



OECD Guidelines for Multinational Enterprises

Final Statement

(Specific Instance regarding Samsung Heavy Industries' Crane Accident)

October 26, 2022

Under the Procedural Guidance to the OECD Guidelines for Multinational Enterprises, following conclusion of a specific instance and after consultation with the parties involved, the Korean National Contact Point (KNCP) will make the results of the procedures publicly available.

As no agreement was reached in this specific instance, the KNCP is issuing the following statement. This statement describes the issues raised, the reasons why the KNCP decided that the issues raised merited further examination, and the procedures initiated by the KNCP to assist the parties. This statement also includes the reasons that agreement could not be reached and the recommendations made by the KNCP to the enterprise(s) on the implementation of the Guidelines.

As the procedures initiated by NCPs are not legally binding in accordance with the Guidelines and NCPs are not judicial bodies, NCPs cannot directly order compensation nor compel parties to participate in a conciliation or mediation process.

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1. Overview and Proceedings of the KNCP

The OECD Guidelines for Multinational Enterprises (hereinafter, “Guidelines”) are voluntary recommendations without legally binding force established for the purpose of minimizing the adverse effect of multinational enterprises’ activities and strengthening their responsible business conduct.

The Korean government operates the Korean national contact point (hereinafter, “KNCP”) in order to promote the Guidelines and handle specific instances for multinational enterprises based or operating in Korea.

The KNCP offers good offices for parties to amicably resolve issues with respect to any specific instances in accordance with the implementation procedures of the Guidelines. The KNCP may only conduct such procedures if the parties agree and commit to participate in the procedures in good faith.

If a multinational enterprise decides to accept the good offices, this does not mean that the enterprise admits to having engaged in any activity inconsistent with the Guidelines, and the KNCP will not recommend or force any accepting party to make any concession, reserve their legal rights or violate any laws.

2. Executive Summary

In connection with the crane accident of the Martin Linge Project, the Samsung Heavy Industries Martin Linge Project Crane Accident Workers Support Team and the Korean Transnational Corporations Watch (hereinafter, “KTNC Watch”) made a submission to the KNCP, Norwegian NCP and French NCP on March 29, 2019 against Samsung Heavy Industries (hereinafter, “SHI”), Total, Technip FMC and Equinor claiming that the Respondent SHI had no safety measures in place for crane crash accidents, such as passages for overlapping areas and crane crash prevention measures (II. General Policies A. 10 and IV. Human Rights 1, 4); managers under the responsibility of SHI were negligent in directing work tasks (II. General Policies A. 10 and IV. Human Rights 1, 4); a sufficient number of signal personnel were not assigned for the Goliath crane and the signal personnel were also negligent in their surveillance (II. General Policies A. 10 and IV. Human Rights 1, 4).

In this case, the KNCP notified the concerned NCPs that it would proceed with this specific instance, focusing on matters relating to the company headquartered in Korea. The French and Norwegian NCPs also proposed that they would conduct a relevant procedure against the companies based in their countries and share the progress or results of their handling of the specific instance. Accordingly, the NCPs agreed that the KNCP would handle the instance against the Respondent SHI based in Korea while the Norwegian NCP would deal with the instance against the Respondents Total, Technip FMC and Equinor headquartered in Europe.

The KNCP determined that further investigation and good offices were necessary, comprehensively considering (i) the facts that this instance is based on an accident within the place of business of SHI and there is a link between the enterprise’s activities and the issue raised in the specific instance, (ii) the materials submitted by the parties and (iii) the parties’ response to the situation. Accordingly, the KNCP offered good offices for mediation among

the parties during the period from November 19, 2019 to June 9, 2022, but they failed to reach a settlement.

The KNCP recommends the Respondent SHI to take remedial measures for any additional victims not included during the course of the investigation; devise a plan to actively seek out victims and remedial measures to be taken upon the occurrence of any future industrial accidents; conduct due diligence on countermeasures for such accidents; reflect the Guidelines in the course of such due diligence, and submit the implementation results of such recommendations within six months.

3. Substance of the Submission and the Enterprise's Response

The Samsung Heavy Industries Martin Linge Project Crane Accident Workers Support Team and the KTNC Watch made a submission to the KNCP and Norwegian and French NCPs on March 29, 2019 against SHI, Total, Technip FMC and Equinor with respect to the Martin Linge Project case.

The Respondent and the Complainant submitted their responses and additional opinions on May 13, 2019 and June 3, 2019, respectively to the KNCP. The KNCP delivered the relevant materials to both parties and the Respondent notified the KNCP that they would submit no additional opinion in response to the Complainant's additional opinion on June 11, 2019.

1) Substance of the submission

Highlighting that the Respondent should have conducted a prior risk assessment to change the work method to an unusual and dangerous method, the Complainant raised the following three issues:

- (1) The Respondent had no safety measures in place against any crane accident, such as passages through overlapping areas and crash prevention measures (Guidelines II. General Policies and Human Rights A. 10 and IV. Human Rights 1, 4);
- (2) The managers under the responsibility of the Respondent were negligent in directing work tasks (Guidelines II. General Policies and Human Rights A. 10 and IV. Human Rights 1, 4); and
- (3) A sufficient number of signal personnel were not assigned, and the signal personnel were also negligent in their surveillance of the Goliath crane (Guidelines II. General Policies and Human Rights A. 10 and IV. Human Rights 1, 4).

2) Respondent(SHI)'s response

The Respondent delivered its position on the issues raised by the Complainant based on the first court decision rendered by Tongyoung Branch of Changwon District Court on May 7, 2019 as follows:

- (1) The Transportation Safety Procedures, the Work Standard Procedures and the Guidelines on Provision of One Additional Radio Set contain the procedures for passages through

overlapping areas and the prescribed methods for signal adjustment;

- (2) The Respondent admits that its managers were negligent in the undertaking of their professional duties; and
- (3) The accident took place due to the professional misconduct of workers, and not the Respondent's failure to assign a sufficient number of signal personnel.

4. Initial Assessment by the KNCP

Upon receipt of the submission under the Procedural Guidance to the Guidelines, an NCP performs an initial assessment. The initial assessment is a procedure through which an NCP assesses whether the issues are (i) *bona fide* and (ii) relevant to the implementation of the Guidelines, based on the six criteria set forth below.

- the identity of the party concerned and its interest in the matter.
- whether the issue is material and substantiated.
- whether there seems to be a link between the enterprise's activities and the issue raised in the specific instance.
- the relevance of applicable law and procedures, including court rulings.
- how similar issues have been, or are being, treated in other domestic or international proceedings.
- whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines.

The KNCP concluded the initial assessment on June 25, 2019 as follows:

- As a result of reviewing all the factors that should be taken into account in the initial assessment based on interviews with the parties and the materials submitted in relation to the Korean enterprise, the KNCP determined that it is necessary to open up dialogue at the NCP level to contribute to resolving the issues. This determination was made considering that the specific instance is material and both parties have actively responded to this specific instance, as well as the fact that proceeding to the next step of mediation will be beneficial.
- In particular, this specific instance was submitted to the KNCP as well as the French and Norwegian NCPs together, and as such requires mutual cooperation whilst under investigation in each NCP.
- However, since the initial assessment is a procedure to determine whether an NCP can offer good offices to the parties for dialogue and contribute to resolving the issues, it is necessary to highlight that passage of the initial assessment does not mean that the Respondent is deemed to have violated the Guidelines.

The KNCP notified the parties and disclosed the initial assessment outcomes on its website.

- (Korean version) Initial Assessment: <http://www.ncp.or.kr/servlet/ncnp/kor/4001>
- (English version) Initial Assessment: <http://www.ncp.or.kr/servlet/ncnp/eng/4001>

5. The Proceedings of the KNCP

In connection with the submission dated March 29, 2019, the Respondent submitted its response on May 13, 2019 while the Complainant submitted an additional opinion on June 3, 2019 to the KNCP. The Respondent notified on June 11, 2019 that it had no further comment on the Complainant's submission.

On September 25, 2019, the KNCP announced the initial assessment result and contacted the Respondent SHI to check whether it would be willing to participate in the mediation process. Initially, the Respondent SHI refused to participate in the mediation process due to an ongoing criminal litigation against it, but subsequently changed its position and expressed its intent to participate in the mediation process on March 24, 2020 after the appellate court's ruling on February 21, 2020.

The KNCP decided to extend the deadlines for this specific instance from March 29, 2020 to December 31, 2020, and organized a mediation committee consisting of KNCP commissioner Sanghee Lee as Chairperson (professor at Tech University of Korea and Adjudication Committee member under the National Labor Relations Commission), KNCP commissioner Sangtae Yeo (dean of Korea Polytechnics, Seoul Campus, Mediation Committee member under the Gyeonggi RLRC) and KNCP commissioner Jaechang Oh (attorney-at-law of Haemaru Law firm).

The mediation committee held two prior meetings for both parties at 14:00 on July 23, 2020 (Respondent SHI) and at 10:30 on July 31, 2020 (Complainant) before the mediation meetings in order to proceed with the mediation process and listen to both parties' positions in advance.

In the first mediation meeting on August, 19, 2020, the Respondent SHI presented its improved safety measures and the attendees discussed the proceeding of the second mediation meeting.

In the second mediation meeting on September 17, 2020, the Complainant requested a roadmap of remedial measures for victims, consultation with civic groups to prevent the recurrence of a similar industrial accident and cooperation with the proceedings of the Norwegian NCP. The attendees also listened to the appeal of one reference witness for compensation for traumatic damages as well as their request for an apology from the Respondent SHI. The Respondent SHI agreed to participate in the mediation process of the Norwegian NCP as an observer.

As there have been difficulties in promptly proceeding with the mediation process due to the ongoing COVID-19 pandemic, both parties agreed upon the further proceeding of the mediation process and the KNCP decided to further extend the deadline from December 14, 2020 to June 30, 2021. Both parties accordingly engaged in direct dialogue.

On June 25, 2021, the Complainant applied for an extension of the deadline citing the necessity of discussions over the consolidation of the proceedings of the KNCP and the Norwegian NCP. Upon the agreement of the Respondent SHI, the KNCP additionally extended the deadline from June 29, 2021 to December 31, 2021.

The KNCP closely consulted with the Norwegian NCP with respect to the proceedings of the

OECD Secretariat and recommended the Respondent SHI to participate in the proceedings of the Norwegian NCP at the request of the Norwegian NCP. However, the Respondent SHI requested the KNCP to continue its proceedings and expressed their refusal to agree with the proceeding consolidation, stating that (i) the proceedings of the Norwegian NCP and KNCP are separate with different claims; (ii) Korea is where the accident took place and where most of the interested parties reside; and (iii) more than two years have elapsed since it participated in the mediation process of the KNCP.

The KNCP accepted the Respondent SHI's request for the continuance of the proceeding and the Complainant's request for an extension of the proceeding, and further extended the deadline from January 13, 2022 to June 30, 2022.

In the third mediation meeting on March 4, 2022, the Respondent SHI and the Complainant submitted their opinions on March 31, 2022 and April 1, 2022, respectively, based on the matters agreed during the mediation meeting. The KNCP then held the fourth mediation meeting on May 18, 2022.

The requests made by the Complainant in the fourth mediation meeting are as follows:

- With regard to an official and sincere apology for the victims, SHI shall post a written apology on its website and in a major daily newspaper published in Korea;
- SHI shall actively identify victims not included in the government's official statistics and trauma victims found through an investigation, and offer a specific remedial plan including re-employment opportunities for victims;
- SHI shall establish a regional support system involving the operation of a healing and rehabilitation program for victims, relevant research and studies, support programs for families of the deceased, industrial accident preventive projects, industrial accident trauma education projects and the establishment of a serious accident counseling center; and
- SHI shall make active efforts such as the provision of resources and materials for the establishment of the OECD Guidelines for Due Diligence on Shipbuilding Industry and ensure the concerned parties participate in the establishment of such due diligence guidelines.

In this regard, the Respondent SHI issued the following response:

- SHI already offered a written apology and made a separate apology to the victims and families of the deceased in the name of its representative (President Daeyoung Park of SHI) immediately after the accident occurred, and the relevant details of the apology were published by the media, including major daily newspapers;
- SHI has fully compensated all identified victims for damages and is also willing to review active support for any additional victims, if identified. Thus, SHI wishes to receive the list of victims identified by the Complainant as well as review a plan to operate an accident-related psychological counseling system as a part of efforts to extensively

manage the accident-related trauma victims;

- Since SHI is not authorized to represent the shipbuilding industry as a whole, it is difficult to take the lead in establishing the due diligence guidelines given that there is no specific action in this regard. However, it will actively consider such guidelines, if established.
- SHI is devising a mid and long-term plan regarding the improvement of safety in the shipbuilding industry, and it will accept constructive opinions in this regard, if any, after their review.

The mediation committee endeavored to produce a proposed settlement comprehensively considering the Respondent SHI's response and the Complainant's opinion. However, the Complainant asked to close the proceedings of its opinion on May 31, 2022, stating that the Respondent SHI remained passive and refused to accept the Complainant's requests. The Complainant also said it could not accept the Respondent's response that it would review support for only specified victims, and the Respondent refused to apologize to the victims.

The KNCP closed the mediation process on June 9, 2022, considering the Complainant's opinion, and conducted a further investigation.

6. Outcome of the Good Offices

The KNCP regrets that both parties failed to reach a full agreement despite its efforts up until the end of the mediation meetings, resulting in no further benefit to continuing the mediation process any longer.

However, the KNCP positively noted that the Respondent accepted the necessity of support for psychological damages, and agreed upon the necessity of active countermeasures pertaining to industrial accidents and due diligence.

7. Examination and Conclusions

After further investigation, the KNCP confirmed the following matters:

7-1. Respondent's apology

Hyosup Kim, the head of shipbuilding yard (Vice President) of SHI released a written apology on behalf of SHI President Daeyoung Park on May 2, 2017. The written apology reads, "we pray for the repose of those who passed away due to the unfortunate accident at the shipbuilding yard of Geoje and offer sincere consolation and apology to the bereaved and the injured and their families. We will provide support to our fellow workers and their families suffering from the sudden accident as much as we can. ... (*omitted*) We will thoroughly determine the cause of the accident and spare no efforts to prevent any recurrence of an accident such as this."

Meanwhile, it is noted that if any additional victim is identified, their individual expression of intent for compensation may be required.

7-2. Safety measures

As the Guidelines prescribe the duty to uphold human rights, workers should rightly be provided with a safe labor environment.

In connection with this case, it was confirmed that on September 30, 2021, the Supreme Court of Korea decided to remand and reverse the lower court's ruling that the Respondent was found not guilty with respect to the violation of its duty to ensure safety measures and as well as accident prevention measures. Accordingly, on June 23, 2022, the appellate court imposed a fine of KRW 20 million on the Respondent SHI, and this ruling became final and conclusive without the possibility of re-appeal.

In the meantime, through the mediation process, the KNCP confirmed that the Respondent has undertaken several measures, such as reflecting the safety measure risk assessment in relevant regulations; newly establishing a procedure for passages in overlapping areas; and establishing a channel for anonymously reporting risks to a reporting worker or his/her coworkers, if recognized.

7-3. Remedy for victims

It is necessary to note that the performance of duties under the Guidelines is not limited to those under domestic law, and a broader scope of duties is expected. As such, the duty to uphold human rights under the Guidelines may be deemed to include active efforts to identify and support victims.

The Respondent SHI provided compensation for the victims that suffered directly as a result of the accident and their families, as well as for psychological damages due in accordance with the legal proceedings. However, the Respondent SHI is required to come up with an active plan to identify additional victims.

Through the mediation process, the Respondent clarified that it is reviewing a plan to support victims for the treatment of psychological trauma, refer other workers that are appealing for compensation for damages to the psychological counseling center and operate a psychological counseling center at all times for the management of trauma.

8. Recommendations

Upon closing all procedures with respect to this specific instance, the KNCP recommends the Respondent SHI to:

- (1) undertake necessary remedial measures if any victim not included in the course of the investigation is additionally identified, and explain the details of such remedial measures to the Complainants;
- (2) establish a plan to actively seek out victims upon the occurrence of any industrial accident and undertake proper remedial measures for relevant victims, such as compensation;

- (3) faithfully undertake safety measures against accidents as well as establish and conduct a due diligence process as to whether the safety measures are effective; and
- (4) ensure that the OECD Guidelines for Multinational Enterprises, the OECD Due Diligence Guidance for Responsible Business Conduct and the ILO convention, etc. are taken into consideration in the due diligence process.

9. Follow up

The KNCP recommends the Respondent SHI to submit the implementation outcomes of the aforementioned recommendations within six months from the receipt of this Final Statement.

The KNCP believes that the participation of both parties in the good offices offered by the KNCP as well as discussions to resolve the issues were worthwhile endeavors. If both parties had participated in the mediation process offered by the KNCP in a more active and flexible manner to reach an agreement, the outcome may have been a noteworthy example of establishing best practice standards sought after by the OECD Guidelines for Multinational Enterprises.

The KNCP expresses its gratitude to the Complainant and the Respondent for participating in the proceedings of the NCP, and also extends its appreciation to the OECD Secretariat for its necessary support as well as the Norwegian NCP for its close cooperation throughout the process of undertaking this specific instance.

October 26, 2022
Korea National Contact Point