



**NCP Brazil**  
**Ministry of Finance**

**FINAL STATEMENT**

**BANCO DO BRASIL S.A/ Bank Workers Union of São Paulo, Osasco and Region**  
**Complaint NCP N° 01/2013**

On April 8, 2013, the Brazilian National Contact Point (NCP) received a notification sent by the trade union Bank Workers Union of São Paulo, Osasco and Region – headquartered in São Paulo, Brazil – against the multinational Brazilian company Banco do Brasil S.A.

According to the complainant, the following actions of Banco do Brasil would have been in disagreement with the OECD Guidelines for Multinational Enterprises:

a) *application of a Function Plan, that would establish new tasks and levels of responsibility for the employees of Banco do Brasil.* Banco do Brasil informed the National Commission of Workers and the employees of the company about this Plan on January 28, 2013, without a previous consultation about its feasibility

b) *use of the instrument “interdito proibitorio”<sup>1</sup> by Banco do Brasil against the complainant.* The application of the abovementioned Function Plan caused a one-hour standstill on February 28, 2013 and another one with the duration of 24 hours on March 7, 2013; on that occasion, Banco do Brasil used the “interdito proibitorio” against the complainant, with application of daily fine of R\$ 20,000 .00 (twenty thousand reais) in case of non-compliance;

c) *transfer, unilaterally, without discussion or advance notice, of approximately 2,000 (two thousand) employees of buildings located on the streets of São João, Líbero Badaró and Boa Vista (named São João Complex), to the West of the city of São Paulo (Lapa), where, formerly, there was a unit of Siemens company, which would have its soil contaminated.*

As stated by the complainant, the mentioned actions violated the 6<sup>th</sup> Paragraph of Chapter V (Employment and Industrial Relations) and the 3<sup>rd</sup> Paragraph of chapter VI (Environment) of the Guidelines:

**V. Employment and Industrial Relations**

*6. In considering changes in their operations which would have major employment effects, in particular in the case of the closure of an entity involving collective lay-offs or dismissals, provide reasonable notice of such changes to representatives of the workers in their employment and their organizations, and, where appropriate, to the relevant governmental authorities, and co-operate with the worker*

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<sup>1</sup> The “interdito proibitorio” is a legal institution of the Brazilian Civil Procedure Code aimed at the defense of rights of property. According to labor law, this instrument may be used by companies in order to defend their businesses and assets during strike periods. In practice, however, it has been found that the “interdito proibitorio” has been used to move further away the strike movement from the vicinity of certain companies.



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*representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects. In light of the specific circumstances of each case, it would be appropriate if management were able to give such notice prior to the final decision being taken. Other means may also be employed to provide meaningful co-operation to mitigate the effects of such decisions.*

**VI. Environment**

*3. Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle with a view to avoiding or, when unavoidable, mitigating them. Where these proposed activities may have significant environmental, health, or safety impacts, and where they are subject to a decision of a competent authority, prepare an appropriate environmental impact assessment.*

On March 12, the NCP requested that the complainant give additional information about: 1) how the alleged non-observance of Guidelines would affect the complainant or the people it represents; 2) description of the efforts made by the complainant so that the multinational company would resolve the alleged non-observance of the Guidelines; 3) copy of the document or information that could assist in understanding of the facts; and 4) specification of confidential material.

On March 14, the complainant answered informing that: 1) it was understood that both the implementation of the plan of functions, as the aforementioned transfer, directly affect the lives of workers of the enterprise; 2) contact with the company was made through a national committee of employees of Banco do Brasil, composed by Union leaders of different trade unions and by banking federations, but this attempt did not succeed in debating these demands with Banco do Brasil; 3) documents and additional information would be given in the following days; and 4) there were no confidential material. The documents and additional information were sent on March 15 and 18.

After the analysis of the additional information, the NCP concluded that according to the NCP Resolution number 01/2012 the Complaint: brought together elements that had thematic relevance with the topics covered by the Guidelines; had well enough delimited focus area. Given the above, the NCP decided by the acceptance of Complaint N° 01/2013, under the rapporteur of the Ministry of Labor and Employment (MTE) and of the Ministry of Environment (MMA). Then, the acceptance was communicated to Banco do Brasil and to the OECD, remembering that the acceptance of the claim did not suppose any decision on the merits of the issue.

On April 8, 2013, the NCP sent an e-mail to the Director of Employee and Sponsors Relationship of Banco do Brasil informing him about the acceptance of the Complaint and requesting comments of the complainant about the issue. In a document



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of April 7, 2013, Banco do Brasil presented its response informing, in summary: that the Function Plan was a matter of strategy of the Bank, of voluntary adherence and that did not give rise to any dismissal; that the use of the “*interdito proibitorio*” was not a common practice of the company, however it was used in necessary occasions when entities went beyond their rights to protest and infringed rights of property, of free exercise of economic activity and of coming and going of citizens, stressing, finally, that it did not intend to restrict the right to strike of workers; and that the transfer of the employees to another building happened without environmental risk, as stated by the environmental report attached.

After the analyses of the company’s response, on June 15, 2013, by the recommendation of the MMA, the NCP requested that Banco do Brasil send the before mentioned environmental report. On the 17<sup>th</sup> of July, Banco do Brasil withdrew its decision to move the employees to the land subject of dispute, which could be attested by the trade union that brought the complaint. It also asked if it was still necessary to send the documents that the NCP requested.

Due to the information provided by Banco do Brasil, on July 18, the NCP contacted the complainant to confirm the given information and to ask about the continuation of the Complaint. On the 23<sup>rd</sup> of July, the NCP received a response from the complainant informing that the Complaint would be kept, waiting for the meeting between the complainant and Banco do Brasil that was to be held on July 25. Thus, on July 24, the NCP informed Banco do Brasil that it was not necessary to send any additional information at that moment.

At a meeting of the Inter-ministerial Group on August 8<sup>th</sup>, the NCP adopted the recommendations of the rapporteurs, MTE and MMA, to request additional information. On August 9<sup>th</sup>, the NCP contacted the complainant requesting documents relative to the use of the “*interdito proibitorio*” during the strike on February 28<sup>th</sup>, 2013, and to the Function Plan mentioned on the Complaint; and asked for updated information about the transfers to the site of the former Siemens, which would be contaminated. The information was not provided by the complainant.

In the time-lapse between the analyses of the information and the negotiations of the case, before the elaboration of a report with the next steps was concluded, the complainant asked for archiving of the Notification.

In Inter-ministerial group meeting of the NCP on May 26, 2014, the MTE informed that the complainant had asked to archive the complaint with subject matters related to the environment because that issue has already been solved. Later on, in another Inter-ministerial group meeting of NCP, on August 5<sup>th</sup>, the MTE informed that the complainant had also asked to archive the complaint referent to the employment issues. In an e-mail sent to the MTE on August 5, the complainant explained that the Function Plan would be discussed in an collective negotiation environment and that the



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issue related to the possible transfer of the employees had been solved through a direct discussion between the parties.

Due to all the above, the NCP decided to terminate the NCP Complaint n° 01/2013.

Brasília, January 28, 2015