

The OECD Guidelines and Socially Responsible Investment

Introduction

The Organisation for Economic Co-operation and Development's (OECD) Guidelines for Multinational Enterprises outline what OECD member governments agree are the basic components of responsible corporate conduct. They

cover a range of issues, including labour and human rights, bribery and corruption, the environment and information disclosure. These guidelines can be a useful tool for the socially responsible investment (SRI) community because of their

broad coverage of corporate social responsibility (CSR) issues, commitment from governments, and support from business, labour and some civil society groups. OECD Watch, a network of 70 international NGOs working on corporate

accountability, and Eurosif (the European Social Investment Forum) have partnered to develop a series of fact sheets to help investors and SRI agencies better understand the scope of the OECD Guidelines and facilitate their use.

Download the entire fact sheet series at www.oecdwatch.org or www.eurosif.org.

Fact Sheet

1 2 3 4

SRI Criteria and the OECD Guidelines

Summary

The OECD Guidelines for Multinational Enterprises are recommendations addressed by governments to multinational enterprises that cover a broad range of corporate activities. This fact sheet, the second in a

series of four, outlines the relevant content of the OECD Guidelines for the SRI community. Each of the ten chapters that make up the Guidelines can be linked to key CSR indicators. Drawing upon the standards

included in the Guidelines, a series of key questions is presented that SRI agencies can use to guide information gathering to develop a profile of a company's practices. Using the OECD Guidelines as a

basis for developing indicators ensures a broad coverage of commonly accepted standards and principles that companies should comply with in order to operate in a responsible manner.

The Content of the OECD Guidelines

The OECD Guidelines are divided into ten chapters which cover a broad range of corporate activities and outline standards for good business practices. Monitoring a company's compliance with

the standards included in the Guidelines can provide an overview of a company's practices.

While there is no standard practice or methodology

among SRI agencies for ranking and rating the overall CSR performance of companies, many of the numerous indicators currently used to make such assessments can be grouped into themes, which

overlap with those covered by the OECD Guidelines. Therefore the ten OECD Guidelines chapters could be a useful common framework for those interested in examining CSR performance.

Chapter Content

Chapter 1 Concepts and Principles	Discusses the scope of the Guidelines (applicable to the global activities of companies based in any of the 39 signatory countries, voluntary nature, includes coverage of small and medium-sized enterprises, foreign and domestic) and states the obligation of multinational enterprises to obey national and international law.
Chapter 2 General Policies	Discusses the obligation of companies to take into account the policies of the countries in which they operate and the views of various stakeholders; includes recommendations on human rights, sustainable development and supply chain responsibility.
Chapter 3 Disclosure	Focuses on a company's obligation to disclose information. The information recommended for compilation and publication includes both financial and non-financial information (for example through environmental and social reporting).
Chapter 4 Employment and Industrial Relations	Presents a company's obligations to respect workers' rights, including the ILO core labour standards, and ensure good working conditions.
Chapter 5 Environment	Focuses on a company's obligation to protect the environment, public health and safety and to contribute to the goal of sustainable development.
Chapter 6 Combating Bribery	Recommends that companies do not, directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper advantage.
Chapter 7 Consumer Interests	Calls upon enterprises to act in accordance with fair business, marketing and advertising practices and recommends that they take all reasonable steps to ensure the safety and quality of the goods or services that they provide.
Chapter 8 Science and Technology	Includes recommendations for a company's obligations in relation to compliance with science and technology policies, intellectual property rights issues, technology transfer, and science and technology capacity building.
Chapter 9 Competition	Calls upon companies to operate in a competitive manner.
Chapter 10 Taxation	Recommends that enterprises contribute to the public finances of host countries by complying with tax laws and recommendations, including on information disclosure and transfer pricing practices.

This is an outline of the OECD Guidelines; it is recommended that the complete text of the Guidelines be read in order to develop a comprehensive understanding of the scope and content of each chapter (www.oecd.org/daf/investment/guidelines). For a better understanding of the Guidelines and their implementation procedures it is also advisable to read the Commentary, Clarifications and Procedural Guidance sections.

NAVIGATING THE GUIDELINES: SIMILAR AND REINFORCING RECOMMENDATIONS

The OECD Guidelines are organised into chapters that mainly relate to one broad subject area, for example the environment or information disclosure. However, some of the chapters of the guidelines are somewhat similar or in some way reinforce the expectations contained in other chapters. For example, although most of the guidelines that relate to labour issues are contained in chapter 4 on employment and industrial relations, there are guidelines in other chapters that also pertain to labour issues. Chapter 5 for example, on the environment, includes several references to obligations relating to safe-guarding the health and safety of employees, reinforcing the expectations raised in

chapter 4. There are also major recommendations, such as companies' obligations to obey the law, which are repeated in several chapters (ex. chapters 1, 2, 4, 5, 6, 9, 10).

For a reference list to assist in identifying similar and reinforcing guidelines, see part five of *Guide to the Guidelines*, published by Friends of the Earth – United States. This reference also includes a list of the international laws, standards and principles referred to in the explanatory commentary section that follows each of the Guidelines' chapters. Downloadable at www.foe.org/oecdguidelines/oecdguidelinesguide.pdf.

Assessing Corporate Practices Based on the OECD Guidelines

Using the OECD Guidelines chapters as a framework, the following is a list of selected indicators ("key questions" relating to policy or practice) to help SRI agencies consider if companies are in compliance with the Guidelines. Some observations on the provisions of each chapter are presented in the "remarks" section. It is important to recognise that assessing a company's compliance with the Guidelines provides a *broad picture* of its practices; this analysis must be further supplemented by the use of indicators that specifically relate to the sector of industry being examined.

Complaints of alleged violations of the Guidelines, filed with the National Contact Points (NCPs) in the various OECD member countries, can flag serious concerns regarding corporate practices. Examples of ways in which corporate policies or practices have been alleged to violate each chapter of the Guidelines are presented in the margin. These cases are more extensively documented in OECD Watch's Case Database. To sign up for the Case Alert System, which sends SRI agencies and others an electronic alert each time OECD Watch is informed of a new Guidelines complaint filed by NGOs, send a message to info@oecdwatch.org.

Chapter 1 Concepts and Principles

Key question on practices

- Is the company in violation of any domestic laws of the host countries in which it operates?

Remarks

The Guidelines apply to all parts of a multinational enterprise – from the company's headquarters to its subsidiaries – located in both OECD and non-OECD countries. Determining if a company is in violation of the law in any of the countries where it operates

would need to involve examining past and pending court cases and their rulings in those countries. A comprehensive mapping of the com-

pany's supply chain would be needed as the starting-off point for determining where to investigate possible legal violations.

Example of Violation Chapter 1, OECD Guidelines

Sector

Mining

Description

NGOs filed a complaint with the Canadian NCP alleging that Ascendant Copper Corporation violated the Equadorian constitution and national mining law for failing to obtain authorisation to conduct exploratory activities.

source: OECD Watch Case Database

Chapter 2 General Policies

Key questions on policy

- Does the company have a credible mechanism in place for stakeholder consultation (including a complaints mechanism) that is accessible to host country workers and community members? How is this stakeholder input used in decision-making?

- Does the company have benchmarks in place for reaching sustainable development goals?

- Does the company have a policy to protect "whistle-blowers"?

- Does the company implement all these policies throughout their supply chain? Does the company have an appropriate supply chain management system?

Key questions on practice

- Is the company in compliance with the human rights obligations and

commitments of host governments?

- How does the company facilitate local capacity building? Human capital formation? For example, does the company invest in local community services such as education or health care? Does the company have programmes for training local managers? What percentage of management is local or foreign?

- Has the company sought or accepted any exemptions to regulatory requirements?
- Has the company become involved in local political activities?

Remarks

In the General Policies chapter, paragraph 2 makes clear that multinational enterprises should respect the human rights of those affected by their activities, and that companies' activities should be consistent with the host governments' human rights

obligations and commitments. A government's obligations and commitments apply to its responsibilities under both legally binding and non-legally binding human rights instruments, for example, the Universal Declaration of Human Rights (UDHR). Fact Sheet # 3 provides more detailed information on the human rights provision of the Guidelines and its relevance to the SRI community. The Guidelines apply to the supply chains of companies, meaning all the direct suppliers, contractors, and sub-contractors that take part

in the manufacture, delivery and sale of the multinational enterprise's goods and services. However the business community and some governments have challenged the scope of the obligation pertaining to supply chains, and a narrower interpretation based on an identifiable "investment" relationship between the multinational and its supplier has come into use. This is explained in more depth in Fact Sheet #4 which focuses on how the SRI community can use the supply chain provision of the Guidelines.

Example of Violation Chapter 2, OECD Guidelines

Sector

Oil and gas

Description

Several NGOs filed a complaint with the Dutch NCP alleging Royal Dutch Shell with improper involvement in local political activities in conjunction with their operations in the Philippines.

source: OECD Watch Case Database

Chapter 3 Disclosure

Key questions on practice

- Does the company regularly disclose to the public basic material company information, including information on its activities, structure, financial situation and performance?
- Does the company regularly disclose information to the public about the social and environmental impact of its activities? Does the company disclose its social and environmental policies and practices?
- Does the company disclose of all information,

accounting and auditing meet high-quality standards?

- Does the company disclose information on its systems for managing risks and complying with laws and codes of conduct?

Remarks

This chapter makes clear that companies should disclose "material" information to the public: information is considered "material" if it is important enough to potentially influence shareholders or investors' decisions. It is important to note that information that represents "material foreseeable risk factors" or "material issues regarding employees and other stakeholders" can be the subject of intense debate. OECD Watch considers, for example, information on the social and environmental impact of a company's operations to be "material".

Available tools to assist companies in how to report on

their activities include the Global Reporting Initiative's (GRI) *Sustainability Reporting Guidelines*. For more information from the GRI on how their reporting framework relates to the OECD Guidelines see "Synergies between the OECD Guidelines for Multinational Enterprises and the GRI 2002 Sustainability Reporting Guidelines" (available at http://www.globalreporting.org/NR/rdonlyres/A8087145-1A5F-4420-97D8-5C550F5FD184/0/GRI_OECDUsersGuide.pdf).

Information that is disclosed must be independently verified by qualified third parties in order to be considered a credible account of a company's practices. For example, statements made regarding compliance with workers' rights obligations covered in chapter 4 would need to be verified through a comprehensive auditing process that includes off-site interviews with workers and their representatives.

Example of Violation Chapter 3, OECD Guidelines

Sector

Oil

Description

Environmental organisations filed complaints with the US, UK, German, Italian and French NCPs charging that British Petroleum's proposed plans for a Baku-Tbilisi-Ceyhan oil pipeline violated disclosure obligations due to a failure to adequately consult with project-affected communities.

source: OECD Watch's Case Database

Chapter 4 Employment and Industrial Relations

Key questions on policy

- Does the company have and implement an anti-discrimination policy that covers discrimination on the basis of race, colour, sex, religion, political opinion, national extraction or social origin?

Key questions on practice

- Does the company comply with its employees' right to organise and negotiate collectively?
- Does the company use child labour in its operations?
- Does the company use forced or compulsory labour in its operations?

- Are the company's standards of employment and industrial relations equal to or better than comparable employers in the country of operation?
- Does the company have sufficient measures in place to ensure the health and safety of employees?
- Does the company employ local personnel and provide training?
- Has the company provided reasonable notice of major changes in its operations, such as facility closure or large-scale dismissals?
- Does the company unfairly influence negotiations on employment conditions or employees' right to organise?

Remarks

Gathering information to answer these questions will involve consultation with local and international unions and labour-rights NGOs active in the relevant sectors where the

company is active. They can also provide feedback on significant issues that are not covered by the Guidelines (for example provision of a living wage and working hours). Additional resources that can be consulted include the annual survey of violations of trade union rights published by the International Trade Union Confederation (ITUC), which flags well-documented labour rights issues that the company should be addressing in specific countries or locations. Multi-stakeholder initiatives covering specific sectors in relation to labour rights can also be a source of current information on a company's labour practices (ex. the Fair Labor Association publishes an annual report and tracking charts of the labour rights compliance of garment industry member companies). Business and Human Rights (www.business-humanrights.org) compiles information on the rights compliance of some 3,000 companies from various sectors into an online searchable database.

Example of Violation Chapter 4, OECD Guidelines

Sector

Chemical

Description

NGOs filed a complaint with the German NCP alleging that Bayer used child labour in their supply chain in India.

source: OECD Watch's Case Database

Chapter 5 Environment

Key questions on policy

- Does the company have a credible management system in place to take into account protection of the environment, public health and safety (EH&S) in relation to its activities? Does the company take precautions to prevent serious harm to the EH&S?
- Does the company have benchmarks in place for contributing to the wider goal of sustainable development?

- Does the company have a credible mechanism in place for consulting with communities on EH&S policies and their implementation?

Key questions on practice

- Does the company monitor and verify its progress towards EH&S objectives or targets?
- Does the evaluation of the company's activities, goods and services for their EH&S impacts cover the full life

cycle? And does the company address these results in decision making?

- Does the company disclose information on EH&S impacts to employees and the public?
- Does the company adopt technologies and procedures in all parts of the enterprise that reflect standards concerning environmental performance in the best-performing part of the enterprise?

- Does the company develop and provide products or services that have undue environmental impacts and that are inefficient in their consumption of energy?
- Does the company promote awareness among customers of the environmental implications of its products and services?
- Is the company actively researching ways to improve environmental performance?
- Does the company provide training to employees on EH&S matters including hand-

ling hazardous materials and preventing accidents?

- Does the company contribute to the development of environmental policies?

Remarks

This chapter makes clear that companies should not use scientific uncertainty as a reason for not taking action to prevent serious harm to the environment or human health.

Examining agreements between the company and the host government could reveal

if the enterprise has secured exemptions from laws to minimize or prevent serious harm to the environment and human health, this could point to concerns.

Environment and the OECD Guidelines for Multinational Enterprises: Corporate Tools and Approaches is a book published by the OECD (2005) that highlights the environmental aspects of the Guidelines, providing information and case studies on tools and approaches available to companies that seek to upgrade their environmental performance.

Example of Violation Chapter 5, OECD Guidelines Sector

Sector
Automotive
Description
An NGO filed a complaint with the German NCP alleging that some Volkswagen AG products have negative impacts on the climate and also charged the company with failing to promote awareness of the environmental implications of their products.

source: OECD Watch's Case Database

Chapter 6 Combating Bribery

Key questions on practices

- Does the company offer bribes to obtain or retain business or other undue advantage?
- Does the company make illegal contributions to political candidates or parties?
- Does the company give in to demands to pay officials or others a portion of a contract payment?

- Does the company maintain a list of payments it has made to public bodies and state-owned enterprises? Has it made this information available to authorities? Is the company in compliance with domestic disclosure requirements?
- Does the company have a management system that discourages bribery and corrupt practices?
- Has the company implemented accounting and audit practices to prevent corrupt practices?

Remarks

The OECD Convention on Combating Bribery of Foreign Public Officials is a legally binding convention – the contents of which are reflected in the Combating Bribery chapter of the Guidelines. The Bribery Convention makes it a crime to offer, promise or give a bribe to foreign public officials in order to obtain or retain business deals. Coun-

tries that have ratified the Bribery Convention (36 to date) agree to implement legislation to monitor and punish companies and individuals that engage in illegal bribery. The scope of a company's obligations under the Guidelines goes beyond those set out in the Convention.

Transparency International, whose Bribe Payers Index shows that the use of bribes to gain or retain business is still common in major exporting economies, including OECD countries, has several tools available to help companies come into compliance with their obligations under this chapter of the Guidelines. For example, their Business Principles for Countering Bribery with guidance document for implementation and their Six-Step Implementation Process to guide companies in developing a systematic anti-bribery policy or process for countering bribery. For more information see www.transparency.org.

Example of Violation Chapter 6, OECD Guidelines

Sector

Mineral trading

Description

An NGO filed a complaint with the UK NCP alleging that Afrimex's trade in minerals contributed directly to the brutal conflict and large-scale human rights abuses in the Democratic Republic of Congo by making tax payments to an armed rebel group with a well-documented record of carrying out grave human rights abuses.

source: OECD Watch's Case Database

Chapter 7 Consumer Interests

Key questions on practices

- What steps does the company take to ensure safety and quality of its goods and services?
- Do the company's goods and services meet agreed and legally required standards for consumer health and safety?
- Does the company provide clear and accurate information to enable consumers to make informed decisions?
- Does the company engage in misleading, fraudulent or unfair practices?

- Does the company have a transparent and effective mechanism in place to address consumer complaints and resolve disputes?
- Does the company cooperate with officials to prevent or remove threats caused by their products?

Remarks

Examples of misleading or fraudulent practices include misleading or inaccurate product information, advertising and labelling. National-level consumer organisations could be consulted for information on corporate practices.

Consumer watchdog organisations operate in some sectors and alert the public to instances of corporations making misleading statements about their business practices. For example, the Clean Clothes Campaign (www.cleanclothes.org) uses

websites and other means to inform European consumers about cases of garment sector companies that allegedly violate not only the law in their supply chains, but also their own public promises to maintain specific codes of labour practice.

Example of Violation Chapter 7, OECD Guidelines

Sector

Security

Description

Several NGOs filed a complaint with the Australian NCP charging that in addition to committing human rights violations at their immigration detention centres in Australia, Global Solutions Limited misrepresented their policies about promoting human rights at these facilities.

source: OECD Watch's Case Database

Chapter 8 Science and Technology

Key questions on practices

- Are the company's activities compatible with the science and technology (S&T) policies of the host country?
- Is the company contributing to the development of local and national S&T capacity?
- Is the company carrying out S&T development work in host countries and hiring

people from host countries to encourage training?

- Does the company grant licenses for the use of intellectual property rights or technology transfer under reasonable terms and conditions?
- Has the company cultivated relationships with local educational and research institutions through collaborative research?

Remarks

Intellectual property rights and controversial patenting are key issues connected to this chapter. Sectors of specific interest in relation to these obligations include the pharmaceutical industry, agriculture and the computer software industry.

Chapter 9 Competition

Key questions on practices

- Is the company in compliance with competition laws and regulations?
- Has the company made any anti-competitive agreements with competitors? To do so violates the Guidelines. This would include engagement in: (a) price fixing, (b) rigged bids,

(c) setting output restrictions or quotas, or (d) sharing or dividing markets.

- Does the company have a process for taking into account the anti-competition laws of other countries?

Remarks

Profits and margins are not

divided equitably across market and value chain players if dominant market positions are abused and corporations enter into agreements that undermine free trade and competition. Companies engaging in free trade and free markets should comply with rules aimed at providing fair opportunities to all players in the market.

Example of Violation Chapter 9, OECD Guidelines

Sector

Logging

Description

An NGO filed a complaint with the Danish NCP charging Nepenthes with violation of the competition provision of the Guidelines in connection with purchase of illegal timber.

source: OECD Watch's Case Database

Chapter 10 Taxation

Key question on policy

- Does the company apply the arm's length principle for transfer pricing to intra-group trade?

Key questions on practices

- Does the company avoid paying taxes by accumulating deferred tax reserves?
- Is the company in compliance with tax laws and regulations in every country where it has operations?
- Does the company provide all necessary information to the relevant authorities where it has operations to determine tax obligations?

Remarks

The transfer price is the amount paid from one part of a multinational enterprise for goods or services provided by another. There are some legitimate reasons for multinational companies to use trans-

fer pricing. However, when transfer pricing is abused, it deprives states – particularly developing countries – of much needed tax revenues. As a basic principle tax should be paid in the country where business activities have actually taken place. Examining a company's practices in relation to taxation could include checking to see if the company has subsidiaries in OECD-defined "non-cooperative" tax havens.

The Guidelines recommendation that companies apply the arm's length principle to the practice of transfer pricing means that transfer prices "should be the same as if the two companies involved were independent of each other, not part of the same corporate structure".

Example of Violation Chapter 10, OECD Guidelines

Sector

Mining and quarrying

Description

Several NGOs filed a complaint against Nami Gems and three other Belgian companies concerning the illegal exploitation of natural resources in the DRC. The complaint against Nami Gems alleges that the company evaded taxes, hid revenues, and failed to provide the relevant authorities with the information necessary for the correct determination of taxes by smuggling diamonds from DRC through Uganda to Belgium.

source: OECD Watch's Case Database

Concluding remarks

This fact sheet provides a brief overview of the content of the OECD Guidelines for Multinational Enterprises and the practical translation of each chapter into questions to guide the assessment of corporate compliance with

these obligations. In order to develop a more thorough view of a company's performance in relation to responsible business standards, the SRI community is encouraged to make use of the key questions outlined

above in conjunction with more sector-specific indicators of a company's performance.

The Guidelines in their entirety are more detailed and more has been

elaborated elsewhere on the obligations they contain; readers are encouraged to visit the OECD Watch website for more information and reference to other resources on the Guidelines (www.oecdwatch.org).

Additional tools available to facilitate the use of the OECD Guidelines:

Fact Sheet #1 in this series provides an introduction as to how the SRI community can make use of the OECD Guidelines.

Fact Sheet #3 goes into more depth on how the SRI community can make use of the OECD Guidelines' human rights provision.

Fact Sheet #4 examines in more detail how the SRI community can use the supply chain provision of the OECD Guidelines.

This fact sheet series is a co-publication of OECD Watch and Eurosif.

OECD Watch is an international network of civil society organisations promoting corporate accountability. OECD Watch aims to inform the NGO community about policies and activities of the OECD's Investment Committee and to test the effectiveness of the OECD Guidelines for Multinational Enterprises. For more information visit www.oecdwatch.org.

Eurosif (The European Social Investment Forum) is a pan-European group whose mission is to address sustainability through financial markets. Member affiliates of the association include pension funds, financial service providers, academic institutes, research associations and NGOs. For more information visit www.eurosif.org.

OECD Watch and Eurosif are working together to promote dialogue on better integration of the OECD Guidelines into SRI practices. To share your feedback on this fact sheet or other issues related to the Guidelines and SRI please contact contact@eurosif.org and info@oecdwatch.org

© 2007 OECD Watch and Eurosif
This publication has been made possible through financial support from the European Commission, DG Employment, Social Affairs and Equal Opportunity, the Dutch Ministry of Foreign Affairs, and the German Federal Ministry for the Environment. The contents of this publication are the sole responsibility of OECD Watch and Eurosif and can under no circumstances be regarded as reflecting the position of the European Commission, Dutch or German Government.