

# National Contact Point of Switzerland

---

## Specific Instance regarding Lombard Odier submitted by the international trade union IUF

### Final Statement

Berne, 20 February 2024

#### Overview of the NCP and its role

The OECD Guidelines for Multinational Enterprises (hereafter “OECD Guidelines”) represent a set of principles for responsible business conduct, addressed as recommendations by the governments of the 38 OECD member and 13 other adhering States to multinational enterprises operating in or from their territories. The National Contact Point of Switzerland for Responsible Business Conduct (hereafter “Swiss NCP”) has the mandate to raise awareness and promote observance of the OECD Guidelines. The Swiss NCP also contributes to the resolution of issues that arise relating to the implementation of the OECD Guidelines in specific instances by offering a forum for mediation, assisting parties concerned to deal with these issues and providing recommendations regarding the implementation of the OECD Guidelines.

#### Submission and Initial Assessment

On 5 April 2023, the Swiss NCP received a written submission by the International Trade Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Associations (hereafter “IUF” or “submitting Party”) under the OECD Guidelines. It concerns Bank Lombard Odier & Co Ltd, headquartered in Switzerland (hereafter “responding Party” or “Lombard Odier”). The submission was related to alleged violations of the OECD Guidelines by failure to properly conduct due diligence related to an investment in the Cambodian company NagaCorp Ltd. (hereafter “NagaCorp”) alleged to have committed violations of fundamental rights at work.

According to information at its disposal, the Swiss NCP viewed the issues raised in the submission as material and substantiated as well as plausible and related to the application of the OECD Guidelines, in particular Chapters II (General Policies) and IV (Human Rights). It offered its good offices for a mediation focusing on Lombard Odier’s due diligence process including its engagement with NagaCorp. The Swiss NCP considered that by offering a confidential mediation it could contribute to the dialogue between the parties and help them to reach a better mutual understanding of the issues raised and a mutually acceptable outcome.

Following the Swiss NCP’s acceptance of the specific instance in its report on the [Initial Assessment](#) from 17 July 2023, the parties took up the Swiss NCP’s offer for a mediation. The issues for discussion, recalled in the TORs for the mediation, concerned:

- Chapter II (General Policies), para. 10: *“Carry out risk-based due diligence....to identify, prevent and mitigate actual and potential adverse impacts....”*
- Chapter IV, (Human Rights), para 5: *“Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.”*

Following preliminary discussions with Lombard Odier, the Swiss NCP accepted and understood that investments in Nagacorp had not been made by Lombard Odier, but by public investment funds for which Lombard Odier Funds (Europe) SA (“LOFE”) acts as management company and accordingly agreed that LOFE and not Lombard Odier should participate in the mediation.

## Proceedings of the Swiss NCP

Since the receipt of the submission on 5 April 2023 the Swiss NCP took the following steps:

|              |   |
|--------------|---|
| 12.4.2023    | Confirmation to <b>acknowledge receipt</b> of submission to the submitting party.   |
| 15.4.2023    | Submission forwarded to the responding party.   |
| 26.4.2023    | Virtual Exchange with responding party on procedural issues.  |
| 27.4.2023    | Constitution of an <b>ad hoc Working group</b> including representatives from the State Secretariat for Economic Affairs, the Federal Department of Foreign Affairs according to the Specific Instances Procedure of the Swiss NCP <sup>1</sup> .         |
| 27.4.2023    | Information of the Office of the Swiss Development Cooperation in Phnom Penh and the Swiss Embassy in Thailand (responsible for Cambodia).  |
| 17.7.2023    | Publication of the <b>report on the Initial Assessment</b> confirming acceptance of the specific instance, stating the position of the submitting party and the response of the responding party and offering its good offices to the parties.            |
| 30.1.2024    | Agreement on and signing of the <b>Terms of Reference</b> for a mediation process   |
| 30-31.1.2024 | <b>2-day mediation meeting</b> between: <ul style="list-style-type: none"><li>• three representatives of LOFE</li><li>• two representatives of IUF</li><li>• one professional external mediator</li><li>• one representative from the Swiss NCP</li></ul> |
| 10.2.2024    | Finalisation of the <b>Confidential Joint Conclusions</b> of the mediation  |
| 12.2.2024    | Consultation of the <i>ad hoc</i> working group on the draft <b>Final Statement</b>   |
| 20.2.2024    | Publication of the <b>Final Statement</b> .   |

### Outcome of the mediation process and conclusions

- On 30-31 January 2024, representatives of LOFE and the IUF met at the offices of the Swiss State Secretariat for Economic Affairs (SECO) in Berne and engaged in constructive and positive dialogue mediated by the Swiss NCP.
- The parties wish to thank the Swiss NCP for facilitating a fruitful and valuable exchange on such an important topic. The parties shared much common ground. The discussions were entered into in the spirit of productivity and achieving constructive outcomes.
- The mediation was a unique opportunity for the parties to understand the practical operations and considerations of each other. On the one hand LOFE was able to better understand the detailed facts that the IUF was able to bring concerning this particular case, having direct and first-hand experience with those involved. On the other hand, the IUF was able to understand the due diligence framework which LOFE has put in place and to understand some of the challenges that investment firms face concerning the availability/reliability of data relating to social issues.

### Joint Commitment on Human Rights

- LOFE and the IUF recognize the importance of the OECD Guidelines, which set forth agreed principles for responsible business conduct. Adherence to these Guidelines is important for the sustainability of the enterprises in which funds managed by LOFE invest, and for the workers which the IUF represent.
- The parties confirmed that they were 100% aligned on the following fundamental principles:
  - Human rights abuses are never acceptable in any country or in any sector.
  - Workers should be able to exercise the right to freedom of association, the right to bargain collectively, and to strike, without fear of reprisals.
  - Imprisonment resulting from strike action is never acceptable.
  - Collusion between the private sector and government to facilitate or restrict fundamental freedoms is never acceptable.

<sup>1</sup> [www.seco.admin.ch/ncp](http://www.seco.admin.ch/ncp)

- The investment community should not take a passive role when issues relating to human rights abuses are raised.

#### Information Gaps

- The parties recognise that data relating to the social pillar within the ESG framework is not as well developed or available as it needs to be. Commercially available data sources relied upon by many institutional investors contain limited information on social rights, including labour rights. The lack of such information can present systemic difficulty for investors to rigorously apply the OECD Guidelines.
- The parties agreed that active ongoing dialogue between the investment community and relevant stakeholders (including both national and global union federations) can be an extremely valuable part of the due diligence required by the OECD Guidelines.

#### Collective Responses

- LOFE and the IUF recognize the important role that investors, even those with a minority stake, play in ensuring compliance with the OECD Guidelines. Given their experience in this particular case, the parties believe that a collaborative collective approach where investors pool their leverage is likely to yield better outcomes for compliance with the OECD Guidelines.
- LOFE commits to use its role as a leader in sustainability to participate in a proposal to bring together other institutional investors in a collaborative collective engagement, together with the IUF, in a forum to be co-facilitated by the Swiss NCP with a view to seeking NagaCorp's full compliance with the OECD Guidelines as it relates to labour rights as a matter of urgency.
- The parties agreed that building trust and relationships between such stakeholders is very important and that such dialogue shall inter alia aim to bridge the data gap mentioned above and help to develop more comprehensive ways of highlighting crucial data, particularly when human rights are involved.
- The Swiss NCP confirmed its willingness to co-facilitate the proposed forum described above.

#### Final Remarks

- Both parties confirmed that bringing stakeholders together was important but that any such future forum of stakeholders should prioritise tangible outcomes and not just discussions.

#### **Recommendations and follow-up**

The Swiss NCP welcomes the highly constructive and engaged participation of both parties during the mediation and their joint commitment to find constructive pathways to support adherence to the OECD Guidelines.

The Swiss NCP recommends that the parties continue their dialogue and collaboration where useful based on the trust established during the mediation process.

The Swiss NCP will follow up on this specific instance with the following measure:

- co-facilitate the proposed forum with a view to seeking NagaCorp's full compliance with the OECD Guidelines as it relates to labour rights;
- receive from the parties written information on progress made in implementing the measures agreed in the joint conclusions six months after publication of the Final Statement;
- organize a follow-up in person meeting to discuss the information received from the parties within 9 months.

With this Final Statement, the Swiss NCP closes the specific instance.