

## OECD Investment Policy Review of Kazakhstan

### *Responsible Business Conduct and the OECD Guidelines for Multinational Enterprises*

Workshop  
29 June 2016  
Astana, Kazakhstan

#### RESOURCE DOCUMENT

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#### What is responsible business conduct?

The actual and potential impacts of business activities on society are broad and cross-cutting. Responsible business conduct (RBC) means that business activities support sustainable and inclusive development, rather than hinder it. Responsible businesses make a positive contribution to economic, environmental, and social progress, while avoiding and addressing the negative impacts of their activities. All enterprises - regardless of their legal status, size, ownership structure or sector – are expected to behave responsibly.

The process of risk-based due diligence is a central element of RBC - it is an ongoing, proactive, and reactive process through which businesses identify, prevent and mitigate actual and potential negative impacts, and account for how these impacts are addressed. This includes the entire supply chain and activities linked to their operations, products or services by a business relationship. In high risk areas and sectors, where regulatory, legal, and institutional capacities and frameworks are underdeveloped, more attention to avoiding and addressing negative impacts is often appropriate.

RBC, when practiced and promoted, is a key element of a healthy business environment – one that attracts high-quality investment, minimises risks for businesses, ensures stakeholder rights are respected and ultimately leads to broader value creation.

#### What are the OECD Guidelines for Multinational Enterprises?

The OECD Guidelines for Multinational Enterprises (the Guidelines) are the most comprehensive set of government-backed recommendations on what constitutes responsible business. They provide principles and standards for business conduct in areas such as environment, employment and industrial relations, human rights, disclosure, combating bribery, consumer interests, science and technology, competition, and taxation.

The Guidelines are one of four instruments of the OECD Declaration on International Investment and Multinational Enterprises, a policy commitment to provide an open and transparent international investment environment. The Guidelines, together with the UN Guiding Principles for Business and Human Rights and the core ILO conventions, form the basis of international law for what is considered responsible business.

#### Who do the Guidelines apply to?

The Guidelines are recommendations from governments to multinational enterprises (MNEs) operating in or from the jurisdictions of the governments that adhere to them. These 46 countries - 34 OECD and 12 non-OECD economies - are the source and the recipients of a large majority of global investment<sup>1</sup> and

home to a majority of MNEs.<sup>2</sup> The expectations in the Guidelines extend to the entire supply chain and activities linked to their operations, products or services by a business relationship.

### How are the Guidelines used?

The Guidelines serve a range of purposes to governments, businesses, trade unions and civil society. The continuous and proactive engagement between these stakeholders, at both national and international levels, is central to the successful implementation of the Guidelines. The following section outlines different ways stakeholders use the Guidelines.

#### Policy Goals

The Guidelines serve a distinct policy purpose - on a both national and international level - for governments, which primarily use them to:

- provide clear guidance on the expected behaviours of businesses operating in or from their jurisdictions;
- protect public interest and stakeholder rights;
- promote a more open, transparent, and better business and investment climate.

Because of their breadth and scope, the Guidelines can also serve as a tool to strengthen links between policy areas not traditionally associated with each other (e.g. corporate governance and risk management for environmental and social issues) and, thus, can be used to promote policy coherence and a whole-of-government approach to policies that govern business conduct.

There has also been an increasing trend to cite the Guidelines in bilateral investment treaties and free trade agreements as a way to promote good practice and international co-operation.<sup>3</sup> The recent EU agreements are an example.<sup>4</sup>

Some adherents are also using the Guidelines to frame regional or country strategies, for example the [European Union Corporate Social Responsibility Strategy](#) or the [United States National Action Plan on Responsible Business Conduct](#). A notable recent development is the [G7 commitment](#) to strengthen the functioning and performance of G7 National Contact Points under the Guidelines.

Finally, more and more adherents are using the Guidelines and RBC principles to frame domestic law. For example, the United States Dodd-Frank Act specifically addresses due diligence for human rights along the minerals supply chain and requires companies to report on whether they source certain minerals (tin, tantalum, tungsten and gold) from conflict areas. Another example is the UK Modern Slavery Act, mandating that commercial organisations prepare an annual statement on slavery and human trafficking and report on their due diligence processes to manage these risks within their operations and supply chains. Similar legislation is being discussed in France, which, if passed, would mandate supply chain due diligence in accordance with the Guidelines for large companies.

#### Multi-stakeholder Engagement

Adhering governments engage with stakeholders and partners in different ways. On a national level, many of these interactions are channelled through the National Contact Points (see section below). On the international level, stakeholder interactions are institutionalised through regular consultations with the OECD Investment Committee.

Furthermore, the Guidelines most recent negotiation in 2011 was an intensive multi-stakeholder process, giving the Guidelines necessary credibility and wide support for usage on the ground. It included intensive consultations with a wide range of stakeholders and partners, including also with all G20 countries, which were invited to participate in the negotiation on an equal footing.

More information can be found at: <http://www.oecd.org/daf/inv/mne/2011update.htm>.

### Supply Chain Management

The Guidelines also help businesses prioritise and manage risks throughout the entire supply chain, as well as frame good practice and meet their responsibilities toward stakeholders. Good business practice can help improve access to international markets for domestic industries by promoting their linkages with MNEs and upgrading their position in global value chains. For MNEs, the Guidelines are useful for risk and reputation management; obtaining the social licence to operate; protecting brand capital; promoting access to new markets, as well as operational efficiency and productivity gains.

### Strengthening Accountability

The Guidelines are also a useful framework for promoting constructive dialogue between governments, businesses, trade unions and civil society because they represent a common understanding about what actually constitutes responsible business. They allow trade unions and civil society to hold businesses accountable against reasonable expectations, while clarifying the extent of business responsibilities toward their stakeholders.

### What are National Contact Points?

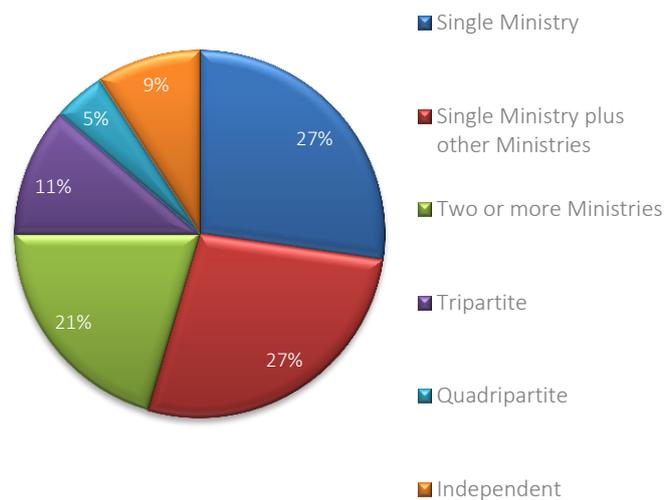
Setting up a National Contact Point for the Guidelines and providing the adequate resources for its operation is a legal obligation of all adhering governments. 46 NCPs currently exist – one for each adhering government. NCPs are mandated with promoting the Guidelines, handling inquiries, and helping resolve issues that can arise if the Guidelines are not observed.

### How are National Contact Points structured?

Countries have flexibility in how they organise their NCPs. NCPs have to be composed and organised to be able to deal with a broad range of issues covered by the Guidelines. They also have to be able to operate in an impartial manner while maintaining an adequate level of accountability to the government.

A range of institutional arrangements are in place. Some NCPs consist of one or more representatives of a single Ministry; others of two or more Ministries. Some have representatives of business associations, trade unions, or NGOs. Others are independent. Almost half of NCPs also have either an advisory or oversight body or both. Oversight bodies can provide an additional layer of accountability.

NCP Structure - 2015



<i>Examples of NCP institutional arrangements</i>	
Country	Description
Canada	An interdepartmental committee chaired by the Department of Foreign Affairs, Trade and Development Canada; composed of eight member departments.
Brazil	Located in the Ministry of Finance; multi-agency forum, composed of representatives from eleven Ministries, the Central Bank of Brazil, the National Secretariat for Human Rights, and the Office of the Controller General.
Chile	Located in the General Directorate for International Economic Relations, Ministry of Foreign Affairs.
Denmark	An independent secretariat located in the Danish Business Authority, Ministry of Business and Growth.
France	Located in the Treasury, Ministry of Economy, Finance and Employment; composed of representatives from several ministries, trade unions and an employer's federation.
Japan	Coordinated by the Ministry of Foreign Affairs; composed of the Ministry of Foreign Affairs, Ministry of Health, Labour and Welfare, and Ministry of Economy, Trade and Industry ; advisory body composed of the Business Federation, Trade Union Confederation, and the NCP.
United Kingdom	Located in the Department for Business, Innovation & Skills; overseen by a Steering Board composed of representatives of government departments and 4 external members.
United States	Located in Department of State; supported by a Stakeholder Advisory Board, composed of representatives from business, labour, academia, environmental, and human rights groups.
Poland	Located in the Polish Information and Foreign Investment Agency, supervised by the Ministry of Economy.

## How do National Contact Points operate?

### Core Criteria

To ensure that all NCPs operate in a comparable way, NCPs have to follow four core criteria in their activities: visibility, accessibility, transparency, and accountability. These criteria are not mutually exclusive – they reinforce each other.

#### *What do the Core Criteria mean in practice?*

	Visibility	Accessibility	Transparency	Accountability
<b>Description</b>	Ensure that the NCP and the availability of its services are known to the wider public and take an active role in promoting the Guidelines.	Facilitate easy access to NCP services and deal with issues in an efficient and timely manner.	Be transparent in all activities, taking into account the need for confidentiality in offering good offices.	Be accountable, with the goal to retain confidence of stakeholders and foster the public profile of the Guidelines.
<b>In Practice</b>	<ul style="list-style-type: none"> <li>- Host seminars and events</li> <li>- Communicate in a clear manner through appropriate channels (e.g. website; in national language)</li> <li>- Raise awareness and make the Guidelines better known and available, including with non-adhering</li> </ul>	<ul style="list-style-type: none"> <li>- Define and publish procedures for dealing with specific instances in line with the Guidelines</li> <li>- Be clear about the requirements and on indicative timeframes and processes to lodge a complaint.</li> </ul>	<ul style="list-style-type: none"> <li>- Publish reports on NCP functioning and its activities</li> <li>- Proactively share information</li> <li>- Respond to requests for information and be reachable</li> </ul>	<ul style="list-style-type: none"> <li>- Report to national authorities as appropriate, as well as to the OECD</li> <li>- Attend NCP meetings</li> <li>- Participate in peer reviews and peer learning exercises</li> <li>- Develop and maintain relationships with stakeholders, seek their active support</li> </ul>

governments			and take their views into account
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### Peer Engagement and Learning

An important element of NCP functioning is engagement and peer learning activities with other NCPs. This is mainly accomplished through regular meetings, horizontal and thematic peer learning exercises, as well as individual NCP peer reviews. NCPs generally meet at least twice a year in a plenary meeting. Some NCPs also host regional or thematic meetings.

Horizontal and thematic peer learning is generally focused on strategies and ways of dealing with cross cutting issues that all NCPs face, for example on communication strategies or on defining procedures for NCP facilities.

Peer reviews generally focus on the functioning of a specific NCP. They are a useful tool for highlighting individual NCP achievements while identifying areas for improvement. Peer reviews are also useful for the reviewer NCPs as a good way to build capacity and learn from good practice. Peer reviews of the NCPs of the Netherlands (2009), Japan (2012), Norway (2013) and Denmark (2015) have been completed.

### Collaborative and Proactive Initiatives

One area of substantive work under the Guidelines, called the proactive agenda, is focused on helping businesses identify and respond to risks related to adverse impacts with particular products, regions, sectors or industries. Four multi-stakeholder projects are currently under way to help clarify what RBC means in practice in the agriculture, textiles, financial and extractive sectors.

NCPs play an important role in ensuring such collaborative initiatives are a success as they maintain regular and direct contact with stakeholders on the ground. An additional benefit of the NCP proximity to the activities on the ground is the ability of the NCP to consider new developments and emerging practices related to RBC.

### How do National Contact Points actually solve problems?

NCPs have to provide a platform for discussion and assistance to stakeholders to help them find a resolution for issues related to non-observance of the Guidelines by a company. The mandate to look at these specific instances<sup>5</sup> establishes a grievance mechanism for the breadth of issues covered by the Guidelines. A grievance mechanism, in its simplest terms, is any routine process through which a grievance can be raised. It can be government or non-government based; judicial or non-judicial; national, regional or international; or operational or project level.

The availability of grievance mechanisms is important because they can contribute to improving access to remedy for victims of business-related rights violations. Access to remedy and accountability have long been an issue in cross-border transactions, and judicial and non-judicial systems alike have often failed to address these gaps.<sup>6</sup>

The grievance mechanism provided for in the Guidelines is one of the few government-based, non-judicial mechanisms with such an effective and broad application. The problem solving focus of NCPs is attractive to the participating parties because it allows them to exercise a better level of control over the process of reaching an agreement than more formal processes in which a third unrelated party makes a final binding decision. NCPs offer, and with the agreement of the parties involved, facilitate access to consensual and non-adversarial means, such as conciliation or mediation, to help them dealing with the

issues. This offer can be significantly more expeditious and a cost saving alternative to more formal or legal procedures.

However, it is important to have clear and realistic expectations about the NCP process and its possible outcomes. Specific instances are not legal cases and NCPs are not judicial bodies. The type of remedy that the NCP mechanism can provide is not unlimited. In some cases, remedy may be partial or not possible.

## Examples of Grievance Mechanisms or Complaint Procedures

### *International*

#### **OECD National Contact Points (NCPs)**

- Government-backed unique grievance mechanism – specific instance facility – to examine all alleged non-observances of the OECD Guidelines
- Applies to all sectors and covers multiple themes that are covered in the OECD Guidelines
- <http://mneguidelines.oecd.org/>

### *Thematic*

#### **National Human Rights Institutions (NHRIs)**

- Complaint procedures against enterprises on alleged human rights violations included in some NHRIs
- Thematic (human rights)
- <http://nhri.ohchr.org/EN/Pages/default.aspx>

#### **ILO Complaint Procedure**

- Complaint procedures against non-compliant member states
- Thematic (labour relations)
- [www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/complaints/lang--en/index.htm](http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/complaints/lang-en/index.htm)

### *Financial Institutions*

#### **World Bank: Compliance Advisor Ombudsman (CAO)**

- Complaint procedures for people affected by projects funded by International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA)
- All sectors
- [www.cao-ombudsman.org/](http://www.cao-ombudsman.org/)

#### **Asian Development Bank (ADB): Accountability Mechanism**

- Complaint procedures for people affected by ADB-funded projects
- All sectors
- [www.adb.org/site/accountability-mechanism/main](http://www.adb.org/site/accountability-mechanism/main)

### *Multi-stakeholder Initiatives - Industry Level*

#### **Fair Labour Association (FLA): Third Party Complaint Procedure**

- Complaint procedure for violations of labour rights in facilities used by companies committed to FLA's codes or principles
- Manufacturing sector, Thematic (labour relations)
- [www.fairlabor.org/third-party-complaint-process](http://www.fairlabor.org/third-party-complaint-process)

#### **Social Accountability International: Social Accountability Accreditation Services (SAAS)**

- Complaint and appeal procedures against the accreditation process and resultant decisions made by SAAS in relation with the SA8000 standard
- Thematic (labour relations)
- [www.saasaccreditation.org/complaints.htm](http://www.saasaccreditation.org/complaints.htm)

#### **Voluntary Principles on Security and Human Rights (VPs): Participation Criteria**

- Complaint procedures for non-compliance with the Principles by a member
- Extractive sector
- [http://voluntaryprinciples.org/files/VPs\\_Participation\\_Criteria\\_Final\\_-\\_127000\\_v1\\_FHE-DC.PDF](http://voluntaryprinciples.org/files/VPs_Participation_Criteria_Final_-_127000_v1_FHE-DC.PDF)

### *Other*

#### **ICMM: Human Rights in the Metals and Mining Industry: Handling and Resolving Local Level Concerns and Grievances**

- Extractive sector
- [www.unglobalcompact.org/docs/issues\\_doc/human\\_rights/Resources/HR-Concerns-and-Grievances.pdf](http://www.unglobalcompact.org/docs/issues_doc/human_rights/Resources/HR-Concerns-and-Grievances.pdf)

## Who can submit a complaint?

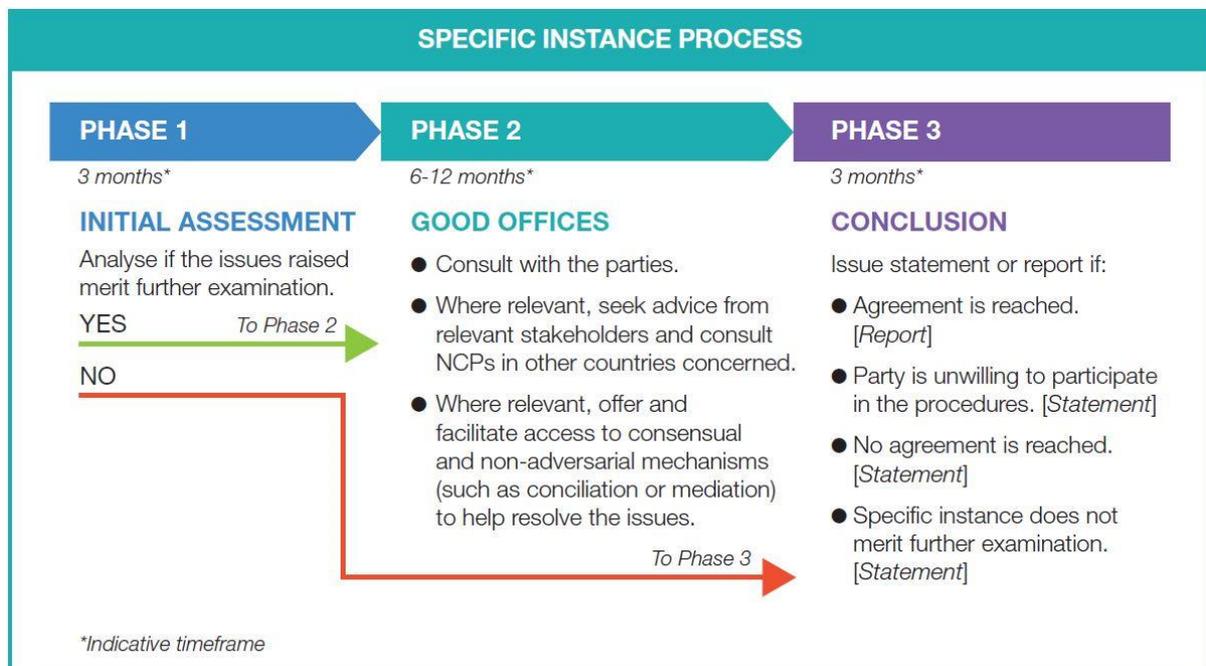
Any interested party can submit a complaint to an NCP. Once the complaint has been submitted, generally by a trade union or an NGO, its consideration is composed of three phases:

**Phase 1 - Initial Assessment:** NCPs determine if the issues raised merit further examination.

**Phase 2 - Offer of Good Offices:** NCPs facilitate access to consensual and non-adversarial means to resolve the issues, for example, mediation or conciliation.

**Phase 3 - Conclusion:** NCPs issue statements or reports.

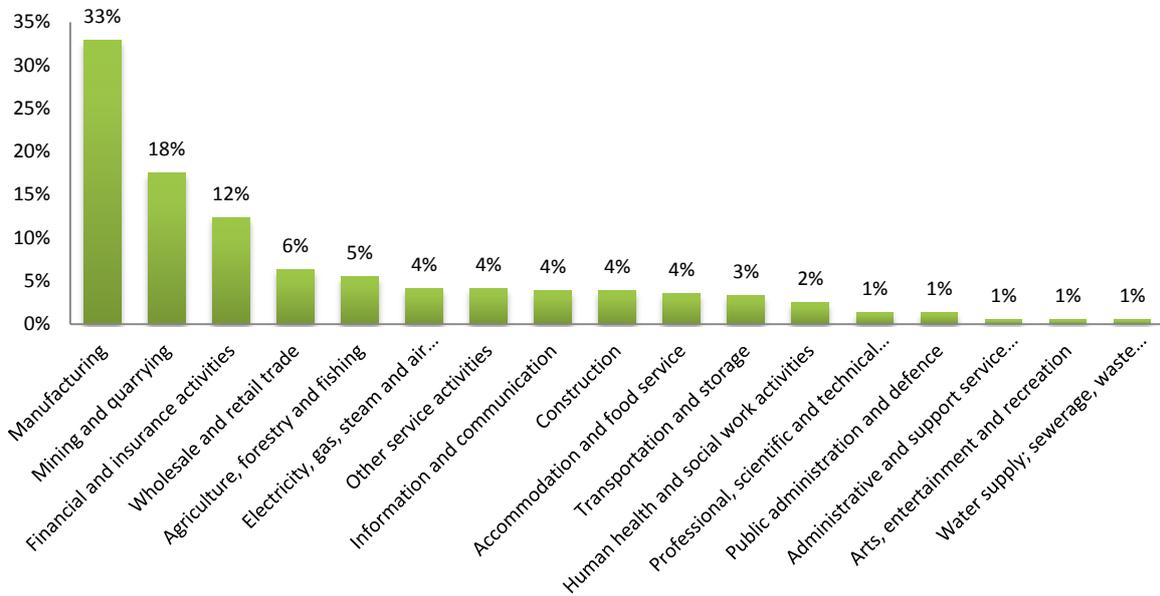
Good offices can only proceed upon agreement of the parties concerned. The commitment to participate in good faith is a crucial element to a successful resolution of issues.



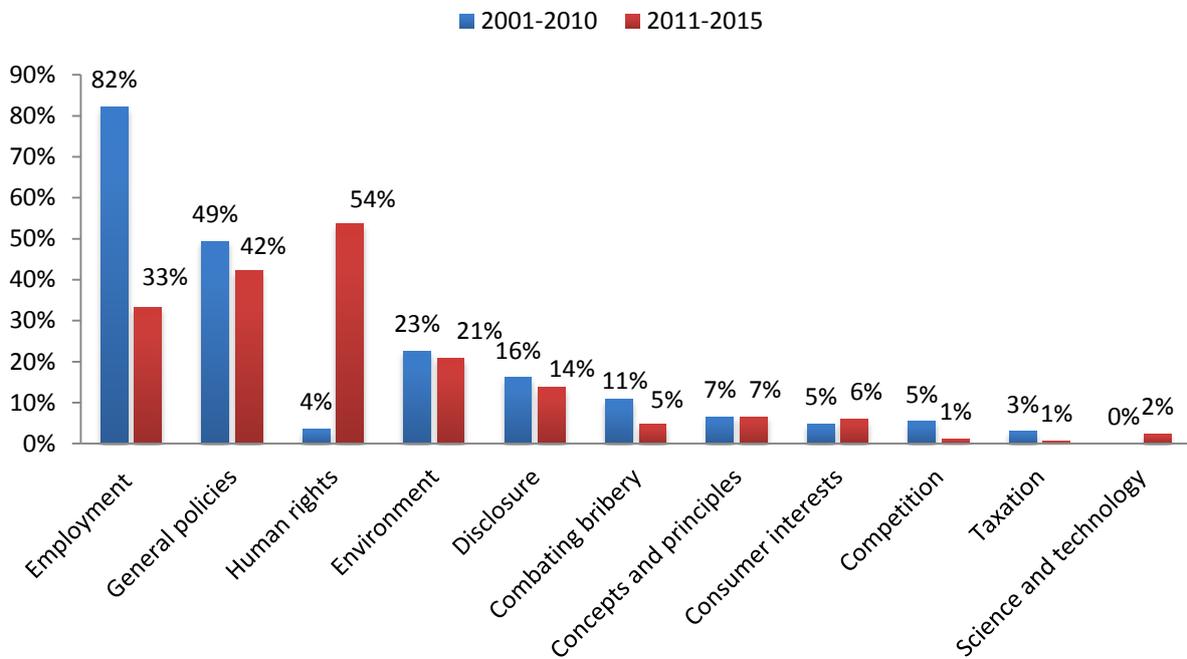
## What has been the impact?

Over 360 specific instances have been considered to date by NCPs.<sup>7</sup> The concerned sectors are diverse, with manufacturing and mining and quarrying being the two most frequently cited. Most originated from NGOs and trade unions, with employment and industrial relations, human rights, and environment being the predominant issues. The issues were raised in 101 countries and territories. The tables below provide more information.

### Percentage of cases by sector



### Percentage of cases by theme



\*Source: OECD Specific Instance Database

*Number of specific instances by host country or territory 2000-2015*

United States	30
Brazil	26
Democratic Republic of the Congo	24
India	21
United Kingdom	15
Argentina	13
New Zealand	12
Indonesia	11
Denmark, France, Chile	10
Philippines	9
Turkey, Uzbekistan, Russian Federation	8
Netherlands, Peru	7
Bahrain, Cameroon, Canada, Czech Republic Korea, México,	6
Belgium, Germany, Italy, Malaysia, Myanmar, Pakistan, Papua New Guinea	5
Australia, Bangladesh, China, Colombia, Ecuador, Lao PDR, Norway, Spain, Sri Lanka, Zambia	4
Austria, Guatemala, Israel, Japan, Liberia, Mali, Poland, Portugal, South Africa, Sweden, Thailand, Uruguay	3
Cambodia, Georgia, Hungary, Ireland, Malawi, Mongolia, Montenegro, Mozambique, Nigeria, Palestinian Administered Areas, Paraguay, Switzerland, Yemen	2
Algeria, Azerbaijan, Belize, Benin, Cuba, Dominican Republic, Egypt, Ethiopia, El Salvador, European Union, Finland, Gabon, Ghana, Greece, Hong Kong, Iceland, Iraq, Kazakhstan, Kosovo, Luxembourg, Maldives, Morocco, Nepal, Nicaragua, Panama, Qatar, Romania, Senegal, Singapore, Slovak Republic, Tunisia, Uganda, United Arab Emirates, Vietnam, Venezuela, Western Sahara	1

*Number of specific instances handled by NCPs 2000-2015*

United Kingdom	45
United States	43
Netherlands	28
Brazil, Germany	25
France	21
Belgium	15
Canada, Denmark	14
Norway, Switzerland	13
New Zealand	12
Australia, Chile	11
Argentina	10
South Korea	8
Italy, Sweden, Japan	7
Austria, Czech Republic, Mexico, Spain	5
Finland, Peru, Turkey	3
Israel, Poland, Ireland	2
Hungary, Luxembourg, Portugal	1

*\*Source: OECD Specific Instance Database*

## Annex 1: Adherent Countries to the OECD Declaration on International Investment and Multinational Enterprises

Argentina (1997)	Jordan (2013)
Australia (1976)	Korea (1996)
Austria (1976)	Latvia (2004)
Belgium (1976)	Lithuania (2001)
Brazil (1997)	Luxembourg (1976)
Canada (1976)	Mexico (1994)
Chile (1997)	Morocco (2009)
Colombia (2011)	Netherlands (1976)
Costa Rica (2013)	New Zealand (1976)
Czech Republic (1995)	Norway (1976)
Denmark (1976)	Peru (2008)
Egypt (2007)	Poland (1996)
Estonia (2001)	Portugal (1976)
Finland (1976)	Romania (2005)
France (1976)	Slovak Republic (2000)
Germany (1976)	Slovenia (2002)
Greece (1976)	Spain (1976)
Hungary (1994)	Sweden (1976)
Iceland (1976)	Switzerland (1976)
Ireland (1976)	Tunisia (2012)
Israel (2002)	Turkey (1981)
Italy (1976)	United Kingdom (1976)
Japan (1976)	United States (1976)



## EndNotes

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<sup>1</sup> 75% of global FDI outflows and 58% inflows on average between 2010-2015 and 81% of outward stock as of end 2014. Source: OECD international direct investment database, IMF.

<sup>2</sup> See Annex 1 for a full list of adherent countries.

<sup>3</sup> For more information, please see Gordon, K., J. Pohl and M. Bouchard (2014), “Investment Treaty Law, Sustainable Development and Responsible Business Conduct: A Fact Finding Survey”, OECD Working Papers on International Investment, 2014/01, OECD Publishing. <http://dx.doi.org/10.1787/5jz0xvqx1zlt-en>

<sup>4</sup> For more information, please see Session Note *Making an impact through responsible business conduct* from the 2016 Global Forum on Responsible Business Conduct: <http://mneguidelines.oecd.org/globalforumonresponsiblebusinessconduct/documents.htm>

<sup>5</sup> The Guidelines refer to these cases as “specific instances”.

<sup>6</sup> This is particularly true for cases involving gross human rights abuses and other serious offenses – such as forced and child labour or large-scale harm to human health and livelihoods. A 2014 study commissioned by the UN Working Group for Business and Human Rights has found that considerable legal, financial, practical and procedural barriers exist for access to remedy. The issues are wide ranging and, among others, concern definitions of jurisdictional space, what constitutes an offense, standards for assessing liability, and methods of determining sanctions and compensation. The lack of access to remedy is not just a problem for victims, but also for a majority of business - it creates legal uncertainty and reinforces concerns about impunity.<sup>6</sup> A seeming lack of accountability has lent support to the June 2014 resolution by the UN Human Rights Council to examine the scope of a legally binding treaty on business and human rights. For more information, please see UN’s Initiative on enhancing accountability and access to remedy in cases of business involvement in human rights abuses: <http://www.ohchr.org/EN/Issues/Business/Pages/OHCHRstudyondomesticlawremedies.aspx>

<sup>7</sup> <http://mneguidelines.oecd.org/database/>, as of June 2016.