

Update of the Policy Framework for Investment

Draft chapter:
Responsible business conduct



Context

Since the PFI was developed in 2006, new forces have reshaped the global investment landscape, including the global economic and financial crisis, which started in 2008 and from which many economies have still not recovered, and the emergence of new major outward investors within the G20, the spread of global value chains. Numerous lessons have also been learnt through the use of the PFI, particularly in developing and emerging economies. To reflect new global economic fundamentals, an update of the PFI was launched in 2013 and is due for completion in 2015.

Invitation to contribute

Experts, business and civil society representatives, international organisations, and the general public are invited to contribute comments on this draft chapter. Comments should be sent to investment@oecd.org by 31 December 2014.

A compilation of comments received will be published online at the end of the consultation period.

Contact

If you have any questions regarding the consultation, please email investment@oecd.org.

Find out more about the update of the PFI: www.oecd.org/investment/pfi-update.htm

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POLICIES FOR RESPONSIBLE BUSINESS CONDUCT

1. Responsible business conduct (RBC) enables enterprises to better contribute to economic development, sustainability, inclusiveness and social progress and to respect internationally recognised human rights. RBC focuses on two aspects of the business-society relationship: the positive contribution businesses can make to economic, environmental and social progress to achieve sustainable development, as well as the need to avoid adverse impacts and to address them when they occur. It is an essential component of a competitive and transparent business environment.
2. RBC is a matter for both governments and enterprises.
3. Governments have a role in promoting and enabling responsible business conduct. This point goes to the heart of the *Policy Framework for Investment*: to the extent that governments provide an enabling legal environment for businesses to act responsibly, they are more likely to keep and attract high quality investors who comply with RBC standards, minimise the risks of negative impacts of investments and contribute to value creation and sustainable development in the countries in which they operate.
4. For enterprises, RBC means above all complying with the host country's laws, including those on respecting human rights, environmental protection, labour relations and financial accountability, even where these are poorly enforced. However, it also means striving to go beyond minimum legal standards and act in accordance with increasingly high expectations of business behaviour, as reflected in international RBC standards. This entails the need for social responsibility, business ethics, and the goal to contribute to sustainable development to become part of business decisions and activities. Firms that adhere to high RBC standards are increasingly enjoying the commercial and non-commercial benefits leadership in RBC brings in terms of distinguishing themselves from competitors, meeting customer demands, retaining employees, and contributing positively to the societies in which they operate.
5. The scope of RBC is broad and cross cutting and covers a range of substantive areas including disclosure, human rights, employment and labour, environment, anti-corruption, and consumer interests, science and technology, competition, and taxation. RBC also applies to all types of enterprises regardless of the sector and legal nature, size or ownership structure of the enterprise. Thus it extends to enterprises that are private, state-owned, publicly listed, or of hybrid structure and applies equally to multinational enterprises as well as local businesses and SMEs.
6. Governments can support RBC in several ways:
 - *Law-making and enforcement*-- establishing and enforcing an adequate and coherent legal framework for RBC and monitoring performance and compliance with regulatory frameworks;
 - *Facilitating* – setting and communicating overall policy frameworks and enabling compliance;
 - *Cooperation* – working with stakeholders in the business community, worker organisations, civil society, general public as well as other governments to create synergies among RBC initiatives;
 - *Promoting* –demonstrating support for RBC practices that go beyond compliance with national laws.

A. Law-making and enforcement

7. Governments define and implement the laws and regulations that underpin RBC.

8. The state duty to respect fundamental freedoms and to protect against human rights abuses is a recognised international human rights obligation, reaffirmed in the *OECD Guidelines for Multinational Enterprises*, the *UN Guiding Principles for Business and Human Rights* and the *ILO Declaration on Multinational Enterprises*. Through these instruments, states are also encouraged to set clear expectations that businesses respect human rights abroad. It is the duty of governments to assure that a legal and regulatory framework to protect against such abuses is established and enforced. Human rights are an important element of RBC however regulatory regimes should extend beyond basic human rights protection to cover other areas of RBC (e.g. employment and labour, environment, anti-corruption, and consumer interests).

9. In addition to law-making and enforcement governments can endorse or help develop voluntary or non-binding initiatives related to responsible business conduct which go beyond legally mandated standards.

B. Facilitating

10. Governments can facilitate and support companies' efforts to comply with regulatory regimes by effectively communicating expectations as well as through providing open channels of communication making it possible to seek clarification and advice. Governments should also seek out company views on laws and enforcement practices, provide guidance on appropriate compliance management practices and strive to lower the cost of compliance for business. This can be done through working with individual companies or through collaboration with business and professional associations.

C. Cooperation

11. The roles of government, business and civil society in RBC are interdependent. Consequently, the process of defining and promoting RBC requires consultation and cooperation amongst all stakeholders – including governments, companies, worker associations, professional associations, employer's associations, civil society, and local communities.

12. Governments and international organisations can harness their convening power to play an important role in launching new collective initiatives which enable a range of stakeholders to address complex RBC challenges across sectors, regions, or issue areas.

13. Beyond convening local stakeholders, governments should also ensure policy coherence between federal and regional government agencies. Furthermore, governments should collaborate with external governments to establish policy coherence international RBC policies to contribute to a global level-playing field for investment.

E. Promoting:

14. Both regulation and voluntary business standards on RBC have merits. Governments should look for ways of facilitating and endorsing business initiatives that extend beyond the minimum legal threshold

with regards to RBC. Additionally governments should promote RBC in their own economic activities, by engaging with enterprises with a strong RBC record, for example through procurement policies.

15. The core questions included in this section attempt to reflect the roles of government in the context of RBC. In addition the questions also address the government's own role in practicing RBC in the economy.

Key questions

1. *How does the government establish and enforce an adequate legal and regulatory framework for responsible business? How does the government support business compliance with that framework?*
2. *How does the government promote policy coherence and alignment with RBC standards?*
3. *How does the government promote RBC by domestic companies operating abroad?*
4. *Does the government cooperate with other governments in promoting international concepts and principles for RBC?*
5. *How does the government promote transparency around RBC, including non-financial disclosure and reporting?*
6. *How does the government communicate RBC expectations to investors and other stakeholders?*
7. *How does the government provide support and incentives to companies to strengthen RBC?*
8. *How does the government support the public's involvement in RBC?*
9. *Does the government itself practice RBC in its role within the economy (e.g. as an employer, investor, or through state-owned enterprises)??*

SUPPLEMENTAL QUESTIONS

<p>Establishing and enforcing a legal and regulatory framework</p>	<ul style="list-style-type: none"> • Has the government ratified the main international human rights, labour, environmental and anti-bribery conventions and incorporated them into national law? How does it implement and enforce laws in these areas? • Does the national legal regulatory framework align with internationally recognised instruments on RBC? • Does the government provide effective, secure and publically accessible legal processes? • Does the government provide human and financial resources to assure development and implementation of an adequate legal and regulatory framework for RBC? <p>Further questions relating to core labour standards, financial accountability and the environment can be found in other PFI chapters.</p>
<p>Supporting business compliance</p>	<ul style="list-style-type: none"> • How does the government enforce responsible business related laws and regulations? • How does the government raise awareness of and provide advice and guidance on interpreting RBC related laws and regulations? • Does the government offer guidance on appropriate compliance management practices? If so, is this done at the company level or through collaboration with business and professional associations? • Does the government engage in efforts to lower the costs of implementing responsible business policies? • Does the government encourage companies to incorporate due diligence to identify, prevent, mitigate and account for actual and potential adverse impacts as part of their enterprise risk management systems? • Does the government take specific actions to involve and encourage small and medium sized enterprises to implement RBC standards?
<p>Promoting policy coherence and alignment with RBC</p>	<ul style="list-style-type: none"> • Do trade and investment agreements signed by the government make reference to RBC principles? • Does the government incorporate sustainability and inclusiveness considerations into sectoral master plans or other private sector development strategies? • Does the government organise collaboration across relevant government bodies as well as with sub-national government bodies and authorities on cross cutting issues related to RBC?
<p>Promoting RBC abroad</p>	<ul style="list-style-type: none"> • Does the government instruct companies under its jurisdiction operating internationally to respect international RBC standards including the OECD MNE Guidelines and the UN Guiding Principles? • Does the government encourage business operating internationally to conduct due diligence across business relationships, including throughout supply chains, to address actual and potential adverse social and environmental impacts? • Does the government provide non-legal mechanisms for conflict resolution, for example through mediation and conciliation? Does the

	<p>government require reporting on the respect of human rights by companies operating abroad and throughout their supply chain? Does the government provide mechanisms to facilitate reporting by companies of suspected violations and risks regarding international law and agreements related to their business operations (e.g. as outlined in the Voluntary Principles on Human Rights and Security or in UN Sanctions)?</p> <ul style="list-style-type: none"> • Does the government encourage reporting by companies under its jurisdiction operating internationally, on areas such as payments revenue payments to governments, information on corporate ownership structures? • Does the government incorporate RBC issues such as sustainable development within its international trade and investment policy?
<p>Promoting international RBC principles</p>	<ul style="list-style-type: none"> • How does the government encourage broad participation, including by developing countries, in international, regional and bilateral initiatives on RBC, for example through donor agencies, diplomatic action, etc.? • Has the government adhered to or participated, or does it consider doing so, in any of the following: <ul style="list-style-type: none"> a. OECD Guidelines for Multinational Enterprises? b. UN Guiding Principles on Business and Human Rights? c. ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policies?
<p>Promoting transparency around RBC</p>	<ul style="list-style-type: none"> • Does the government promote high standards for corporate reporting including non-financial reporting on social and environmental impacts in line with international guidelines (e.g. Global Reporting Initiative)? • Do regulatory frameworks on corporate reporting allow for innovative and flexible approaches to respond to diverse contexts and evolving priorities of investors? • Does the government promote awareness of social and environmental issues through market-making bodies such as stock exchanges? • Does the government promote revenue and where appropriate contract transparency around significant public resources or expenditures, for example in the extractive sector or for large infrastructure projects? • How easily can public information be accessed? <p>See Question 7.3 on promoting RBC abroad which includes questions on reporting requirements for the foreign affiliates of home-based firms.</p>
<p>Communicating expected RBC behaviour</p>	<ul style="list-style-type: none"> • Does the government have a national RBC policy? • Has the government appointed a special dedicated body or representative within government responsible for coordinating RBC activities and promotion? • Does the government communicate on RBC through other relevant bodies such as investment promotion agencies, public relations bodies etc.? • Does the government engage actively with business and civil society on RBC? What mechanisms for engagement exist? • Does it provide clear and accessible information on responsible business practices to the public? <p>See Question 7.3 on international cooperation to promote RBC.</p>

<p>Providing support and incentives for strengthened RBC</p>	<ul style="list-style-type: none"> • Does the government favour companies with demonstrated commitment to RBC (e.g. participation in RBC related initiatives, strong corporate policy on RBC, strong internal due diligence system targeted at risks related to RBC) in government contracting and procurement processes? • Does the government provide financial incentives to companies, to encourage goals related to RBC? • Does the government use its convening power to help support initiatives related to RBC? • Is the government active in supporting widely accepted non-legal standards on RBC and voluntary measures and initiatives relevant to RBC (e.g., bottom-up mechanisms/standards negotiated with stakeholders at local level)?
<p>Supporting public involvement in RBC</p>	<ul style="list-style-type: none"> • Are public consultations and consultations with most affected stakeholders held on existing and proposed laws and regulations on a local, regional and national basis (see Horizontal Policy chapter)? • Are the rights of individuals or organisations who draw attention to legal misconduct related to RBC by either government or business explicitly protected by the law? • Are individuals and organisations able to research and publish information on human rights, environmental concerns and related issues without fear of punishment? • Are civil society organisations supported and encouraged in taking part in international and multi-stakeholder RBC initiatives?
<p>Government practicing RBC</p>	<ul style="list-style-type: none"> • Does the government comply with RBC standards and principles in its own practices, e.g. as an employer or business partner? • Does the state set a good example as an investor in local and foreign enterprises (including through public pension funds and sovereign wealth funds)? • Does the government through its public contracts and procurement processes promote high standards of transparency and objectivity? • Do state-owned enterprises set a good example in terms of RBC, including through environmental, social and governance reporting? • Does the government mandate high standards of disclosure for companies seeking support from bodies managing public funds such as Export Credit Agencies?

ADDITIONAL RESOURCES

Websites

<http://mneguidelines.oecd.org/>

www.unodc.org

www.unepfi.org

www.unfccc.int

www.ilo.org

www.amnesty.org

www.business-humanrights.org

www.hrw.org

www.transparency.org

www.globalreporting.org

www.cdproject.net

www.iblfi.org (International Business Leaders' Forum)

www.wbcsd.org (World Business Council for Sustainable Development)

www.ihrb.org

www.wwf.org

Principles and Standards

OECD Guidelines for Multinational Enterprises

OECD Recommendation on Bribery and Officially Supported Export Credits

OECD Guidelines on Corporate Governance of State-Owned Enterprises

OECD Due Diligence for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas

OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions

UN Guiding Principles on Business and Human Rights

UN Universal Declaration of Human Rights

UN Principles for Responsible Investment

Voluntary Principles on Security and Human Rights

ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policies

ISO 26000

UN Global Compact

Extractive Industries Transparency Initiative

Kimberley Process

Ethical Trade Initiative

Fair Labour Association

Tools, Guidance, Manuals

OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones

Transparency International Corruption Fighter's Toolkit

Anti-Bribery Resource Guide (BIAC)

Business Anti-Corruption Portal

World Bank: Public Sector Roles in Strengthening Corporate Social Responsibility: A Baseline Study

Reviews, Case/Country Studies

Protect, Respect and Remedy: A Framework for Business and Human Rights

Business and Human Rights in Weak Governance Zones

www.globalintegrity.org

Corporate Governance of State-Owned Enterprises: A Survey of OECD Countries (OECD)

Corporate Responsibility: Private Initiatives and Public Goals

Indicators

ILOLEX database on international labour standards

NATLEX database on labour, social security and related human rights legislation

ECOLEX information service on environmental law (www.ecolex.org)

World Bank Governance Indicators (www.govindicators.org)

Transparency International Corruption Perceptions Index

www.un.org/esa/sustdev

UN Office of the High Commission for Human Rights database on countries' ratification of human rights conventions

Reviews, Case/Country Studies and Indicators

Francke, E. et al. (2012), "The Mobilisation of Private Investment for Low-carbon, Climate-Resilient Infrastructure: The Case of Metrobus Bus Rapid Transit System in Mexico City", case study prepared by CTS EMBARQ Mexico for the OECD.

OECD (2014c), Green Growth Indicators 2014, *OECD Green Growth Studies*, OECD Publishing, Paris.

OECD (2013c), *OECD Investment Policy Reviews: Malaysia 2013*, OECD Publishing, Paris.

OECD (2013d), *OECD Investment Policy Reviews: Costa Rica 2013*, OECD Publishing, Paris.

OECD (2013e), *OECD Investment Policy Reviews: Jordan 2013*, OECD Publishing, Paris.

OECD (2012a), *Investment Policy Reviews: Tunisia 2012*, OECD Publishing, Paris.

OECD (2012b), *OECD Investment Policy Reviews: Colombia 2012*, OECD Publishing, Paris.