



POLICY FRAMEWORK FOR INVESTMENT USER'S TOOLKIT

Chapter 7. Promoting Responsible Business Conduct**Introductory note**

The PFI User's Toolkit responds to a need for specific and practical implementation guidance revealed from the experience of the countries that have already undertaken a PFI assessment.

Development of the Toolkit has involved government users, co-operation with other organisations, OECD Committees with specialised expertise in the policy areas covered by the PFI and interested stakeholders.

This document offers guidance relating to the PFI chapter on Promoting Responsible Business Conduct.

The PFI User's Toolkit is purposely structured in a way that is amenable to producing a web-based publication. A web-based format allows: a flexible approach to providing updates and additions; PFI users to download the guidance only relevant to the specific PFI application being implemented; and a portal offering users more detailed resources and guidance on each PFI question. The website is accessible at www.oecd.org/investment/pfitoolkit.



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Policies for Promoting Responsible Business Conduct

Responsible business conduct (RBC) means above all complying with laws, such as those on respecting human rights, environmental protection, labour relations and financial accountability, even where these are poorly enforced. It also involves responding to societal expectations communicated by channels other than the law, e.g. inter-governmental organisations, within the workplace, by local communities and trade unions, or via the press. Private voluntary initiatives addressing this latter aspect of RBC are often referred to as corporate social responsibility (CSR).

Companies are best able to promote RBC when governments fulfil their own distinctive roles effectively. This point goes to the heart of the PFI: to the extent that governments provide an enabling legal environment for responsible businesses, they are more likely to keep and attract high quality investors who might otherwise be tempted to go elsewhere. At the same time, firms that adhere to high RBC standards are more likely to bring lasting benefits to employees, customers and the societies in which they operate. The roles of government, business and civil society are both complementary and interdependent.

The prime tasks of government are to define and, just as importantly, to implement the laws and regulations that underpin RBC. But going beyond these tasks, governments can and should support RBC initiatives in three main ways:

- *Facilitating* – setting clear overall policy frameworks;
- *Partnering* – combining public resources with those of business and other actors to leverage complementary skills and resources
- *Endorsing* – showing public political support for particular kinds of RBC practice in the market place or for particular companies.

Similarly, companies' commitment to RBC does not begin and end with legal compliance. In a model that may be applied to a number of RBC issues, the Business Leaders' Initiative on Human Rights (www.blihr.org) defines three levels of company behaviour:

- *Essential* actions refer to minimum business standards defined by national and international law.
- *Expected* actions go beyond what is legally required to meet the additional expectations of key stakeholders such as investors, employees, customers, and suppliers as well as NGOs and the wider community. As standards improve, some of today's expectations could become tomorrow's essential requirements.
- *Desirable* actions are often company-specific and may include pioneering philanthropic or community-based initiatives.

The process of defining and promoting these aspects of RBC requires consultation and cooperation among government, companies, professional associations and other civil society.

The 6 PFI questions on promoting responsible business conduct relate to:

- [Clear separation of government and business roles](#)
- [Promoting effective two-way communication: law-making and other dialogue](#)
- [Providing an adequate framework for corporate disclosure](#)
- [Enlisting business as a partner in the legal and regulatory system](#)
- [Strengthening the business case for responsible conduct](#)
- [Intergovernmental co-operation](#)

Clear separation of government and business roles

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

Rationale for the question

The role of government is to look after the collective interests of its citizens. As part of this role, governments work with companies, trade unions and other civil society organisations to create an enabling environment for responsible business conduct. If this enabling environment is well designed, including through a clearly communicated distinction between the respective roles and responsibilities of government and business, uncertainty over expectations concerning responsible business conduct are lowered, thus encouraging investment, and private and public sector actors will be encouraged to play mutually-supporting roles in enhancing economic, social and environmental well-being. Government and business roles need to remain distinct and cannot substitute for each other: each sector needs to assume its responsibilities.

Governments can *facilitate, partner* and *endorse* business initiatives in support of RBC (e.g. by co-hosting consultations and conferences organised by business and professional associations). At the same time, too much government influence in these associations is likely to prove stifling rather than enabling. Similarly, companies and business associations may partner with government (e.g. in promoting new environmental policies and practices), but they should not try to take decisions on government's behalf. If narrow commercial interests exercise too much influence on governments, the result could in the worst case be a form of 'regime capture'. In such circumstances, the wider business community would suffer: companies need governments that are seen as legitimate and represent the interests of all of their citizens.

Related PFI questions:

Question 8.6 on core labour standards

Questions 10.6—10.9 on anti-corruption and integrity standards.

Key considerations

Leadership and policy coordination. Carefully considered leadership at the highest level of government is essential for RBC, including statements of support for RBC principles from cabinet ministers and the head of state. From an administrative point of view, governments should decide which branches are to take the lead in coordinating policy in this area.

Equitable enforcement. Well-run companies, whether domestic or foreign, will abide by international labour and environmental standards, but they may not be able to meet their commercial targets if they are undercut by competitors who are able to reduce costs by paying unfair wages or skimping on safety requirements.

Policy practices to scrutinise

Human rights:

- Has the government ratified the main international human rights conventions and incorporated them into national law?
- How does it implement and enforce human rights law?
- How does it raise awareness of human rights in the business community and ensure that companies abide by the law?

Employment and industrial relations:

- Has the government ratified the key ILO labour conventions?
- Does the government set a positive example in its own employment practices?
- Does the government enforce labour laws equitably so that all businesses operate on a level playing field?

Financial accountability

Another government responsibility is to establish an effective legal and administrative framework to promote government transparency and reduce opportunities for corruption, thus helping to ensure that companies are competing on equal terms. Legislation should be drafted in accordance with the principles of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the United Nations Convention against Corruption. Specifically with regard to the private sector, the law should establish that:

- It is a criminal offence for either private sector representatives or public officials to give or receive bribes, whether directly or through an intermediary and regardless of whether the bribe is for the benefit of the person receiving the bribe or a third person;
- Both natural and legal persons (*i.e.* companies) can be held liable for acts of bribery;
- Bribes are not tax-deductible as expenses;
- Companies are required to keep accurate books and records (off-the-books accounts are not permitted);
- Companies are required to disclose in their financial statements the full range of material contingent liabilities;

- Accounting omissions, falsifications and fraud must be adequately sanctioned.

Legislation should be accompanied by effective implementation:

- Do law enforcement agencies have the necessary resources and technical expertise to investigate commercial corruption?
- Does the judiciary have the independence and the expertise that it needs to assess complex commercial corruption and fraud cases?
- Do key regulatory agencies – notably customs and tax agencies – have effective internal controls to combat corruption?
- Are requirements to submit to external audit adequate?
- Are external auditors independent and able to provide objective assessments of company accounts, financial statements and internal controls?
- Are auditors who discover indications of a possible illegal act of bribery required to report this to management and, as appropriate, to corporate monitoring bodies and law enforcement authorities?
- Are companies encouraged to develop and adopt adequate internal company controls, including standards of conduct and the inclusion of statements in annual reports about their internal control mechanisms?
- Are companies encouraged to create internal monitoring bodies, independent of management, such as audit committees of boards of directors or of supervisory boards?
- Are companies encouraged to provide channels for communication by, and protection for, persons not willing to violate professional standards or ethics under instructions or pressure from hierarchical superiors?

Further resources and case studies

The role of government in RBC

Three World Bank studies elaborate on the role of government in mandating, facilitating, partnering and endorsing RBC:

- [Public Sector Roles in Strengthening Corporate Social Responsibility: A Baseline Study](#)
- [Public Sector Roles in Strengthening Corporate Social Responsibility: Taking Stock](#)
- [CSR Implementation Guide. Non-legislative Options for the Polish Government](#)

An OECD publication [Corporate Responsibility: Private Initiatives and Public Goals](#) includes a chapter on ‘Public policy and voluntary initiatives: What role have governments played?’

Human rights

Government information on human rights protection

- The UN Secretary-General's Special Representative for Business and Human Rights, Professor John Ruggie, has developed a framework, '[Protect, Respect and Remedy](#)', that sets out the different responsibilities of States, who have a duty to protect against human rights violations, and business enterprises, who have a duty to respect the human rights of those who are affected by their activities, while both States and business enterprises have to provide for remedies against infringements of human rights. Practical guidance for States and business enterprises can be found in the [Guiding Principles on Business and Human Rights](#).
- The UN Office of the High Commission for Human Rights (www.ohchr.org) provides a database on the extent of each country's ratification of human rights conventions.
- Other sources of country information on human rights include the US Department of State, which publishes an annual set of [Country Reports on Human Rights Practices](#) as well as specialist international NGOs such as Amnesty International (www.amnesty.org) and Human Rights Watch (www.hrw.org). The Business and Human Rights Resource Centre (www.business-humanrights.org) provides a specialist database on national and international human rights issues as they affect business.
- The US-based Freedom House (www.freedomhouse.org) publishes an annual report *Freedom in the World*, which assesses civil and political rights, including press freedom and electoral rights. Reporters without Borders (www.rsf.org) publishes an annual *Press Freedom Index*, which ranks individual countries.

Information for business on human rights

- A paper on [Business and Human Rights in Weak Governance Zones](#), developed jointly by the Business and Industry Advisory Committee (BIAC) to the OECD, the International Chamber of Commerce (ICC) and the International Employers Organization (IOE), identifies the range of issues associated with weak governance zones and the reality faced by companies that operate or are contemplating operating in them. It also identifies actions that companies can take individually or collectively in order to respond effectively to such situations.
- The [OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones](#) is a due diligence framework and method for assessing whether a company has the risk management systems in place to operate in high risk environments.

Labour

The International Labour Organization (ILO - www.ilo.org) publishes three complementary databases that make it possible to assess government performance on labour issues:

- The [ILOLEX Database of International Labour Standards](#) provides information on all the main labour conventions, and provides a quick reference tool for checking which countries have ratified the conventions.
- [NATLEX](#) features national laws on labour, social security, and related human rights legislation.
- [Key Indicators of the Labour Market](#) provide country data on 20 labour market indicators relating to 'decent work deficits'.

The US Department of Labor prepares annually [Findings on the worst forms of child labour](#), describing the efforts of 144 countries and territories to meet commitments to eliminate the worst forms of child labour.

Combating bribery

- The World Bank Institute publishes an annual set of six governance indicators (www.govindicators.org): voice and accountability; political stability and absence of violence; government effectiveness; regulatory quality; rule of law; and control of corruption. The indicators are based on a combination of external assessments covering 212 countries and territories.
- Transparency International (www.transparency.org) publishes a series of indices and assessments:
 - The best known is the annual [Corruption Perceptions Index](#), based on a combination of ratings by external agencies covering almost 200 countries.
 - The annual [Global Corruption Barometer](#) assesses general public attitudes toward, and experience of, corruption in dozens of countries around the world.
 - The [National Integrity System Surveys](#) provides a framework which anti-corruption organisations can use to analyse both the extent and causes of corruption in a given country as well as the effectiveness of national anti-corruption efforts.
 - The website also includes an online [Anti-corruption Handbook](#) and a [Corruption Fighter's Toolkit](#).
- Global Integrity (www.globalintegrity.org), a US-based NGO, assesses governance and corruption trends worldwide through periodic country reports based on both qualitative and quantitative data compiled by local experts.

- BIAC has developed an [Anti-Bribery Resource Guide](#) to provide a comprehensive and easily accessible inventory of relevant anti-corruption instruments and initiatives which define legally-binding obligations on states and companies, reflect a commitment against bribery and offer guidance to companies in their fight against bribery and corruption.
- Financed by seven OECD member governments, the [Business Anti-Corruption Portal](#) of the [Global Advice Network](#) provides advice to international companies operating in emerging and transition economies and contains a set of country profiles analysing current trends—including the performance of government agencies—from a business perspective.
- The UN Office on Drugs and Crime (UNODC – www.unodc.org), charged with promoting the UN Convention against Corruption, has a tool for [Self Assessment of the Implementation of the UNCAC](#), as well as a more succinct [Anti-Corruption Toolkit](#).

Environment and Sustainable Development

- ECOLEX (www.ecolex.org) is an information service on environmental law, operated jointly by the Food and Agriculture Organization, the International Union for Conservation of Nature and the UN Environment Programme. It includes information on treaties, international soft-law and other non-binding policy and technical guidance documents, national legislation, judicial decisions, and law and policy literature.
- The UN Department of Economic and Social Affairs, Division for Sustainable Development (www.un.org/esa/sustdev) provides a database and publishes a [world map](#) showing which countries are making most progress in developing national sustainable development strategies. It also includes a set of [national reports on sustainable development strategies](#).

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

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

Rationale for the question

Law making is one of the main forms of communication between governments and business. An effective legal system requires consultation both before laws are drafted and after they are promulgated. These consultation processes cannot work unless citizens' rights to information are respected and grievance mechanisms are in place.

Both government regulation and voluntary business standards have merits. Governments should look for ways of facilitating and endorsing business initiatives that extend beyond the minimum legal threshold. For example, governments can use their convening power to bring companies and civil society organisations together and to help develop voluntary initiatives that extend the boundaries of best practice. They may also be able to use government websites and communications networks to publicise information about best practice.

Related PFI questions:

- Question 2.6 on public consultation with investors
- Question 3.2 on consultations on planned changes to trade policies
- Question 10.4 on good practice in public consultation
- Question 7.5 on the scope for partnership between business and government in the development of voluntary standards

Key considerations

Understanding the legitimate needs of the private sector. Business people often complain that officials have little understanding of their legitimate needs and day-to-day realities, reflecting a significant 'cultural divide' between the public and private sectors which must be overcome. Business associations, chambers of commerce and multi-stakeholder groups working on specific RBC issues are likely to be among the most important dialogue partners for government, although government needs to consult with representatives of civil society as well as business.

Advice on interpreting new laws. Laws and regulations on RBC issues are often subject to a variety of interpretations, and it is helpful if government can provide channels of communication making it possible to seek advice. For example, the US Department of Justice (www.usdoj.gov) has established a system of 'opinion procedures' whereby companies can seek advice on whether proposed actions

would bring them into conflict with the US Foreign Corrupt Practices Act. The opinions, and the principles behind them, are published on the Department's website.

Freedom of information and rights of whistleblowers. Local and international civil society organisations, often working together, provide an important source of independent information on the human rights, labour and environmental issues that touch on RBC. They are unable to fulfil this role effectively unless the government observes Article 19 of the UN Universal Declaration for Human Rights, the right to freedom of opinion and expression.

A related area concerns the rights of 'whistleblowers' who draw attention to malpractice in either government or business. 'Blowing the whistle' often incurs high risks for the individuals involved, particularly if they are employees of the organisation concerned.

Reporting of problems to government. Under the terms of the [Voluntary Principles on Human Rights and Security](#) (Question 7.5), companies are themselves expected to report suspected human rights abuses, if these take place in or near their area of operations. Governments should provide mechanisms to facilitate this.

Policy practices to scrutinise

Consultation when drafting and implementing new laws

- Does the government consult business representatives when drafting new laws that may affect the business community?
- Does business have access to all relevant information and adequate time to respond?
- Do such consultations take place at the local as well as the national level?
- Are rules and regulations communicated in a non-technical, 'user-friendly' style that is accessible to business people without legal training?

Freedom of information and rights of whistleblowers.

- How easily can civil society organisations obtain access to public information?
- How far are the media genuinely free and independent?
- Are civil society organisations able to research and publish information on human rights and related issues without fear of persecution?
- Are the rights of whistleblowers explicitly protected by the law?

Further resources and case studies

The following resources and case studies provide additional information on effective two-way communication:

- The International Chamber of Commerce (www.iccwbo.org) is a business-led civil society organisation, one of whose roles is to help set commercial rules and standards on issues ranging from model contracts to strategies for countering bribery. It is a useful potential dialogue partner on both formal regulation and business self-regulation.
- The US-based Ethics Resource Center (www.ethics.org) includes a toolkit on what should be included in corporate codes of conduct. An OECD publication [*Corporate Responsibility: Private Initiatives and Public Goals*](#) includes a chapter on ‘Codes of corporate conduct: Expanded view of their contents’.
- Reporters Without Borders (www.rsf.org) publishes an annual *Press Freedom Index*, which ranks individual countries. Freedom House (www.freedomhouse.org) publishes an annual report *Freedom in the World*, which ranks civil and political rights – including press and freedom and electoral rights - on a scale of one (most free) to seven (least free).
- A leading NGO specialising in protecting the rights of whistleblowers is the UK-based Public Concern at Work (www.pcaw.co.uk). Its policy papers include recommendations on appropriate legislation to protect the interest of whistleblowers, and it has advised many countries and organisations on this issue.
- Governments adhering to the [*OECD Guidelines for Multinational Enterprises*](#) have established National Contact Points: government offices responsible for encouraging observance of the *Guidelines* and addressing any concerns about how to implement them.

Providing an adequate framework for corporate disclosure

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

Rationale for the question

While investors have traditionally focused solely on companies' financial performance, there is now growing interest in how companies perform on 'environmental, social and governance' (ESG) issues. Companies' environmental and social policies as well as their performance in this area in any given year are increasingly important for all classes of investors and essential for the growing Socially Responsible Investment market for investments in companies that meet specified social and environmental criteria.

Company policy on ESG issues is important for other stakeholders, not just investors. For example, the communities surrounding major projects will want to know how companies manage environmental issues and what their past record has been. Society as a whole has an interest in understanding how major industries are managed and who benefits from the revenue that they bring. Particular focus recently has been on the revenue management of the oil, gas and mining industries. One result has been the emergence of the multi-stakeholder initiatives discussed below.

Related PFI questions:

Question 6.5 on corporate disclosure standards and procedures

Key considerations

The mandating role of the government. Governments can promote corporate disclosure through legal reform. For example, the [UK Companies Act \(2006\)](#) explicitly mandates social and environmental reporting. Article 417 states that the director's report of a quoted company must 'to the extent necessary for an understanding of the development, performance or position of the company's business, include... social and community issues, including information about any policies of the company in relation to these matters.'

An amendment to the UK Pensions Act in 2000, prompted a higher level of disclosure in pension funds by requiring fund managers to tell members whether they consider the ethical, social or environmental impact of the companies they invest in. Managers still have the option to state that they do not take these

impacts into account, but the fact that they are required to disclose their policies puts greater pressure on them to justify their stances. Other countries in Europe, including Austria, Belgium, France, Germany, Italy and Sweden, have all enacted similar legislation. In Australia, the Financial Services Reform Act includes an amendment that compels providers of investment products to disclose ‘the extent, if any, to which labour standards, environmental, social or ethical considerations are incorporated into their investment principles’. The Act applies to all investment, not just pension schemes.

The role of stock exchanges. Many leading exchanges are now managed as independent corporations, albeit subject to official regulation and delegation of authority by governments. Governments can therefore play an important facilitating role in establishing an overall policy framework that encourages non-financial reporting. Stock exchanges in emerging markets sometimes play a leading role in promoting awareness of socially responsible reporting, often building in part on the OECD *Guidelines for Multinational Enterprises*. In China, the Shenzhen Stock Exchange has published an instruction on social and environmental standards for listed companies. To stimulate CSR awareness among Thai companies, the Stock Exchange of Thailand has begun to give awards to listed companies for outstanding CSR projects and established a CSR Promotion Fund at the end of 2008 to increase CSR awareness and implementation. In a related initiative, a CSR committee comprising both the public and private sectors has proposed a CSR roadmap for Thai listed companies and has developed a CSR Handbook.

Corporate codes of business principles. Company policy on corporate responsibility is an important area for corporate disclosure. Companies often express their overall policies through codes of business principles or codes of conduct which typically include a commitment to legal compliance but which also often go beyond it.

Disclosure and combating bribery. The degree of corporate disclosure required by investors is directly linked to the fight against bribery. Investors have a right to know how companies spend their money, but corrupt transactions – being illegal – are bound to be concealed. In the US, the Securities Exchange Commission (www.sec.gov) enforces the Foreign Corrupt Practices Act ‘books and records’ provisions which require companies to keep accurate and comprehensive accounts. Similarly, both the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the UN Convention against Corruption (www.unodc.org) require governments to introduce legislation forbidding off-the-books accounts which may be used to keep track of illicit payments.

Disclosure in Export Credit Agency applications. Export credit agencies in OECD member states are currently implementing higher standards of disclosure for

companies seeking official guarantees. An [OECD Recommendation on Bribery and Officially Supported Export Credits](#) requires applicants for official credits to disclose upon demand: (i) the identity of persons acting on their behalf in connection with the transaction, and (ii) the amount and purpose of commissions and fees paid, or agreed to be paid, to such persons. Bribes, particularly in the international arena, are often paid via business intermediaries, and if companies are required to identify such intermediaries they will be less likely to use them in this way.

Policy practices to scrutinise

Do state-owned enterprises set a good example? State-owned enterprises (SOEs) can serve as a model for other companies by demonstrating best practice in non-financial reporting of their own activities.

- In 2004 the OECD published its [Guidelines on Corporate Governance of State-Owned Enterprises](#), including the statement that ‘large or listed SOEs should disclose financial and non-financial information according to high quality, internationally recognised standards’. The Guidelines are accompanied by an OECD publication on [Corporate Governance of State-Owned Enterprises: A Survey of OECD Countries](#).
- In 2007, the Swedish government issued a set of [Guidelines for External Reporting by State-owned Companies](#), including a requirement to comply with the sustainability reporting guidelines of the Global Reporting Initiative (GRI – see below).
- Similarly, in 2008 China’s State-owned Assets Supervision and Administration Commission of the State Council issued Guidelines for SOEs on Fulfilling Corporate Social Responsibilities, including establishing a CSR reporting mechanism, preferably with a regular sustainability report. These Guidelines are presented in an Annex of the [OECD Investment Policy Review of China: Encouraging Responsible Business Conduct](#).

Does the state set an example as an investor in local and foreign enterprises? Whether through public pension schemes or sovereign wealth funds, the state is often an important investor in private companies. These funds can set an example to other investors by engaging in socially-responsible investing and by full non-financial reporting. For example, Norway’s [Government Pension Fund](#), the second largest in the world, has clear ethical guidelines based on sector and company behaviour. All companies in which the Fund invests are monitored by a Council of Ethics to ensure that the companies are not involved in activities that can contribute to violation of human rights, corruption, environmental damage or ‘other particularly serious violations of fundamental ethical standards’.

Government procurement is an area where it is particularly important for governments to set a positive example in promoting high standards of

transparency and disclosure. The [OECD Recommendation on Enhancing Integrity in Public Procurement](#) provides policy makers with Principles for enhancing integrity throughout the entire public procurement cycle, taking into account international laws, as well as national laws and organisational structures of Member countries. A related OECD publication considers [Integrity in Public Procurement: Good Practice from A to Z](#).

Further resources and case studies

The following resources and case studies provide further information on frameworks for corporate disclosure:

- The Global Reporting Initiative (www.globalreporting.org) has developed a framework for corporate reporting on environmental sustainability, labour and human rights issues. GRI is an independent, not-for-profit organisation: its funders have included the governments of Australia, Germany, Sweden and the UK as well as the European Commission and a range of charitable foundations.
- The Carbon Disclosure Project (www.cdproject.net) is an independent organisation supported by institutional investors with a combined asset portfolio of USD 71 trillion. Its role is to promote disclosure of company policies and practices relating to climate change and greenhouse gas emissions through detailed questionnaires sent to leading companies.
- The Ethical Investment Research Service (EIRIS – www.eiris.org), a not-for-profit organisation, provides independent research into the social, environmental and ethical performance of companies. EIRIS reports provide a useful source of information on current trends in the field of socially responsible investment, including the adoption of corporate codes of business principles.
- The Principles for Responsible Investment (www.unpri.org) are the result of an initiative by the UN Environment Programme (UNEP) and the UN Global Compact (see Question 7.6). Asset owners, investment managers and professional service partners are invited to sign up to a set of six principles on environmental, social and governance (ESG) issues. The third principle states that signatories will ‘seek appropriate disclosure on ESG issues by the entities in which we invest’. It also lists the following possible actions:
 - Ask for standardised reporting on ESG issues (using tools such as the GRI);
 - Ask for ESG issues to be integrated within annual financial reports;
 - Ask for information from companies regarding adoption of, or adherence to, relevant norms, standards, codes of conduct or international initiatives (such as the UN Global Compact);

- Support shareholder initiatives and resolutions promoting ESG disclosure.

The Principles are voluntary, but governments may endorse them in a number of ways. For example, in March 2008, UK members of parliament proposed making it mandatory for fund managers administering personal pension funds to sign up to the PRI.

- The Extractive Industries Transparency Initiative (EITI – www.eitransparency.org), a multi-stakeholder initiative involving governments from both industrialised and developing countries, as well as companies and civil society organisations, promotes transparent company and government reporting of mining and petroleum revenues.
- The Kimberley Process (KP - www.kimberleyprocess.com) is a multi-stakeholder initiative on a specific aspect of disclosure: the origin of diamonds. Governments have helped endorse and facilitate the process. The KP is a joint government, industry and civil society initiative to stem the flow of conflict diamonds – rough diamonds used by rebel movements to finance wars against legitimate governments. As of the end of 2009, it had 49 members, representing 75 countries, with the European Union and its member states counting as an individual participant. Other participants include the World Diamond Council, which represents the international diamond industry, and the civil society organisations Global Witness and Partnership-Africa Canada.
- The [*OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*](#) is the first example of a collaborative government-backed multi-stakeholder initiative on responsible supply chain management of minerals from conflict-affected areas. Its objective is to help companies respect human rights and avoid contributing to conflict through their mineral sourcing practices. It is also intended to cultivate transparent mineral supply chains and sustainable corporate engagement in the mineral sector.

Enlisting business as a partner in the legal and regulatory system

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

Rationale for the question

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

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

Related PFI questions:

Question 7.2 on promoting effective two-way communication.

Key considerations

The need for management systems. Companies need to follow up on their commitments to abide by the law or to adhere to voluntary industry standards with effective management systems to ensure that all employees are aware of their commitments. These systems should include training as well as monitoring, reporting and evaluation procedures. Governments can help by providing information and guides to best practice on complying with the law, either by working with individual companies or through collaboration with business and professional associations.

Policy practices to scrutinise

How far does the government take corporate culture into account when enforcing the law? The US Federal Sentencing Guidelines instruct judges to take corporate culture into account when enforcing certain aspects of the law (see www.ussc.gov). For example, it may be possible to argue that individual acts of bribery are exceptional, rather than an inevitable consequence of the company's management practices, if it can demonstrate that it has established an effective and well-designed anti-bribery compliance programme. In such cases, judges have authority to impose a less severe penalty on the company than they

otherwise would. The Guidelines therefore give companies an extra incentive to implement high-quality anti-bribery programmes.

Further resources and case studies

The following resources and case studies provide additional information on government support for companies' efforts to comply with the law:

- An OECD publication [Corporate Responsibility: Private Initiatives and Public Goals](#) includes a chapter on 'Making codes of corporate conduct work: Management control systems and corporate responsibility'.
- Hong Kong's Independent Commission against Corruption (ICAC - www.icac.org.hk) provides a good example of a government agency working with business to facilitate good practice as well as helping enforce the law. It consists of three departments: Operations, Corruption Prevention and Community Education. Since 1985 the Corruption Prevention department has offered a tailor-made consultancy service to business, advising more than 3,000 companies in manufacturing, financial services, property management, trading, hotels and catering, welfare, education and others. The ICAC's Hong Kong Ethics Development Centre offers consultancy services on corporate ethics, including codes of conduct and system controls. Its publications include *Practical Guides* for engineers, bank managers and executives in the construction industry. Meanwhile, the Community Education Department spreads the anti-corruption message to both business and the general public through specially-commissioned television dramas based on real-life investigations, as well as through advertisements and via the Internet.
- Examples of collective business initiatives against corruption include the World Economic Forum's [Partnering against Corruption Initiative](#). In the UK, a group of organisations involved in the construction and engineering sectors have combined to form the UK Anti-Corruption Forum (www.anticorruptionforum.org). The forum's member organisations include the Institution of Civil Engineers, the Institution of Mechanical Engineers, British Expertise, and the Association for Consultancy and Engineering as well as the UK chapter of Transparency International.

Strengthening the business case for responsible conduct

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

Rationale for the question

The overall business case for RBC is that responsible companies are more likely to be sustainable not only on environmental grounds but also because they will retain a social and legal 'licence to operate' from governments and consumers. The business and moral cases go hand in hand: companies that demonstrate a commitment to ethical values are more likely to be able to attract and retain the best employees and ultimately to develop the strongest customer base. In this way, RBC is not just about protecting value through risk and reputation management but also about new value creation. Companies with innovative approaches to RBC gain first-mover advantages.

Responsible business conduct is still an evolving field. The process of developing standards and best practices involves costs in time and management expertise and also incurs commercial risks because companies that sign up first to newly defined best practices may be undercut by their less committed competitors. Collective initiatives, which typically involve a range of leading companies and civil society organisations, therefore have obvious benefits. The UK-based Ethical Trade Initiative (ETI - www.ethicaltrade.org) and the US-based Fair Labor Association (www.fairlabor.org) are prominent examples in the field of labour practices among international supplier companies making consumer goods.

Governments and international organisations have convening power and may therefore play an important role in launching new initiatives. The UN's role in launching the Principles for Responsible Investment (PRI – see above) is an example. Similarly, the UK Department for International Development helped sponsor the Ethical Trading Initiative (ETI) in the late 1990s, and also provided the first secretariat for the Extractive Industries Transparency Initiative (EITI – see above) in the early 2000s.

Key considerations

Ingredients of successful partnerships. Building successful multi-stakeholder partnerships requires skill, diplomacy and effort. The International Business Leaders Forum (IBLF - www.iblf.org) has extensive experience of working with governments, business and civil society in partnerships related to sustainable development. The Forum identifies three critical ingredients of success: equity,

with each partner having an equal voice; transparency; and acceptance of the need for all partners to achieve a sense of mutual benefit.

Balance between government, business and civil society participants. Complex issues such as ethical trade involve several different jurisdictions and cannot be resolved without the active participation of business and civil society as well as government. One or several governments may play a catalytic role in setting up initiatives, but it may be inappropriate for them to play a leading role once the initiative has been set up. Organisational structures vary, but the typical model is a small executive reporting to a board dominated by business and NGO participants.

Government endorsement and publicity. Endorsement by government leaders – for example in public speeches and at conferences – can provide welcome evidence of official support for partnership initiatives, thus boosting their credibility. Another welcome government endorsement is official involvement in awards (e.g. ‘Green Business Awards’) for innovations linked to RBC and sustainability. The favourable publicity associated with government awards is itself a commercial benefit.

Development of business codes of conduct and standards. Many of the most important initiatives in the development of RBC are industry-led. Governments should look for means of supporting these initiatives – for example by providing funds and sources of expertise – but without seeking to control them.

Policy practices to scrutinise

- How far is the government willing to engage with business and civil society?
- What mechanisms for engagement exist?

Further resources and case studies

The following resources and case studies provide additional information on partnerships and strengthening the business case for responsible business conduct.

- The Partnering Initiative was set up by the International Business Leaders Forum and the University of Cambridge Programme for Industry to develop and disseminate knowledge and methodologies for effective cross-sector partnerships. The [Initiative's website](#) offers free downloads of reports and guides to partnership techniques.
- The World Business Council for Sustainable Development (www.wbcsd.org) is a CEO-led initiative that promotes the business case for sustainable development, as well as business partnership with governmental and intergovernmental bodies on policy development.

- Business in the Community (www.bitc.org.uk) is a UK-based business-led, not-for-profit organisation promoting RBC. It works closely with government and was instrumental in working with members of parliament and peers to set up the UK All Party Parliamentary Group on Corporate Responsibility in 2001.

Examples of successful multi-stakeholder initiatives with varying degrees of government involvement and endorsement include:

- The *Ethical Trade Initiative* (ETI - www.ethicaltrade.org), a UK-based alliance of companies, NGOs and trade union organisations, promotes and works to improve the implementation of corporate codes of practice covering supply chain working conditions. Its ultimate goal is to ensure that the working conditions of workers producing for the UK market meet or exceed international labour standards. The ETI is part-funded by the UK Department for International Development which helped it set up in 1998.
- The *Voluntary Principles on Security and Human Rights* (www.voluntaryprinciples.org) provide an example of government playing a convening role bringing companies and NGOs together, thus helping to develop policy on a sensitive and difficult area. Launched in 2000, they are intended to address the human rights problems associated with security provision for oil, gas and mineral projects in conflict-affected areas. The US and UK governments played an important facilitating role, bringing together the initial group of US- and UK-based petroleum and mining companies together with a selection of human rights NGOs. The governments of Norway and the Netherlands have since joined the process, along with major mining and petroleum companies headquartered in other countries and other NGOs.

A particular concern was the need to avoid cases where companies might be accused of ‘beneficial complicity’ in human rights abuses committed by the security forces that had been designated to protect them – for example firing on unarmed civilian demonstrators.

The *Principles*, which were agreed by consensus, lay down guidelines for human rights and conflict risk assessment as well as company relationships with government security forces and private security agencies. Progress in implementing the *Principles* is reviewed annually.

Intergovernmental co-operation

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

Rationale for the question

Many of the problems that the RBC agenda seeks to address are international in scope: climate change and the challenge of reducing carbon emissions; the fight against bribery in cross-border business transactions; and the promotion of responsible labour standards among the suppliers of large international companies. The search for solutions should equally be international: it demands the pooling international expertise, sharing experience, and developing common standards.

Intergovernmental bodies such as the OECD, the World Bank and the ILO and other UN agencies play a vital role by providing access to specialist expertise and by serving as forums to develop common standards and promote best practice. The G-8 summits and similar high-level meetings provide important forums for discussing wider political and economic issues.

Related PFI questions:

International initiatives and agreements reappear throughout the PFI, including:

- Questions 1.5 – 1.8 on investment agreements and instruments
- Question 3.3 on international trade agreements
- Question 6.8 on international principles of corporate governance
- Question 10.9 on international anti-corruption and public sector integrity initiatives

Key considerations

Establishing the right mix. If intergovernmental initiatives are to carry genuine international legitimacy, both home and host countries to MNEs should participate.

Willingness to allocate resources. Participation in international initiatives requires time and money: governments need to be willing to allocate people and funds, possibly at the expense of lower-priority domestic initiatives. The richer industrialised countries may need to find diplomatically acceptable ways of fostering the participation of developing countries with more limited financial resources.

Involvement of civil society and business associations. Civil society organisations and business associations may be an important source of information and

expertise. In some cases they organise their own parallel conferences to precede or accompany official government events. Government officials should make sure that they benefit from their expertise.

Policy practices to scrutinise

- Do governments provide their share of funding and other resources for key international organisations?
- Do policy-makers include RBC issues on the agenda at international meetings, and do they actively participate?
- Do governments cooperate with peer review processes? Many international organisations, including the OECD as well as the Council of Europe (www.coe.int) and the New Partnership for Africa's Development (NEPAD - www.nepad.org) operate on the principle of peer review to develop common standards.

Further resources and case studies

The following sources provide additional information on intergovernmental cooperation in support of responsible business conduct:

- The [OECD Guidelines for Multinational Enterprises](#) are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. They provide voluntary principles and standards for RBC in a variety of areas including human rights, employment and industrial relations, environment, information disclosure, combating bribery, consumer interests, science and technology, competition, and taxation.
- The [ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policies](#) lays down principles offering guidelines to MNEs, governments, and employers' and workers' organisations in such areas as employment, training, conditions of work and life, and industrial relations. Its provisions are reinforced by certain international labour Conventions and Recommendations which the social partners are urged to bear in mind and apply, to the greatest extent possible.
- The UN Global Compact (www.unglobalcompact.org) is a strategic policy initiative for businesses committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption. Over 8700 corporations and stakeholders from over 130 countries participate.
- The [Concluding Report of the Heiligendamm Dialogue Process](#), involving the G8 countries, as well as Brazil, China, India, Mexico and South Africa, was endorsed at the 2009 L'Aquila Summit. 'Promoting cross-border investment to our mutual benefit including the encouragement of responsible business conduct' was one of the four main areas addressed.

It was agreed that building confidence and trust in open investment policies is crucial to ensure public support of foreign direct investment and that common principles of responsible business conduct and corporate social responsibility contribute in this respect.

- The [G20 Seoul Summit Framework for Strong, Sustainable and Balanced Growth Document](#) calls for identifying, enhancing and promoting responsible private investment in value chains and for promoting responsible agriculture investment.
- The European Commission convened a [European Multistakeholder Forum on CSR](#) to promote innovation, convergence and transparency in existing CSR practices and tools.
- The [OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones](#) is a due diligence framework and method for assessing whether a company has the risk management systems in place to operate in high risk environments. The expected outcome is the elaboration of practical guidance designed to translate the broad principles contained in the *OECD Guidelines for Multinational Enterprises* into options for action and steps to be taken by companies in specific situations on a wide range of issues (e.g. human rights, corruption).
- The UN Environmental Programme Finance Initiative (www.unepfi.org) is a global partnership between UNEP and over 170 institutions, including banks, insurers and fund managers to understand the effects of environmental and social considerations on financial performance.
- The UN Human Rights Commission is coordinating an initiative to clarify the responsibilities of business in relation to human rights. The [Universal Declaration of Human Rights](#) applies to ‘every organ of society’.

Professor John Ruggie, UN Special Representative on Business and Human Rights, notes that:

Governments should not assume that they are helping business by failing to provide adequate guidance for, or regulation of, the human rights impacts of corporate activities. On the contrary, the less governments do, the more they increase reputational and other risks to business.

He has a mandate to identify and clarify standards of corporate accountability in relation to human rights, elaborate on the role of states, and compile a compendium of best practice. In 2008, he submitted a report [Protect, Respect and Remedy: a Framework for Business and Human Rights](#) comprising three core principles:

i) the State duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication;

ii) the corporate responsibility to respect human rights, which in essence means to act with due diligence to avoid infringing on the rights of others; and

iii) greater access by victims to effective remedies.

As a follow-up, Professor Ruggie produced the [Guiding Principles on Business and Human Rights](#) in March 2011 to provide concrete guidance to States and business, including through the development of a set of practical guiding principles for companies on due diligence and related accountability measures.

Intergovernmental initiatives to combat corruption

Many of the leading inter-governmental initiatives against corruption operate on the principle of peer review whereby external assessors judge how far the country's standards meet benchmarks set up the international instruments concerned. They include the following:

- The [Asian Development Bank/OECD Anti-Corruption Initiative](#) supports the 28 member governments' anti-corruption initiatives by fostering public dialogue, providing policy analysis and capacity building. Its website includes a country database.
- The Council of Europe's Group of States against Corruption (GRECO – www.coe.int/greco) publishes regular peer reviews of its 47 member states' anti-corruption initiatives. These include former socialist transition economies in Eastern Europe and the former Soviet Union.
- The *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* makes it an offence for companies and citizens of the 34 OECD member states, together with Argentina, Brazil, Bulgaria and South Africa to pay bribes to foreign officials, regardless of whether the offence takes place within their borders or abroad. The OECD [anti-corruption homepage](#) provides the convention itself and a set of country files for the 38 signatories which include evaluations of the effectiveness of each country in implementing the convention, as well as a variety of reports, speeches and links to relevant websites.
- The Organisation of American States adopted the *Inter-American Convention against Corruption* (ICAC) in 1996, and its [Fighting Corruption](#) webpage reports on the progress made by the 35 member states in implementing the legislation.

International Initiatives on the Environment and Sustainable Development

- The [United Nations Framework Convention on Climate Change](#) is the international treaty body responsible for coordinating the implementation of the 1997 Kyoto Protocol which seeks to control greenhouse gas emissions. Officially-recognised observer organisations include business-led civil society groups such as the International Chamber of Commerce and the World Business Council for Sustainable Development.