



# DECISION

Complaint submitted by  
Christian Juhl regarding the  
activities of Bestseller A/S

**30 September 2022**

English version • 1 December 2022  
Unofficial translation

## The Mediation and Complaints-Handling Institution for Responsible Business Conduct – The Danish National Contact Point to the OECD Guidelines for Multinational Enterprises.

The Danish Mediation and Complaints-Handling Institution for Responsible Business Conduct (NCP Denmark) is the Danish National Contact Point based on the OECD Guidelines for Multinational Enterprises. NCP Denmark is an independent non-judicial grievance mechanism established by law<sup>1</sup>. NCP Denmark is mandated to handle specific instances (complaints) concerning whether Danish companies, public authorities, and public and private organisations act in observance of the OECD Guidelines for Multinational Enterprises.

NCP Denmark can determine whether a corporate or public entity has observed the OECD Guidelines for Multinational Enterprises and can provide recommendations. NCP Denmark cannot prescribe remedy or compensation to impacted parties.

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<sup>1</sup> The Danish Act no 546 of 18 June 2012 on a Mediation and Complaints-Handling Institution for Responsible Business Conduct.

## Summary

This is a decision pursuant to the third procedural step of the case handling procedure; the preliminary investigation. In the preliminary investigation, NCP Denmark assesses whether it can be dismissed that non-observance of the OECD Guidelines for Multinational Enterprises has taken place in the case in question.

In connection with the preliminary investigation, Bestseller has accounted for and documented their human rights due diligence in the following time periods: prior to 2014, between 2014 and 2019 and after 2019. Bestseller has presented their policies and guidelines in the human rights area and accounted for and documented how the policies have been implemented in practice and adjusted on an ongoing basis. Bestseller's risk assessments are based on a broad range of sources, including Bestseller's own investigations, third-party audits, self-assessment forms, cooperation with suppliers and other stakeholders (including multi-stakeholder initiatives and external experts), as well as information from key local and international stakeholders.

Based on the preliminary investigation, NCP Denmark concludes that Bestseller has conducted a thorough, systematic and continuous risk-based human rights due diligence in the time periods reviewed<sup>2</sup>. Consequently, NCP Denmark finds that the complaint does not merit further consideration. On that basis, NCP Denmark rejects the complaint.

## 1. DECISION

This is a decision following the third procedural step of the case handling procedure; the preliminary investigation.

**Complainant:** Christian Juhl

**Respondent:** Bestseller A/S

The Mediation and Complaints-Handling Institution for Responsible Business Conduct (NCP Denmark) has conducted a preliminary investigation of the complaint, cf. section 7, subsection 2 of Act no. 546 on Mediation and Complaints-Handling Institution for Responsible Business Conduct (the NCP Act)<sup>3</sup>.

In the preliminary investigation, NCP Denmark assesses whether it can be dismissed that non-observance of the OECD Guide-

lines for Multinational Enterprises (OECD Guidelines) has taken place in the case in question.

NCP Denmark dismisses the case if the preliminary investigation concludes that the complaint has not been substantiated, and/or it is unlikely that the alleged events have taken place, cf. section 7, subsection 2 of the NCP Act.

NCP Denmark accepts the case for further consideration if the preliminary investigation concludes that the complaint (in its entirety or parts of the complaint) has been substantiated and/or if it cannot be dismissed that the alleged events have taken place. If expedient, NCP Denmark can offer mediation, cf. section 7, subsection 3 of the NCP Act.

<sup>2</sup> NCP Denmark notes that the preliminary investigation was concluded on 27 June 2022. Thus, any contextual developments in Myanmar since that date is not part of NCP Denmark's assessment of the complaint.

<sup>3</sup> The Danish Act no 546 of 18 June 2012 on a Mediation and Complaints-Handling Institution for Responsible Business Conduct.

The preliminary investigation does not determine whether non-observance of the OECD Guidelines has taken place. An actual investigation is conducted if the complaint reaches the fifth procedural step; the investigation, cf. section 7, subsection 4 of the NCP Act.

NCP Denmark is a politically independent non-judicial grievance mechanism established by law.

## 2. THE OECD GUIDELINES AND RISK-BASED DUE DILIGENCE

The OECD Guidelines acknowledges the positive contributions that businesses can make for economic, environmental, and social progress, while also recognizing that business activities can result in negative impacts on the surrounding world. Due diligence is thus the process that enterprises should perform to identify, prevent, remedy and account for actual and potential adverse impacts on people, society and the environment that are derived from an enterprise's activities.

Due diligence addresses actual and potential adverse impacts (risks) related to chapters III-VIII in the OECD Guidelines (human rights, labour rights and industrial relations, environment, bribery and corruption, consumer interests and publication of information). The term risk in the context of the OECD Guidelines does not refer to risks to the enterprise itself, but the risk of adverse impacts on society that the enterprise causes, contributes to or is directly linked to<sup>4</sup>. Due diligence is a dynamic and ongoing process as the risk profile and circumstances may evolve over time<sup>5</sup>.

NCP Denmark assesses that the complaint in question concerns the OECD Guidelines' chapter IV (sections 3 and 5) on human rights.

## 3. PROCEEDINGS

NCP Denmark received the complaint on 18 April 2021.

On 12 May 2021, NCP Denmark informed the parties of the result of the initial assessment of the complaint in terms of whether the formal criteria had been met, including if the complaint was reasonably argued and supported by relevant documentation. NCP Denmark accepted the case for further processing, and the parties were given two months to try to resolve the matter without NCP Denmark's involvement, cf. section 7, subsection 1 of the NCP Act.

On 7 July 2021, Bestseller and Christian Juhl notified NCP Denmark that they had not reached a common agreement on the case in question. Consequently, NCP Denmark initiated a preliminary investigation of the complaint with the purpose of assessing whether the case merited further consideration, cf. section 7, subsection 2 of the NCP Act. On 30 August 2021, NCP Denmark requested Bestseller to submit information and relevant documentation on the case in question.

Due to Bestseller's expressed concern of risks related to the disclosure of information, which may compromise the security of organizations and individuals, NCP Denmark engaged with Bestseller in dialogue from September 2021 to May 2022 with the purpose of finding a solution to which NCP Denmark could be presented the documentation without risking the safety of Bestseller's informants<sup>6</sup>.

In October 2021 and June 2022, NCP Denmark received documentation from Bestseller. In May and June 2022, NCP Denmark visited Bestseller's offices with the purpose of reviewing documentation with sensitive personal information, which for security reasons could not be submitted to NCP Denmark, as well as to receive a presentation of Bestseller's due diligence

<sup>4</sup> OECD Due Diligence Guidance for Responsible Business Conduct (2018), chapter 1

<sup>5</sup> OECD Due Diligence Guidance for Responsible Business Conduct (2018), p. 15

<sup>6</sup> As an independent body within the public administration, NCP Denmark is subject to Act no. 606 of 12 June 2013 on Public Access to Information.

procedures<sup>7</sup>.

Based on the preliminary investigation, NCP Denmark will decide to either:

1. Dismiss the complaint.
2. Accept the complaint for further consideration.

## 4. REVIEW OF THE COMPLAINT

In the wake of the Rohingya crisis in 2017, the UN established the International Independent Fact-Finding Mission for Myanmar (IIFMM), which in 2019 reported on the economic activities of the military. In the report, IIFMM concluded that Bestseller, among other enterprises, had business relations to three factories that potentially were affiliated with the Myanmar military.

Thus, the complaint concerns whether Bestseller has observed the OECD Guidelines with regard to its business activities in Myanmar. Christian Juhl has raised the following points of criticism:

- That Bestseller cooperates with and has business relationships with three factories in Myanmar, which may be affiliated to the Myanmar military that is accused of large-scale human rights infringements.
- That Bestseller, by virtue of the close relations to the military junta of Myanmar, risks contributing to the military's human rights infringements on the civilian population of Myanmar.
- That Bestseller has promised to investigate the above matters, however without concluding the investigations.

In order to assess whether it can be dismissed that non-observance of the OECD

Guidelines has taken place in this complaint, NCP Denmark finds it relevant to investigate the following points:

1. Bestseller's due diligence prior to establishing business activities in Myanmar in 2014.
2. Bestseller's due diligence in Myanmar from 2014 and until the publication of the IIFMM report in 2019.
3. Bestseller's due diligence from 2019 and until June 2022<sup>8</sup>.

Based on the above claims, NCP Denmark has requested Bestseller the following:

- To describe Bestseller's relationship to the factories in question.
- To account for and document Bestseller's due diligence procedures, including their human rights policies and how these have been implemented with regard to the factories in question during all of the abovementioned time periods.

### 4.1 DUE DILIGENCE PRIOR TO THE ESTABLISHMENT OF BUSINESS ACTIVITIES IN MYANMAR IN 2014

According to the OECD Guidelines, enterprises should perform risk-based due diligence to identify, prevent, mitigate and account for how they handle actual and potential adverse impacts related to enterprises activities<sup>9</sup>. In order to identify risks of adverse impact, enterprises should perform a broad scoping exercise in which relevant information about sector-specific, geographic, product and enterprise risk factors are taken into account.

The scoping exercise should enable enterprises to perform an initial prioritisation of the most material risk areas that require

<sup>7</sup> NCP Denmark notes that Bestseller did not wish to share the submitted documentation with Christian Juhl.

<sup>8</sup> NCP Denmark notes that the preliminary investigation was concluded on 27 June 2022. Thus, any contextual developments in Myanmar since that date is not part of NCP Denmark's assessment of the complaint.

<sup>9</sup> OECD Guidelines for Multinational Enterprises (2011), chapter III, section 10-12, commentary 14

further assessment<sup>10</sup>. Information about the local regulatory framework and governance, as well as the socio-economic and political context may also be relevant to investigate as part of the scoping, and information from international organisations, civil society organisations, national human rights institutions, government agencies, trade unions and employer and industry associations may also be relevant<sup>11</sup>.

Bestseller has given an account of and documented the initial risk analyses and assessments that Bestseller performed prior to the decision in 2014 to establish business activities in Myanmar. Bestseller's risk assessment in 2014 is based on information collected i.a. via:

- Several country-visits.
- Desk research.
- Dialogue with and information from relevant stakeholders, including with the Danish Ministry of Foreign Affairs, human rights institutions, international organisations, like-minded enterprises, industry associations, supplier factories, NGOs, the Danish embassy in Myanmar, an employers' association in Myanmar.
- The Danish Ministry of Foreign Affairs' risk assessment of Myanmar.

Bestseller concluded that it was acceptable to initiate business activities in Myanmar on the condition that a number of strict requirements were adhered to. In the risk assessment, corruption, child labour, abuse of power and discrimination were assessed to constitute the most significant risks. Despite knowledge of the military's role in the country, potential affiliation with the military was not assessed as constituting any significant risk in Myanmar's textile industry.

In Bestseller's account to NCP Denmark, it is noted that Bestseller, based on a precautionary principle, chose to wait until 2014 to place their first order in Myanmar despite the fact that the country opened up for investments in the beginning of 2010. In the submitted documentation, Bestseller moreover refers to a newspaper article in which the Danish government in 2012 encouraged Danish enterprises to establish business activities in Myanmar to support the democratic and economic development.

Bestseller's final decision to establish activities in Myanmar was made at the highest managerial level, including the CEO. In connection with the establishment, Bestseller formed a number of partnerships with relevant organisations and stake-holders, as well as informed the Danish Ministry of Foreign Affairs on challenges and dilemmas related to the establishment in the country on an ongoing basis.

In Bestseller's account, it is moreover highlighted that the factories in Myanmar that Bestseller chose to enter into cooperation with in 2014 are foreign-owned, and that Bestseller already has had long-term cooperation with the same owners in other countries.

## 4.2 DUE DILIGENCE IN MYANMAR FROM 2014 TO 2019

Bestseller's human rights due diligence on the individual suppliers between 2014-2019 was based on e.g., policies, procedures, audits, IT systems, databases of suppliers, internal and external guidelines as well as dialogue with various stakeholders.

### Risk assesment

Bestseller's "Code of Conduct" and "Stand-

<sup>10</sup> OECD Due Diligence Guidance for Responsible Business Conduct (2018), p. 25

<sup>11</sup> OECD Due Diligence Guidance for Responsible Business Conduct (2018), p. 62-63

ards Operating Procedure” describe Bestseller’s expectations to their suppliers and sub-suppliers with regard to ethics and behaviour. Bestseller’s Code of Conduct is a standardised document, which can be adapted to local contexts and updated based on information from e.g., stakeholders and audits.

Bestseller has, through their “Factory Standards Programme,” accounted for how they have identified and assessed adverse impacts on supplier factories in the time period 2014-2019. Adverse impacts were i.a. identified by means of self-evaluation forms and audits performed by Bestseller’s local teams of in-house experts or by third-party auditors. In this regard, Bestseller highlighted their use of in-house experts in high-risk countries, such as in Myanmar. Bestseller has further documented dialogue with central local and international stakeholders, which also formed the basis for Bestseller’s risk assessments. In their account to NCP Denmark, Bestseller moreover noted that they made use of local expertise with special local knowledge in the area.

According to Bestseller, the onboarding process for factories in Myanmar is the strictest out of all the countries in which Bestseller operates in. Bestseller requires that Bestseller’s own in-house experts must examine and approve each supplier based on a check list of about 200 items (concerning social and labour standards as well as environmental and chemical safety), which according to Bestseller i.a. covers the areas of the OECD Guidelines. Bestseller states that their in-house experts also advise on improvements and prepares the factory for third-party audits. The factory must pass this third-party audit, which is based on Bestseller’s check list.

According to Bestseller, more than 1,000 audits and follow-up visits of their about 800 tier 1 factories are carried out an-

nually on a global level. Any remarks from audits are ranked according to acceptable, medium risk and high risk, and all data is registered in internal IT systems. The data forms the basis for a supplier ranking system, which Bestseller uses as reference when deciding on purchases. If the factory is marked as high risk, all orders are immediately stopped.

Bestseller has accounted for an ongoing identification of salient human rights risks in the time period 2014-2019, which was performed on the ground in Myanmar and as desk research in Denmark. Moreover, Bestseller continuously conducted more extensive risk assessments in relation to actual and potential adverse impacts on i.a. human rights in the country. Bestseller’s most recent extensive global risk assessment was made in 2018. The next global risk assessment is expected to be performed in 2022.

### **Risk management**

According to the OECD Guidelines, an enterprise should use its leverage to affect change in a business relationship’s practice and mitigate any impact in cases where risks of contributing to adverse impacts are identified<sup>12</sup>. The ability of an enterprise to influence its supplier depends i.a. on the volume of products purchased, the size of the enterprise in relation to the supplier, if there are other suppliers etc. Enterprises can cooperate at industry or multi-industry level and with relevant stakeholders during the entire due diligence process, although they always remain responsible for ensuring that their due diligence is carried out efficiently<sup>13</sup>. Cooperation may for example be sought with the purpose of exchanging knowledge, increasing leverage and scaling effective measures.

As regards the three factories mentioned in the complaint, Bestseller has stated that its orders make up respectively 5%, 20% and 25% of the factories’ order capacity. According to Bestseller, the risk assess-

<sup>12</sup> OECD Guidelines for Multinational Enterprises (2011), chapter II, section 10-12, commentary 19-20

<sup>13</sup> OECD Due Diligence Guidance for Responsible Business Conduct (2018), p. 19

ments conducted between 2014 and 2019 concluded that the most salient risks concerned social standards, including labour rights and working conditions in general. Affiliation with the military was assessed to be of low risk.

Bestseller informs that their stated objective is to enter long-term and stable relationships with their suppliers. Thus, in order to ensure that suppliers meet Bestseller's standards and requirements, Bestseller's local teams are – besides from their control function – also tasked with training suppliers. Moreover, Bestseller has accounted for and documented their engagement in a number of multi-stakeholder initiatives in Myanmar (including ACT, in which Bestseller plays a leading role, SMART TAG and MYPOD) in order to facilitate capacity building and knowledge sharing with their business relationships on labour and human rights-related issues, as well as to improve their purchasing practices in general.

According to Bestseller, the abovementioned efforts help increase Bestseller's leverage over suppliers with regard to implementation of responsible business conduct, while also assisting in building strong and resilient institutions (e.g., trade unions and labour market legislation) in the country. At the same time, these efforts serve the purpose of contributing to ongoing identification and handling of risks of adverse impacts, hence they form an essential part of Bestseller's due diligence.

With regard to the escalating Rohingya crisis in the country, Bestseller has documented multi-stakeholder dialogue in November 2017 between enterprises, NGOs and trade unions in terms of deciding on the most feasible response to the crisis. The dialogue was supported by national human rights institutions, which contributed with expert knowledge. The outcome of the dialogue was a joint statement and a recommendation for enterprises to per-

form heightened due diligence in relation to military affiliation. Bestseller has moreover, within the same period, documented dialogue with like-minded enterprises with the purpose of increasing leverage and exert pressure on the Myanmar government to respect the rights of the Rohingya people. In response to the critical situation in Myanmar, Bestseller decided on 18 December 2017 to pause onboarding of new suppliers in the country, while still allowing the placing of orders with existing suppliers. This was communicated internally by Bestseller's CEO to all executives and purchasing managers in Bestseller's subsidiaries. In May 2019 – a few months before the publication of the IIFFMM report – Bestseller decided, based on their risk assessment, to allow onboarding of new factories in Myanmar again, however with heightened due diligence processes.

### **4.3 DUE DILIGENCE IN MYANMAR FROM 2019 TO JUNE 2022**

The UN Guiding Principles on Business and Human Rights (UNGPs) acknowledge that business activities in conflict-affected and high-risk areas increase the risks of businesses contributing to conflict and/or contributing to or facilitate human rights infringements made by third parties, such as the military. In such complex contexts, enterprises are expected to ensure that they do not exacerbate the situation. Enterprises' assessment of appropriate action in a given situation should i.a. be based on advice from credible, independent, external experts, including representatives of governments, civil society, national human rights institutions and relevant initiatives with participation from stakeholders<sup>14</sup>.

#### **Heightened due diligence in relation to the military**

In their account to NCP Denmark, Bestseller explained that they performed regular

<sup>14</sup> United Nations Guiding Principles on Business and Human Rights (2011), principles 7 and 23



due diligence from 2014-2019 and onwards. A heightened due diligence was however also initiated in 2019 due to new information about the military's role in the country in general and in the country's textile industry in particular.

While Bestseller acknowledge the military's increased control and critical role in Myanmar over time, Bestseller's risk analyses and assessments had not given rise to further concerns in relation to potential military affiliation. Bestseller did, however, initiate a number of measures in the wake of IIFFMM's report in 2019 with regard to the three factories' potential affiliation with the military. Bestseller has e.g., presented the following documentation to NCP Denmark:

- Bestseller's due diligence on the three factories in Myanmar, including self-evaluations, check of ownership and routine audits made by Bestseller's own in-house auditors and third-party auditors.
- Key stakeholders' (including NGOs and enterprises) critical assessment of the quality and statements of the IIFFMM report.
- Mail correspondence with a like-minded enterprise, which – like Bestseller – could not recognize the conclusions of the report.
- Bestseller's futile attempts to contact IIFFMM in order to obtain documentation of the report's allegations on the factories' potential affiliation with the military. In this regard, Bestseller also documented other local and international enterprises' futile attempts.
- Bestseller's correspondence with the Danish Ministry of Foreign Affairs. Bestseller continuously kept the Ministry informed of Bestseller's risk analyses and assessments.

- A legal investigation from 2021 concerning Bestseller's due diligence in Myanmar, which was commissioned by Bestseller.

In addition to the above documentation, Bestseller has documented and given an account of Bestseller's own fact-finding mission in Myanmar in December 2019. Employees from Bestseller's Danish headquarter and Shanghai office went on a fact-finding mission in Myanmar with Bestseller's local in-house auditors to investigate the situation regarding the military's affiliation with Myanmar's textile industry in general, and Bestseller's suppliers in particular. The team held meetings with key stakeholders who, according to Bestseller's assessment, had expertise within the field of human rights and the military's affiliation with the business community in Myanmar. These stakeholders could simultaneously assist in strengthening Bestseller's general due diligence procedures in the country in terms of handling risks of Bestseller unknowingly entering relationships with military affiliations. According to Bestseller's key stakeholders, the most salient risks in Myanmar's textile industry still concerned labour rights and not military affiliation. Bestseller moreover held meetings with the three factories, all of which denied affiliation with the military.

Bestseller concluded, based on the fact-finding mission, that the risk of the factories being affiliated with the military was low. Based on the fact-finding mission, Bestseller moreover prepared and implemented a heightened due diligence during 2019 and 2020 in relation to the risk of military affiliation, as well as a heightened human rights due diligence in Myanmar. Examples hereof are:

- Updated self-evaluation forms.
- Development of new supplier self-declarations regarding military affiliation, which are rolled out in all supplier fac-

tories in Myanmar.

- The launch of a “Sourcing Regions of Particular Human Rights Focus” policy, which i.a. implements a total ban on any type of military affiliation. The policy is distributed to all local offices and to all Bestseller’s suppliers.
- The launch of a country specific procedure: “Myanmar Due Diligence Procedure & Industrial Zone Observation List”, which is built on extensive risk assessments. This has been communicated to the highest managerial level of Bestseller.
- Stricter requirements for onboarding of new factories. Among others, an international law firm with local representation must investigate and confirm that there is no military affiliation in relation to the ownership of a factory or ownership of the land on which the factory is located. If military affiliation is identified, the factory cannot be onboarded.
- Requirement that suppliers must exert sufficient leverage on their value chains and that they commit to join the SMART TAG initiative.
- Requirement that onboarding of all new suppliers and subcontractor must be approved by Bestseller’s department for responsible purchases.

In light of the dialogue with local stakeholders and the aforementioned three factories between 2020 and 2021, Bestseller identified that the factories were located in industrial zones, which potentially were administered by the military. The factories in these zones potentially paid a small fee (USD 200-400 per factory per year) to the military owned enterprise that oversaw waste management in the area. Bestseller has documented that the Danish Ministry of Foreign Affairs was kept informed of this on an ongoing basis. Bestseller moreover

highlighted its positive contribution to employment and development in the area and explained that Bestseller assessed that these contributions outweighed the risk – which according to Bestseller was an insignificant amount of payment – of military affiliation. This contributed to Bestseller’s decision to maintain production in the area.

## 5. NCP DENMARK'S ASSESSMENT

NCP Denmark is authorized to handle specific instances (complaints) concerning the observance of the OECD's Guidelines for Multinational Enterprises, cf. section 3 of the NCP-Act.

According to the OECD Guidelines and UNGPs, enterprises involved in business activities in conflict affected and high-risk areas have the potential to generate income and growth, and to enable local development. At the same time, there may be risks of enterprises contributing to or being directly linked to adverse impacts, including serious infringements of human rights<sup>15</sup>. Consequently, enterprises operating in such contexts should heighten their due diligence to ensure that they respect human rights and avoid contributing to adverse impacts, whilst contributing to sustainable development<sup>16</sup>.

NCP Denmark assesses that Bestseller has accounted for and documented a thorough and systematic risk-based human rights due diligence and operationalisation of the international guidelines for all three time periods (before 2014, between 2014 and 2019, and after 2019). Bestseller has submitted an account of Bestseller's policies and guidelines on human rights, and accounted for and documented how these policies have been implemented in practice and continuously adjusted. Bestseller's risk assessments are based on a broad range of sources, including own investigations, third-party audits, self-assessment forms, cooperation with suppliers and other stakeholders (including multi-stakeholder initiatives and external experts), as well as information from key local and international stakeholders.

With regard to risk management, Bestseller has documented extensive procedures and internal follow-up procedures,

as well as long-term relationships with suppliers with the purpose of enabling capacity-building and improving social conditions in the factories as well as contributing to improving the general socio-economic situation in Myanmar. Bestseller has moreover documented efforts to increase leverage through participating in a number of multi-stakeholder initiatives.

NCP Denmark further notes the anchoring of responsible business conduct in senior management, and that e.g., the decisions on establishment of business activities in Myanmar and the subsequent stop for onboarding of new suppliers were made and communicated internally from the highest managerial level.

Bestseller has documented a due diligence procedure, which has continuously been adapted as the risk scenario in Myanmar evolved, and Bestseller obtained new information about the situation. Bestseller has persistently investigated the situation to ensure that Bestseller does not contribute to or is directly linked to adverse impacts. This has happened concurrently with Bestseller contributing to income-generation and enabling a positive development of Myanmar's textile industry.

Based on the preliminary investigation, NCP Denmark finds that Bestseller has conducted a thorough, systematic and continuous risk-based human rights due diligence for all three time periods reviewed. Consequently, NCP Denmark finds that the complaint does not merit further consideration. On that basis, NCP Denmark rejects the complaint.

According to the OECD Guidelines, enterprises should publicly account for their work with responsible business conduct in order to inform customers, partners and other stakeholders about their efforts<sup>17</sup>. NCP Denmark notes that Bestseller

<sup>15</sup> OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (2016), p. 12

<sup>16</sup> United Nations Guiding Principles on Business and Human Rights (2011), principle 23

<sup>17</sup> OECD Guidelines for Multinational Enterprises (2011), chapter III

has communicated openly about their activities in Myanmar, e.g., in Bestseller's sustainability report from 2021. NCP Denmark encourages Bestseller to further increase transparency about Bestseller's due diligence procedures, as well as to continue the sharing of experiences, challenges and considerations in ways that make the information more accessible.

NCP Denmark is an independent body within the public administration. The decision to dismiss a complaint cannot be appealed to another administrative authority.

### **On business activities in Myanmar in particular**

NCP Denmark emphasizes that the dismissal of the complaint does not imply that Danish enterprises can uncritically conduct business activities in Myanmar. The situation in the country is serious and unstable with documented widespread human rights infringements. Civil society organisations and trade unions are particularly exposed, and Myanmar's military junta has proved to use radical means to silence critics<sup>18</sup>. When deciding on business activities in conflict-affected countries, broad and meaningful stakeholder engagement is particularly important<sup>19</sup>. Enterprises with activities in Myanmar are therefore recommended to closely monitor the situation in order to be able to quickly respond to new developments and new information, which may affect the enterprises' presence in the country. This is aligned with the principles and recommendations of the OECD's Guidelines and UNGPs.

In this context, it is relevant to assess whether it is possible to maintain business activities in a responsible way and thus provide continued employment in the

country – or whether continued presence in the country may cause more harm on the rights of workers and the wider population, and ultimately undermine a return to democracy<sup>20</sup>. Such assessment should always be evidence-based and guided by an up-to-date assessment of social and economic consequences. If, based on the heightened due diligence, an enterprise determines that the most responsible course of action will be to end a business relationship or to stop business activities in the country, NCP Denmark emphasizes the importance of disengaging in a responsible way. In this regard, it is vital that the enterprise<sup>21</sup>:

1. Complies with national legislation, international labour standards and the terms of any collective agreements;
2. Is able to explain and document its decision to relevant stakeholders;
3. Provides affected parties, including suppliers, workers and the surrounding society, adequate notice of the termination or expiry of the business relationship.

<sup>18</sup> <https://www.industrial-union.org/between-military-violence-union-busting-and-deteriorating-working-conditions-myanmars-factory>

<sup>19</sup> UN Working Group on Business & Human Rights: *Business, human rights and conflict-affected regions: towards heightened action* (2020), p. 11

<sup>20</sup> <https://www.ihrb.org/other/businesss-role/staying-or-leaving-myanmar-whats-needed-is-a-human-rights-led-approach>

<sup>21</sup> OECD Due Diligence Guidance for Responsible Supply Chains in the Garment & Footwear Sector, p. 79 and 150