RESPONSIBLE BUSINESS CONDUCT AND RISK-BASED DUE DILIGENCE FOR SMES

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With funding by the European Union

Nguyen Tuong Dung, Policy Analyst, OECD Centre for Responsible Business Conduct
OUTLINE

MODULE 1  WHAT IS RBC AND WHY SHOULD COMPANIES CARE?

MODULE 2  OECD RISK-BASED DUE DILIGENCE

MODULE 3  TAILORING DUE DILIGENCE
MODULE 1:

CORPORATE SOCIAL RESPONSIBILITY, RESPONSIBLE BUSINESS CONDUCT, BUSINESS AND HUMAN RIGHTS?
Many businesses, governments and stakeholders are familiar with the term Corporate Social Responsibility (CSR), which has historically been used to describe business interactions with society. Over the last years, CSR has increasingly been used alongside Responsible Business Conduct (RBC) and Business and Human Rights (BHR), with some using the terms interchangeably.

How do these concepts relate to each other? They all reflect the expectation that businesses should consider the impact of their operations and supply chains on people, the planet and society as part of their core business considerations and not as an add-on.

This includes the need to avoid and address negative environmental and social impacts. A key characteristic of CSR, RBC and BHR is that they refer to corporate conduct beyond simply complying with domestic law and call on business to contribute positively to sustainable development while managing risks and impacts that may result from their activities. These concepts should not be understood to be equivalent to philanthropy.
MODULE 1.1:

WHY SHOULD COMPANIES CARE ABOUT RBC?
Market globalisation has resulted in a fragmented process of production
Companies global operations expanded significantly, created global supply chains
Rapid growth of global supply chains has had many positive impacts

Companies have the potential to generate growth and employment...
Growth

Correlation between growth in global value chain (GVC) participation and GDP per capita, 1990-2010

Developed Countries

Developing Countries

Role of global supply chains

Number and share of jobs associated with global supply chains, 1995–2013

Source: ILO (2016) Research Paper No. 16: Linking jobs in global supply chains to demand
Companies’ activities in the global supply chains have also resulted in negative impacts.
Laws and regulations sometimes do not keep pace with the expansion of global supply chains.
Governance gap between companies’ influence and potential harms.
The understanding of risks is also evolving

People
Environment
Society

Risks to the company
Expectations on RBC are increasing

- Legislation
- Investor and Shareholder Requirements
- Public Benchmarking
- Lawsuits
Regulations in responsible supply chains are on the rise

- Australia Modern Slavery Bill
- Netherlands Child Labour Due Diligence Law
- Philippines Sustainability Reporting Guidelines
- European Union Responsible Minerals Regulation
- Germany CSR Directive Implementation Act
- France Corporate Duty of Vigilance Law
- United Kingdom Modern Slavery Act
- Singapore Prevention of Human Trafficking Act
- United States Dodd-Frank Act Section 1502 (Responsible Minerals)
- California Transparency Act
- United Kingdom Bribery Act
Investor interest continues to grow

Investor interest in sustainability strategies has led to a record number of related assets under management expected in 2020.

- 85% of global investors expressed an interest in sustainability-focused strategies in 2019.
- $45 trillion of assets under management following global sustainable investment approaches (including ESG principles) expected by the end of 2020.
- 15% more investment per month recorded in companies with good sustainability ratings than those with poor ratings between 2016 and 2019.
- 94% of sustainable indices outperformed their parent benchmarks between January and March 2020.

Sources: Morgan Stanley (2019), Sustainable Reality: Analysing Risk and Returns of Sustainable Funds
OECD (2020), ESG Investing: Practices, Progress and Challenges
Consumers are demanding more

- Stop human trafficking
- Say no to animal cruelty
- Fight against deforestation
- End child labour
RBC and the Sustainable Development Goals

To learn more about links between the SDGs, RBC and OECD due diligence, please click on the buttons below:

- Responsible Business Conduct and the SDGs
- The OECD-FAO Guidance for Responsible Agricultural Supply Chains – Helping achieve the SDGs
RBC and due diligence pays off

Stock market performance of high and low sustainability portfolio of firms

Implementing OECD due diligence can also help companies make responsible decisions in times of crises.

Supply chain mapping assists with an ability to adapt to disruptions when they occur.

Supply chain visibility creates supply chain resilience.
Why should companies care about responsible business conduct?

1/5

To contribute to meeting Sustainable Development Goal 1 (No Poverty) and Goal 2 (Zero Hunger) only

TRUE  FALSE
Why should companies care about responsible business conduct?

2/5

To avoid actual and potential adverse impacts to people, the environment and society.

TRUE  FALSE
Why should companies care about responsible business conduct?

To focus on addressing company risks such as financial risk, market risk, operational risk, reputational risk.
Why should companies care about responsible business conduct?

To respond to increasing legislation, government scrutiny and consumer campaigns towards company actions

TRUE  FALSE
Why should companies care about responsible business conduct?

To respond to shareholders and investors’ pressure on potential environmental, social and corporate governance (ESG) risks they might be associated with.
### End-of-Module Knowledge Check: Summary

Why should companies care about responsible business conduct?

Results: \%Slide_quiz_answer\_yes\% / 5

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MODULE 1.2:

OECD AND INTERNATIONAL STANDARDS ON RBC
International expectations on responsible business conduct

International alignment of expectations that companies behave responsibly by identifying, avoiding and addressing adverse impacts.
The OECD Guidelines align with ILO and UN instruments

- OECD Guidelines for Multinational Enterprises (Last updated 2011)
- UN Guiding Principles on Business and Human Rights (2011)
OECD Guidelines for Multinational Enterprises

- Government-backed recommendations on what constitutes responsible business conduct (RBC)
- Most comprehensive standard on RBC
- Contains an implementation mechanism: National Contact Points for RBC (NCPs)
- Last updated in 2011 with new chapters on human rights and approach to due diligence

Available in multiple languages to download
The OECD Guidelines cover all major business ethics

- Disclosure
- Human Rights
- Employment and Industrial Relations
- Environment
- Combating Bribery, Bribe Solicitations and Extortions
- Consumer Interests
- Science and Technology
- Competition
- Taxation
What are National Contact Points?

- All governments adhering to the OECD Declaration on International Investment and Multinational Enterprises have a legal obligation to set up a National Contact Point for RBC (NCP)
- Flexible in structure
- Dual mandate
- NCPs are not courts of law

<table>
<thead>
<tr>
<th>PROMOTING RBC</th>
<th>HANDLING SPECIFIC INSTANCES</th>
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<td>• Internal promotion within government</td>
<td>• Help resolve “specific instances” through dialogue, conciliation and mediation</td>
</tr>
<tr>
<td>• External promotion to business, investors, civil society, etc.</td>
<td>• “Any interested person” may submit case</td>
</tr>
<tr>
<td>• Handling enquiries about the OECD Guidelines</td>
<td>• Company operating “in or from” country of the NCP</td>
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Operationalising the OECD Guidelines

OECD Due Diligence Guidance for Responsible Business Conduct

- Explains in plain language the due diligence requirements under the OECD Guidelines
- Contains actionable examples
- Applicable to any sector and company

Available in multiple languages to download
Sectoral due diligence guidances

Available in multiple languages to download
Additional OECD tools to help business

To find links to the tools please click on each image.
MODULE 1.2:

END-of-Module knowledge check
Please select the correct statement.

The OECD Guidelines for Multinational Enterprises are recommendations from governments and applicable only to multinational enterprises that operate in the countries that have adhered to the OECD Guidelines.

The OECD Guidelines for Multinational Enterprises cover major business ethics, from human rights, employment, the environment to bribery, disclosure and taxation.

The OECD Guidelines for Multinational Enterprises are the only standard to ask companies to respect human rights in their supply chains.

National Contact Points (NCPs) – agencies set up by governments – can hear complaints against companies and issue legally binding decisions on what companies must do different to comply with the OECD Guidelines for Multinational Enterprises.
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MODULE 2:

RISK-BASED DUE DILIGENCE
The OECD recommends:

“Enterprises should:

• Carry out risk-based due diligence, (…), to identify, prevent and mitigate actual and potential adverse impacts (…), and account for how these impacts are addressed.

• Avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.

• Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship.”
### Risk-based due diligence is...

<table>
<thead>
<tr>
<th>The process</th>
<th>WHAT IS IT?</th>
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<tbody>
<tr>
<td>Enterprises should carry out to</td>
<td>WHO IS RESPONSIBLE?</td>
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<td>WHAT DO THEY DO?</td>
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<td>WHERE IN OPERATIONS?</td>
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<td>Other business relationships</td>
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*Source: OECD (2018) OECD Due Diligence Guidance for Responsible Business Conduct, Chapter 1, p.15*
How does due diligence differ from traditional compliance approaches?

- Moves beyond Tier 1 suppliers, including to sub-contractors
- Risk-based – Includes a focus on how a company’s actions may cause or contribute to harms in its supply chain (e.g. through purchasing practices)
- Focus on effectiveness – what works?
- Involves relevant stakeholders and workers throughout
- Engagement in processes to provide access to remedy

Simplified diagram of business relationships covered by due diligence
OECD Due Diligence Guidance for RBC

- Explains in plain language the due diligence requirements under the OECD Guidelines
- Contains actionable examples
- Applicable to any sector and company
Characteristics of due diligence

Due diligence is the process enterprises should carry out to identify, prevent, mitigate and account for how they address these actual and potential adverse impacts in their own operations, their supply chain and other business relationships.

- Preventative

- **Risk-based**: Commensurate to the severity and likelihood of the impact, and prioritized accordingly

- **Flexible**: Nature and extent of due diligence tailored to company size, context, severity of adverse impacts, etc.

- **Dynamic**: Ongoing, responsive and changing

- Informed by engagement with stakeholders
Characteristics of due diligence (continued)

Due diligence is the process enterprises should carry out to identify, prevent, mitigate and account for how they address these actual and potential adverse impacts in their own operations, their supply chain and other business relationships.

- **“Leverage”** is essential to prevent or mitigate adverse impacts directly linked to operations, products or services by a business relationship
- **Disengagement as a last resort** and considering impacts of disengagement
- Due diligence **does not shift responsibilities**
OECD due diligence framework

Identify, assess, mitigate, prevent and address actual and potential adverse impacts

1. Embed responsible business conduct into policies and management systems
2. Identify & assess adverse impacts in operations, supply chains & business relationships
3. Cease, prevent or mitigate adverse impacts
4. Track implementation and results
5. Communicate how impacts are addressed
6. Provide for or cooperate in remediation when appropriate
MODULE 2:

END-of-Module knowledge check
If companies are conducting audits and have compliance in place, they do not need to carry out due diligence as these are the same.
Due diligence is an iterative process – companies should do it as an ongoing exercise and in particular where circumstances change.
Working with stakeholders, for example trade unions and civil society organizations, is very important in the due diligence process.
Companies should seek to identify areas of risk beyond Tier 1 suppliers, i.e. along the full supply chain including sub-contractors.
Due diligence helps companies to find suppliers and business partners that are causing adverse impacts and shift responsibility to them.
Due diligence can be supported by engaging in processes to provide remedy for those that have been affected by the adverse impacts.
### End-of-Module Knowledge Check: Summary

Please select TRUE or FALSE and submit your answer to get a feedback.

Results: $\%\text{Slide\_quiz\_answer\_yes}\% / 6$

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MODULE 3:

TAILORING DUE DILIGENCE
Tailoring to the enterprise’s circumstances

The nature and extent of due diligence can be affected by factors such as:

- Its size of the enterprise
- Its business model
- The context of its operations
- Its position in supply chains
- The nature of its products or services
Tailoring to company size

“The size or resource capacity of an enterprise does not change its responsibility to conduct due diligence commensurate with risk but may affect how an enterprise carries it out” – OECD Due Diligence Guidance.

**Small and medium-sized enterprises (SMEs)**

- SMEs with limited leverage over suppliers may consider joining industry associations to apply leverage collectively.
- With new suppliers SMEs may consider establishing robust prequalification processes to engage with only high-quality partners.

**Large enterprises**

- Engage directly through in-region country offices who may have a more nuanced approach to issues on the ground.
- Help build capacity of suppliers to meet RBC expectations, or engage with the government to help address and/or mitigate risks.
Tailoring to company size

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Tailoring to context of operations

High risk areas:

As part of its stakeholder engagement an enterprise sourcing from conflict-affected or unsafe regions may engage with bilateral aid agencies (e.g. donor agencies) who have means, access and expertise over these areas or civil society within the region.

Safer areas:

Engage directly with impacted or potentially impacted stakeholders and rights holders.
Tailoring to business model

- **Long term:**
  Enterprises with long term operations in high risk areas may focus efforts on engagement with government and civil society to address more systemic risks.

- **Short term:**
  Enterprises engaged in short term operations on the ground could prioritise carrying out robust impact assessments on human rights or environmental impact.
Tailoring to position in the supply chain

UPSTREAM:
Upstream enterprises (e.g. farms, raw material traders, refiners) would be expected to trace their supply chains to the point of origin of the raw material and work to directly address adverse impacts on the ground where they operate.

DOWNSTREAM:
Enterprises further downstream in the supply chain (e.g. retailer, manufacturer) may only be able to map their supply chain up to a certain mid-stream point. These companies could then work to build capacity of their mid-stream suppliers and check how those suppliers are conducting due diligence further upstream.
Example: simplified mineral supply chain

UPSTREAM COMPANIES

Mines → Road transporters → Trading houses → Refiners & smelters

DOWNSTREAM COMPANIES

Metal traders & exchanges → Component manufacturers → Consumer goods manufacturers
Tailoring to nature of products and services

An enterprise that provides an online platform for peer-to-peer services (such as accommodation) may not carry out on-site assessments of its individual operators (e.g., those providing lodging) as an enterprise with more traditional services may do.

However, the enterprise may establish robust grievance mechanisms and stringent requirements for operators that are monitored to guard against any breaches to its code of conduct and operating policies so as to discourage and quickly react to offenders.
MODULE 3:

End-of-Module knowledge check
Please select the correct statement.

Due diligence involves human and financial resource implications. Resource constraints may be a challenge for all enterprises.

- Enterprises with few impacts or business partners to manage in their supply chains have little to no responsibility to conduct due diligence commensurate with the risk.

- Enterprises with few personnel and financial resources may not need to carry out due diligence given their circumstances.

- Enterprises with limited resource capacity should rely on collaborative approaches in carrying out due diligence and always follow the prioritisation order for taking action on adverse impact(s) these collaborative approaches suggest.

- Enterprises in any size may take advantage of existing resources such as public information on risks in certain supply chains and seek technical assistance from industry associations they are members of.
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END OF MODULE 3
The OECD e-learning Academy on Responsible Business Conduct


Helping business boost capacity to meet responsible business expectations

With funding by the European Union
OECD Guidelines are available in Vietnamese
RESOURCES

For more information on RBC

OECD Responsible Business Conduct main web page http://mneguidelines.oecd.org/


OECD sector due diligence work and implementation programmes http://mneguidelines.oecd.org/duediligence/

OECD National Contact Points http://mneguidelines.oecd.org/ncps/

Additional OECD resources

Corporate Governance http://www.oecd.org/corporate/


Bribery and Corruption https://www.oecd.org/corruption/

Trade https://www.oecd.org/trade/

Tax https://www.oecd.org/tax/

Agriculture and Fisheries https://www.oecd.org/agriculture/

SEMs and Entrepreneurship https://www.oecd.org/industry/smesc/ 

THANK YOU

June Tuong-Dung Nguyen, tuongdung.nguyen@oecd.org

Promoting Responsible Supply Chains in Viet Nam
https://mneguidelines.oecd.org/responsible-business-conduct-vietnam.htm