Responsible business conduct for Institutional Investors

Promoting responsible business conduct in the financial sector is vital to building a sustainable global economy. However, inherent complexities in the sector, such as extensive and complex business relationships, make practical application of effective due diligence systems challenging.

The OECD paper *Responsible business conduct for Institutional Investors* explains key considerations for institutional investors in carrying out due diligence as recommended by the OECD Guidelines for Multinational Enterprises (OECD Guidelines). The paper will help institutional investors to prevent and address adverse impacts related to human and labour rights, the environment, and corruption caused by companies in their investment portfolios.

It provides tailored recommendations for:

- **Asset managers and asset owners**
- **Active and passive investment strategies**
- **Listed equity, fixed income, private equity, real estate, infrastructure**

A multi-stakeholder advisory group of over 50 representatives from the financial sector, including leading investment institutions, government, civil society, international organisations and other experts contributed to the development of the paper. It has been approved by the 47 governments that adhere to the OECD Guidelines.

Why should investors carry out due diligence?

By carrying out due diligence in line with the OECD Guidelines, investors will be able to avoid negative impacts of their investments on society and the environment. They will also be able to avoid financial and reputational risks, respond to the expectations of their clients and beneficiaries and contribute to global goals on climate and sustainable development.

Failing to consider long-term investment value drivers, which include environmental, social and governance issues, in investment practice is increasingly seen to be a failure of fiduciary duty. Since the adoption of the Paris Climate Agreement in 2015, investors have been facing increasing expectations to manage climate risks in their portfolios. International financial institutions have also signalled plans to mobilise USD 400 billion towards achieving the Sustainable Development Goals (SDGs). Strong due diligence processes can help ensure that investments are put towards projects and companies that behave responsibly and ultimately help to contribute to achieving the SDGs.

Bridging gaps in understanding

The paper articulates a common position on several complex issues which were previously not recognised nor well understood. Specifically:

- The relationship of responsible business conduct (RBC) standards to fiduciary duty.
- How minority shareholders, in a vast majority of cases, will be directly linked to adverse impacts caused or contributed to by companies in their portfolio.
- How investors should approach prioritisation when carrying out due diligence.

A common position on due diligence

Due diligence is a process companies can undertake to know and show they are acting responsibly, both in the context of their own actions and operations as well and in the context of their business relationships and value chain.

1. **EMBEDDING** RBC in policies and management systems involves developing an RBC policy and making sure RBC risk management functions are streamlined throughout an investment institution.
2. **IDENTIFICATION** and assessment involves risk identification of real and potential adverse impacts prior to investment and ongoing screening of investment portfolios for potential adverse impacts.
3. **PREVENTION** and mitigation can involve a wide variety of actions, including, engagement with investee companies, divestment or participation in initiatives with RBC objectives.

Implement responsible policies

Identify actual or potential harm

Cease, prevent or mitigate harm

Track performance

Communicate

Provide remediation

4. **ACCOUNTING** for due diligence involves both monitoring how identified impacts are responded to and communicating on RBC policy and results, publically and to stakeholders as appropriate.
5. **REMEDIATION** is an expectation in situations where an investor may be causing or contributing to adverse impacts.

For more information please visit:
mneguidelines.oecd.org/rbc-financial-sector.htm

Cases handled by the **National Contact Points for the OECD Guidelines for Multinational Enterprises**

The OECD Guidelines for Multinational Enterprises (Guidelines) represent a global framework for responsible business conduct covering all areas of business responsibility including disclosure, human rights, employment and industrial relations, environment, anti-corruption, competition and taxation.

Countries adhering to the Guidelines are required to set up National Contact Points (NCPs) which are tasked with furthering their effectiveness. As part of their mandate, NCPs provide a mediation and conciliation platform for helping to resolve cases (known as "specific instances") of the alleged non-observance of the Guidelines.

How do NCPs handle cases in practice?

1. Initial assessment The NCP evaluates whether the issues raised merit further examination and either accepts the case or publishes a statement explaining why it has not accepted the case.

2. Support The NCP offers its "good offices" (dialogue, mediation, conciliation services) to both parties with a view to resolving the issues.

3. Conclusion At the end of the process, the NCP publishes a statement regarding the issues raised in the case, the support offered by the NCP and the outcomes.

A unique grievance mechanism

SCOPE: Since 2000, NCPs have received more than 400 cases relating to company operations in over 100 countries and territories.

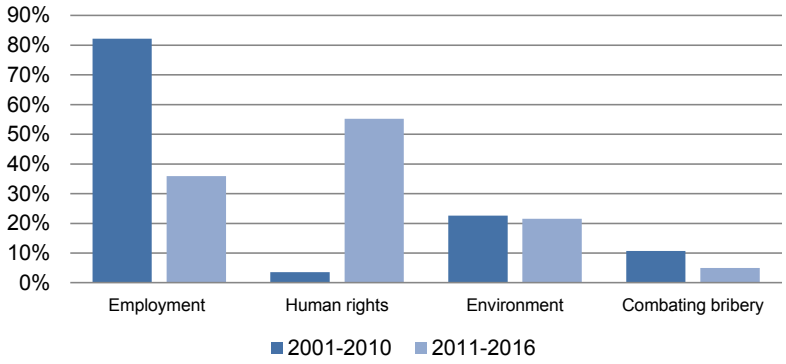
THEMES: The majority of cases deal with employment and worker issues (54%), followed by human rights (28%) and environment (20%). However since 2011, when a human rights chapter was added to the Guidelines, human rights cases have been the most frequent.

SECTOR: 33% of cases since 2000 relate to issues arising from multinational enterprises operating in the manufacturing sector. However, cases concerning the financial sector are on the rise, accounting for over 20% of all new cases between 2014 and 2016.

SUBMITTERS: Trade unions, NGOs and individuals account for 90% of the cases submitted to NCPs since 2000. Companies and government officials have also submitted cases to NCPs.

OUTCOMES: Between 2011 and 2016, approximately half of all cases (47%) which were accepted for further examination by NCPs resulted in some form of agreement between the parties; approximately 37% resulted in an internal policy change by the company in question.

Main themes of specific instances
(before and after 2011)



These cases have contributed to protecting:

HUMAN RIGHTS

A case handled by the Norwegian and Swedish NCPs involved the construction of wind turbines which could interfere with traditional migration routes of the Sami reindeer-herding collective. A short time after mediation organised by the Norwegian NCP, an agreement was reached between the Sami collective and Statkraft, the enterprise building the turbines, which set out the preventive measures which will be taken to avoid the negative impacts to the traditional lands of the collective.

WORKERS

A case handled by the NCP of Germany concerning a German company sourcing from the Tazreen garment factory in which over one hundred people were killed in 2012 due to a fire breaking out, led to an agreement by which the company committed to improve the fire and building safety standards in its supplier factories. Measures included reducing the number of supplier factories, establishing long-term supplier relations, close supervision by local staff, and signing the Bangladesh Accord on Fire and Building Safety.

THE ENVIRONMENT

The UK NCP concluded mediation between the World Wildlife Fund (WWF) and SOCO International PLC regarding oil exploration being conducted by SOCO in Virunga National Park in the Democratic Republic of Congo (DRC), a World Heritage site. SOCO committed to cease exploration in the park unless UNESCO and the DRC government agree that such activities are not incompatible with its World Heritage status and not to conduct any operations in any other World Heritage site.

For more information please visit:
mneguidelines.oecd.org/ncp.htm

OECD
mneguidelines.oecd.org

OECD Due Diligence Guidance for Responsible Business Conduct

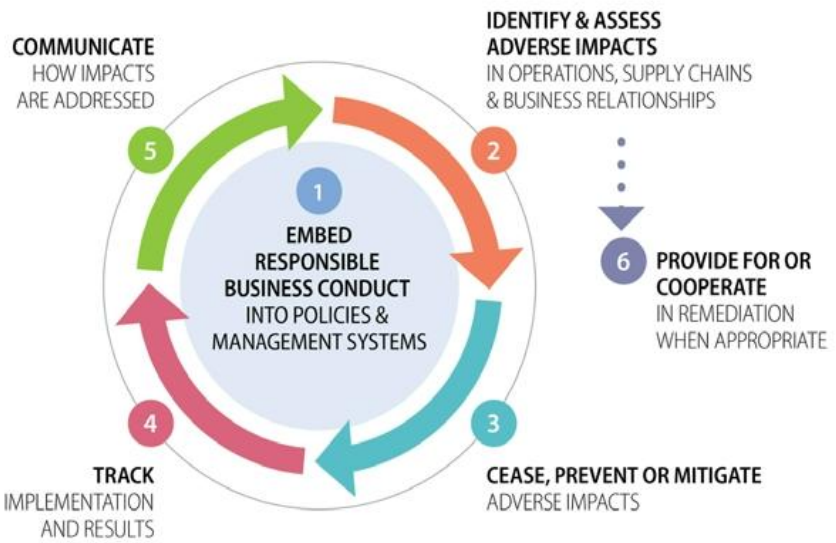
Businesses can play an important role in contributing to economic, environmental and social progress, but to do so they must also ensure that they manage negative impacts associated with their activities. Due diligence is a process business can carry out to identify and respond to real and potential negative impacts related to their own operations as well as throughout their supply chains.

The OECD Due Diligence Guidance for Responsible Business Conduct, adopted in 2018, provides support to enterprises by providing practical, clear explanations of how to implement due diligence as recommended in the OECD Guidelines for Multinational Enterprises. It is the first government backed reference on due diligence which is relevant for all types of companies operating in all countries and sectors of the economy.

This Guidance represents a common understanding among governments and stakeholders on due diligence for responsible business conduct and can also be used by businesses to respond to due diligence expectations of the UN Guiding Principles on Business and Human Rights and the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy. It was developed through a multi-stakeholder process including representatives from OECD and non-OECD countries, international organisations, business, trade unions and civil society.

> *"The business community has a responsibility to conduct business in a way that takes into account both the bottom line and the impact of their activities on society. The guidance is a major milestone in ensuring that governments and business can work together to drive more inclusive and sustainable growth across the world through more responsible business conduct and due diligence across supply chains."*
>
> **Angel Gurría, OECD Secretary-General**

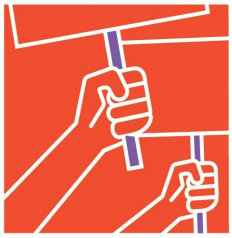
DUE DILIGENCE PROCESS & SUPPORTING MEASURES



DUE DILIGENCE FOR RBC :

- Involves multiple processes and objectives
- Concerns internationally recognised standards on RBC
- Is risk-based
- Seeks to prevent negative impacts
- Does not shift responsibilities
- Is tailored to an enterprise's circumstances
- Can be adapted to the limitations of working with business relationships
- Is dynamic, ongoing and responsive
- Involves ongoing communication
- Is informed by engagement with stakeholders

Due diligence aims to address adverse impacts related to the following chapters of the OECD Guidelines for Multinational Enterprises:



Human Rights

Environment

Employment and Industrial Relations

Combating Bribery, Bribe Solicitation and Extortion

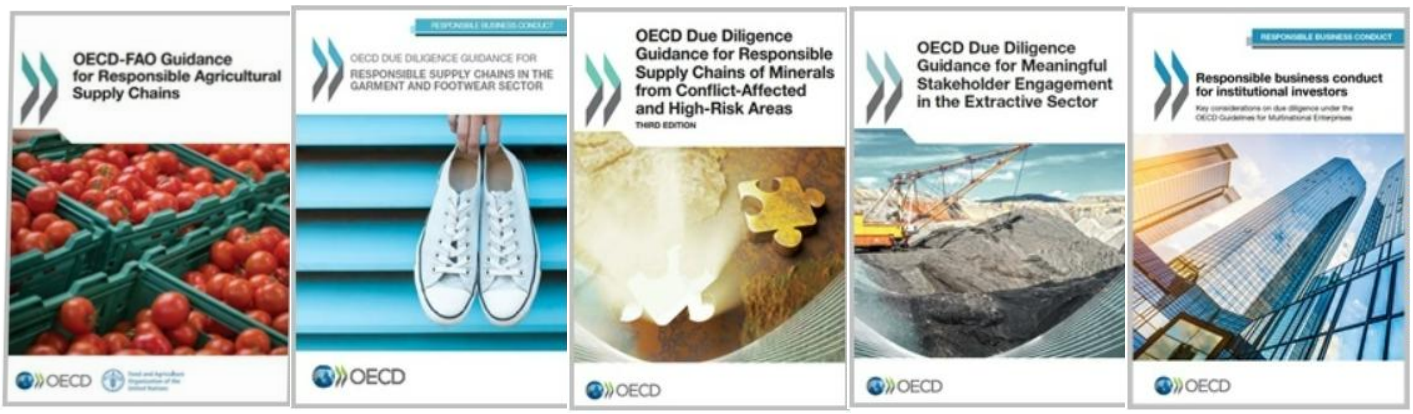
Consumer Interests

Disclosure

The OECD Guidelines aim to ensure an open and transparent international investment environment and to encourage the positive contribution of multinational enterprises to economic and social progress. They are the most comprehensive set of government-backed recommendations on what constitutes responsible business conduct. The governments that adhere to the OECD Guidelines represent some of the world's leading economies and recommend that enterprises operating in or from their territories observe the principles and standards set out in the OECD Guidelines.

Sector due diligence guidance

This Guidance complements existing resources developed by the OECD to help enterprises carry out due diligence for responsible business conduct in specific sectors and supply chains including in the agriculture, minerals & extractive, garment & footwear and financial sectors :



mneguidelines.oecd.org/due-diligence-guidance-for-responsible-business-conduct.htm