange among the Participants
- ✓ The development of a Letter of Intent for structuring the discussions
- ✓ Fact-finding carried out by the Participants and the CSR Counsellor to inform problem-solving
- ✓ Potentially the involvement of an external third-party mediator
- ✓ Public reporting by the CSR Counsellor

Part VI: Completion of the Review Process and Reporting

In this section both parties to the dispute in the Review Process will find out what to expect at the end of the Review Process.

Below are a number of key questions and answers about the completion of the Review Process. The Review Process may also be terminated early, at the discretion of the CSR Counsellor, or if one of the parties withdraws from the process.

Question 37: When does the Review Process end?

There are at least three potential outcomes in a review: (a) the process is completed because the Participants have reached an agreement on a way forward; (b) the process is terminated because the CSR Counsellor determines that there is no value in moving forward; or (c) one of the Participants decides to withdraw from the process before it is completed.

The completion or early termination of the process will be reflected in the CSR Counsellor's Final Report, discussed in the question, below.

Question 38: What reports does the CSR Counsellor issue?

An important part of the Office's mandate is to provide the public with an understanding of the developments that take place when a Request for Review has been received by the Office.

During the dialogue among the parties, the CSR Counsellor may issue Interim Reports. These reports are progress updates and are posted in the Office's website registry. Interim reports will typically focus on the process, rather than specifics of the dialogue or issues.

At the conclusion of the dialogue process the CSR Counsellor issues and publishes a Final Report. Final Reports provide a debrief on the review, including a description of the Request for Review, the results of the eligibility screening and how the dialogue between the parties unfolded. Final Reports describe the results of the Review Process from the perspective of the CSR Counsellor.

The CSR Counsellor will inform the Participants of the results of the Review Process and will provide them with an advance copy of the Final Report.

What to expect in the Final Report of the CSR Counsellor: Information about the Request, what took place during the Review Process and whether the Participants reached agreement on next steps will be contained in the CSR Counsellor's Final Report, which will be a public document and published on the Office's website.

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