

Chapter 7

Policies for Promoting Responsible Business Conduct*

* This background document was prepared by Kathryn Gordon, Investment Division, OECD Directorate for Financial and Enterprise Affairs.

7.1. Introduction

Governments can use a broad range of public policies to promote recognised concepts and principles for responsible business conduct, such as those recommended in the OECD Guidelines for Multinational Enterprises. These policies help attract investments and enhance their contribution to sustainable development. This background document looks at how governments can work to help companies to ensure that their operations “are in harmony with government policies, to strengthen the basis of mutual confidence between enterprises and the societies in which they operate ... and to enhance [their] contribution to sustainable development”.¹

Policies that promote responsible business conduct include: providing an enabling environment that clearly defines the respective roles of government and business; promoting dialogue on norms for business conduct; providing for adequate disclosure so that investors can be held accountable for their actions; supporting companies’ efforts to comply with law; encouraging responsible business conduct through partnership and promotion; and participating in intergovernmental cooperation in order to promote agreed concepts and principles for responsible business conduct.

7.2. Clear separation of government and business roles

How does the government make clear for investors the distinction between its own role and responsibilities and those ascribed to the business sector? Does it actively assume its responsibilities (e.g. by effectively enforcing laws on respecting human rights, environmental protection, labour relations and financial accountability)?

The core mission of business is to identify and manage investment projects that yield competitive returns to suppliers of capital. In fulfilling this core function, responsible business conduct also consists above all of complying with legal and regulatory requirements; in addition, it includes responding to societal expectations that might be communicated through channels other than law. The view of responsible business conduct developed in this paper reflects earlier Investment Committee work. A summary of this work, drawn from the Committee’s Report to Ministers [C/MIN(2001)4], appears in Annex 7.A.

The role of governments is to look after the collective interests of their citizens. As part of this role, they work with companies, trade unions and other civil society organisations to create enabling environments for responsible business conduct. If this enabling environment is well designed, including through a clearly communicated distinction between the respective roles and responsibilities of government and business, uncertainty over expectations concerning responsible business conduct are lowered, thus encouraging

investment, and private and public sector actors will be encouraged to play mutually-supporting roles in enhancing economic, social and environmental well-being.² Government and business roles need to remain distinct and they cannot substitute for one another – each sector needs to assume its responsibilities.

7.2.1. Business roles

The business sector's contribution to sustainable development has many facets, the most important of which is the conduct of business itself. As noted above, its core mission is to identify and manage investment projects that yield competitive returns to suppliers of capital. In the process, investors spur economic growth and provide jobs and produce goods and services that consumers want to buy.

Of course, the responsibilities of business go beyond this core function. Businesses also have to comply with legal and regulatory requirements and, as a practical matter, must often respond to societal expectations that might be communicated through channels other than law.

OECD research shows that many companies have invested heavily in improving their abilities to comply with law and to respond to other societal expectations. They make these investments because they recognise their inter-dependence with societies in which they operate – if these societies are not doing well, business will not prosper either.

7.2.2. Government roles

Of course, governments also play an important role in nurturing this interdependent relationship. The role of governments is to define and implement policies that serve the collective interests of their citizens, including their interest in having a dynamic and efficient business sector. Governments play an essential role in creating the policy environment in which business can flourish. The Policy Framework for Investment provides considerations for good practice in many of the relevant policy areas (*e.g.* competition, corporate governance, taxation, human resource development, infrastructure and financial services). If the enabling environment is well designed, all parties – governments, business and other elements of civil society – will be encouraged to assume their respective roles in supporting sustainable development.

This background document provides a broad overview of government roles in this area. The range of policies that form part of this enabling environment is vast – they include protecting the rights framework, engaging in responsive, efficient and effective law making; promoting other forms of two-way communication between business and the rest of society; forming partnerships for compliance with business; The rest of this background document examines these government roles.

7.2.3. Trade union, NGO and other civil society roles

Trade unions and other elements civil society also have a role to play in fostering and monitoring responsible business conduct. Like the business sector, they control resources that they can use to improve the quality of the dialogue relevant to the formation of both business and government policy. In particular, they can contribute their knowledge of situations in specific locations and workplaces and bring a wider array of perspectives (other than those of government and business).

7.3. Promoting effective two-way communication: law-making and other forms of dialogue

What steps does the government take to promote communication on expected responsible business conduct to investors? How does the government endeavour to protect the rights framework that underpins effective communication?

Law-making is the key channel for communicating societal expectations to companies, thus creating a stable, predictable environment conducive to investment. Expectations concerning responsible business conduct are also communicated through a multitude of other channels and these also affect the quality of the investment environment. Such communication can take place within the workplace, with local communities, with trade unions in the course of industrial relations and collective bargaining, through discussions with investors, dialogue with other civil society organisations, via the press and so forth. These two-way communication channels provide inputs that can be valuable for setting company policies and evaluating performance. These other channels complement the information communicated to companies through formal legal and regulatory processes.

7.3.1. Law-making

Law-making (developing legal statutes, regulations and administrative procedures; law enforcement; and design and maintenance of the judicial system) is central to the public sector's role in creating an enabling environment for responsible business – law is a key channel for communicating societal expectations to companies. The other chapters of the Policy Framework for Investment propose considerations for law-makers in diverse policy areas that are relevant for business.

While acknowledging the central place of law making in the government role in communicating societal expectations, it is also worth noting the limits of law. It is not possible for law codes to describe the conduct that should be adopted in every conceivable business situation. Even if it were possible to foresee every possible situation and to write down the corresponding appropriate conduct, the resulting legal codes would be too long for anyone to read. Thus, those covered by law almost always need to interpret the implications of law in specific business situations.³ This interpretation of law or drawing out the implications of law for specific business circumstances is a key role for responsible business and one that business is uniquely qualified to play (since businesses are likely to have the most information about their own business processes).

In addition, laws are made within national jurisdictions, whereas many of the relevant business behaviours are international in scope and may occur in investment environments where legal systems do not work well.⁴ In such circumstances, international instruments provide a particularly useful complement to national laws.

The use of other communication channels (*e.g.* social dialogue and development of international instruments for responsible business conduct) as complements to national laws are addressed in the rest of this section.

7.3.2. Other channels for communication

Societies also channel their expectations through *other channels for communication* (e.g. with employees in the workplace, with local communities, through discussions with investors, via the press and so forth). As noted above, these communications channels provide inputs that can be valuable for setting company policies and evaluating performance and they often complement formal legal and regulatory processes.

Governments play several roles in ensuring that these channels work well:

- *Protecting rights.* While the protection of human rights (political, social, civil, labour and property) is a fundamental objective in itself, it is also a pre-condition for such communication to take place.⁵ This removes threats of rights violations so that many voices, including those of investors, can be heard. Thus, protection of the rights framework is a key responsibility of governments.
- *Promoting effective communication between companies and the rest of society.* Governments sometimes encourage such communication by participating in it directly or by requiring that it take place among private parties. Box 7.1 describes how the government of Brazil participated in a dialogue that led to the development of a National Tri-partite Agreement on Benzene (a hazardous chemical). Box 7.2 describes Ghana's requirement that such dialogue take place with a view to protecting local communities affected by lumbering operations.

International instruments for corporate responsibility are also important channels for communicating with business. These are often derived from the broader framework of international declarations and conventions (e.g. the Universal Declaration of Human

Box 7.1. The National Tripartite Agreement on Benzene, Brazil

Brazilian trade unions, the petrochemical, iron and steel industry, and the national government concluded the National Tripartite Agreement on Benzene. The Agreement provides a model of employer-union cooperation in support of sustainable development. Work on the Agreement began as follow up on a campaign led by the Unified Workers Confederation.

The Agreement recognises benzene as a hazard and requires companies and subcontractors to carry, store or handle it and its derivatives in a prescribed manner. It also requires them to register its use and to implement a "Prevention Programme" in every workplace. Standards and procedures define objectives, applications, and responsibilities for each workplace party and a technical standard for safe exposure determined by workers, employers and government.

Strict evaluation procedures are established and workers are involved in monitoring. A "Representative Group of Workers" in each plant is trained and made responsible for monitoring and enforcing the designated programme for Prevention of Occupational Exposure to Benzene. Workers also have equal representation on the Permanent National Commission for Benzene that oversees developments, monitors compliance, promotes research, supplements laws and regulation and issues Certificates for the controlled use of Benzene to companies. Periodic seminars organised under the Agreement provide for joint evaluation.

Source: International Confederation of Free Trade Unions and TUAC. FOX, Tom, Halina Ward and Bruce Howard (2002), Public Sector Roles in Strengthening Corporate Social Responsibility: A Baseline Study. The World Bank Corporate Responsibility Practice. Washington DC, Boxes 4 and 24.

Box 7.2. Social Responsibility Agreements, Ghana

The reform of forest policy in Ghana resulted in a new regulation stipulating that companies tendering for timber cutting permits would be assessed in terms of their respect for the social and environmental values of local residents. Under the new law, which came into operation in 1998, logging companies are required to secure a “Social Responsibility Agreement” with the customary owners of the land.

This Agreement follows a standard pattern. It includes a code of conduct setting forth commitments for the company’s environmental, employment and cultural practices. It also involves a pledge to make specific contributions to local development. Each Agreement must be fully negotiated with the local community and must follow a procedure for negotiating with local representatives and the district forest office before submission to a central evaluation committee.

Source: FOX, Tom, Halina Ward and Bruce Howard (2002),.

Source: Public Sector Roles in Strengthening Corporate Social Responsibility: A Baseline Study. The World Bank Corporate Responsibility Practice. Washington DC, Box 14.

Rights, the International Labour Organisation’s declarations and conventions).⁶ Most corporate responsibility instruments draw on this broader framework (e.g. the OECD Guidelines and the UN Global Compact).⁷ Box 7.3 describes the OECD Guidelines for Multinational Enterprises, one of the world’s foremost corporate responsibility instruments. The Guidelines contain government-backed recommendations in such areas as human rights, supply chain management, employment and industrial relations, the environment, combating bribery, consumer interests, science and technology, disclosure of information, competition and taxation. They do not aim to introduce differences of treatment between multinational and domestic enterprises; they reflect good practices for all. While it is acknowledged that small- and medium-sized enterprises may not have the same capacities as larger enterprises, governments adhering to the Guidelines nevertheless encourage them to observe the Guidelines recommendations to the fullest extent possible. Other important international initiatives that have benefited from government involvement are the *ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policies* and the *Voluntary Principles on Security and Human Rights*.

7.4. Providing an adequate framework for corporate disclosure

Does the government ensure that an adequate framework is in place to support the financial and non-financial disclosure that companies make about their business activities? Is this framework flexible enough to allow scope for innovation, for tailoring practices to the needs of investors and their stakeholders?

Clear and complete information on enterprises is important to a variety of users ranging from shareholders and the financial community to other constituencies such as employees, local communities, special interest groups and society at large.

Box 7.3. The OECD Guidelines for Multinational Enterprises

Relative to other major instruments that promote responsible business, the OECD Guidelines' engage government responsibilities in a unique way – they are the only comprehensive code of conduct involving recommendations addressed by governments to business. In addition, the Guidelines are promoted via a government-backed follow-up mechanism.

The recommendations of the Guidelines are both comprehensive and detailed – they contain relatively specific recommendations on a broad range of issues. The recommendations cover such areas as respecting human rights, encouraging good conduct in supply chains, whistleblower protection, disclosing financial and non-financial information, respecting all core labour standards, environmental protection, combating bribery, protecting consumer interests, enhancing technology transfer to host societies, fair competition and making tax payments (see Annex for more detailed description of coverage).

Thirty nine countries adhere to the Guidelines (the thirty OECD member countries plus 9 non-members).¹ The National Contact Points (NCPs; government offices located in each adhering country that promote observance of the Guidelines among companies operating in or from their territories) are the most concrete sign of adhering government commitment to the Guidelines. The NCPs are expected to further the effectiveness of the Guidelines in accordance with the core criteria of visibility, accessibility, transparency and accountability. The NCPs report annually on their activities.

Among other responsibilities, the National Contact Point is asked to provide conciliation and mediation in which companies and other interested parties may discuss concrete issues of business ethics. The facility is called the “specific instances procedure”. Specific instances involve voluntary dialogue on whether or not a company has observed the Guidelines in a particular business situation. They are the only international conciliation and mediation facility that can be used to address a broad range of business ethics issues. The specific instances procedure has been used 72 times since its creation in June 2000.² Discussions have covered a broad array of business situations including labour management practices in an export processing zone in Guatemala, forced labour in Myanmar, the resettlement of local populations in the Zambian copper belt and managing the risks of employing child labour in supply chains in the Indian sporting goods industry. Thus, the Guidelines provide a unique channel for communications among governments, business, trade unions and civil society and for promoting appropriate standards of business conduct.

1. The 9 non-member adherents are: Argentina, Brazil, Chile, Estonia, Israel, Latvia, Lithuania, Romania and Slovenia.
2. See “Summary Report of the Chair of the Meeting on the Activities of the National Contact Points” in the 2005 *Annual Report on the OECD Guidelines for Multinational Enterprises*. Forthcoming. This report can be accessed at: www.oecd.org/dataoecd/20/13/35387363.pdf.

Rules and guidance for reporting by companies are already well developed in most countries (see also Question 6.5), although the framework for non-financial reporting, particularly in relation to voluntary initiatives, is still evolving. Governments can enhance the quality of the investment environment by ensuring that an adequate framework is in place, whether through legislation or self-regulation, to support clear communication of all relevant rules and guidance for both financial and non-financial disclosure. When disclosures are mandatory, governments need to ensure that the application and

enforcement of these requirements is non-discriminatory. At the same time, governments should seek to avoid unnecessary regulatory burdens and to allow innovation and adaptation to particular company circumstances to take place.

7.5. Enlisting business as a partner in the legal and regulatory system

How can the government support companies' efforts to comply with the law?

Effective and transparent enforcement of the law motivates compliance in a particularly straightforward way – by creating costs for non-compliance (e.g. the costs of investigations, legal costs, fines, imprisonment and damage to reputation) and by having a “deterrent” effect. Complying with law is a challenge and requires the knowledge of specific business circumstances and deployment of managerial expertise and of formal management systems.

Governments can facilitate and motivate companies' efforts by seeking out companies' views on laws and enforcement practices. They can also provide conciliation and ombudsman facilities so that investors and others have the right to complain about government decisions that they believe are unjust. In addition, governments can acknowledge and support private initiatives to enhance compliance by providing guidance on appropriate compliance management practices.

7.5.1. Investing in management capabilities

Complying with law can be a formidable management challenge, especially for companies that have thousands of employees and products and that straddle numerous legal jurisdictions and business cultures. Compliance in such companies requires the knowledge of specific business circumstances and deployment of significant managerial expertise and of formal management systems.

OECD research suggests that OECD and non-OECD businesses have invested heavily in developing management know-how and systems that make such compliance possible in complex, international business settings.⁸ These systems generally involve developing formal expressions of company policy (e.g. codes of conduct), related management systems (involving, for example, information flow, financial incentives, hierarchical controls, hiring and firing practices, internal audit, external monitoring and whistle-blowing facilities) and associated disclosure of management practices and company performance.

Investments in these management capabilities have been a major trend in international business.⁹ An OECD study¹⁰ shows variable, but often high rates of adoption of formal compliance practices and management systems by publicly-traded companies around the world, including those based in emerging markets. For example, rates of publication of anti-corruption codes by listed companies in emerging markets are around 70 per cent for the African (essentially South African) and Latin American samples of listed companies (Figure 7.1). Similarly, almost 70 per cent of the African listed companies have implemented anti-corruption management systems, a rate which is close to those seen in OECD business sectors (Figure 7.2). In contrast, adoption of such management practices in Central and Eastern Europe is comparatively low. Thus, the global picture is that adoption

Figure 7.1. Published codes on fighting corruption and promoting business integrity
Companies reporting as a percentage of national sample of companies

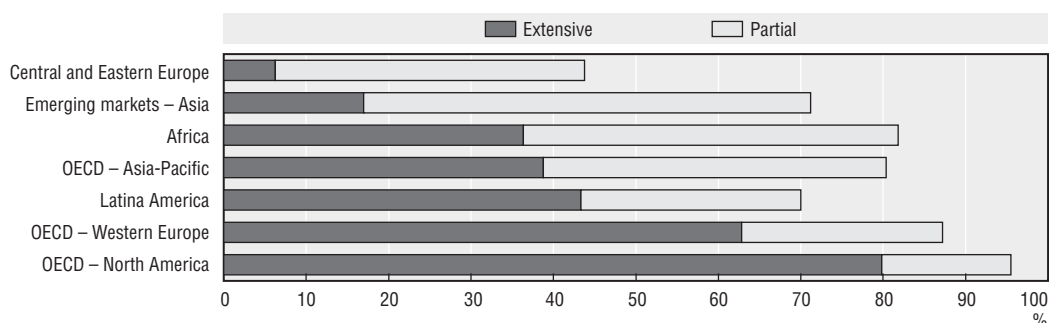
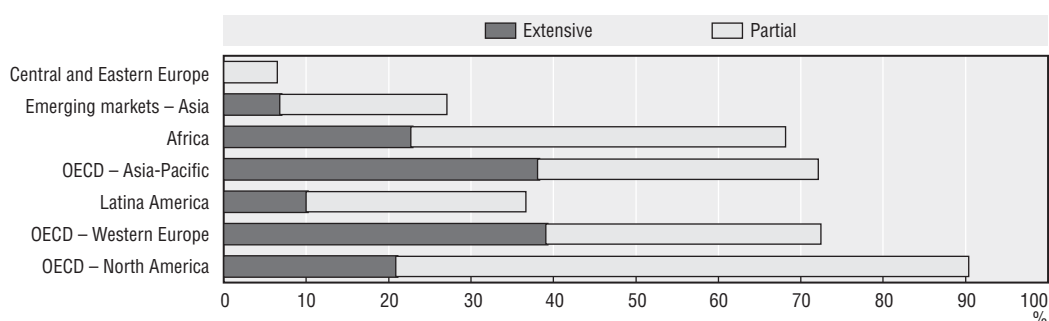


Figure 7.2. Extent of anti-corruption management systems
Companies reporting as a percentage of national sample of companies



Source: OECD (2005), “Corporate Responsibility Practices of Emerging Market Companies – A Fact Finding Study”, Annual Report on the OECD Guidelines for Multinational Enterprises, Paris, 2005.

of such practices is widespread in both the OECD and non-OED areas, but there are significant regional variations in practice. The rest of this section looks at the roles governments can play in encouraging innovation, learning and adoption of good management and compliance practices.

7.5.2. Acknowledging and supporting private initiatives

Only companies have the management expertise and the knowledge of their individual business circumstances and sectors that are needed to design and implement systems for complying with law and responding to other societal expectations. Thus, they control information and management resources that make them indispensable partners in successful regulatory systems. Business (often working through business associations and in multi-stakeholder settings) has undertaken many initiatives in an effort to play its role in this partnership more effectively. For example, Box 7.4 presents the International Association of Oil and Gas Producers’ Reputational Risk Management Tool. This helps companies to select employees and business partners that are less likely to engage in corrupt or other criminal activities. Other examples include the Wolfsberg Standards (dealing with the financial sector’s role in combating money laundering) and Responsible Care (for improving health and safety in the chemicals industry). These and other sectoral initiatives help individual companies to meet the compliance challenges facing their industries and, in that sense, they complement formal enforcement by public authorities.

Box 7.4. The OGP Guidelines on reputational due diligence

The International Association of Oil and Gas Producers' (OGP) Reputational Risk Management Guidelines recognise that companies are more vulnerable to violating anti-corruption laws when they do not have good knowledge of their employees and business partners. The OGP Guidelines aim to help companies to carry out appropriate and lawful research on associates, employees and business environments, especially when contemplating business relationships with previously unknown parties or when considering mergers, acquisitions or business in new markets where dependence on others is likely to be greater.

The purpose of conducting such research prior to entering into a business relationship is to develop a reasonable objective basis upon which the company can proceed in good faith that the employee or associate will not make improper payments to government officials or commit other illegal or unethical acts.

The OGP Guidelines outline good practices in such areas as initial risk assessment and screening; collection and verification of basic information; assessment and reports to management; proper documentation and records; integrity management of the business relationship to ensure the maintenance of longer term commitment to the required ethical policies and standards by the associate or employee. The Guidelines also note that, in certain circumstances, proof of having conducted appropriate due diligence research might be successfully used in a court of law.

Source: International Association of Oil and Gas Producers' Guidelines on Reputational Due Diligence. www.ogp.org.uk/pubs/356.pdf.

7.5.3. Promoting voluntary compliance – personal conviction and informal peer pressure¹¹

Binding law and associated deterrence are not the only determinants of individual and organisational compliance with law. Indeed, compliance is often high where the amount spent on deterrence is low. In fact, the determinants of decisions to engage in socially-acceptable or anti-social behaviour appear to be remarkably complex. People comply with law and other behavioural norms not only because they fear sanctions, but because they believe in them, because they value their affiliation with the group issuing the law or norm, and because they are under informal social pressure to do so.

Widespread acceptance by business and other actors is increasingly viewed as an essential element for effective regulation – one that lowers enforcement costs and increases compliance. Private initiatives can help build up such acceptance by developing and reinforcing personal belief in and commitment to accepted norms and by strengthening informal, social pressures for compliance (*e.g.* peer pressures within business or professional associations). Examples of how this is done include:

- Some governments (*e.g.* Austria, Finland, Netherlands and Sweden) seek to do this through national initiatives that endorse and publicise good corporate practices and that create a social dynamic in favour of responsible business conduct. Government support of private anti-corruption initiatives are another example.
- Governments can facilitate and motivate companies' compliance efforts by seeking out companies' views on laws and enforcement practices. Consultation of this type can enhance the quality of the design and enforcement of law and can facilitate and motivate companies' compliance efforts.

- Governments can provide conciliation and ombudsman facilities so that investors and others have the right to complain about government decisions that they believe are unjust. This recognition of investors' and others rights to seek redress against unjust acts by the government also can reinforce acceptance of and willingness to comply with law and regulation.

7.6. Strengthening the business case for responsible business conduct

How does the government through partnership (e.g. by participating in the development of standards that lower costs of adopting responsible business policies) and through promotion (e.g. by improving the information on responsible business practices to customers and the public) help to strengthen the business case for responsible business conduct?

The “business case” for responsible behaviour is often clear-cut. For example, environmentally friendly production processes can decrease costs. Likewise, careful control of labour practices in supply chains can boost productivity at production sites and protect brand capital in consumer markets (i.e. it can improve profitability and help the company to manage business risks). The existence of a business case depends very much on particular circumstances (for example, the desire to protect brand capital would not be relevant for companies positioned in non-branded market segments). To the extent that the business case exists, private initiatives are self-enforcing (that is, government intervention is not required to make them happen).

Governments can act to reinforce the business case by providing information about responsible practices (e.g. good performance in the environmental field; see Box 7.5) and by lowering the costs of developing and adopting responsible practices, such as through support for industry initiatives (e.g. the International Association of Oil and Gas Producers Guidelines on Reputational Due Diligence). They can also promote internationally accepted concepts and principles, such as those embodied in the *OECD Guidelines for Multinational Enterprises*. The numerous initiatives and experiences of governments aimed at developing closer partnerships with investors on issues relating to the promotion of responsible business conduct, including through their purchasing, contracting and other business relations with private companies, provide a rich source of policy guidance.

Box 7.5. Reinforcing the business case for environmental protection: The Green Business Award, Chinese Taipei

The Environmental Protection Administration (EPA) of Chinese Taipei has run an annual Green Business Award since 1992 to “commend industrial organisations that have made a contribution to the environmental protection in Taiwan”. The EPA exhibits practices from award-winning companies to create a demonstration effect for other companies. The EPA holds a high profile award ceremony and arranges for winning companies to meet with the President. The EPA believes that Chinese Taipei’s high ranking in the ISO 14 000 certification (fifth in the world with over 560 organisations certified) can be linked to the promotion effect of the Green Business Award.

Source: FOX, Tom, Halina Ward and Bruce Howard (2002) Public Sector Roles in Strengthening Corporate Social Responsibility: A Baseline Study. The World Bank Corporate Responsibility Practice, Washington DC.

7.7. Intergovernmental co-operation

Does the government participate in intergovernmental co-operation in order to promote international concepts and principles for responsible business conduct, such as the OECD Guidelines for Multinational Enterprises, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policies and the United Nations Global Compact?

Governments are co-operating with each other and with other actors to strengthen the international legal and policy framework in which business is conducted. The post-war period has seen the development of this framework, starting with the adoption in 1948 of the Universal Declaration of Human Rights. Multilateral instruments dealing with responsible business conduct, such as the OECD Guidelines for Multinational Enterprises and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policies, draw on this broader framework of international declarations and conventions. They communicate and promote concepts and principles for appropriate business conduct. Thirty-nine countries have committed to promoting responsible business conduct of their multinational enterprises – wherever they operate in the world – under the *OECD Guidelines for Multinational Enterprises*. While the Guidelines recommendations are addressed to business, governments – through their network of National Contact Points – have committed to promoting the Guidelines, handling enquiries and helping to resolve issues that arise in specific instances. Nine non-OECD members have adhered to the OECD Declaration on International Investment and Multinational Enterprises, which the Guidelines are a part of. The OECD encourages the adherence of other non-OECD members.

Global corporate responsibility instruments, such as the OECD Guidelines for Multinational Enterprises, communicate and promote a dynamic international framework of concepts and principles for appropriate business conduct. Intergovernmental cooperation in this field can make several contributions:

- *Broadening awareness and increasing the perceived legitimacy of concepts.* By promoting intergovernmental co-operation in this field, governments can help to broaden awareness of basic principles for appropriate conduct. As pointed out above, respect of basic principles for appropriate conduct is enhanced if these principles are widely known and accepted as legitimate. Governments can provide especially authoritative backing and support for such concepts and principles. Increased global acceptance of common principles for business conduct also helps to reduce the likelihood that responsible business conduct could become a competitive disadvantage for investors.
- *Exploring regional perspectives on global principles.* Regional intergovernmental processes allow countries to explore the meaning of international concepts and principles in the regional context (e.g. in light of institutional, political and cultural characteristics). For example, while the four regional human rights initiatives draw on the main international human rights instruments, they also exhibit distinctive features that reflect special regional interests or concerns. The Organisation of American States (OAS) Declaration deals with duties as well as rights of individuals. The African Union Charter

covers the rights of “peoples” (that is, not just individual rights). The Arab Charter on Human Rights explicitly invokes a religious basis for human rights principles.¹²

- *Developing the international framework.* The framework of public and private instruments for corporate responsibility is in constant evolution. International and regional anti-corruption instruments have seen particularly remarkable development. Starting with the OAS’ Inter-American Convention against Corruption (1996), initiatives have been developed by the OECD, the United Nations, the Council of Europe, the Southern African Development Community and the African Union Convention.

Notes

1. First paragraph of the *Preface* of the *OECD Guidelines for Multinational Enterprises*.
2. In some cases, usually referred to as “weak governance zones”, governments are unable or unwilling to assume their responsibilities. In these situations, the guidance provided in international instruments such as the *OECD Guidelines for Multinational Enterprises* are particularly valuable for companies.
3. See the “Summary of Roundtable Discussions” for a discussion of the need for business, trade unions, NGOs and governments to make further investments in clarifying the meaning of anti-corruption laws. Facilitation payments, political contributions, use of agents and other business partners and subsidiaries were cited as priority areas for further work. The “Summary” is published in the *2003 Annual Report on the OECD Guidelines for Multinational Enterprises*. OECD 2003. Pages 120-121.
4. The OECD Investment Committee is developing a Risk Management Tool for Investors in Weak Governance Zones (these are defined as countries where governments are unwilling or unable to assume their responsibilities). This tool, which is addressed to business, is complementary to the *Policy Framework for Investment*, which is addressed to governments.
5. Protecting the rights of whistleblowers is deemed to be particularly important in the corporate responsibility field. Recommendation II.9 of the *OECD Guidelines* asks companies to “refrain from discriminatory or disciplinary action against employees who make *bona fide* reports to management or, as appropriate, to the competent public authorities on practices that contravene the law, the Guidelines or the enterprise’s policies”.
6. The *OECD Guidelines for Multinational Enterprises* and related Commentary cite 20 external instruments as important influences on the Guidelines’ recommendations. For a more detailed review of the normative sources of the Guidelines, see “Multilateral Influences on the OECD Guidelines”. *2005 Annual Report on the OECD Guidelines*. Forthcoming. or www.oecd.org/dataoecd/29/40/35666447.pdf.
7. For more information on the UN Global Compact, see www.globalcompact.org.
8. See Chapters 1-4 and 6 of *Corporate Responsibility: Private Initiatives and Public Goals*. Paris (2001). See also the background documentations prepared for the 2002 Roundtable (on responsible supply chain management), the 2003 Roundtable (on the business role in combating corruption), the 2004 Roundtable (on responsible environmental management) and the 2005 Roundtable (on corporate responsibility and developing countries). These background documents can be found at: www.oecd.org/daf/investment/guidelines.
9. Business associations, trade unions, NGOs and international organisations have sought to help individual companies develop these systems by issuing management system standards (e.g. the ISO 14000 management systems series and the International Chamber of Commerce and Transparency International’s work on anti-corruption management systems). These standards help to lower companies’ development and implementation costs.
10. The OECD study “Corporate Responsibility Practices of Emerging Market Companies – A Fact-Finding Study” is based on a sample of 127 publicly-listed companies in 21 emerging markets. Where possible the findings are compared to existing data on 1 740 listed companies in a range of high-income OECD countries. The 127 companies analysed comprised 22 per cent of the emerging market companies on FTSE’s All-World index. The companies were selected so that sample would consist of the largest companies on their respective stock exchanges and so that the emerging market sample would have wide geographical coverage. www.oecd.org/dataoecd/29/38/35666512.pdf.

11. The basis for this section can be found in Chapter 1 of *Corporate Responsibility: Private Initiatives and Public Goals* (OECD 2001). Chapter 1 discusses social capital, “voluntary compliance” and the importance of consensus.
12. See “Multilateral Influences on the OECD Guidelines for Multinational Enterprises” in the 2005 *Annual Report on the OECD Guidelines for Multinational Enterprises*. OECD (2005a). This paper can also be accessed at: www.oecd.org/dataoecd/29/40/35666447.pdf.

References and Further Policy Resources

- ILO (2000), *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policies: Revised 2000*, Geneva.
- OECD (2000), *Guidelines for Multinational Enterprises: Revision*, Paris.
- OECD (2001), *Corporate Responsibility: Private Initiatives, Public Goals*, Paris.
- OECD (2005), *Environment and the OECD Guidelines for Multinational Enterprises*, Paris.
- OECD (forthcoming), *Risk Management Tool for Investors in Weak Governance Zones*, Paris.
- OECD, *Annual Report on the Guidelines for Multinational Enterprises* (various years), Paris.
- OECD, *Declaration on International Investment and Multinational Enterprises*, Paris.

ANNEX 7.A1

*Extracts from the Report to OECD Ministers
by the Investment Committee on “Private Initiatives
for Corporate Responsibility” [C/MIN(2001)4]*

Paragraph 3:

The key findings are as follows:

- *Global phenomenon.* Voluntary initiatives are a global phenomenon, but there are significant intra-regional variations in practice.
- *Strong motivations exist that reinforce these initiatives’ credibility.* Although the initiatives are often referred to as “voluntary”, some firms have strong motivations to comply. These stem from legal and regulatory arrangements, employees’ expectations, the need to protect brand or reputation capital and the interest of civil society. For some firms, however, such motivations can be weak (for example, for those with low public visibility).
- *Divergences of commitment and management practices.* There appear to be wide divergences in the content of codes of conduct even in relatively narrowly defined issue areas (e.g. labour standards in branded apparel, environmental and human rights commitments in extractive industries, the fight against bribery, science and technology transfer). This is not necessarily a problem, since there can be no “one-size-fits-all” approach to corporate responsibility due to the varying business contexts facing individual companies. On the other hand, these divergences may point to a need for continued public debate on what exactly constitutes appropriate behaviour for the different ethical challenges that confront international business. Similarly, management practices vary significantly. Some firms have adopted advanced practices while others have yet to translate their codes into management controls. The Guidelines have an important role to play in helping to build international consensus and to spread knowledge about advanced management practices in support of corporate responsibility.
- *Steps toward global norms for business conduct.* Private initiatives for corporate responsibility have provided an international channel through which various actors – businesses, business associations, public authorities, trade unions, intergovernmental organisations and NGOs – can debate various standards of business conduct and management practice. The amount of dialogue and mutual influence among these actors has been significant and it is important that this continues. This dialogue can be facilitated when companies choose to make their corporate responsibility practices

public. The Guidelines institutions provide an important forum for discussion of norms for business conduct.

- *Accumulation of managerial expertise in ethical and legal compliance.* Voluntary initiatives in corporate responsibility have promoted the accumulation of the management expertise needed to translate law, regulation and less formal societal expectations into the day-to-day operations of companies. The institutional supports for this expertise – management standards, professional societies, specialised consulting and auditing services – help lower the costs of legal and ethical compliance as well as making it more effective. Non-financial auditing and reporting standards are a more recent phenomenon and, while advances are being made, they are still relatively weak.
- *The costs of voluntary initiatives for corporate responsibility.* Little information on the costs of these initiatives in specific business settings is available. It is expected that, as experience with the initiatives grows, businesses will add to their knowledge of both costs and benefits. Uncertainty also gives rise to the possibility that well-intended initiatives might have adverse, unforeseen effects. The risk of unintended consequences underscores the need to proceed carefully and with adequate knowledge of local circumstances.
- *The benefits for individual companies and for society.* The potential benefits of these initiatives are numerous. For companies, they include improved legal compliance, management of litigation risks, brand and reputation enhancement and smoother relations with shareholders and with society. Some initiatives have also deflected calls for formal regulation. Finally, companies use the initiatives to improve employee morale and to promote a “culture of integrity” within the firm. For societies, the benefits include better compliance with law and regulation and an enhanced contribution by the business sector to economic, social and environmental welfare.
- *The effectiveness of voluntary initiatives.* To promote compliance with law and appropriate responses to other societal expectations, companies often need to communicate effectively with thousands of employees and to use diverse compliance tools, effectively deployed in a coherent management system. Private initiatives are the expression of managerial expertise that allows companies to blend profitability objectives with other legal and ethical considerations into coherent business activity and response. Non-financial auditing and reporting systems are now emerging to make companies’ efforts in this area more effective and more credible. However, the business sector is not the only actor to play a crucial role in promoting the success of these initiatives. If private initiatives are successful, this attests not only to the competence of the business community, but also to the abilities of societies to formulate and communicate reasonable expectations for appropriate business conduct. Thus, the effectiveness of these initiatives is closely linked to the effectiveness of the broader systems of private and public governance from which they emerge – private initiatives cannot work well if other parts of the system work poorly.

ANNEX 7.A2

Declaration on International Investment and Multinational Enterprises

27 June 2000

ADHERING GOVERNMENTS¹

CONSIDERING:

- That international investment is of major importance to the world economy, and has considerably contributed to the development of their countries;
- That multinational enterprises play an important role in this investment process;
- That international co-operation can improve the foreign investment climate, encourage the positive contribution which multinational enterprises can make to economic, social and environmental progress, and minimise and resolve difficulties which may arise from their operations;
- That the benefits of international co-operation are enhanced by addressing issues relating to international investment and multinational enterprises through a balanced framework of inter-related instruments;

DECLARE:

- | | |
|--|---|
| Guidelines for Multinational Enterprises | I. That they jointly recommend to multinational enterprises operating in or from their territories the observance of the Guidelines, set forth in Annex 1 hereto, ² having regard to the considerations and understandings that are set out in the Preface and are an integral part of them |
| National Treatment | II.1. That adhering governments should, consistent with their needs to maintain public order, to protect their essential security interests and to fulfil commitments relating to international peace and security, accord to enterprises operating in their territories and owned or controlled directly or indirectly by nationals of another adhering government (hereinafter referred to as “Foreign-Controlled Enterprises”) treatment under their laws, regulations and administrative practices, consistent with international law and no less favourable than that accorded in like situations to domestic enterprises (hereinafter referred to as “National Treatment”); |

	2. That adhering governments will consider applying “National Treatment” in respect of countries other than adhering governments;
	3. That adhering governments will endeavour to ensure that their territorial subdivisions apply “National Treatment”;
	4. That this Declaration does not deal with the right of adhering governments to regulate the entry of foreign investment or the conditions of establishment of foreign enterprises;
Conflicting Requirements	III. That they will co-operate with a view to avoiding or minimising the imposition of conflicting requirements on multinational enterprises and that they will take into account the general considerations and practical approaches as set forth in Annex 2 hereto. ³
International Investment Incentives and Disincentives	IV.1 That they recognise the need to strengthen their co-operation in the field of international direct investment;
	2 That they thus recognise the need to give due weight to the interests of adhering governments affected by specific laws, regulations and administrative practices in this field (hereinafter called “measures”) providing official incentives and disincentives to international direct investment;
	3. That adhering governments will endeavour to make such measures as transparent as possible, so that their importance and purpose can be ascertained and that information on them can be readily available;
Consultation Procedures	V. That they are prepared to consult one another on the above matters in conformity with the relevant Decisions of the Council;
Review	VI That they will review the above matters periodically with a view to improving the effectiveness of international economic co-operation among adhering governments on issues relating to international investment and multinational enterprises

Notes

1. As at 27 June 2000 adhering governments are those of all OECD members, as well as Argentina, Brazil, Chile and the Slovak Republic. The European Community has been invited to associate itself with the section on National Treatment on matters falling within its competence.
2. The text of the Guidelines for Multinational Enterprises is reproduced in Appendix II of this publication.
3. The text of General Considerations and Practical Approaches concerning Conflicting Requirements Imposed on Multinational Enterprises is available from the OECD Web site www.oecd.org/daf/investment/.

ANNEX 7.A3

The OECD Guidelines for Multinational Enterprises: Text and Implementation Procedures

Text

Preface

1. The *OECD Guidelines for Multinational Enterprises* (the *Guidelines*) are recommendations addressed by governments to multinational enterprises. They provide voluntary principles and standards for responsible business conduct consistent with applicable laws. The *Guidelines* aim to ensure that the operations of these enterprises are in harmony with government policies, to strengthen the basis of mutual confidence between enterprises and the societies in which they operate, to help improve the foreign investment climate and to enhance the contribution to sustainable development made by multinational enterprises. The *Guidelines* are part of the *OECD Declaration on International Investment and Multinational Enterprises* the other elements of which relate to national treatment, conflicting requirements on enterprises, and international investment incentives and disincentives.

2. International business has experienced far-reaching structural change and the *Guidelines* themselves have evolved to reflect these changes. With the rise of service and knowledge-intensive industries, service and technology enterprises have entered the international marketplace. Large enterprises still account for a major share of international investment, and there is a trend toward large-scale international mergers. At the same time, foreign investment by small and medium-sized enterprises has also increased and these enterprises now play a significant role on the international scene. Multinational enterprises, like their domestic counterparts, have evolved to encompass a broader range of business arrangements and organisational forms. Strategic alliances and closer relations with suppliers and contractors tend to blur the boundaries of the enterprise.

3. The rapid evolution in the structure of multinational enterprises is also reflected in their operations in the developing world, where foreign direct investment has grown rapidly. In developing countries, multinational enterprises have diversified beyond primary production and extractive industries into manufacturing, assembly, domestic market development and services.

4. The activities of multinational enterprises, through international trade and investment, have strengthened and deepened the ties that join OECD economies to each

other and to the rest of the world. These activities bring substantial benefits to home and host countries. These benefits accrue when multinational enterprises supply the products and services that consumers want to buy at competitive prices and when they provide fair returns to suppliers of capital. Their trade and investment activities contribute to the efficient use of capital, technology and human and natural resources. They facilitate the transfer of technology among the regions of the world and the development of technologies that reflect local conditions. Through both formal training and on-the-job learning enterprises also promote the development of human capital in host countries.

5. The nature, scope and speed of economic changes have presented new strategic challenges for enterprises and their stakeholders. Multinational enterprises have the opportunity to implement best practice policies for sustainable development that seek to ensure coherence between social, economic and environmental objectives. The ability of multinational enterprises to promote sustainable development is greatly enhanced when trade and investment are conducted in a context of open, competitive and appropriately regulated markets.

6. Many multinational enterprises have demonstrated that respect for high standards of business conduct can enhance growth. Today's competitive forces are intense and multinational enterprises face a variety of legal, social and regulatory settings. In this context, some enterprises may be tempted to neglect appropriate standards and principles of conduct in an attempt to gain undue competitive advantage. Such practices by the few may call into question the reputation of the many and may give rise to public concerns.

7. Many enterprises have responded to these public concerns by developing internal programmes, guidance and management systems that underpin their commitment to good corporate citizenship, good practices and good business and employee conduct. Some of them have called upon consulting, auditing and certification services, contributing to the accumulation of expertise in these areas. These efforts have also promoted social dialogue on what constitutes good business conduct. The *Guidelines* clarify the shared expectations for business conduct of the governments adhering to them and provide a point of reference for enterprises. Thus, the *Guidelines* both complement and reinforce private efforts to define and implement responsible business conduct.

8. Governments are co-operating with each other and with other actors to strengthen the international legal and policy framework in which business is conducted. The post-war period has seen the development of this framework, starting with the adoption in 1948 of the Universal Declaration of Human Rights. Recent instruments include the ILO Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development and Agenda 21 and the Copenhagen Declaration for Social Development.

9. The OECD has also been contributing to the international policy framework. Recent developments include the adoption of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and of the OECD Principles of Corporate Governance, the OECD Guidelines for Consumer Protection in the Context of Electronic Commerce, and ongoing work on the OECD Guidelines on Transfer Pricing for Multinational Enterprises and Tax Administrations.

10. The common aim of the governments adhering to the *Guidelines* is to encourage the positive contributions that multinational enterprises can make to economic, environmental and social progress and to minimise the difficulties to which their various operations may

give rise. In working towards this goal, governments find themselves in partnership with the many businesses, trade unions and other non-governmental organisations that are working in their own ways toward the same end. Governments can help by providing effective domestic policy frameworks that include stable macroeconomic policy, non-discriminatory treatment of firms, appropriate regulation and prudential supervision, an impartial system of courts and law enforcement and efficient and honest public administration. Governments can also help by maintaining and promoting appropriate standards and policies in support of sustainable development and by engaging in ongoing reforms to ensure that public sector activity is efficient and effective. Governments adhering to the *Guidelines* are committed to continual improvement of both domestic and international policies with a view to improving the welfare and living standards of all people.

I. Concepts and principles

1. The *Guidelines* are recommendations jointly addressed by governments to multinational enterprises. They provide principles and standards of good practice consistent with applicable laws. Observance of the *Guidelines* by enterprises is voluntary and not legally enforceable.

2. Since the operations of multinational enterprises extend throughout the world, international co-operation in this field should extend to all countries. Governments adhering to the *Guidelines* encourage the enterprises operating on their territories to observe the *Guidelines* wherever they operate, while taking into account the particular circumstances of each host country.

3. A precise definition of multinational enterprises is not required for the purposes of the *Guidelines*. These usually comprise companies or other entities established in more than one country and so linked that they may co-ordinate their operations in various ways. While one or more of these entities may be able to exercise a significant influence over the activities of others, their degree of autonomy within the enterprise may vary widely from one multinational enterprise to another. Ownership may be private, state or mixed. The *Guidelines* are addressed to all the entities within the multinational enterprise (parent companies and/or local entities). According to the actual distribution of responsibilities among them, the different entities are expected to co-operate and to assist one another to facilitate observance of the *Guidelines*.

4. The *Guidelines* are not aimed at introducing differences of treatment between multinational and domestic enterprises; they reflect good practice for all. Accordingly, multinational and domestic enterprises are subject to the same expectations in respect of their conduct wherever the *Guidelines* are relevant to both.

5. Governments wish to encourage the widest possible observance of the *Guidelines*. While it is acknowledged that small- and medium-sized enterprises may not have the same capacities as larger enterprises, governments adhering to the *Guidelines* nevertheless encourage them to observe the *Guidelines* recommendations to the fullest extent possible.

6. Governments adhering to the *Guidelines* should not use them for protectionist purposes nor use them in a way that calls into question the comparative advantage of any country where multinational enterprises invest.

7. Governments have the right to prescribe the conditions under which multinational enterprises operate within their jurisdictions, subject to international law. The entities of a

multinational enterprise located in various countries are subject to the laws applicable in these countries. When multinational enterprises are subject to conflicting requirements by adhering countries, the governments concerned will co-operate in good faith with a view to resolving problems that may arise.

8. Governments adhering to the *Guidelines* set them forth with the understanding that they will fulfil their responsibilities to treat enterprises equitably and in accordance with international law and with their contractual obligations.

9. The use of appropriate international dispute settlement mechanisms, including arbitration, is encouraged as a means of facilitating the resolution of legal problems arising between enterprises and host country governments.

10. Governments adhering to the *Guidelines* will promote them and encourage their use. They will establish National Contact Points that promote the *Guidelines* and act as a forum for discussion of all matters relating to the *Guidelines*. The adhering Governments will also participate in appropriate review and consultation procedures to address issues concerning interpretation of the *Guidelines* in a changing world.

II. General policies

Enterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders. In this regard, enterprises should:

1. Contribute to economic, social and environmental progress with a view to achieving sustainable development.
2. Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.
3. Encourage local capacity building through close co-operation with the local community, including business interests, as well as developing the enterprise's activities in domestic and foreign markets, consistent with the need for sound commercial practice.
4. Encourage human capital formation, in particular by creating employment opportunities and facilitating training opportunities for employees.
5. Refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation, financial incentives, or other issues.
6. Support and uphold good corporate governance principles and develop and apply good corporate governance practices.
7. Develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate.
8. Promote employee awareness of, and compliance with, company policies through appropriate dissemination of these policies, including through training programmes.
9. Refrain from discriminatory or disciplinary action against employees who make *bona fide* reports to management or, as appropriate, to the competent public authorities, on practices that contravene the law, the *Guidelines* or the enterprise's policies.

10. Encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the *Guidelines*.
11. Abstain from any improper involvement in local political activities.

III. Disclosure

1. Enterprises should ensure that timely, regular, reliable and relevant information is disclosed regarding their activities, structure, financial situation and performance. This information should be disclosed for the enterprise as a whole and, where appropriate, along business lines or geographic areas. Disclosure policies of enterprises should be tailored to the nature, size and location of the enterprise, with due regard taken of costs, business confidentiality and other competitive concerns.
2. Enterprises should apply high quality standards for disclosure, accounting, and audit. Enterprises are also encouraged to apply high quality standards for non-financial information including environmental and social reporting where they exist. The standards or policies under which both financial and non-financial information are compiled and published should be reported.
3. Enterprises should disclose basic information showing their name, location, and structure, the name, address and telephone number of the parent enterprise and its main affiliates, its percentage ownership, direct and indirect in these affiliates, including shareholdings between them.
4. Enterprises should also disclose material information on:
 1. the financial and operating results of the company;
 2. company objectives;
 3. major share ownership and voting rights;
 4. members of the board and key executives, and their remuneration;
 5. material foreseeable risk factors;
 6. material issues regarding employees and other stakeholders;
 7. governance structures and policies.
5. Enterprises are encouraged to communicate additional information that could include:
 - a) Value statements or statements of business conduct intended for public disclosure including information on the social, ethical and environmental policies of the enterprise and other codes of conduct to which the company subscribes. In addition, the date of adoption, the countries and entities to which such statements apply and its performance in relation to these statements may be communicated.
 - b) Information on systems for managing risks and complying with laws, and on statements or codes of business conduct.
 - c) Information on relationships with employees and other stakeholders.

IV. Employment and industrial relations

Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices:

1.
 - a) Respect the right of their employees to be represented by trade unions and other *bona fide* representatives of employees, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on employment conditions.
 - b) Contribute to the effective abolition of child labour.
 - c) Contribute to the elimination of all forms of forced or compulsory labour.
 - d) Not discriminate against their employees with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, unless selectivity concerning employee characteristics furthers established governmental policies which specifically promote greater equality of employment opportunity or relates to the inherent requirements of a job.
2.
 - a) Provide facilities to employee representatives as may be necessary to assist in the development of effective collective agreements.
 - b) Provide information to employee representatives which is needed for meaningful negotiations on conditions of employment.
 - c) Promote consultation and co-operation between employers and employees and their representatives on matters of mutual concern.
3. Provide information to employees and their representatives which enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole.
4.
 - a) Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country.
 - b) Take adequate steps to ensure occupational health and safety in their operations.
5. In their operations, to the greatest extent practicable, employ local personnel and provide training with a view to improving skill levels, in co-operation with employee representatives and, where appropriate, relevant governmental authorities.
6. In considering changes in their operations which would have major effects upon the livelihood of their employees, 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 their employees, and, where appropriate, to the relevant governmental authorities, and co-operate with the employee 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.
7. In the context of *bona fide* negotiations with representatives of employees on conditions of employment, or while employees are exercising a right to organise, not threaten to transfer the whole or part of an operating unit from the country concerned nor transfer employees from the enterprises' component entities in other countries in

order to influence unfairly those negotiations or to hinder the exercise of a right to organise.

8. Enable authorised representatives of their employees to negotiate on collective bargaining or labour-management relations issues and allow the parties to consult on matters of mutual concern with representatives of management who are authorised to take decisions on these matters.

V. Environment

Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development. In particular, enterprises should:

1. Establish and maintain a system of environmental management appropriate to the enterprise, including:
 - a) collection and evaluation of adequate and timely information regarding the environmental, health, and safety impacts of their activities;
 - b) establishment of measurable objectives and, where appropriate, targets for improved environmental performance, including periodically reviewing the continuing relevance of these objectives; and
 - c) regular monitoring and verification of progress toward environmental, health, and safety objectives or targets.
2. Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights:
 - a) provide the public and employees with adequate and timely information on the potential environmental, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance; and
 - b) engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.
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. 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.
4. Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage.
5. Maintain contingency plans for preventing, mitigating, and controlling serious environmental and health damage from their operations, including accidents and emergencies; and mechanisms for immediate reporting to the competent authorities.

6. Continually seek to improve corporate environmental performance, by encouraging, where appropriate, such activities as:
 - a) adoption of technologies and operating procedures in all parts of the enterprise that reflect standards concerning environmental performance in the best performing part of the enterprise;
 - b) development and provision of products or services that have no undue environmental impacts; are safe in their intended use; are efficient in their consumption of energy and natural resources; can be reused, recycled, or disposed of safely;
 - c) promoting higher levels of awareness among customers of the environmental implications of using the products and services of the enterprise; and
 - d) research on ways of improving the environmental performance of the enterprise over the longer term.
7. Provide adequate education and training to employees in environmental health and safety matters, including the handling of hazardous materials and the prevention of environmental accidents, as well as more general environmental management areas, such as environmental impact assessment procedures, public relations, and environmental technologies.
8. Contribute to the development of environmentally meaningful and economically efficient public policy, for example, by means of partnerships or initiatives that will enhance environmental awareness and protection.

VI. Combating bribery

Enterprises should not, directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper advantage. Nor should enterprises be solicited or expected to render a bribe or other undue advantage. In particular, enterprises should:

1. Not offer, nor give in to demands, to pay public officials or the employees of business partners any portion of a contract payment. They should not use subcontracts, purchase orders or consulting agreements as means of channelling payments to public officials, to employees of business partners or to their relatives or business associates.
2. Ensure that remuneration of agents is appropriate and for legitimate services only. Where relevant, a list of agents employed in connection with transactions with public bodies and state-owned enterprises should be kept and made available to competent authorities.
3. Enhance the transparency of their activities in the fight against bribery and extortion. Measures could include making public commitments against bribery and extortion and disclosing the management systems the company has adopted in order to honour these commitments. The enterprise should also foster openness and dialogue with the public so as to promote its awareness of and co-operation with the fight against bribery and extortion.
4. Promote employee awareness of and compliance with company policies against bribery and extortion through appropriate dissemination of these policies and through training programmes and disciplinary procedures.

5. Adopt management control systems that discourage bribery and corrupt practices, and adopt financial and tax accounting and auditing practices that prevent the establishment of “off the books” or secret accounts or the creation of documents which do not properly and fairly record the transactions to which they relate.
6. Not make illegal contributions to candidates for public office or to political parties or to other political organisations. Contributions should fully comply with public disclosure requirements and should be reported to senior management.

VII. Consumer interests

When dealing with consumers, enterprises should act in accordance with fair business, marketing and advertising practices and should take all reasonable steps to ensure the safety and quality of the goods or services they provide. In particular, they should:

1. Ensure that the goods or services they provide meet all agreed or legally required standards for consumer health and safety, including health warnings and product safety and information labels.
2. As appropriate to the goods or services, provide accurate and clear information regarding their content, safe use, maintenance, storage, and disposal sufficient to enable consumers to make informed decisions.
3. Provide transparent and effective procedures that address consumer complaints and contribute to fair and timely resolution of consumer disputes without undue cost or burden.
4. Not make representations or omissions, nor engage in any other practices, that are deceptive, misleading, fraudulent, or unfair.
5. Respect consumer privacy and provide protection for personal data.
6. Co-operate fully and in a transparent manner with public authorities in the prevention or removal of serious threats to public health and safety deriving from the consumption or use of their products.

VIII. Science and technology

Enterprises should:

1. Endeavour to ensure that their activities are compatible with the science and technology (S&T) policies and plans of the countries in which they operate and as appropriate contribute to the development of local and national innovative capacity.
2. Adopt, where practicable in the course of their business activities, practices that permit the transfer and rapid diffusion of technologies and know-how, with due regard to the protection of intellectual property rights.
3. When appropriate, perform science and technology development work in host countries to address local market needs, as well as employ host country personnel in an S&T capacity and encourage their training, taking into account commercial needs.
4. When granting licenses for the use of intellectual property rights or when otherwise transferring technology, do so on reasonable terms and conditions and in a manner that contributes to the long term development prospects of the host country.

5. Where relevant to commercial objectives, develop ties with local universities, public research institutions, and participate in co-operative research projects with local industry or industry associations.

IX. Competition

Enterprises should, within the framework of applicable laws and regulations, conduct their activities in a competitive manner. In particular, enterprises should:

1. Refrain from entering into or carrying out anti-competitive agreements among competitors:
 - a) to fix prices;
 - b) to make rigged bids (collusive tenders);
 - c) to establish output restrictions or quotas; or
 - d) to share or divide markets by allocating customers, suppliers, territories or lines of commerce.
2. Conduct all of their activities in a manner consistent with all applicable competition laws, taking into account the applicability of the competition laws of jurisdictions whose economies would be likely to be harmed by anti-competitive activity on their part.
3. Co-operate with the competition authorities of such jurisdictions by, among other things and subject to applicable law and appropriate safeguards, providing as prompt and complete responses as practicable to requests for information.
4. Promote employee awareness of the importance of compliance with all applicable competition laws and policies.

X. Taxation

It is important that enterprises contribute to the public finances of host countries by making timely payment of their tax liabilities. In particular, enterprises should comply with the tax laws and regulations in all countries in which they operate and should exert every effort to act in accordance with both the letter and spirit of those laws and regulations. This would include such measures as providing to the relevant authorities the information necessary for the correct determination of taxes to be assessed in connection with their operations and conforming transfer pricing practices to the arm's length principle.

Implementation Procedures

Decision of the OECD Council on the OECD Guidelines for Multinational Enterprises

June 2000

THE COUNCIL,

Having regard to the Convention on the Organisation for Economic Co-operation and Development of 14th December 1960;

Having regard to the OECD Declaration on International Investment and Multinational Enterprises (the "Declaration"), in which the Governments of adhering countries ("adhering countries") jointly recommend to multinational enterprises operating in or from their territories the observance of Guidelines for Multinational Enterprises (the "Guidelines");

Recognising that, since operations of multinational enterprises extend throughout the world, international co-operation on issues relating to the Declaration should extend to all countries;

Having regard to the Terms of Reference of the Investment Committee, in particular with respect to its responsibilities for the Declaration [C(84)171(Final), renewed in C/M(95)21];

Considering the Report on the First Review of the 1976 Declaration [C(79)102(Final)], the Report on the Second Review of the Declaration [C/MIN(84)5(Final)], the Report on the 1991 Review of the Declaration [DAFFE/IME(91)23], and the Report on the 2000 Review of the Guidelines [C(2000)96];

Having regard to the Second Revised Decision of the Council of June 1984 [C(84)90], amended June 1991 [C/MIN(91)7/ANN1];

Considering it desirable to enhance procedures by which consultations may take place on matters covered by these Guidelines and to promote the effectiveness of the Guidelines;

On the proposal of the Investment Committee:

DECIDES:

To repeal the Second Revised Decision of the Council of June 1984 [C(84)90], amended June 1991 [C/MIN(91)7/ANN1], and replace it with the following:

I. National Contact Points

1. Adhering countries shall set up National Contact Points for undertaking promotional activities, handling inquiries and for discussions with the parties concerned on all matters covered by the Guidelines so that they can contribute to the solution of problems which may arise in this connection, taking due account of the attached procedural guidance. The business community, employee organisations, and other interested parties shall be informed of the availability of such facilities.

2. National Contact Points in different countries shall co-operate if such need arises, on any matter related to the Guidelines relevant to their activities. As a general procedure, discussions at the national level should be initiated before contacts with other National Contact Points are undertaken.
3. National Contact Points shall meet annually to share experiences and report to the Investment Committee.

II. The Investment Committee

1. The Investment Committee (“the Committee”) shall periodically or at the request of an adhering country hold exchanges of views on matters covered by the Guidelines and the experience gained in their application.
2. The Committee shall periodically invite the Business and Industry Advisory Committee to the OECD (BIAC), and the Trade Union Advisory Committee to the OECD (TUAC) (the “advisory bodies”), as well as other non-governmental organisations to express their views on matters covered by the Guidelines. In addition, exchanges of views with the advisory bodies on these matters may be held at their request.
3. The Committee may decide to hold exchanges of views on matters covered by the Guidelines with representatives of non-adhering countries.
4. The Committee shall be responsible for clarification of the Guidelines. Clarification will be provided as required. If it so wishes, an individual enterprise will be given the opportunity to express its views either orally or in writing on issues concerning the Guidelines involving its interests. The Committee shall not reach conclusions on the conduct of individual enterprises.
5. The Committee shall hold exchanges of views on the activities of National Contact Points with a view to enhancing the effectiveness of the Guidelines.
6. In fulfilling its responsibilities for the effective functioning of the Guidelines, the Committee shall take due account of the attached procedural guidance.
7. The Committee shall periodically report to the Council on matters covered by the Guidelines. In its reports, the Committee shall take account of reports by National Contact Points, the views expressed by the advisory bodies, and the views of other non-governmental organisations and non-adhering countries as appropriate.

III. Review of the Decision

This Decision shall be periodically reviewed. The Committee shall make proposals for this purpose.

Procedural Guidance

I. National Contact Points

The role of National Contact Points (NCP) is to further the effectiveness of the Guidelines. NCPs will operate in accordance with core criteria of visibility, accessibility, transparency and accountability to further the objective of functional equivalence.

A. Institutional arrangements

Consistent with the objective of functional equivalence, adhering countries have flexibility in organising their NCPs, seeking the active support of social partners, including the business community, employee organisations, and other interested parties, which includes non-governmental organisations.

Accordingly, the National Contact Point:

1. May be a senior government official or a government office headed by a senior official. Alternatively, the National Contact Point may be organised as a co-operative body, including representatives of other government agencies. Representatives of the business community, employee organisations and other interested parties may also be included.
2. Will develop and maintain relations with representatives of the business community, employee organisations and other interested parties that are able to contribute to the effective functioning of the Guidelines.

B. Information and promotion

National Contact Points will:

1. Make the Guidelines known and available by appropriate means, including through on-line information, and in national languages. Prospective investors (inward and outward) should be informed about the Guidelines, as appropriate.
2. Raise awareness of the Guidelines, including through co-operation, as appropriate, with the business community, employee organisations, other non-governmental organisations, and the interested public.
3. Respond to enquiries about the Guidelines from:
 - a) other National Contact Points;
 - b) the business community, employee organisations, other non-governmental organisations and the public; and
 - c) governments of non-adhering countries.

C. *Implementation in specific instances*

The NCP will contribute to the resolution of issues that arise relating to implementation of the Guidelines in specific instances. The NCP will offer a forum for discussion and assist the business community, employee organisations and other parties concerned to deal with the issues raised in an efficient and timely manner and in accordance with applicable law. In providing this assistance, the NCP will:

1. Make an initial assessment of whether the issues raised merit further examination and respond to the party or parties raising them.
2. Where the issues raised merit further examination, offer good offices to help the parties involved to resolve the issues. For this purpose, the NCP will consult with these parties and where relevant:
 - a) seek advice from relevant authorities, and/or representatives of the business community, employee organisations, other non-governmental organisations, and relevant experts;
 - b) consult the National Contact Point in the other country or countries concerned;
 - c) seek the guidance of the CIME if it has doubt about the interpretation of the Guidelines in particular circumstances;
 - d) offer, and with the agreement of the parties involved, facilitate access to consensual and non-adversarial means, such as conciliation or mediation, to assist in dealing with the issues.
3. If the parties involved do not reach agreement on the issues raised, issue a statement, and make recommendations as appropriate, on the implementation of the Guidelines.
 - a) In order to facilitate resolution of the issues raised, take appropriate steps to protect sensitive business and other information. While the procedures under paragraph 2 are under way, confidentiality of the proceedings will be maintained. At the conclusion of the procedures, if the parties involved have not agreed on a resolution of the issues raised, they are free to communicate about and discuss these issues. However, information and views provided during the proceedings by another party involved will remain confidential, unless that other party agrees to their disclosure.
 - b) After consultation with the parties involved, make publicly available the results of these procedures unless preserving confidentiality would be in the best interests of effective implementation of the Guidelines.
4. If issues arise in non-adhering countries, take steps to develop an understanding of the issues involved, and follow these procedures where relevant and practicable.

D. *Reporting*

1. Each National Contact Point will report annually to the Committee.
2. Reports should contain information on the nature and results of the activities of the National Contact Point, including implementation activities in specific instances.

II. Investment Committee

1. The Committee will discharge its responsibilities in an efficient and timely manner.

2. The Committee will consider requests from NCPs for assistance in carrying out their activities, including in the event of doubt about the interpretation of the Guidelines in particular circumstances.
3. The Committee will:
 - a) Consider the reports of NCPs.
 - b) Consider a substantiated submission by an adhering country or an advisory body on whether an NCP is fulfilling its responsibilities with regard to its handling of specific instances.
 - c) Consider issuing a clarification where an adhering country or an advisory body makes a substantiated submission on whether an NCP has correctly interpreted the Guidelines in specific instances.
 - d) Make recommendations, as necessary, to improve the functioning of NCPs and the effective implementation of the Guidelines.
4. The Committee may seek and consider advice from experts on any matters covered by the Guidelines. For this purpose, the Committee will decide on suitable procedures.