



Introduction to the OECD Draft Due Diligence Guidance for Responsible Business Conduct

Background Note

To facilitate conformity with expectations of due diligence under international standards such as the OECD Guidelines for Multinational Enterprises (OECD Guidelines) and the UN Guiding Principles on Business and Human Rights (UNGPs) as well as under domestic obligations, the OECD Working Party on Responsible Business Conduct (WPRBC) agreed to develop a draft Due Diligence Guidance for Responsible Business Conduct (RBC) for all sectors of the economy.

The rationale for developing this Guidance is that a common approach to due diligence can help to mainstream RBC due diligence processes across business operations and facilitate RBC among diverse commercial actors. It may also provide a common reference point on due diligence for business subject to domestic obligations and international expectations and could help avoid a multiplication of varying expectations. A common framework for due diligence will make the provisions of the Guidelines more accessible to businesses seeking to apply the principles of due diligence across all of the relevant chapters of the Guidelines.

The objectives of the Due Diligence Guidance on RBC are to:

- provide *practical* guidance for enterprises to implement due diligence for RBC *across all industry sectors, across various possible areas of adverse impacts* covered by the due diligence provision of the OECD Guidelines for Multinational Enterprises (e.g. disclosure, human rights, employment and industrial relations, environment, combatting bribery, bribe solicitation and extortion and consumer interests).
- align with international instruments on RBC (OECD MNE Guidelines, UN Guiding Principles on Business and Human Rights, and relevant ILO Conventions and instruments).
- provide practical recommendations for businesses of various sizes, across geographies and sectors;
- build off of existing good practice; and
- be developed in a manner that cultivates buy-in and ownership from relevant stakeholders (OECD and non-OECD countries, industry, workers and civil society).

Background

The OECD Guidelines call on businesses to conduct due diligence to identify, prevent and mitigate actual or potential adverse impacts in relation to matters covered by the OECD Guidelines (e.g. disclosure, human rights, employment and industrial relations, environment, combatting bribery, bribe solicitation and extortion and consumer interests) and account for how adverse impacts are addressed.¹ In relation to human rights impacts, this language is aligned with that of the UNGPs.

Due diligence is an important approach for companies to demonstrate that they are behaving responsibly by addressing adverse impacts associated with their activities, products or services. The OECD

¹ In the context of the UNGPs adverse impacts refer to human rights impacts, in the context of the OECD Guidelines, adverse impacts go beyond human rights impacts to refer to the range of issues covered under the Guidelines unless explicitly excluded.



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Guidelines set out some key elements and components of the due diligence process, but do not provide detailed guidance to support implementation in practice. Together with industry and stakeholders, the OECD has developed practical approaches to due diligence, which aim to help companies to identify and respond to risks of adverse impacts associated with particular products, regions, sectors or industries:



[OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas \(2011\)](#)



[OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector](#)



[FAO-OECD Guidance for Responsible Agricultural Supply Chains](#)



[OECD Due Diligence Guidance for Responsible Supply Chains in the Garment & Footwear Sector \(forthcoming 2016\)](#)



[Responsible Business Conduct in the Financial Sector \(good practice papers forthcoming 2016\)](#)

These Guidance(s) and tools provide a useful common reference and enjoy strong recognition among industry and other stakeholders.

Process

The development of the draft Due Diligence Guidance on RBC is overseen by the WPRBC and will involve regular consultation and engagement with stakeholders, primarily through the National Contact Points (NCPs), OECD's institutional stakeholders (TUAC, BIAC & OECD Watch), a public and online consultation, as well as bilateral engagement with experts and other stakeholders as necessary.

To date, the OECD Secretariat presented a concept note on the Due Diligence Guidance on RBC for all sectors during the December 2015 meeting of the WPRBC. Feedback was collected from delegates, institutional stakeholders (TUAC, BIAC & OECD Watch) and other experts, and incorporated as appropriate within the draft of the Guidance, which is currently being reviewed by the WPRBC. As with previous due diligence work, the Secretariat is preparing the draft with support from experts² as necessary.

Indicative timeline and proposed next steps (*resource-dependant*)

30 May – 8 July 2016:	Draft Guidance circulated to WPRBC & NCPs for written comments
8 July – Nov. 2016:	Revision of the draft, follow up as necessary with delegates, NCPs, institutional stakeholders (TUAC, BIAC & OECD Watch) and bilateral consultations on specific issues with experts
Nov. 2016 - January 2017:	Revised draft shared with WPRBC, public online consultation (<i>date and sequencing of public consultation with WPRBC oversight to be determined</i>)

² The Institute for Human Rights and Business



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February - April 2017:	Final revision of the draft, follow up as necessary with delegates, stakeholders and experts; submitted for final consideration by WPRBC and any other relevant bodies
May - June 2017:	Submitted for approval by WPRBC; submitted for adoption by Investment Committee.

Due Diligence Guidance on RBC - Outline

The draft Due Diligence Guidance on RBC is structured as follows:

- **Introduction:** summary of the OECD Guidelines, target audience for the guidance, links to other OECD processes and the UN Guiding Principles on Business and Human Rights
- **Overview:** enterprises covered by the Guidance, scope, types of adverse impacts, business relationships and due diligence principles
- **Part I:** Embedding Responsible Business Conduct in Enterprise Policy and Management Systems
- **Part II:** Due Diligence
 - Identify and Assess Potential and Actual Adverse Impacts
 - Prevent and Mitigate Adverse Impacts
 - Account for Adverse Impacts – tracking and communicating
- **Part III:** Provide for or Cooperate in Remediation

The structure highlights the importance of enterprises taking a systematic approach to RBC due diligence, so that such due diligence becomes part of everyday business (**Part I**).

Within the Due Diligence section (**Part II**), the Guidance covers each step of the due diligence process and is aligned as closely as possible between the OECD Guidelines and the UNGPs. Each step is explained covering a standard set of issues: (i) purpose; (ii) key approaches and tools; (iii) working with business relationships; and (iv) involving internal and external stakeholders. This section also includes a series of explanatory boxes throughout the document providing additional information, examples and analysis for implementing enterprises.

The structure also reflects an important dimension of the Guidelines that complements the due diligence process -- remediation (**Part III**). One of the principle functions of due diligence is to avoid the kinds of adverse risks highlighted in the Guidelines,³ but where avoidance or mitigation is not possible, the Guidelines prompt enterprises to provide for or cooperate in remedying adverse impacts in certain circumstances. Remedy is a logical consequence of due diligence and therefore has been included within the Guidance.

³ Due diligence can and should highlight opportunities for positive impacts but that is not the focus of the Due Diligence Guidance.