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Working Party on the OECD Guidelines for Multinational Enterprises

THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES:
TEXT, COMMENTARY AND CLARIFICATIONS

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THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES TEXT, COMMENTARY AND CLARIFICATIONS

FOREWORD

The *OECD Guidelines for Multinational Enterprises* contain non-binding recommendations by governments to multinational enterprises operating in or from the 33 adhering countries -- the OECD members as well as Argentina, Brazil and Chile. They are complemented by implementation procedures whereby adhering governments agree to promote observance of the *Guidelines*.

The *Guidelines* are part of the OECD Declaration on International Investment and Multinational Enterprises. The Declaration is a balanced framework of OECD instruments designed to improve the international investment climate and to strengthen the basis of mutual confidence between multinational enterprises and the societies in which they operate.

The present publication includes the text and implementation procedures of the *Guidelines*, along with the corresponding commentary and clarifications where they exist, presented chapter by chapter.

The commentaries were agreed during the 2000 Review of the *Guidelines* to provide information on and explanation of the *Guidelines* text and implementation procedures. They are not part of the Declaration on International Investment and Multinational Enterprises. The paragraph numbers for these commentaries reproduce the numbering in the collection of *Guidelines* texts as reproduced in the “*OECD Guidelines for Multinational Enterprises – Revision 2000*” [www.oecd.org/daf/investment/guidelines/].

The clarifications provide interpretations of how certain provisions of the *Guidelines* should be understood as a result of deliberations by the Committee on International Investment and Multinational Enterprises prior to the 2000 Review. These clarifications, however, do not modify the authoritative texts, which are found in the verbatim language of the *Guidelines* and the relevant decisions of the Committee on International Investment and Multinational Enterprises. To date, the implementation procedures have not been subject to clarifications.

The Declaration on International Investment and Multinational Enterprises, of which the *Guidelines* are an integral part, is not reproduced in this document. For the complete collection of texts relevant to the Declaration, including all four constituent elements (National Treatment Instrument; general considerations and practical approaches to Conflicting Requirements imposed on multinational enterprises; a procedural decision on International Investment Incentives and Disincentives; and the Guidelines for Multinational Enterprises) see the “OECD Declaration and Decisions on International Investment and Multinational Enterprises – Basic Texts”. This document and other relevant information can be found on the OECD website at www.oecd.org/daf/investment/.

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PART I: THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

Preface

Text

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

Text

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.*

Clarifications

The Guidelines are recommendations jointly addressed by adhering countries to multinational enterprises operating in their territories. They lay down standards for the activities of multinational enterprises and, where relevant, of national enterprises in the different adhering countries. Observance of the Guidelines is voluntary and not legally enforceable. They represent, nevertheless, adhering countries' firm expectations for multinational enterprise behaviour.¹ Although compliance with national law is necessary, this is not necessarily sufficient to observance of the Guidelines. Every State has the right to prescribe the conditions under which multinational enterprises operate within its national jurisdiction, subject to international law and the international agreements to which it subscribes. The Guidelines are not a substitute for national laws, to which multinational enterprises are fully subject. They represent supplementary standards of behaviour of a non-legal character, particularly concerning the international operations of these enterprises.²

The Guidelines do not define the term "multinational enterprises", a concept which embraces a diversity of situations found throughout the business world. Rather, they describe some general criteria covering a broad range of multinational activities and arrangements.³ These arrangements can include traditional international direct investment based on equity participation, or other means which do not necessarily include an equity capital element. Majority ownership is not the exclusive form of linkage between two companies in different countries which allows one to exercise a significant influence over the activities of others. Accordingly, an entity may be considered part of a multinational enterprise without necessarily being a majority owned subsidiary. The sharing of knowledge and resources among companies or other entities does not in itself indicate that such companies or entities constitute a multinational enterprise.⁴

Responsibilities of the various entities of a multinational enterprise

All entities, including parent companies, local subsidiaries, as well as intermediary levels of the organisation, are expected to co-operate and assist, as necessary, in observing the Guidelines. To the extent that parent companies actually exercise control over the activities of their subsidiaries, they have a responsibility for observance of the Guidelines by those subsidiaries.⁵ Consultation between the parent and its local entities would undoubtedly assist in achieving the purposes of the Guidelines. As long as enterprises can ensure this co-operation and assistance, it would be up to the various entities to decide the division of responsibilities between parent companies and local entities.

Since the expectations of the Guidelines are that all entities will co-operate to ensure observance of the Guidelines, it would be reasonable to expect that a "prudent enterprise" would set up whatever internal procedures would be necessary to ensure that the Guidelines are known and applied by its various entities. The Guidelines, do not, however, imply a model of corporate decision making nor do they interfere with the way parent companies communicate with their affiliated entities.

The concept of responsibilities of the various entities of a multinational enterprise is relevant for specific paragraphs of the Guidelines, particularly those dealing with the provision of information to employee representatives (see, for example, paragraphs 2 and 3 of the Employment and Industrial Relations chapter of the Guidelines). It is also important to the Guidelines as a whole. The chapter on Disclosure addresses the parent company directly when referring to “the fact that the information should be disclosed for the enterprises as a whole and, where appropriate, along business lines or geographic areas” that is, information which must be gathered and prepared by the parent company. In other areas, such as taxation, observance of the Guidelines may also require that a full picture of the operations of the enterprise as a whole be made available and that enterprises, including parent companies, co-operate with national authorities.⁶

The question whether parent companies should assume responsibility for certain financial obligations of subsidiaries as part of good management practice raises complex problems in view of the limited liability principle embodied in adhering countries' national laws. The Guidelines cannot supersede or substitute for national laws governing corporate liability. They do not therefore imply an unqualified principle of parent company responsibility. Nonetheless, in certain cases, parent companies have assumed on a voluntary basis financial responsibility for a subsidiary, and such behaviour may actually be considered good management practice under the Guidelines. This question is especially relevant when discussing changes in the operations of a firm and co-operation between the entities to mitigate resulting adverse effects.⁷

II. General Policies

Text

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.*

Commentary

1. *The General Policies chapter of the Guidelines is the first to contain specific recommendations to enterprises. As such it is important for setting the tone and establishing common fundamental principles for the specific recommendations in subsequent chapters.*
2. *Obeying domestic law is the first obligation of business. The Guidelines are not a substitute for nor should they be considered to override local law and regulation. They represent supplementary principles and standards of behaviour of a non-legal character, particularly concerning the international operations of these enterprises. While the Guidelines extend beyond the law in many cases, they should not and are not intended to place an enterprise in a situation where it faces conflicting requirements.*
3. *Enterprises are encouraged to co-operate with governments in the development and implementation of policies and laws. Considering the views of other stakeholders in society, which includes the local community as well as business interests, can enrich this process. It is also recognised that governments should be transparent in their dealings with enterprises, and consult with business on these same issues. Enterprises should be viewed as partners with government in the development and use of both voluntary and regulatory approaches (of which the Guidelines are one element) to policies affecting them.*
4. *There should not be any contradiction between the activity of multinational enterprises (MNEs) and sustainable development, and the Guidelines are meant to foster complementarities in this regard. Indeed, links among economic, social, and environmental progress are a key means for furthering the goal of sustainable development*. On a related issue, while promoting and upholding human rights is primarily the responsibility of governments, where corporate conduct and human rights intersect enterprises do play a role, and thus MNEs are encouraged to respect human rights, not only in their dealings with employees, but also with respect to others affected by their activities, in a manner that is consistent with host governments' international obligations and commitments. The Universal Declaration of Human Rights and other human rights obligations of the government concerned are of particular relevance in this regard.*
5. *The Guidelines also acknowledge and encourage the contribution that MNEs can make to local capacity building as a result of their activities in local communities. Similarly, the recommendation on human capital formation is an explicit and forward-looking recognition of the contribution to individual human development that MNEs can offer their employees, and encompasses not only hiring practices, but training and other employee development as well. Human capital formation also incorporates the notion of non-discrimination in hiring practices as well as promotion practices, life-long learning and other on-the-job training.*
6. *Governments recommend that, in general, enterprises avoid efforts to secure exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation and financial incentives among other issues, without infringing on an enterprise's right to seek changes in the statutory or regulatory framework. The words "or accepting" also draw attention to the role of the state in offering these exemptions. While this sort of provision has been traditionally directed at governments, it is also of direct relevance to MNEs. Importantly, however, there are instances where specific exemptions from laws or other policies can be consistent with these laws for legitimate public policy reasons. The environment and competition policy chapters are examples.*

* One of the most broadly accepted definitions of sustainable development is in the 1987 World Commission on Environment and Development (the Brundtland Commission): "Development that meets the needs of the present without compromising the ability of future generations to meet their own needs".

7. *The paragraph devoted to the role of MNEs in corporate governance gives further impetus to the recently adopted OECD Principles of Corporate Governance. Although primary responsibility for improving the legal and institutional regulatory framework lies with governments, enterprises also have an interest in good governance.*

8. *An increasing network of non-governmental self-regulatory instruments and actions address aspects of corporate behaviour and the relationships between business and society. Enterprises recognise that their activities often have social and environmental implications. The institution of self-regulatory practices and management systems by enterprises sensitive to reaching these goals - thereby contributing to sustainable development - is an illustration of this. In turn, developing such practices can further constructive relationships between enterprises and the societies in which they operate.*

9. *Following from effective self-regulatory practices, as a matter of course, enterprises are expected to promote employee awareness of company policies. Safeguards to protect bona fide "whistle-blowing" activities are also recommended, including protection of employees who, in the absence of timely remedial action or in the face of reasonable risk of negative employment action, report practices that contravene the law to the competent public authorities. While of particular relevance to anti-bribery and environmental initiatives, such protection is also relevant to other recommendations in the Guidelines.*

10. *Encouraging, where practicable, compatible principles of corporate responsibility among business partners serves to combine a re-affirmation of the standards and principles embodied in the Guidelines with an acknowledgement of their importance to suppliers, contractors, subcontractors, licensees and other entities with which MNEs enjoy a working relationship. It is recognised that there are practical limitations to the ability of enterprises to influence the conduct of their business partners. The extent of these limitations depends on sectoral, enterprise and product characteristics such as the number of suppliers or other business partners, the structure and complexity of the supply chain and the market position of the enterprise vis-à-vis its suppliers or other business partners. The influence enterprises may have on their suppliers or business partners is normally restricted to the category of products or services they are sourcing, rather than to the full range of activities of suppliers or business partners. Thus, the scope for influencing business partners and the supply chain is greater in some instances than in others. Established or direct business relationships are the major object of this recommendation rather than all individual or ad hoc contracts or transactions that are based solely on open market operations or client relationships. In cases where direct influence of business partners is not possible, the objective could be met by means of dissemination of general policy statements of the enterprise or membership in business federations that encourage business partners to apply principles of corporate conduct compatible with the Guidelines.*

11. *Finally, it is important to note that self-regulation and other initiatives in a similar vein, including the Guidelines, should not unlawfully restrict competition, nor should they be considered a substitute for effective law and regulation by governments. It is understood that MNEs should avoid potential trade or investment distorting effects of codes and self-regulatory practices when they are being developed.*

Clarifications

The relevance of taking into account established policies of the government in the countries where enterprises operate is clear when a decision is taken to close down a local subsidiary of a multinational enterprise. While not affecting the right of the enterprise to reach decisions with respect to cutting back or terminating operations in a given plant, a prudent company should seek clarification of government policies through advance consultations with the government concerned.⁸

On their part, governments should make sure that their aims and objectives are clear, stable and understandable to management. Although the right of each State to prescribe the operating conditions for multinational enterprises within its jurisdiction remains unchanged, such laws and policies are subject to international law and international agreements and should respect contractual obligations. They should also be consistent with adhering countries' responsibilities to treat enterprises equitably.⁹

This chapter of the Guidelines also recommends that multinational enterprises co-operate closely with the local community and business interests (paragraph 3) and that they allow their various entities freedom to develop and exploit their potential, consistent with the need for specialisation and sound commercial practice (paragraph 3). This argues for a certain amount of integration of the various entities of a multinational enterprise into the economic context of the countries in which they operate. It does not mean that existing structures of multinational enterprises may not be changed, nor does it impinge on the freedom of such enterprises to divest as part of global strategies, if this is considered in the best interests of the firm as a whole. However, this freedom is circumscribed by national law and by a firm's contractual obligations.¹⁰

The question has been raised whether the Guidelines imply that special consideration be given in cases where an enterprise is considering the closing down of a subsidiary or the transfer of its activities abroad, especially if the particular subsidiary is a profitable one. In practice, the profitability of a particular entity may be difficult to evaluate due to the different accounting standards and practices used to determine value and future profitability. However, whenever there is clear evidence of the profitability of a particular subsidiary, the company should give special consideration to this fact when contemplating the closing down of that subsidiary. This does not restrict the company's right to make such a decision which may take account of other factors besides profitability.¹¹

III. Disclosure

Text

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:*

- a) The financial and operating results of the company;*
- b) Company objectives;*
- c) Major share ownership and voting rights;*
- d) Members of the board and key executives, and their remuneration;*
- e) Material foreseeable risk factors;*
- f) Material issues regarding employees and other stakeholders;*
- g) 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.*

Commentary

12. *The purpose of this chapter is to encourage improved understanding of the operations of multinational enterprises. 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, governments and society at large. To improve public understanding of enterprises and their interaction with society and the environment, enterprises should be transparent in their operations and responsive to the public's increasingly sophisticated demands for information. The information highlighted in this chapter may be a supplement to disclosure required under the national laws of the countries in which the enterprise operates.*

13. *This chapter addresses disclosure in two areas. The first set of disclosure recommendations is identical to disclosure items outlined in the OECD Principles of Corporate Governance. The Principles call for timely and accurate disclosure on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company. Companies are also expected to disclose sufficient information on the remuneration of board members and key executives (either individually or in the aggregate) for investors to properly assess the costs and benefits of remuneration plans and the contribution of incentive schemes, such as stock option schemes, to performance. The Principles contain annotations that provide further guidance on the required disclosures and the recommendations in the Guidelines should be construed in relation to these annotations. They focus on publicly traded companies. To the extent that they are deemed applicable, they should also be a useful tool to improve corporate governance in non-traded enterprises; for example, privately held and state owned enterprises.*

14. *The Guidelines also encourage a second set of disclosure or communication practices in areas where reporting standards are still emerging such as, for example, social, environmental, and risk reporting. Many enterprises provide information on a broader set of topics than financial performance and consider disclosure of such information a method by which they can demonstrate a commitment to socially acceptable practices. In some cases, this second type of disclosure -- or communication with the public and with other parties directly affected by the firms' activities -- may pertain to entities that extend beyond those covered in the enterprises' financial accounts. For example, it may also cover information on the activities of subcontractors and suppliers or of joint venture partners.*

15. *Many enterprises have adopted measures designed to help them comply with the law and standards of business conduct, and to enhance the transparency of their operations. A growing number of firms have issued voluntary codes of corporate conduct, which are expressions of commitments to ethical values in such areas as environment, labour standards or consumer protection. Specialised management systems are being developed with the aim of helping them respect these commitments -- these involve information systems, operating procedures and training requirements. Enterprises are co-operating with NGOs and intergovernmental organisations in developing reporting standards that enhance enterprises' ability to communicate how their activities influence sustainable development outcomes (e.g. the Global Reporting Initiative).*

16. *The OECD Principles of Corporate Governance support the development of high quality internationally recognised standards of accounting, financial and non-financial disclosure, and audit, which can serve to improve the comparability of information among countries. Financial audits conducted by independent auditors provide external and objective assurance on the way in which financial statements have been prepared and presented. The transparency and effectiveness of non-financial disclosure may be enhanced by independent verification. Techniques for independent verification of non-financial disclosure are emerging.*

17. *Enterprises are encouraged to provide easy and economical access to published information and to consider making use of information technologies to meet this goal. Information that is made available to users in home markets should also be available to all interested users. Enterprises may take special steps to make information available to communities that do not have access to printed media (e.g. poorer communities that are directly affected by the enterprise's activities).*

18. *Disclosure requirements are not expected to place unreasonable administrative or cost burdens on enterprises. Nor are enterprises expected to disclose information that may endanger their competitive position unless disclosure is necessary to fully inform the investment decision and to avoid misleading the investor.*

Clarifications

The purpose of this chapter is to encourage greater transparency of the enterprise as a whole through the publication of a body of information sufficient to improve public understanding. This can alleviate concerns arising from the complexity of multinational enterprises and the difficulties in clearly perceiving their diverse structures, operations and policies¹².

IV. Employment and Industrial Relations

Text

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.*

Commentary

19. *This chapter opens with a chapeau that includes a reference to "applicable" law and regulations, which is meant to acknowledge the fact that multinational enterprises, while operating within the jurisdiction of particular countries, may be subject to national, sub-national, as well as supra-national levels of regulation of employment and industrial relations matters. The terms "prevailing labour relations" and "employment practices" are sufficiently broad to permit a variety of interpretations in light of different national circumstances - for example, different bargaining options provided for employees under national laws and regulations.*

20. *The International Labour Organisation (ILO) is the competent body to set and deal with international labour standards, and to promote fundamental rights at work as recognised in its 1998 Declaration on Fundamental Principles and Rights at Work. The Guidelines, as a non-binding instrument, have a role to play in promoting observance of these standards and principles among multinational enterprises. The provisions of the Guidelines chapter echo relevant provisions of the 1998 Declaration, as well as the ILO's 1977 Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. The Tripartite Declaration sets out principles in the fields of employment, training, working conditions, and industrial relations, while the OECD Guidelines cover all major aspects of corporate behaviour. The OECD Guidelines and the ILO Tripartite Declaration refer to the behaviour expected from enterprises and are intended to parallel and not conflict with each other. The ILO Tripartite Declaration can therefore be of use in understanding the Guidelines to the extent that it is of a greater degree of elaboration. However, the responsibilities for the follow-up procedures under the Tripartite Declaration and the Guidelines are institutionally separate.*

21. *The first paragraph of this chapter is designed to echo all four fundamental principles and rights at work which are contained in the ILO's 1998 Declaration, namely the freedom of association and right to collective bargaining, the effective abolition of child labour, the elimination of all forms of forced or compulsory labour, and non-discrimination in employment and occupation. These principles and rights have been developed in the form of specific rights and obligations in ILO Conventions recognised as fundamental.*

22. *The chapter recommends that multinational enterprises contribute to the effective abolition of child labour in the sense of the ILO 1998 Declaration and ILO Convention 182 concerning the worst forms*

of child labour. Long-standing ILO instruments on child labour are Convention 138 and Recommendation 146 (both adopted in 1973) concerning minimum ages for employment. Through their labour management practices, their creation of high quality, well paid jobs and their contribution to economic growth, multinational enterprises can play a positive role in helping to address the root causes of poverty in general and of child labour in particular. It is important to acknowledge and encourage the role of multinational enterprises in contributing to the search for a lasting solution to the problem of child labour. In this regard, raising the standards of education of children living in host countries is especially noteworthy.

23. *The chapter also recommends that enterprises contribute to the elimination of all forms of compulsory labour, another principle derived from the 1998 ILO Declaration. The reference to this core labour right is based on the ILO Conventions 29 of 1930 and 105 of 1957. C. 29 requests that governments “suppress the use of forced or compulsory labour in all its forms within the shortest possible period”, while C. 105 requests of them to “suppress and not to make use of any form of forced or compulsory labour” for certain enumerated purposes (e.g. as a means of political coercion or labour discipline), and “to take effective measures to secure [its] immediate and complete abolition”. At the same time, it is understood that the ILO is the competent body to deal with the difficult issue of prison labour, in particular when it comes to the hiring-out of prisoners to (or their placing at the disposal of) private individuals, companies or associations.*

24. *The principle of non-discrimination with respect to employment and occupation is considered to apply to such terms and conditions as hiring, discharge, pay, promotion, training and retirement. The list of non-permissible grounds for discrimination which is taken from ILO Convention 111 of 1958 considers that any distinction, exclusion or preference on these grounds is in violation of the Convention. At the same time, the text makes clear that the terms do not constitute an exhaustive list. Consistent with the provisions in paragraph 1d), enterprises are expected to promote equal opportunities for women and men with special emphasis on equal criteria for selection, remuneration, and promotion, and equal application of those criteria, and prevent discrimination or dismissals on the grounds of marriage, pregnancy or parenthood.*

25. *The reference to consultative forms of employee participation in paragraph two of the Guidelines is taken from ILO Recommendation 94 of 1952 concerning Consultation and Co-operation between Employers and Workers at the Level of the Undertaking. It also conforms to a provision contained in the 1977 ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. Such consultative arrangements should not substitute for employees’ right to bargain over terms and conditions of employment. A recommendation on consultative arrangements with respect to employment arrangements is also part of paragraph eight.*

26. *In paragraph three of this chapter, information provided by companies to their employees is expected to provide a “true and fair view” of performance. It relates to the following: the structure of the enterprise, its economic and financial situation and prospects, employment trends, and expected substantial changes in operations, taking into account legitimate requirements of business confidentiality. Considerations of business confidentiality may mean that information on certain points may not be provided, or may not be provided without safeguards.*

27. *In paragraph four, employment and industrial relations standards are understood to include compensation and working-time arrangements. The reference to occupational health and safety implies that MNEs are expected to follow prevailing regulatory standards and industry norms to minimise the risk of accidents and injury to health arising out of, linked with, or occurring in, the course of employment. This encourages enterprises to work to raise the level of performance with respect to occupational health and safety in all parts of their operation even where this may not be formally required by existing*

regulations in countries in which they operate. It also encourages enterprises to respect employees' ability to remove themselves from a work situation when there is reasonable justification to believe that it presents an imminent and serious risk to health or safety. Reflecting their importance and complementarities among related recommendations, health and safety concerns are echoed elsewhere in the Guidelines, most notably in chapters on Consumer Interests and the Environment.

28. The recommendation in paragraph five of the chapter encourages MNEs to recruit an adequate workforce share locally, including managerial personnel, and to provide training to them. Language in this paragraph on training and skill levels complements the text in paragraph four of the General Policies chapter on encouraging human capital formation. The reference to local personnel complements the text encouraging local capacity building in paragraph three of the General Policies chapter.

29. Paragraph six recommends that enterprises provide reasonable notice to the representatives of employees and relevant government authorities, of changes in their operations which would have major effects upon the livelihood of their employees, in particular the closure of an entity involving collective layoffs or dismissals. As stated therein, the purpose of this provision is to afford an opportunity for co-operation to mitigate the effects of such changes. This is an important principle that is widely reflected in the industrial relations laws and practices of adhering countries, although the approaches taken to ensuring an opportunity for meaningful co-operation are not identical in all adhering countries. The paragraph also notes that it would be appropriate if, in light of specific circumstances, management were able to give such notice prior to the final decision. Indeed, notice prior to the final decision is a feature of industrial relations laws and practices in a number of adhering countries. However, it is not the only means to ensure an opportunity for meaningful co-operation to mitigate the effects of such decisions, and the laws and practices of other adhering countries provide for other means such as defined periods during which consultations must be undertaken before decisions may be implemented.

Clarifications

Introductory Paragraph

This important introductory paragraph is to be read in conjunction with each of the separate paragraphs in the chapter on Employment and Industrial Relations.

Paragraph 1a)

This paragraph expressly provides for management engaging in constructive negotiations on employment conditions with employee representatives. The thrust of the Guidelines in this area is towards management adopting a positive approach towards the activities of trade unions and other bona fide representatives of employees of all categories and, in particular, an open attitude towards organisational activities of workers within the framework of applicable rules and practices.¹³

The Guidelines do not indicate what representatives of employees in a specific sense should represent employees for collective bargaining purposes or what criteria should be used for the selection of such representatives of employees.¹⁴ The Guidelines will not put obstacles in the way of recognition by management, in agreement with applicable laws and practices, of an International Trade Secretariat as a "bona fide representative of employees"¹⁵.*

* The CIME has not considered the question of the conduct of collective bargaining at an international level, for which there are no real examples, although there has been some development of trade union effort to co-ordinate approaches to MNEs on a cross-country basis.

Although the question is not directly addressed, this paragraph implies that management should adopt a co-operative attitude towards the participation of employees in international meetings for consultation and exchanges of views among themselves provided that the functioning of the enterprise's operations and the normal procedures governing relationships with employee representatives and their organisations are not prejudiced thereby.¹⁶

Paragraphs 2a) and b)

The positive attitude towards employee representation encouraged by the Guidelines is also expressed in this paragraph which recommends that management provide facilities to employee representatives as necessary to assist in developing effective collective agreements and the information needed for meaningful negotiations on employment conditions. The term "meaningful" must be applied in the circumstances of each case, but it has operational value to persons experienced in labour relations.¹⁷

Negotiations, consultations, co-operation or the provision of information to employees implies effective communication between the parties concerned. As a general rule, management and labour representatives should communicate in a language effectively understood by employees or their representatives. Where this may be unreasonably difficult, such as when representatives from the parent company are involved, adequate interpretation and translation facilities should be provided.¹⁸

Paragraph 3

In accordance with applicable law and practice, employee representatives should be given information which enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole. Where employee representatives experience difficulties in obtaining such information at the national level because the entity in that country is unable to comply with the provisions of paragraphs 2 and 3, the other entities of the enterprise are expected to co-operate and assist one another as necessary to facilitate observance of the Guidelines^{19 **}.

i) Subjects covered by the information to be supplied

The laws, regulations and practices in adhering countries with respect to the provision of information by enterprises to employees differ considerably. In some countries, statutory provisions are very extensive and detailed, whereas in others, management and labour representatives define, on the basis of need, the information which management is expected to provide on a "good faith basis". There is no general approach to this question as illustrated by the many facets of information provision, including the type of information to be provided, its degree of detail, whether provided to the individual entity or the group (national or international), the timing of provision, whether it covers present situation and past developments and/or future outlook, etc.²⁰

While the Disclosure Guidelines address the provision of information to the general public, employees of multinational enterprises may need and should have access to more specific information, beyond that available to the general public, and in a form suitable for their interests and purposes.²¹ Enterprises should provide information on aspects of the performance of the enterprise which will also enable users to assess, *inter alia*, likely future developments. In so doing, they should be guided by the paragraph 26 of the commentary on Employment and Industrial Relations chapter.²²

** This clarification is relevant for both paragraph 2b and paragraph 3.

Where more specific information is necessary, management and labour should be prepared to discuss information requirements in a constructive manner, taking account of the specific situation of the enterprise and of applicable laws, regulations and practices.

ii) Restructuring activities and the position of the enterprise as a whole

Certain activities of multinational enterprises, for instance restructuring activities, can be put into perspective only if the information on the position of the enterprise as a whole is available. If restructuring, or similar decisions, results in negotiations where the position of the enterprise as a whole is a key element, then employee representatives should have the information which gives a true and fair view of the enterprise as a whole and which they need for meaningful negotiation on employment conditions. As noted in paragraphs 26 of the commentary on this chapter, the provision of information is subject to considerations of business confidentiality.²³

Paragraph 6

i) Taking account of established policy objectives

This paragraph must be read together with the General Policies chapter which provides that enterprises take fully into account established policies in the countries in which they operate and consider the views of other stakeholders.

When a local subsidiary of a multinational enterprise is to be closed down, a company should seek all necessary information on the country's relevant aims and practices from the government concerned. While this does not affect the right of the enterprise to reach decisions with respect to cutting back or terminating operations in a given plant, certain considerations should be carefully weighed in making such a decision.²⁴

ii) Reasonable notice

Reasonable notice is linked to the recommendation that management co-operate with employee representatives and governmental authorities in order to mitigate the adverse effects of such changes. For such notice to be "reasonable", it should be sufficiently timely for the purpose of mitigating action to be prepared and put into effect.²⁵ Notice of changes should be given and the actual changes implemented in such a way that meaningful co-operation can take place.

The Guidelines recognise that the sensitivity of certain business decisions and/or of particular jobs, in terms of possible serious damage to a particular enterprise, is such that it is difficult for management, when considering changes in activities which would have major effects on the livelihood of their employees, to give employee representatives early notice of such changes. However, these considerations would only apply in exceptional circumstances. There is no business sector or business activity where such circumstances can be considered usual.²⁶

iii) Employee representatives

On occasion, enterprises may be faced with a situation where their employees are not represented by trade unions and other bona fide employee representatives. In such cases, enterprises should take all practical steps towards meeting the objectives underlying paragraph 6, within the framework of national laws, regulations and prevailing labour relations practices.²⁷

Paragraph 7*

This paragraph was originally meant to cover only operations involving existing plant and equipment. Nevertheless, future investments, such as replacement of equipment or the introduction of new technology, may be crucial to the survival of the enterprises in the medium and long term and thus may be of interest in this context.²⁸

A distinction should be made between information given to employees on the likely consequences for the future of the firm as a going concern for the eventual outcome of such negotiations, which is legitimately provided by management, and threats which would be an unfair use of management's negotiating power. "Unfair" is the key notion in this context. It is appropriate for management to inform employee representatives if certain demands have, in their view, serious implications for the economic viability of the enterprise. Management should, nevertheless, be prepared to support this claim with appropriate information.²⁹

Paragraph 8

When negotiations or collective bargaining take place in the context of a parent-subsidiary relationship, the subsidiary may not be fully empowered to negotiate and to conclude an agreement. There may be special problems in the case of a subsidiary situated in a country different from that of the parent company. In these situations, the parent company is expected to take the necessary organisational steps to enable its subsidiaries to observe the Guidelines, *inter alia*, by providing adequate and timely information and ensuring that the enterprise's representatives carrying out such negotiations at the national or local level are duly authorised to take decisions on matters under negotiation. The management of a multinational enterprise should see that this is observed in the circumstances of each case.³⁰

Where relevant national law provides for negotiations prior to final decisions being reached, employee representatives should be given an opportunity to conduct negotiations with authorised management before major decisions are predetermined through co-ordination and/or contractual arrangements between the enterprises concerned.³¹

i) "Collective bargaining" and "Labour management relations"

There exists no internationally agreed standard of the scope of the terms "collective bargaining" and "labour management relations". In fact, there is wide diversity among adhering countries concerning national practices with respect to both of these.

In some countries, collective bargaining or labour-management relations are limited to conditions of employment in a more traditional sense (for example, wages, working hours, health and safety standards). In other countries, there is a trend towards including information and consultations on the economic and financial management of the enterprise, extending to future production and investment plans to some extent. As they are used in the Guidelines, the terms are sufficiently broad to permit a variety of

* This clarification is relevant for both paragraph 2b and paragraph 3.

interpretations in light of different national situations. Their specific meaning is determined by reference to national law, regulations and prevailing labour relations and employment practices in each country.³²

ii) “Negotiations” and “Consultations”

The Guidelines do not define what is meant by “negotiations” or “consultations”. As a general rule, “negotiations” implies an effort to reach agreement by the parties concerned, whereas “consultations” are less formal and do not necessarily presuppose a specific decision. It may, however, be difficult in practice to distinguish between “negotiations” and “consultations”, the latter term in some countries being used in situations where management retains the prerogative of a final decision in case of disagreement, after listening to the views of employee representatives. In some cases, “consultations” may be understood to imply an effort to reach agreement, although management retains final decision-making power.³³

Paragraph 8 does not institute a claim for opening consultations or negotiations in the absence of other relevant provisions. Such consultations or negotiations are conducted in the framework of national laws and practices of the country where the entity of the multinational enterprise is located. When interpreting the Employment and Industrial Relations chapter, and in particular paragraph 8, the precise sense of “consultation” or “negotiation” should be defined by these laws and practices.³⁴

Management has a range of possibilities from which to choose to enable meaningful negotiations or consultations between management and employee representatives. With respect to negotiations, management’s choice depends on various circumstances, such as the matters under discussion, the decision-making structure within the enterprise, and the importance of the decision to be taken. Examples of these possibilities include:

- to provide the management of the subsidiary with adequate and timely information and to ensure that it has sufficient powers to conduct meaningful negotiations with employee representatives;
- to nominate one or more representatives of the decision-making centre to the negotiating team of the subsidiary in order to ensure that management has sufficient power to conduct meaningful negotiations with employee representatives;
- to engage directly in negotiations.³⁵

Consultations are intended to ensure adequate communication among the parties, and dissemination of information by representatives of management within the decision-making structure of the multinational enterprise. Consultations facilitate understanding of the views of the parties so that if and when negotiations are undertaken, or decisions are made, the parties are well informed. Management representatives of the entity concerned could be provided with adequate and timely information to enable them to undertake meaningful consultations with employee representatives, while protecting sensitive business and other information.

This clarification is also relevant to the recommendation of paragraph 2c) of the Employment and Industrial Relations chapter.

iii) Future production and investment matters

When dealing with the specific issue of consultation or negotiations in which future production and investment plans are involved, paragraph 8 avoids the need for defining the locus of the negotiations or the proper level of management to be involved in such negotiations. This depends on the decision-making structure of each multinational enterprise. Negotiations conducted in accordance with national practice should take place in a meaningful manner with management representatives in a position to directly influence decisions on investment matters and to engage in effective negotiations. Where negotiations are defined by national practice in a way that management, in case of disagreement, remains free to make the

final decision, these negotiations should still provide employee representatives the opportunity to discuss with management representatives who have a real impact upon the final decision.³⁶

iv) Information on the decision-making structure of the enterprise

The Guidelines do not imply an unqualified right of employees to be informed about the decision-making structure within the enterprise. However, for meaningful negotiations to take place, employee representatives have a legitimate interest to be informed about the decision-making structure within the enterprise in the negotiating situations referred to in the Guidelines, and in particular, paragraph 8.³⁷

V. Environment

Text

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.*

Commentary

30. *The text of the Environment Chapter broadly reflects the principles and objectives contained in the Rio Declaration on Environment and Development, in Agenda 21 (within the Rio Declaration). It also takes into account the (Aarhus) Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters and reflects standards contained in such instruments as the ISO Standard on Environmental Management Systems.*

31. *Sound environmental management is an important part of sustainable development, and is increasingly being seen as both a business responsibility and a business opportunity. Multinational enterprises have a role to play in both respects. Managers of these enterprises should therefore give appropriate attention to environmental issues within their business strategies. Improving environmental performance requires a commitment to a systematic approach and to continual improvement of the system. An environmental management system provides the internal framework necessary to control an enterprise's environmental impacts and to integrate environmental considerations into business operations. Having such a system in place should help to assure stockholders, employees and the community that the enterprise is actively working to protect the environment from the impacts of its activities.*

32. *In addition to improving environmental performance, instituting an environmental management system can provide economic benefits to companies through reduced operating and insurance costs,*

improved energy and resource conservation, reduced compliance and liability charges, improved access to capital, improved customer satisfaction, and improved community and public relations.

33. *In the context of these Guidelines, “sound environmental management” should be interpreted in its broadest sense, embodying activities aimed at controlling both direct and indirect environmental impacts of enterprise activities over the long-term, and involving both pollution control and resource management elements.*

34. *In most enterprises, an internal control system is needed to manage the enterprise’s activities. The environmental part of this system may include such elements as targets for improved performance and regular monitoring of progress towards these targets.*

35. *Information about the activities of enterprises and associated environmental impacts is an important vehicle for building confidence with the public. This vehicle is most effective when information is provided in a transparent manner and when it encourages active consultation with stakeholders such as employees, customers, suppliers, contractors, local communities and with the public-at-large so as to promote a climate of long-term trust and understanding on environmental issues of mutual interest*

36. *Normal business activity can involve the ex ante assessment of the potential environmental impacts associated with the enterprise’s activities. Enterprises often carry out appropriate environmental impact assessments, even if they are not required by law. Environmental assessments made by the enterprise may contain a broad and forward-looking view of the potential impacts of an enterprise’s activities, addressing relevant impacts and examining alternatives and mitigation measures to avoid or redress adverse impacts. The Guidelines also recognise that multinational enterprises have certain responsibilities in other parts of the product life cycle.*

37. *Several instruments already adopted by countries adhering to the Guidelines, including Principle 15 of the Rio Declaration on Environment and Development, enunciate a “precautionary approach”. None of these instruments is explicitly addressed to enterprises, although enterprise contributions are implicit in all of them.*

38. *The basic premise of the Guidelines is that enterprises should act as soon as possible, and in a proactive way, to avoid, for instance, serious or irreversible environmental damages resulting from their activities. However, the fact that the Guidelines are addressed to enterprises means that no existing instrument is completely adequate for expressing this recommendation. The Guidelines therefore draw upon, but do not completely mirror, any existing instrument.*

39. *The Guidelines are not intended to reinterpret any existing instruments or to create new commitments or precedents on the part of governments -- they are intended only to recommend how the precautionary approach should be implemented at the level of enterprises. Given the early stage of this process, it is recognised that some flexibility is needed in its application, based on the specific context in which it is carried out. It is also recognised that governments determine the basic framework in this field, and have the responsibility to periodically consult with stakeholders on the most appropriate ways forward.*

40. *The Guidelines also encourage enterprises to work to raise the level of environmental performance in all parts of their operations, even where this may not be formally required by existing practice in the countries in which they operate.*

41. *For example, multinational enterprises often have access to technologies or operating procedures which could, if applied, help raise environmental performance overall. Multinational enterprises are frequently regarded as leaders in their respective fields, so the potential for a*

“demonstration effect” on other enterprises should not be overlooked. Ensuring that the environment of the countries in which multinational enterprises operate also benefits from available technologies is an important way of building support for international investment activities more generally.

42. *Enterprises have an important role to play in the training and education of their employees with regard to environmental matters. They are encouraged to discharge this responsibility in as broad a manner as possible, especially in areas directly related to human health and safety.*

VI. Combating Bribery

Text

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.*

Commentary

43. Bribery and corruption are not only damaging to democratic institutions and the governance of corporations, but they also impede efforts to reduce poverty. In particular, the diversion of funds through corrupt practices undermines attempts by citizens to achieve higher levels of economic, social and environmental welfare. Enterprises have an important role to play in combating these practices.

44. Progress in improving the policy framework and in heightening enterprises’ awareness of bribery as a management issue has been significant. The OECD Convention of Combating Bribery of Foreign Public Officials (the Convention) has been signed by 34 countries and entered into force on 15

February 1999. *The Convention, along with the 1997 revised Recommendation on Combating Bribery in International Business Transactions and the 1996 Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials, are the core instruments through which members of the anti bribery group co-operate to stop the flow of bribes for the purpose of obtaining or retaining international business. The three instruments target the offering side of the bribery transaction. They aim to eliminate the “supply” of bribes to foreign public officials, with each country taking responsibility for the activities of its companies and what happens on its own territory**. A monitoring programme has been established to assure effective and consistent implementation and enforcement of the Convention.

45. *To address the demand side of bribery, good governance practices are important elements to prevent companies from being asked to pay bribes. In addition, governments should assist companies confronted with solicitation of bribes.*

46. *Another important development has been the International Chamber of Commerce’s recent update of its Report on Extortion and Bribery in Business Transactions. The Report contains recommendations to governments and international organisations on combating extortion and bribery as well as a code of conduct for enterprises that focuses on these issues.*

47. *Transparency in both the public and private domains is a key concept in the fight against bribery and extortion. The business community, non-governmental organisations and governments and inter-governmental organisations have all co-operated to strengthen public support for anti-corruption measures and to enhance transparency and public awareness of the problems of corruption and bribery. The adoption of appropriate corporate governance practices is a complementary element in fostering a culture of ethics within the enterprise.*

* For the purposes of the Convention, a “bribe” is defined as an “...offer, promise, or giv(ing) of any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business.” The Commentaries to the Convention (paragraph 9) clarify that “(s)mall ‘facilitation’ payments do not constitute payments made ‘to obtain or retain business or other improper advantage’ within the meaning of paragraph 1 and, accordingly, are also not an offence. Such payments, which, in some countries, are made to induce public officials to perform their functions, such as issuing licenses or permits, are generally illegal in the foreign country concerned. Other countries can and should address this corrosive phenomenon by such means as support for programmes of good governance.”

VII. Consumer Interests

Text

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.*

Commentary

48. A brief reference to “consumer interests” was first introduced into the Guidelines in 1984, to reflect increasingly international aspects of consumer policies and the impact that the expansion of international trade, product packaging, marketing and sales and product safety can have on those policies. Since that time, the development of electronic commerce and the increased globalisation of the marketplace have substantially increased the reach of MNEs and consumer access to their goods and services. In recognition of the increasing importance of consumer issues, a substantial percentage of enterprises, in their management systems and codes of conduct include references to consumer interests and protections.

49. In light of these changes, and with an eye to helping enhance consumer safety and health, a chapter on consumer interests has been added to the Guidelines as a result of the current Review. Language in this chapter draws on the work of the OECD Committee on Consumer Policy, as well as that embodied in various individual and international corporate codes (such as those of the ICC), the UN Guidelines on Consumer Policy, and the OECD Guidelines for Consumer Protection in the Context of Electronic Commerce.

50. *A variety of consumer protection laws exist that govern business practices. The emerging framework is intended to both protect consumer interests and foster economic growth and places a growing emphasis on the use of self-regulatory mechanisms. As noted, many existing national and international corporate codes of conduct include a reference to some aspect of consumer protection and amplify the commitment of industry to help protect health and safety and build consumer confidence in the marketplace. Ensuring that these sorts of practices provide consumers with effective and transparent protection is essential to help build trust that encourages consumer participation and market growth.*

51. *The emphasis on alternative dispute resolution in paragraph 3 of the chapter is an attempt to focus on what may in many cases be a more practicable solution to complaints than legal action which can be expensive, difficult and time consuming for everyone involved. It is particularly important that complaints relating to the consumption or use of a particular product that results in serious risks or damages to public health should be resolved in a fair and timely manner without undue cost or burden to the consumer.*

52. *Regarding paragraph 5, enterprises could look to the OECD Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data as a helpful basis for protecting personal data.*

VIII. Science and Technology

Text

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.*

Commentary

53. *In a knowledge-based and globalised economy where national borders matter less, even for small or domestically oriented enterprises, the ability to access and utilise technology and know-how is essential for improving firm performance. Such access is also important for the realisation of the economy-wide effects of technological progress, including productivity growth and job creation, within the context of sustainable development. Multinational enterprises are the main conduit of technology transfer across borders. They contribute to the national innovative capacity of their host countries by generating, diffusing, and even enabling the use of new technologies by domestic enterprises and institutions. The R&D activities of MNEs, when well connected to the national innovation system, can help enhance the economic and social progress in their host countries. In turn, the development of a dynamic innovation system in the host country expands commercial opportunities for MNEs.*

54. *The chapter thus aims to promote, within the limits of economic feasibility, competitiveness concerns and other considerations, the diffusion by multinational enterprises of the fruits of research and development activities among the countries where they operate, contributing thereby to the innovative capacities of host countries. In this regard, fostering technology diffusion can include the commercialisation of products which imbed new technologies, licensing of process innovations, hiring and training of S&T personnel and development of R&D co-operative ventures. When selling or licensing technologies, not only should the terms and conditions negotiated be reasonable, but MNEs may want to*

consider the long-term developmental, environmental and other impacts of technologies for the home and host country. In their activities, multinational enterprises can establish and improve the innovative capacity of their international subsidiaries and subcontractors. In addition, MNEs can call attention to the importance of local scientific and technological infrastructure, both physical and institutional. In this regard, MNEs can usefully contribute to the formulation by host country governments of policy frameworks conducive to the development of dynamic innovation systems.

IX. Competition

Text

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.*

Commentary

55. *These Guidelines are intended to emphasise the importance of competition laws and policies to the efficient operation of both domestic and international markets, to reaffirm the importance of compliance with those laws and policies by domestic and multinational enterprises, and to ensure that all enterprises are aware of developments concerning the number, scope, and severity of competition laws and in the extent of co-operation among competition authorities. The term “competition” law is used to refer to laws, including both “antitrust” and “antimonopoly” laws, that prohibit collective or unilateral action to (a) abuse market power or dominance, (b) acquire market power or dominance by means other than efficient performance, or (c) engage in anti-competitive agreements.*

56. *In general, competition laws and policies prohibit (a) hard core cartels; (b) other agreements that are deemed to be anti-competitive; (c) conduct that exploits or extends market dominance or market power; and (d) anti-competitive mergers and acquisitions. Under the 1998 Recommendation of the OECD Council Concerning Effective Action Against Hard Core Cartels, C(98)35/Final, the anti-competitive agreements referred to in sub (a) constitute hard core cartels, but the Recommendation incorporates differences in Member countries’ laws, including differences in the laws’ exemptions or provisions allowing for an exception or authorisation for activity that might otherwise be prohibited. These*

guidelines should not be interpreted as suggesting that enterprises should not avail themselves of such exemptions or provisions. The categories sub (b) and (c) are more general because the effects of other kinds of agreements and of unilateral conduct are more ambiguous, and there is less consensus on what should be considered anti-competitive.

57. *The goal of competition policy is to contribute to overall social welfare and economic growth by creating and maintaining market conditions in which the nature, quality, and price of goods and services are determined by market forces except to the extent a jurisdiction considers necessary to achieve other goals. In addition to benefiting consumers and a jurisdiction's economy as a whole, such a competitive environment rewards enterprises that respond efficiently to consumer demand, and enterprises should provide information and advice when governments are considering laws and policies that might reduce their efficiency or otherwise affect the competitiveness of markets. .*

58. *Enterprises should be aware that competition laws are being enacted in a rapidly increasing number of jurisdictions, and that it is increasingly common for those laws to prohibit anti-competitive activities that occur abroad if they have a harmful impact on domestic consumers. Moreover, the growth of cross-border trade and investment makes it more likely that anti-competitive conduct taking place in one jurisdiction will have harmful effects in other jurisdictions. As a result, anti-competitive unilateral or concerted conduct that is or may be legal where it occurs is increasingly likely to be illegal in another jurisdiction. Enterprises should therefore take into account both the law of the country in which they are operating and the laws of all countries in which the effects of their conduct are likely to be felt.*

59. *Finally, enterprises should understand that competition authorities are engaging in more and deeper co-operation in investigating and challenging anti-competitive activity. See generally: Recommendation of the Council Concerning Co-operation between Member Countries on Anticompetitive Practices Affecting International Trade, C(95)130/Final; Making International Markets More Efficient Through "Positive Comity" in Competition Law Enforcement, Report of the OECD Committee on Competition Law and Policy, DAFPE/CLP(99)19. When the competition authorities of various jurisdictions are reviewing the same conduct, enterprises' facilitation of co-operation among the authorities promotes consistent and sound decision-making while also permitting cost savings for governments and enterprises.*

X. Taxation

Text

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.

Commentary

60. *Corporate citizenship in the area of taxation implies that enterprises should comply with the taxation laws and regulations in all countries in which they operate, co-operate with authorities and make certain kinds of information available to them. However, this commitment to provide information is not without limitation. In particular, the Guidelines make a link between the information that should be provided and its relevance to the enforcement of applicable tax laws. This recognises the need to balance the burden on business in complying with applicable tax laws and the need for tax authorities to have the complete, timely and accurate information to enable them to enforce their tax laws.*

61. *A member of an MNE group in one country may have extensive economic relationships with members of the same MNE group in other countries. Such relationships may affect the tax liability of each of the parties. Accordingly, tax authorities may need information from outside their jurisdiction in order to be able to evaluate those relationships and determine the tax liability of the member of the MNE group in their jurisdiction. Again, the information to be provided is limited to that which is relevant to the proposed evaluation of those economic relationships for the purpose of determining the correct tax liability of the member of the MNE group. MNEs should co-operate in providing that information.*

62. *Transfer pricing is another important issue for corporate citizenship and taxation. The dramatic increase in global trade and cross-border direct investment (and the important role played in such trade and investment by MNEs) has meant that transfer pricing tends now to be a significant determinant of the tax liabilities of members of an MNE group. It is recognised that determining whether transfer pricing respects the arm's length standard (or principle) is often difficult both for MNEs and for tax administrations.*

63. *The Committee on Fiscal Affairs (CFA) of the OECD undertakes ongoing work to develop recommendations for ensuring transfer pricing reflects the arm's length principle. Its work resulted in the publication in 1995 of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD Transfer Pricing Guidelines) which was the subject of the Recommendation of the OECD Council on the Determination of Transfer Pricing between Associated Enterprises (members of an MNE group would normally fall within the definition of Associated Enterprises).*

64. *The OECD Transfer Pricing Guidelines focus on the application of the arm's length principle to evaluate the transfer pricing of associated enterprises. The Transfer Pricing Guidelines aim to help tax*

administrations (of both OECD Member countries and non-member countries) and MNEs by indicating mutually satisfactory solutions to transfer pricing cases, thereby minimising conflict among tax administrations and between tax administrations and MNEs and avoiding costly litigation. MNEs are encouraged to follow the guidance in the OECD Transfer Pricing Guidelines, as amended and supplemented, in order to ensure that their transfer prices reflect the arm's length principle.

***PART II: IMPLEMENTATION PROCEDURES OF THE OECD GUIDELINES FOR
MULTINATIONAL ENTERPRISES***

Decision of the OECD Council

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 Committee on International Investment and Multinational Enterprises, 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 Committee on International Investment and Multinational Enterprises:

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 Committee on International Investment and Multinational Enterprises.

II. The Committee on International Investment and Multinational Enterprises

1. The Committee on International Investment and Multinational Enterprises (“CIME” or “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.
4.
 - (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 underway, 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.
5. 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. Committee on International Investment and Multinational Enterprises

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.

**Commentary on the Implementation Procedures of the
OECD Guidelines for Multinational Enterprises**

1. The Council Decision represents the commitment of adhering countries to further the implementation of the recommendations contained in the text of the *Guidelines*. Procedural guidance for both NCPs and the CIME is attached to the Council Decision.

2. The Council Decision sets out key adhering country responsibilities for the *Guidelines* with respect to NCPs, summarised as follows:

- Setting up NCPs (which will take due account of the procedural guidance attached to the Decision), and informing interested parties of the availability of *Guidelines*-related facilities.
- NCPs in different countries to co-operate with each other as necessary.
- NCPs to meet annually and report to the CIME.

3. The Council Decision also establishes CIME's responsibilities for the *Guidelines*, including:

- Organising exchanges of views on matters relating to the *Guidelines*
- Issuing clarifications as necessary
- Holding exchanges of views on the activities of NCPs
- Reporting to the OECD Council on the *Guidelines*

4. CIME is the OECD body responsible for overseeing the functioning of the *Guidelines*. This responsibility applies not only to the *Guidelines*, but to all elements of the Declaration (National Treatment Instrument, and the instruments on International Investment Incentives and Disincentives, and Conflicting Requirements). In the Declaration, CIME seeks to ensure that each element is respected and understood, and that they all complement and operate in harmony with each other.

5. Reflecting the increasing relevance of the *Guidelines* to countries outside the OECD, the Decision provides for consultations with non-adhering countries on matters covered by the *Guidelines*. This provision allows CIME to arrange periodic meetings with groups of countries interested in *Guidelines* issues, or to arrange contacts with individual countries if the need arises. These meetings and contacts could deal with experiences in the overall functioning of the *Guidelines* or with specific issues. Further guidance concerning CIME and NCP interaction with non-adhering countries is provided in the Procedural Guidance attached to the Decision.

I. Procedural Guidance for NCPs

6. National Contact Points have an important role in enhancing the profile and effectiveness of the *Guidelines*. While it is enterprises that are responsible for observing the *Guidelines* in their day-to-day behaviour, governments can contribute to improving the effectiveness of the implementation procedures. To this end, they have agreed that better guidance for the conduct and activities of NCPs is warranted, including through annual meetings and CIME oversight.

7. Many of the functions in the Procedural Guidance of the Decision are not new, but reflect experience and recommendations developed over the years (e.g. the 1984 Review Report

C/MIN(84)5(Final)). By making them explicit the expected functioning of the implementation mechanisms of the *Guidelines* is made more transparent. All functions are now outlined in four parts of the Procedural Guidance pertaining to NCPs: institutional arrangements, information and promotion, implementation in specific instances, and reporting.

8. These four parts are preceded by an introductory paragraph that sets out the basic purpose of NCPs, together with core criteria to promote the concept of “functional equivalence”. Since governments are accorded flexibility in the way they organise NCPs, NCPs should function in a visible, accessible, transparent, and accountable manner. These criteria will guide NCPs in carrying out their activities and will also assist the CIME in discussing the conduct of NCPs.

Core Criteria for Functional Equivalence in the Activities of NCPs

Visibility. In conformity with the Decision, adhering governments agree to nominate National Contact Points, and also to inform the business community, employee organisations and other interested parties, including NGOs, about the availability of facilities associated with NCPs in the implementation of the *Guidelines*. Governments are expected to publish information about their contact points and to take an active role in promoting the *Guidelines*, which could include hosting seminars and meetings on the instrument. These events could be arranged in co-operation with business, labour, NGOs, and other interested parties, though not necessarily with all groups on each occasion.

Accessibility. Easy access to NCPs is important to their effective functioning. This includes facilitating access by business, labour, NGOs, and other members of the public. Electronic communications can also assist in this regard. NCPs would respond to all legitimate requests for information, and also undertake to deal with specific issues raised by parties concerned in an efficient and timely manner.

Transparency. Transparency is an important criterion with respect to its contribution to the accountability of the NCP and in gaining the confidence of the general public. Thus most of the activities of the NCP will be transparent. Nonetheless when the NCP offers its “good offices” in implementing the *Guidelines* in specific instances, it will be in the interests of their effectiveness to take appropriate steps to establish confidentiality of the proceedings. Outcomes will be transparent unless preserving confidentiality is in the best interests of effective implementation of the *Guidelines*.

Accountability. A more active role with respect to enhancing the profile of the *Guidelines* -- and their potential to aid in the management of difficult issues between enterprises and the societies in which they operate -- will also put the activities of NCPs in the public eye. Nationally, parliaments could have a role to play. Annual reports and annual meetings of NCPs will provide an opportunity to share experiences and encourage “best practices” with respect to NCPs. CIME will also hold exchanges of views, where experiences would be exchanged and the effectiveness of the activities of NCPs could be assessed.

Institutional Arrangements

9. The composition of NCPs should be such that they provide an effective basis for dealing with the broad range of issues covered by the *Guidelines*. Different forms of organisation (e.g. representatives from one Ministry, an interagency group, or one that contained representatives from non-governmental bodies) are possible. It may be helpful for the NCP to be headed by a senior official. NCP leadership should be such that it retains the confidence of social partners and fosters the public profile of the *Guidelines*. NCPs,

whatever their composition, are expected to develop and maintain relations with representatives of the business community, employee organisations, and other interested parties.

Information and Promotion

10. The NCP functions associated with information and promotion are fundamentally important to enhancing the profile of the *Guidelines*. These functions also help to put an accent on “pro-active” responsibilities of NCPs.

11. NCPs are required to make the *Guidelines* better known and available by appropriate means, including in national languages. On-line information may be a cost-effective means of doing this, although it should be noted that universal access to this means of information delivery cannot be assured. English and French language versions will be available from the OECD, and website links to the OECD *Guidelines* website are encouraged. As appropriate, NCPs will also provide prospective investors, both inward and outward, with information about the *Guidelines*. A separate provision also stipulates that in their efforts to raise awareness of the *Guidelines*, NCPs will co-operate with a wide variety of organisations and individuals, including, as appropriate, the business community, employee organisations, other non-governmental organisations, and the interested public.

12. Another basic activity expected of NCPs is responding to legitimate enquiries. Three groups have been singled out for attention in this regard: (i) other National Contact Points (reflecting a provision in the Decision); (ii) the business community, employee organisations, other non-governmental organisations and the public; and (iii) governments of non-adhering countries.

Implementation in Specific Instances

13. When issues arise relating to implementation of the *Guidelines* in specific instances, the NCP is expected to help resolve them. Generally, issues will be dealt with by the NCP in whose country the issue has arisen. Among adhering countries, such issues will first be discussed on the national level and, where appropriate, pursued at the bilateral level. This section of the Procedural Guidance provides guidance to NCPs on how to handle such situations. The NCP may also take other steps to further the effective implementation of the *Guidelines*.

14. In making an initial assessment of whether the issue raised merits further examination, the NCP will need to determine whether the issue is *bona fide* and relevant to the implementation of the *Guidelines*. In this context, the NCP will take into account:

- the identity of the party concerned and its interest in the matter;
- whether the issue is material and substantiated;
- the relevance of applicable law and procedures;
- how similar issues have been, or are being, treated in other domestic or international proceedings;
- whether the consideration of the specific issue would contribute to the purposes and effectiveness of the *Guidelines*.

15. Following its initial assessment, the NCP is expected to respond to the party or parties having raised the issue. If the NCP decides that the issue does not merit further consideration, it will give reasons for its decision.

16. Where the issues raised merit further consideration, the NCP would discuss the issue further with parties involved and offer “good offices” in an effort to contribute informally to the resolution of issues.

Where relevant, NCPs will follow the procedures set out in paragraph 2a) through 2d). This could include seeking the advice of relevant authorities, as well as representatives of the business community, labour organisations, other non-governmental organisations, and experts. Consultations with NCPs in other countries, or seeking guidance on issues related to the interpretation of the *Guidelines* may also help to resolve the issue.

17. As part of making available good offices, and where relevant to the issues at hand, NCPs will offer, or facilitate access to, consensual and non-adversarial procedures, such as conciliation or mediation, to assist in dealing with the issues at hand, such as conciliation or mediation. In common with accepted practices on conciliation and mediation procedures, these procedures would be used only upon agreement of the parties concerned.

18. If the parties involved fail to reach agreement on the issues raised, the NCP will issue a statement, and make recommendations as appropriate, on the implementation of the *Guidelines*. This procedure makes it clear that an NCP will issue a statement, even when it feels that a specific recommendation is not called for.

19. Transparency is recognised as a general principle for the conduct of NCPs in their dealings with the public (see para. 8 in “Core Criteria” section, above). However, paragraph C-4 recognises that there are specific circumstances where confidentiality is important. The NCP will take appropriate steps to protect sensitive business information. Equally, other information, such as the identity of individuals involved in the procedures, should be kept confidential in the interests of the effective implementation of the *Guidelines*. It is understood that proceedings include the facts and arguments brought forward by the parties. Nonetheless, it remains important to strike a balance between transparency and confidentiality in order to build confidence in the *Guidelines* procedures and to promote their effective implementation. Thus, while para. C-4 broadly outlines that the proceedings associated with implementation will normally be confidential, the results will normally be transparent.

20. As noted in para. 2 of the “Concepts and Principles” chapter, enterprises are encouraged to observe the *Guidelines* wherever they operate, taking into account the particular circumstances of each host country.

- In the event *Guidelines*-related issues arise in a non-adhering country, NCPs will take steps to develop an understanding of the issues involved. While it may not always be practicable to obtain access to all pertinent information, or to bring all the parties involved together, the NCP may still be in a position to pursue enquiries and engage in other fact finding activities. Examples of such steps could include contacting the management of the firm in the home country, and, as appropriate, government officials in the non-adhering country.
- Conflicts with host country laws, regulations, rules and policies may make effective implementation of the *Guidelines* in specific instances more difficult than in adhering countries. As noted in the commentary to the General Policies chapter, while the *Guidelines* extend beyond the law in many cases, they should not and are not intended to place an enterprise in a situation where it faces conflicting requirements.
- The parties involved will have to be advised of the limitations inherent in implementing the *Guidelines* in non-adhering countries.
- Issues relating to the *Guidelines* in non-adhering countries could also be discussed at NCP annual meetings with a view to building expertise in handling issues arising in non-adhering countries.

Reporting

21. Reporting would be an important responsibility of NCPs that would also help to build up a knowledge base and core competencies in furthering the effectiveness of the *Guidelines*. In reporting on implementation activities in specific instances, NCPs will comply with transparency and confidentiality considerations as set out in para. C-4.

II. Procedural Guidance for the CIME

22. The Procedural Guidance to the Council Decision provides additional guidance to the Committee in carrying out its responsibilities, including:

- Discharging its responsibilities in an efficient and timely manner;
- Considering requests from NCPs for assistance;
- Holding exchanges of views on the activities of NCPs;
- Providing for the possibility of seeking advice from experts.

23. The non-binding nature of the *Guidelines* precludes the Committee from acting as a judicial or quasi-judicial body. Nor should the findings and statements made by the NCP (other than interpretations of the *Guidelines*) be questioned by a referral to CIME. The provision that CIME shall not reach conclusions on the conduct of individual enterprises has been maintained in the Decision itself.

24. CIME will consider requests from NCPs for assistance, including in the event of doubt about the interpretation of the *Guidelines* in particular circumstances. This paragraph reflects paragraph C-2c) of the Procedural Guidance to the Council Decision pertaining to NCPs, where NCPs are invited to seek the guidance of the CIME if they have doubt about the interpretation of the *Guidelines* in these circumstances.

25. When discussing NCP activities, it is not intended that CIME conduct annual reviews of each individual NCP, although the CIME will make recommendations, as necessary, to improve their functioning, including with respect to the effective implementation of the *Guidelines*.

26. A substantiated submission by an adhering country or an advisory body that an NCP was not fulfilling its procedural responsibilities in the implementation of the *Guidelines* in specific instances will also be considered by the CIME. This complements provisions in the section of the Procedural Guidance pertaining to NCPs reporting on their activities.

27. Clarifications of the meaning of the *Guidelines* at the multilateral level would remain a key responsibility of the CIME to ensure that the meaning of the *Guidelines* would not vary from country to country. A substantiated submission by an adhering country or advisory body with respect to whether an NCP interpretation of the *Guidelines* is consistent with CIME interpretations will also be considered. This may not be needed very often, but would provide a vehicle to ensure consistent interpretation of the *Guidelines*.

28. Finally, the Committee may wish to call on experts to address and report on broader issues (e.g. child labour, human rights) or individual issues, or to improve the effectiveness of procedures. For this purpose, CIME could call on OECD in-house expertise, international organisations, the advisory bodies, NGOs, academics, and others. It is understood that this will not become a panel to settle individual issues.

NOTES

1. Chapter II, paragraph 3, *The OECD Guidelines for Multinational Enterprises* (OECD Paris, 1986).
2. *ibid*, Chapter II, paragraph 4.
3. The Guidelines are addressed to enterprises (private, state, mixed) "established in different countries and so linked that one or more of them may be able to exercise a significant influence over the activities of others and, in particular, to share knowledge and resources with the others"; *ibid*, Chapter II, paragraph 5.
4. *ibid*, Chapter II, paragraphs 5 and 9. See also page 48, *The OECD Declaration and Decisions on International Investment and Multinational Enterprises, 1991 Review* (OECD Paris, 1992).
5. *ibid*, Chapter II, paragraph 5.
6. *ibid*, Chapter II, paragraph 7.
7. *ibid*, Chapter II, paragraph 8.
8. *ibid*, Chapter II, paragraph 10.
9. *ibid*, Chapter II, paragraph 11.
10. *ibid*, Chapter II, paragraph 12.
11. *ibid*, Chapter II, paragraph 12.
12. Chapter II, paragraph 29, *The OECD Guidelines, op. cit.* at note 1.
13. Chapter II, paragraphs 54 and 83. See also page 43, *The OECD Declaration and Decisions, 1991 Review, op. cit.* at note 4.
14. Chapter II, paragraph 54, *The OECD Guidelines, op. cit.* at note 1.
15. *ibid*, Chapter II, paragraph 56.
16. *ibid*, Chapter II, paragraph 55.
17. *ibid*, Chapter II, paragraph 58.
18. *ibid*, Chapter II, paragraph 84.
19. *ibid*, Chapter II, paragraph 59.
20. Page 47, *The OECD Declaration and Decisions, 1991 Review, op. cit.* at note 4.
21. Chapter II, paragraph 86, *The OECD Guidelines, op. cit.* at note 1 and page 47, *The OECD Declaration and Decisions, 1991 Review, op. cit.* at note 4.
22. Pages 46-47, *The OECD Declaration and Decisions, 1991 Review, op. cit.* at note 4.

- 23 Chapter II, paragraph 87, *The OECD Guidelines, op. cit.* at note 3 and page 47, *The OECD Declaration and Decisions, op. cit.* at note 4.
- 24 *ibid.*, page 49.
- 25 Chapter II, paragraphs 60-61, *The OECD Guidelines, op. cit.* at note 4.
- 26 *ibid.*, page 44.
- 27 *ibid.*, page 43.
- 28 Chapter II, paragraph 62, *The OECD Guidelines, op. cit.* at note 1.
- 29 *ibid.*, Chapter II, paragraph 63.
- 30 *ibid.*, Chapter II, paragraphs 65-66.
- 31 *ibid.*, Chapter II, paragraph 79.
- 32 *ibid.*, Chapter II, paragraph 72.
- 33 *ibid.*, Chapter II, paragraph 74.
- 34 *ibid.*, Chapter II, paragraph 75.
- 35 *ibid.*, Chapter II, paragraph 78.
- 36 *ibid.*, Chapter II, paragraph 77.
- 37 *ibid.*, Chapter II, paragraphs 80-81.