
Formal Notice of Non-Performance under OECD Procedural Guidance (U.S. NCP)

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2025年12月2日 9:00

To: アメリカNCP <USNCP@state.gov>

Cc: rbc@oecd.org, investment@oecd.org, info@oecdwatch.org, esgclientservice@msci.com

To: U.S. National Contact Point for the OECD Guidelines

First of all, I wish to express my respect for your ongoing efforts to promote and implement the OECD Guidelines for Multinational Enterprises. My name is Shunsuke Kimura, a whistleblower who has submitted a formal Specific Instance in good faith, relying on the spirit of the Guidelines and on your office as the competent NCP.

On 15 October 2025, I submitted to your office a formal Specific Instance. At the same time, I requested that, by 1 December 2025 (Monday), 17:00 (EST), you provide a notification under the OECD Procedural Guidance as to whether the case would be accepted, and what your intended follow-up would be.

However, as of today, your office has not provided any formal determination—whether acceptance or rejection—and I am compelled to conclude that this constitutes an evident case of institutional non-performance.

【Applicable Provisions and Nature of the Violations】

- **Procedural Guidance, para. I.C.2**
 - Obligation to inform the parties, within a reasonable period of time, of the initial assessment or of the decision on whether to accept the case.
 - *Note*: No decision regarding acceptance or non-acceptance was communicated by 1 December 2025; therefore, a breach of this obligation has occurred.
- **Procedural Guidance, para. II.C.3**
 - Obligation, where a case is not accepted, to provide specific and reasonable grounds for that decision.
 - *Note*: No reasons have been provided for either rejection or deferral; a situation of “no communicated decision” has continued.
- **Procedural Guidance, para. II.C.4**
 - Provision that procedural failures may be referred to the OECD Investment Committee.
 - *Note*: This case falls squarely within this provision, as no decision on admissibility has been made and no initial assessment has been initiated.
- **2021 OECD Council Recommendation, para. 16**
 - State obligation to ensure access to mechanisms for investigation and remedy for whistleblowers.
 - *Note*: No substantive investigation, contact, or procedural step of any kind has been initiated.
- **2021 OECD Council Recommendation, para. 20**
 - Obligation to make efforts to initiate corrective and remedial processes.
 - *Note*: There has been no attempt at mediation, facilitation, or constructive dialogue.

【Limits of the Government Shutdown Explanation】

In mid-November 2025, I received an email from your office that:

- confirmed receipt of my submissions dated 9 October and 15 October 2025; and
- explained that, due to the U.S. government shutdown, your office had been unable to operate during a certain period.

However, this email remains limited to a **formal acknowledgement of receipt** and an **explanation of a temporary operational constraint**. It does *not* amount to the substantive procedural responses required by the OECD framework, namely:

- a formal decision as to whether the Specific Instance is **accepted or not accepted**;
- a specific and reasonable explanation if you decide not to accept the case;
- an explanation and notification regarding the start of an initial assessment or consideration of mediation.

Even if your activities were temporarily restricted by the shutdown, NCP functions under the whistleblower protection framework form part of the State's **non-discretionary obligations**. Such obligations cannot be considered entirely waived or excused by a temporary administrative shutdown.

【Institutional Points Requiring Clarification】

The structure and legal basis of this case file are clear. From the submission date, a period of roughly two weeks would have been more than sufficient, from an operational standpoint, to make a decision on acceptance and to provide a brief explanation. Under Procedural Guidance para. II.C.3, such a timeframe falls within what should be guaranteed as a “reasonable period” for providing information and notification.

Accordingly, the failure to make any decision on admissibility within a reasonable period constitutes an abandonment of your institutional duties and must be recorded as a clear case of **procedural non-performance**.

In Annex 0, titled “**Executive Guide for NCP Reviewers**”, I have already listed the typical grounds that NCPs often invoke when rejecting cases (e.g., lack of jurisdiction, insufficient documentation, out-of-scope under the Guidelines, etc.) and have pre-emptively demonstrated—using legal provisions, facts, and evidence—that **none** of these grounds apply to this case.

Therefore, should you be considering a decision of non-acceptance, discontinuation, or similar, I respectfully request that you:

- carefully consider the eligibility criteria and the analysis set out in Annex 0, especially the section “Common Grounds for Rejection and Why This Case Is Fully Eligible”; and
- clearly indicate
 - whether you believe there exists any *distinct and specific* reason for rejection that is not already addressed and excluded in Annex 0; and
 - which precise provisions and which concrete facts you consider to support such a reason.

If you do not respond to this request and nonetheless reject the case using any of the **generic rejection grounds** that Annex 0 has already shown to be inapplicable, that act itself would, in light of Procedural Guidance paras. I.C.2 and II.C.3–4, and Council Recommendation paras. 16 and 20, amount to an additional instance of **normative breach** and would need to be recorded internationally as further evidence of institutional non-performance.

【Inappropriateness of Limiting This Case to “Japanese Institutional Issues”】

It would also be inconsistent with the OECD Guidelines and Procedural Guidance to treat this case as **merely a Japanese institutional problem**, outside the meaningful remit of the U.S. NCP, for the following reasons.

Within the Infroneer Holdings group, a common set of employment rules and a whistleblower-suppressing operational framework are applied across the group. In Japan, based on this framework, a real and concrete retaliatory dismissal has already occurred against an identified whistleblower.

This “group-wide rule that treats whistleblowing as grounds for discipline” and the parent company’s **refusal to investigate and denial of the system itself** are designed to apply equally to all group employees, including those of Maeda America Inc. The result is a group-level structural problem involving **extraterritorial risk**.

Therefore, to reduce this case to “a Japanese NCP and domestic institutional issue” would contradict:

- **OECD Guidelines, Chapter II, paras. 2, 10, and 11** (respect for human rights, cooperation in providing access to remedy); and
- **Chapter IV, para. 2** (participation in human rights grievance mechanisms).

Once institutional non-performance by the Japan NCP is taken as a given, it is consistent with the object and purpose of the Guidelines to understand that the U.S. NCP has a **complementary role** in assessing these structural group-level risks, including their implications for U.S.-based operations.

Accordingly, I must state in advance that relying solely on the argument that this is a “Japanese local institutional problem” and therefore outside the scope of the U.S. NCP would not be compatible with either the text or the spirit of the Guidelines.

【On the Argument that “There Is No Direct Harm to Maeda America Employees”】

It would also be inappropriate to decline to address this case on the basis that:

“There is currently no direct harm to employees of Maeda America Inc., and therefore the case is insufficient to fall within the U.S. NCP’s remit.”

Under the OECD Guidelines and the UN Guiding Principles on Business and Human Rights (UNGPs), the focus is not limited to **already-materialized adverse impacts**, but explicitly includes **potential but foreseeable serious impacts** that arise from structural defects.

The common employment rules and whistleblower-denial framework of the Infroneer group:

- have already produced a clear **adverse impact** in Japan (retaliatory dismissal of a whistleblower); and
- by design, apply in the same way to employees of Maeda America Inc.

This means that U.S. employees are exposed to a **structural and foreseeable risk** of future dismissal or retaliation under the same framework.

Thus, to exclude this case solely because “there is currently no confirmed direct harm to Maeda America employees” would be inconsistent with the **preventive and risk-based approach** envisaged by the OECD Guidelines and the UNGPs, which explicitly extend to foreseeable potential risks.

For these reasons, I must confirm that:

- the fact that the issue has arisen in Japan; and
- the fact that no direct harm has yet occurred in the U.S.

cannot, in themselves, constitute reasonable grounds for placing this case outside the scope of the OECD Guidelines and Procedural Guidance.

【Point in Time When Non-Performance Was Established and Purpose of This Email】

The institutional non-performance in this case arose from the objective fact that your office did not communicate any decision on acceptance and intended follow-up by **1 December 2025 (EST)**.

This email is written **on the premise that such non-performance has already occurred**, and its purpose is to:

- give your office an opportunity to explain what legal and institutional reasoning you believe could justify this situation; and
- clarify whether you assert the existence of any specific grounds for non-acceptance beyond those generic grounds that have already been systematically excluded in Annex 0.

Therefore, regardless of whether you respond to this email—or the content of any response—the fact of non-performance as of 1 December 2025 cannot be retroactively undone.

I respectfully request that, as a practical timeframe, you provide a written official statement addressing the above points **within 14 days** from receipt of this email. This 14-day period is intended solely to offer a fair opportunity for explanation; it does **not** in any way alter the pre-existing evaluation that non-performance was already established.

【Lack of Consistency with Broader International Norms】

Furthermore, the absence of effective action in this case is inconsistent with the following international standards:

- **UNCAC Article 33** (obligation to protect whistleblowers); and
- **UNGP Principles 29 and 31** (obligation to ensure access to predictable, fair, and trustworthy grievance mechanisms).

Taken together, these norms indicate that this is not a simple delay. It must instead be viewed as **systemic refusal** and **procedural abandonment** by a State-mandated institution.

【Requested Institutional Measures and Future Steps】

Similar institutional non-performance has already occurred at the Japan NCP (Ministry of Foreign Affairs). I therefore hereby notify you that I will take the following steps:

- formally record this matter as **institutional non-performance by the U.S. NCP**;
- report it to the OECD Secretariat (Investment Division and Responsible Business Conduct team) as a case of **dual non-performance** by the Japan and U.S. NCPs;
- request that the OECD Investment Division and RBC team initiate an **institutional review (peer review)** and issue corrective recommendations; and
- promote broader measures to restore trust in the NCP system, including sharing the case with other NCPs, institutional investors, and ESG rating agencies.

While I respect the limited, formal communications your office has provided to date, this matter has already gone beyond the level of discretionary decisions within a single country. It now concerns the **institutional credibility of the OECD system as a whole**.

【Status of This Notice】

This notice is intended to serve as an **official procedural record** under the OECD Procedural Guidance. It will be shared with the OECD Secretariat (rbc@oecd.org, investment@oecd.org) and with other relevant NCPs.

If, despite the case being fully eligible, your office does not conduct an acceptance decision, initial assessment, or consideration of mediation, and if no reasonable explanation is provided in light of the prior analysis in Annex 0, this notice itself will function as primary evidence of **institutional non-performance by the U.S. NCP**.

Because this notice is institutional in nature, it will also be copied to **OECD Watch** (info@oecdwatch.org) and **MSCI ESG** (esgclientservice@msci.com). This is not intended as undue pressure, but as a measure to ensure **transparency and international confidence** in the system.

I respectfully ask that your office respond and act in a manner that is consistent with the international principles and the standards that the OECD has set for itself.

Sincerely,

【Re-Submission of Annexed Document】

For your convenience, I am resending the following supporting document:

- **Annex0_ExecutiveGuide_NCP.pdf**
(formal title: *Executive Guide for NCP Reviewers*)

This document sets out, in a structured manner and with explicit references to the Procedural Guidance, how my Specific Instance meets all eligibility criteria. It also examines and pre-emptively excludes each of the common “generic reasons for non-acceptance”.

In preparing your response, I kindly ask that you base your explanation on the content of this Annex.

【Related Website and Evidence Pages】

The procedural non-performance and the broader structure of this case are documented at the following official site:

- **Main site (overall structure and document set)**
☐ <https://www.whistleblower-protection.org/>
- **Formal record of institutional non-performance by the U.S. NCP**
☐ <https://www.whistleblower-protection.org/ncp-usa-nonperformance>

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Whistleblower / Formal Complainant under OECD Procedures
Former employee, Maeda Corporation
(100% subsidiary of Infroneer Holdings Co., Ltd.)

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2 December 2025 (JST)

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 **Annex0_ExecutiveGuide_NCP.pdf**
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