OECD DUE DILIGENCE GUIDANCE FOR RESPONSIBLE BUSINESS CONDUCT

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Please cite this publication as:

OECD (2018), *OECD Due Diligence Guidance for Responsible Business Conduct*

Design: Peggy King Cointepas

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FOREWORD

The objective of the OECD Due Diligence Guidance for Responsible Business Conduct (Guidance) is to provide practical support to enterprises on the implementation of the OECD Guidelines for Multinational Enterprises by providing plain language explanations of its due diligence recommendations and associated provisions. Implementing these recommendations helps enterprises avoid and address adverse impacts related to workers, human rights, the environment, bribery, consumers and corporate governance that may be associated with their operations, supply chains and other business relationships. The Annex to the Guidance includes additional explanations, tips and illustrative examples of due diligence.

This Guidance also seeks to promote a common understanding among governments and stakeholders on due diligence for responsible business conduct. The UN Guiding Principles on Business and Human Rights as well as the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy also contain due diligence recommendations, and this Guidance can help enterprises implement them.

The Guidance responds to the G7 Leaders' Declaration adopted on 7-8 June 2015 in Schloss Elmau, which recognised the importance of establishing a common understanding on due diligence, in particular for small and medium-sized enterprises, and encouraged enterprises active or headquartered in their countries to implement due diligence in their supply chains. In their Declaration adopted on 8 July 2017 in Hamburg, G20 Leaders committed to fostering the implementation of labour, social and environmental standards and human rights in line with internationally recognised frameworks in order to achieve sustainable and inclusive supply chains, and underlined the responsibility of businesses to exercise due diligence in this regard.

The development of this Guidance was overseen by the OECD Working Party on Responsible Business Conduct (WPRBC) and involved a multi-stakeholder process with OECD and non-OECD countries and representatives from business, trade unions and civil society. A first draft was submitted to the WPRBC and institutional stakeholders of the OECD for comment in May 2016. A public consultation on a revised draft of this Guidance was held in February 2017. A multi-stakeholder advisory group was formed in June 2017 to support the WPRBC in integrating stakeholder comments and completing the Guidance. United Nations Human Rights collaborated extensively in this process.

This Guidance was approved by the OECD Working Party on Responsible Business Conduct on 6 March 2018 and by the OECD Investment Committee on 3 April 2018. An OECD Recommendation on the Guidance was adopted by Council at Ministerial level on 30 May 2018.

The OECD has also developed guidance to help enterprises carry out due diligence for responsible business conduct in specific sectors and supply chains, namely: minerals; agriculture; garment and footwear; extractives; and finance.

ACRONYMS AND ABBREVIATIONS

EIA	Environmental impact assessment
EPZ	Export processing zone
ESIA	Environmental and social impact assessments
HRIA	Human rights impact assessment
KYC	Know your counterparty
MNE	Multinational enterprise
NHRI	National human rights institution
NCP	National Contact Point for the OECD Guidelines for Multinational Enterprises
OLGM	Operational-level grievance mechanism
RBC	Responsible business conduct
RBC issues	Human rights, including workers and industrial relations, environment, bribery and corruption, disclosure, and consumer interests
SME	Small and medium-sized enterprise
WPRBC	OECD Working Party on Responsible Business Conduct

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INTRODUCTION

BASIS

This Due Diligence Guidance for Responsible Business Conduct (Guidance) is based on the OECD Guidelines for Multinational Enterprises (OECD Guidelines for MNEs). The OECD Guidelines for MNEs are non-binding recommendations addressed to multinational enterprises by governments on responsible business conduct (RBC). They acknowledge and encourage the positive contributions that business can make to economic, environmental and social progress, and also recognise that business activities can result in adverse impacts related to workers, human rights, the environment, bribery, consumers and corporate governance. The OECD Guidelines for MNEs therefore recommend that businesses carry out risk-based due diligence to avoid and address such adverse impacts associated with their operations, their supply chains and other business relationships.

PURPOSE

This Guidance helps businesses (enterprises) to understand and implement due diligence for RBC as foreseen in the OECD Guidelines for MNEs (due diligence). This Guidance also seeks to promote a common understanding amongst governments and stakeholders on due diligence for RBC.

The OECD Guidelines for MNEs provide enterprises with the flexibility to adapt the characteristics, specific measures and processes of due diligence to their own circumstances. Enterprises should use this Guidance as a framework for developing and strengthening their own tailored due diligence systems and processes, and then seek out additional resources for further in-depth learning as needed.

The OECD Guidelines for MNEs have a unique promotion and grievance mechanism – the National Contact Points (NCPs). This Guidance is a useful resource for NCPs in understanding and promoting the OECD Guidelines for MNEs. ▶*see Box 8 for further information on NCPs*

SCOPE

TABLE 1. SCOPE OF THE OECD DUE DILIGENCE GUIDANCE FOR RBC

Enterprises	● All multinational enterprises (MNEs), regardless of their ownership structure, in all sectors and of all sizes operating or based in countries adhering to the OECD Guidelines for MNEs, including multinational, small and medium-sized enterprises (SMEs). ● All the entities within the MNE group – parent and local entities, including subsidiaries. ● Multinational and domestic enterprises are subject to the same expectations in respect of their conduct wherever the OECD Guidelines for MNEs are relevant to both.

TABLE 1. SCOPE OF THE OECD DUE DILIGENCE GUIDANCE FOR RBC

Topics covered in due diligence (RBC issues)*	● Human Rights (*OECD, 2011, Chapter IV*) ● Employment and Industrial Relations (*OECD, 2011, Chapter V*) ● Environment (*OECD, 2011, Chapter VI*) ● Combating Bribery, Bribe Solicitation and Extortion (*OECD, 2011, Chapter VII*) ● Consumer Interests (*OECD, 2011, Chapter VIII*) ● Disclosure (*OECD, 2011, Chapter III*)
Business relationships covered by due diligence	All types of business relationships of the enterprise – suppliers, franchisees, licensees, joint ventures, investors, clients, contractors, customers, consultants, financial, legal and other advisers, and any other non-State or State entities linked to its business operations, products or services.

** Three chapters of the OEC D Guidelines for MNEs are not covered by the Guidance: Science and Technology; Competition; and Taxation*.

TARGET AUDIENCES

The primary audience of the Guidance is practitioners tasked with implementing due diligence within an enterprise. Given the wide range of topics covered by the OECD Guidelines for MNEs and the cross-functional nature of implementing due diligence across an enterprise's varied operations and business relationships, there are likely to be a number of different business units, functional areas and individuals responsible for implementing due diligence. This Guidance may also be useful for other parties, such as sector-wide and multi-stakeholder initiatives that facilitate collaboration on due diligence activities, and for workers, trade unions and workers' representatives[1] and civil society organisations.

STRUCTURE

The Guidance begins with a brief summary of each chapter of the OECD Guidelines for MNEs. It then provides an overview of due diligence, including some key concepts and characteristics, so readers can easily understand the due diligence approach recommended in the OECD Guidelines for MNEs.

The main body of this Guidance describes the due diligence process and supporting measures in a step-by-step fashion, although in practice the process of due diligence is ongoing, iterative and not necessarily sequential, as several steps may be carried out simultaneously with results feeding into each other. "Practical actions" are included in each step to further illustrate ways to implement, or

1. *This Guidance uses the terms workers' representatives, trade unions and representative organisations of their own choosing, as understood by international labour standards: ILO Conventions No. 87 (Freedom of Association), No. 98 (Right to Organise and Collective Bargaining) and No. 135 (Workers' Representatives).*

adapt as needed, the supporting measures and due diligence process. The practical actions are not meant to represent an exhaustive "tick box" list for due diligence. Not every practical action will be appropriate for every situation. Likewise, enterprises may find additional actions or implementation measures useful in some situations.

Additional explanations, tips and illustrative examples of due diligence are referenced and crosslinked throughout this Guidance. These are presented in a "question and answer" format and associated with specific sections of the Guidance.

LINKS TO OTHER PROCESSES AND INSTRUMENTS

OECD sector guidance on responsible business conduct

The OECD has developed sector-specific due diligence guidance for the minerals, agriculture and garment and footwear supply chains, and good practice papers for the extractives and financial sectors (see OECD, 2016a; OECD, 2016b; OECD, 2016c; OECD, 2017a; and OECD, 2017b). These were developed in close co-operation with governments, business, trade unions and civil society. Approaches articulated under the sector guidance align with the approach of this Guidance, but provide more detailed recommendations tailored to specific contexts or sectors. This Guidance is not intended to replace or otherwise modify, but can supplement, existing sector-specific or thematic OECD guidance on RBC. Where questions arise, enterprises should use the guidance that is most specific and relevant to their operations, supply chain or sector.

Other OECD instruments

The OECD Guidelines for MNEs are referenced in a range of other OECD instruments that reinforce the interlinkages between RBC and these other areas, including: the G20/OECD Principles of Corporate Governance; the Guidelines on Corporate Governance of State-Owned Enterprises; the Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence; the Policy Framework for Investment; the Recommendation of the Council on Public Procurement; and the Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (see OECD, 2015a; OECD, 2015b; OECD, 2016d; OECD, 2015c; OECD, 2015d; and OECD, 2009).

Other multilateral processes and instruments

In relation to human rights issues, including the human rights of workers, this Guidance seeks to align with the UN Guiding Principles on Business and Human Rights, the ILO Declaration on Fundamental Principles and Rights at Work, the ILO Conventions and Recommendations referenced within the OECD Guidelines for MNEs, and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (see UN, 2011; ILO, 1998; and ILO, 2017).

CHAPTERS OF THE **OECD GUIDELINES**

I. Concepts and Principles

The first chapter of the Guidelines sets out concepts and principles that put into context all of the recommendations in the subsequent chapters. These concepts and principles (e.g. obeying domestic law is the first obligation of enterprises) are the backbone of the Guidelines and underline the fundamental ideas behind the Guidelines.

II. General Policies

This chapter is the first to contain specific recommendations to enterprises in the form of general policies that set the tone and establish a framework of common principles for the subsequent chapters. It includes important provisions such as implementing due diligence, addressing adverse impacts, engaging stakeholders, and others.

III. Disclosure

Clear and complete information on the enterprise is important to a variety of users. This chapter calls on enterprises to be transparent in their operations and responsive to increasingly sophisticated public demands for information.

IV. Human Rights

Enterprises can have an impact on virtually the entire spectrum of internationally recognised human rights. As such, it is important that they meet their responsibilities. This new chapter of the Guidelines draws on and is aligned with the UN "Protect, Respect and Remedy" Framework and the Guiding Principles on Business and Human Rights that operationalise that framework.

V. Employment and Industrial Relations

The ILO is the competent body to set and deal with international labour standards and to promote fundamental rights at work as recognised in the ILO 1998 Declaration on Fundamental Principles and Rights at Work. This chapter focuses on the role the Guidelines have in promoting observance among MNEs of the international labour standards developed by the ILO.

VI. Environment

The environment chapter provides a set of recommendations for MNEs to raise their environmental performance and help maximise their contribution to environmental protection through improved internal management and better planning. It broadly reflects the principles and objectives of the Rio Declaration on Environment and Development and Agenda 21.

FOR **MULTINATIONAL ENTERPRISES**

VII. Combating Bribery, Bribe Solicitations and Extortion

Bribery and corruption are damaging to democratic institutions and the governance of corporations. Enterprises have an important role to play in combating these practices. The OECD is leading global efforts to level the playing field for international businesses by fighting to eliminate bribery. The recommendations in the Guidelines are based on the extensive work the OECD has already done in this field.

VIII. Consumer Interests

The Guidelines call on enterprises to apply fair business, marketing, and advertising practices and to ensure the quality and reliability of the products that they provide. This chapter draws on the work of the OECD Committee on Consumer Policy and the Committee on Financial Markets, and of other international organisations, including the International Chamber of Commerce, the International Organisation for Standardization and the UN.

IX. Science and Technology

This chapter recognises that MNEs are the main conduit of technology transfer across borders. It aims to promote technology transfer to host countries and contribution to their innovative capacities.

X. Competition

This chapter focuses on the importance of MNEs carrying out their activities in a manner consistent with all applicable competition laws and regulations, taking into account the competition laws of all jurisdictions in which their activities may have anti-competitive effects. Enterprises need to refrain from anti-competitive agreements, which undermine the efficient operation of both domestic and international markets.

XI. Taxation

The Guidelines are the first international corporate responsibility instrument to cover taxation, contributing to and drawing upon a significant body of work on taxation, most notably the OECD Model Tax Convention and the UN Model Double Taxation Convention between Developed and Developing Countries. This important chapter covers fundamental taxation recommendations.

I.

OVERVIEW OF DUE DILIGENCE FOR RESPONSIBLE BUSINESS CONDUCT

The OECD Guidelines for MNEs acknowledge and encourage the positive contributions that business can make to economic, environmental and social progress, but also recognise that business activities may result in adverse impacts related to corporate governance, workers, human rights, the environment, bribery, and consumers. 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, as recommended in the OECD Guidelines for MNEs. Effective due diligence should be supported by efforts to embed RBC into policies and management systems, and aims to enable enterprises to remediate adverse impacts that they cause or to which they contribute. ▶*see Figure 1*

ADVERSE IMPACTS AND RISK

Due diligence addresses actual adverse impacts or potential adverse impacts (risks) related to the following topics covered in the OECD Guidelines for MNEs: human rights, including workers and industrial relations, environment, bribery and corruption, disclosure, and consumer interests (RBC issues). The OECD Guidelines for MNEs chapters provide detailed provisions on the type of conduct recommended for each RBC issue. The likelihood of adverse impacts increases in situations where an enterprise's behaviour or the circumstances associated with their supply chains or business relationships are not consistent with the recommendations in the OECD Guidelines for MNEs. A risk of adverse impacts may exist when there is the potential for behaviour that is inconsistent with the recommendations in the OECD Guidelines for MNEs because it involves impacts that may occur in the future. ▶*see Annex Q1*

BOX 1. UNDERSTANDING RISK UNDER THE OECD GUIDELINES FOR MNES

For many enterprises, the term "risk" means primarily risks to the enterprise – financial risk, market risk, operational risk, reputational risk, etc. Enterprises are concerned with their position in the market vis-à-vis their competitors, their image and long-term existence, so when they look at risks, it is typically risks to themselves. The Guidelines however refer to the likelihood of adverse impacts on people, the environment and society that enterprises cause, contribute to, or to which they are directly linked. In other words, it is an outward-facing approach to risk.

Enterprises can identify risks on RBC issues by looking for divergences between what is recommended in the OECD Guidelines for MNEs on the one hand, and the circumstances associated with their operations, supply chains or business relationships on the other. ▶*see Annex Q1*

WHY CARRY OUT DUE DILIGENCE?

Some business operations, products or services are inherently risky because they are likely to cause, contribute to, or be directly linked to adverse impacts on RBC issues. In other contexts, business operations may not be inherently risky, but circumstances (e.g. rule of law issues, lack of enforcement of standards, behaviour of business relationships) may result in risks of adverse impacts. Due diligence should help enterprises anticipate and prevent or mitigate these impacts. In some limited cases, due diligence may help them decide whether or not to go ahead with or discontinue operations or business relationships as a last resort, because the risk of an adverse impact is too high or because mitigation efforts have not been successful.

Effectively preventing and mitigating adverse impacts may in turn also help an enterprise maximise positive contributions to society, improve stakeholder relationships and protect its reputation. Due diligence can help enterprises create more value, including by: identifying opportunities to reduce costs; improving understanding of markets and strategic sources of supply; strengthening management of company-specific business and operational risks; decreasing the probability of incidents relating to matters covered by the OECD Guidelines for MNEs; and decreasing exposure to systemic risks. An enterprise can also carry out due diligence to help it meet legal requirements pertaining to specific RBC issues, such as local labour, environmental, corporate governance, criminal or anti-bribery laws.

CHARACTERISTICS OF DUE DILIGENCE – THE ESSENTIALS

- **Due diligence is preventative.**

  The purpose of due diligence is first and foremost to avoid causing or contributing to adverse impacts on people, the environment and society, and to seek to prevent adverse impacts directly linked to operations, products or services through business relationships. When involvement in adverse impacts cannot be avoided, due diligence should enable enterprises to mitigate them, prevent their recurrence and, where relevant, remediate them.

- **Due diligence involves multiple processes and objectives.**

  The concept of due diligence under the OECD Guidelines for MNEs involves a bundle of interrelated processes to identify adverse impacts, prevent and mitigate them, track implementation and results and communicate on how adverse impacts are addressed with respect to the enterprises' own operations, their supply chains and other business relationships. Due diligence should be an integral part of enterprise decision-making and risk management. In this respect it can build off (although it is broader than) traditional transactional or "know your counterparty" (KYC) due diligence processes. Embedding RBC into policies and management systems helps enterprises prevent adverse impacts on RBC issues and also supports effective due diligence by clarifying an enterprise's strategy, building staff capacity, ensuring availability of resources, and communicating a clear tone from the top.

- **Due diligence is commensurate with risk (risk-based).**

  Due diligence is risk-based. The measures that an enterprise takes to conduct due diligence should be commensurate to the *severity* and *likelihood* of the adverse impact. When the likelihood and severity of an adverse impact is high, then due diligence should be more extensive. Due diligence should also be adapted to the *nature* of the adverse impact on RBC issues, such as human rights, the environment and corruption. This involves tailoring approaches for specific risks and taking into account how these risks affect different groups, such as applying a gender perspective to due diligence. ▶*see Annex Q2*

- **Due diligence can involve prioritisation (risk-based).**

  Where it is not feasible to address all identified impacts at once, an enterprise should prioritise the order in which it takes action based on the severity and likelihood of the adverse impact. Once the most significant impacts are identified and dealt with, the enterprise should move on to address less significant impacts. Where an enterprise is causing or contributing to an adverse impact on RBC issues, it should always stop the activities that are causing or contributing to the impact and provide for or cooperate in their remediation. The process of prioritisation is also ongoing, and in some instances new or emerging adverse impacts may arise and be prioritised before moving on to less significant impacts. In the case of prioritising risks to human rights, the severity of a potential adverse impact, such as where a delayed response would make the impact irremediable, is the predominant factor in prioritising responses. ▶*see Annex Q3-5*

- **Due diligence is dynamic.**

  The due diligence process is not static, but ongoing, responsive and changing. It includes feedback loops so that the enterprise can learn from what worked and what did not work. Enterprises should aim to progressively improve their systems and processes to avoid and address adverse impacts. Through the due diligence process, an enterprise should be able to adequately respond to potential changes in its risk profile as circumstances evolve (e.g. changes in a country's regulatory framework, emerging risks in the sector, the development of new products or new business relationships).

- **Due diligence does not shift responsibilities.**

  Each enterprise in a business relationship has its own responsibility to identify and address adverse impacts. The due diligence recommendations of the OECD Guidelines for MNEs are not intended to shift responsibilities from governments to enterprises, or from enterprises causing or contributing to adverse impacts to the enterprises that are directly linked to adverse impacts through their business relationships. Instead, they recommend that each enterprise addresses its own responsibility with respect to adverse impacts. In cases where impacts are directly linked to an enterprise's operations, products or services, the enterprise should seek, to the extent possible, to use its leverage to effect change, individually or in collaboration with others.

- **Due diligence concerns internationally recognised standards of RBC.**
  The OECD Guidelines for MNEs provide principles and standards of RBC consistent with applicable laws and internationally-recognised standards. They state that obeying domestic laws in the jurisdictions in which the enterprise operates and/or where they are domiciled is the first obligation of enterprises. Due diligence can help enterprises observe their legal obligations on matters pertaining to the OECD Guidelines for MNEs. In countries where domestic laws and regulations conflict with the principles and standards of the OECD Guidelines for MNEs, due diligence can also help enterprises honour the OECD Guidelines for MNEs to the fullest extent which does not place them in violation of domestic law. Domestic law may also in some instances require an enterprise to take action on a specific RBC issue, (e.g. laws pertaining to specific RBC issues such as foreign bribery, modern slavery or minerals from conflict-affected and high-risk areas).

- **Due diligence is appropriate to an enterprise's circumstances.**
  The nature and extent of due diligence can be affected by factors such as the size of the enterprise, the context of its operations, its business model, its position in supply chains, and the nature of its products or services. Large enterprises with expansive operations and many products or services may need more formalised and extensive systems than smaller enterprises with a limited range of products or services to effectively identify and manage risks. ▶*see Annex Q6-7 and Table 4*

- **Due diligence can be adapted to deal with the limitations of working with business relationships.**
  Enterprises may face practical and legal limitations to how they can influence or affect business relationships to cease, prevent or mitigate adverse impacts on RBC issues or remedy them. Enterprises, in particular SMEs, may not have the market power to influence their business relationships by themselves. Enterprises can seek to overcome these challenges to influence business relationships through contractual arrangements, pre-qualification requirements, voting trusts, license or franchise agreements, and also through collaborative efforts to pool leverage in industry associations or cross-sectoral initiatives.

- **Due diligence is informed by engagement with stakeholders.**
  Stakeholders are persons or groups who have interests that could be affected by an enterprise's activities.[2] Stakeholder engagement is characterised by two-way communication. It involves the timely sharing of the relevant information needed for stakeholders to make informed decisions in a format that they can understand and access. To be meaningful, engagement involves the good faith of all parties. Meaningful engagement with relevant stakeholders is important throughout the due diligence process. In particular, when the enterprise may cause or contribute to, or has caused or contributed to an adverse impact, engagement

2. Examples of stakeholders include workers, workers' representatives, trade unions (including Global Unions) community members, civil society organisations, investors and professional industry and trade associations.

with impacted or potentially impacted stakeholders and rightsholders will be important. For example, depending on the nature of the adverse impact being addressed, this could include participating in and sharing results of on-site assessments, developing risk mitigation measures, ongoing monitoring and designing of grievance mechanisms.[3]

- **Due diligence involves ongoing communication.**
  Communicating information on due diligence processes, findings and plans is part of the due diligence process itself. It enables the enterprise to build trust in its actions and decision-making, and demonstrate good faith. An enterprise should account for how it identifies and addresses actual or potential adverse impacts and should communicate accordingly. Information should be accessible to its intended audiences (e.g. stakeholders, investors, consumers, etc.) and be sufficient to demonstrate the adequacy of an enterprise's response to impacts. Communication should be carried out with due regard for commercial confidentiality and other competitive[4] or security concerns. Various strategies may be useful in communicating to the extent possible while respecting confidentiality concerns. ▶*see Annex Q47*

BOX 2. COLLABORATION IN CARRYING OUT DUE DILIGENCE

Enterprises can collaborate at an industry or multi-industry level as well as with relevant stakeholders throughout the due diligence process, although they always remain responsible for ensuring that their due diligence is carried out effectively. For example, collaboration may be pursued in order to pool knowledge, increase leverage and scale-up effective measures. Cost sharing and savings is often a benefit to sector collaboration and can be particularly useful for SMEs. ▶*see Annex Q12*

While in many cases, enterprises can collaborate on due diligence without breaching competition law, enterprises, and the collaborative initiatives in which they are involved, are encouraged to take proactive steps to understand competition law issues in their jurisdiction and avoid activities which can be seen as breach of competition law. ▶*see Annex Q13*

3. Annex Q8 provides an explanation of the terms relevant stakeholders, impacted or potentially impacted stakeholders and rightsholders. Annex Q8-11 provides more information about stakeholder engagement.

4. Competitive concerns should be interpreted in light of applicable competition law.

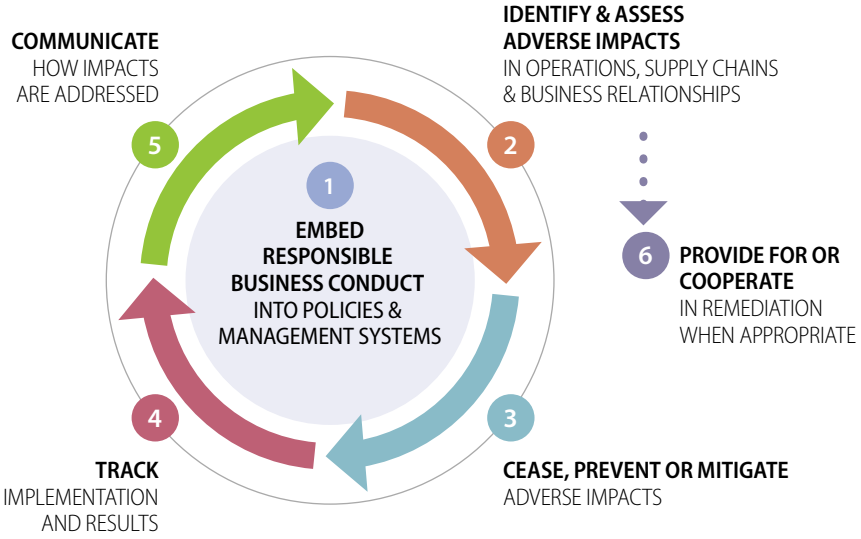
II.

THE DUE DILIGENCE PROCESS

Taking into account that due diligence should be commensurate with risk and appropriate to a specific enterprise's circumstances and context, the following section outlines measures: (1) to embed RBC into the enterprise's policies and management systems; to undertake due diligence by (2) identifying actual or potential adverse impacts on RBC issues, (3) ceasing, preventing or mitigating them, (4) tracking implementation and results, (5) communicating how impacts are addressed; and (6) to enable remediation when appropriate. ▶*see Figure 1*

The practical actions provided are not meant to represent an exhaustive "tick box" list for due diligence. Not every practical action will be appropriate for every situation. Likewise, additional practical actions or implementation measures not described in this Guidance may be useful in some situations.

FIGURE 1. DUE DILIGENCE PROCESS & SUPPORTING MEASURES



1

EMBED RESPONSIBLE BUSINESS CONDUCT INTO POLICIES AND MANAGEMENT SYSTEMS

1.1 Devise, adopt and disseminate a combination of policies on RBC issues that articulate the enterprise's commitments to the principles and standards contained in the OECD Guidelines for MNEs and its plans for implementing due diligence, which will be relevant for the enterprise's own operations, its supply chain and other business relationships.

▶*see Annex Q14-15*

PRACTICAL ACTIONS

a. Review and update existing policies on RBC issues (e.g. labour, human rights, environment, disclosure, consumer protection, governance, anti-bribery and corruption) to align with the principles and standards of the OECD Guidelines for MNEs.

b. Develop specific policies on the enterprise's most significant risks, building on findings from its assessment of risk, in order to provide guidance on the enterprise's specific approach to addressing those risks. Consider making the enterprise's due diligence plans part of these policies.

c. Make the enterprise's policies on RBC issues publicly available, e.g. on the enterprise's website, at the enterprise's premises, and when relevant, in the local languages.

d. Communicate the policies to the enterprise's own relevant employees and other workers, e.g. during staff orientation or training and periodically as needed to maintain awareness.

e. Update the enterprise's policies as risks in the enterprise's operations, supply chain and other business relationships emerge and evolve.

1.2 **Seek to embed the enterprise's policies on RBC issues into the enterprise's oversight bodies. Embed the enterprise's policies on RBC issues into management systems so that they are implemented as part of the regular business processes, taking into account the potential independence, autonomy and legal structure of these bodies that may be foreseen in domestic law and regulations.**

PRACTICAL ACTIONS

a. Assign oversight and responsibility for due diligence to relevant senior management and assign board level responsibilities for RBC more broadly. ▶*see Annex Q16*

b. Assign responsibility for implementing aspects of the policies across relevant departments with particular attention to those workers whose actions and decisions are most likely to increase or decrease risks. ▶*see Annex Q16*

c. Develop or adapt existing information and record-keeping systems to collect information on due diligence processes, related decision-making and responses.

d. Establish channels of communication, or utilise existing channels of communication, between relevant senior management and implementing departments for sharing and documenting information on risk and decision-making.

e. Encourage alignment across teams and business units on relevant aspects of the enterprise's RBC policies. This could be done for example by creating cross-functional groups or committees to share information and decision-making about risks, and including business units that can impact observance of the RBC policies in decision-making. ▶*see Annex Q16*

f. Provide training to workers to help them understand and implement relevant aspects of RBC policies and provide adequate resources commensurate with the extent of due diligence needed.

g. Develop incentives for workers and business units that are compatible with the enterprise's RBC policies.

h. Develop, draw from or adapt existing complaint procedures for workers to raise issues or complaints related to RBC issues (e.g. labour practices, corruption, corporate governance).

i. Develop processes to respond to or, where appropriate, provide remedies in situations where the RBC policy is not observed (e.g. through additional fact-finding, capacity building or disciplinary actions/sanctions).

1.3 Incorporate RBC expectations and policies into engagement with suppliers and other business relationships. ▶*see Annex Q18*

PRACTICAL ACTIONS

a. Communicate key aspects of the RBC policies to suppliers and other relevant business relationships.

b. Include conditions and expectations on RBC issues in supplier or business relationship contracts or other forms of written agreements.

c. Develop and implement pre-qualification processes on due diligence for suppliers and other business relationships, where feasible, adapting such processes to the specific risk and context in order to focus on RBC issues that have been identified as relevant for the business relationships and their activities or area(s) of operation.

d. Provide adequate resources and training to suppliers and other business relationships for them to understand and apply the relevant RBC policies and implement due diligence.

e. Seek to understand and address barriers arising from the enterprise's way of doing business that may impede the ability of suppliers and other business relationships to implement RBC polices, such as the enterprise's purchasing practices and commercial incentives.

2

IDENTIFY AND ASSESS ACTUAL AND POTENTIAL ADVERSE IMPACTS ASSOCIATED WITH THE ENTERPRISE'S OPERATIONS, PRODUCTS OR SERVICES

2.1 Carry out a broad scoping exercise to identify all areas of the business, across its operations and relationships, including in its supply chains, where RBC risks are most likely to be present and most significant. Relevant elements include, among others, information about sectoral, geographic, product and enterprise risk factors, including known risks the enterprise has faced or is likely to face. The scoping exercise should enable the enterprise to carry out an initial prioritisation of the most significant risk areas for further assessment. For enterprises with less diverse operations, in particular smaller enterprises, a scoping exercise may not be necessary before moving to the stage of identifying and prioritising specific impacts. ▶*see Annex Q19-22*

PRACTICAL ACTIONS

a. Create an initial, high-level picture of the enterprise's areas of operation and types of business relationships to understand what information will be relevant to gather.

b. Gather information to understand high-level risks of adverse impacts related to the sector (e.g. products and their supply chains, services and other activities), geography (e.g. governance and rule-of-law, conflict, pervasive human rights or environmental adverse impacts) or enterprise-specific risk factors (e.g. known instances of corruption, misconduct, implementation of standards for RBC). ▶*see Annex Q20* Sources might include reports from governments, international organisations, civil society organisations, workers' representatives and trade unions, national human rights institutions (NHRIs), media or other experts. ▶*see Annex Q21-22*

c. Where gaps in information exist, consult with relevant stakeholders and experts.

d. Consider information raised through early warning systems (e.g. hotlines) and grievance mechanisms.

e. Identify the most significant RBC risk areas and prioritise these as the starting point for a deeper assessment of potential and actual impacts.

f. Review the findings of the scoping exercise on a regular basis.

g. Update the scoping exercise with new information whenever the enterprise makes significant changes, such as operating in or sourcing from a new country; developing a new product or service line that varies significantly from existing lines; changing the inputs of a product or service; restructuring, or engaging in new forms of business relationships (e.g. mergers, acquisitions, new clients and markets).

2.2 Starting with the significant areas of risk identified above, carry out iterative and increasingly in-depth assessments of prioritised operations, suppliers and other business relationships in order to identify and assess specific actual and potential adverse RBC impacts.. ▶*see Annex Q23-28*

PRACTICAL ACTIONS

a. Map the enterprise's operations, suppliers and other business relationships, including associated supply chains, relevant to the prioritised risk.

b. Catalogue the specific RBC standards and issues applicable to the risk being assessed, including relevant provisions from the OECD Guidelines for MNEs, as well as domestic laws and relevant international and industry-specific frameworks on RBC issues.

c. Obtain, when appropriate and feasible, relevant information about business relationships beyond contractual relationships (e.g. sub-suppliers beyond "tier 1"). Establish processes individually or collaboratively to assess the risk profile of more remote tiers of the relationship, including by reviewing existing assessments, and engaging with mid-stream actors and "control points" in the supply chain to assess their due diligence practices against this Guidance.

d. Assess the nature and extent of actual and potential impacts linked to prioritised operations, suppliers or other business relationships (i.e. which RBC issue is impacted and in what ways, the scope of the impact, etc.). Where available, use information from the enterprise's own, or third parties', environmental impact assessments (EIA), environmental and social impacts assessments (ESIA), human rights impact assessments (HRIA), legal reviews, compliance management systems regarding corruption, financial audits (for disclosure), occupational, health and safety inspections; and any other relevant assessments of business relationships carried out by the enterprise or by industry and multi-stakeholder initiatives, including environmental, social and labour audits, corruption assessments and KYC processes.

e. Identify activities that may not be carried out in an appropriate legal and institutional framework sufficient to protect the rights of all persons and enterprises involved.

f. Consider the RBC risks prior to a proposed business activity (e.g. an acquisition, restructuring, new market entry, new product or service development) projecting how the proposed activity and associated business relationships could have adverse impacts on specific RBC issues.

g. Reassess impacts at regular intervals as needed: prior to major decisions or changes in the activity (e.g. market entry, product launch, policy change, or wider changes to the business); in response to or in anticipation of changes in the operating environment (e.g. rising social tensions); and periodically throughout the life of an activity or relationship.

h. For human rights impacts, consult and engage impacted and potentially impacted rightsholders, including workers, workers' representatives and trade unions, to gather information on adverse impacts and risks, taking into account potential barriers to effective stakeholder engagement. Where directly consulting with rightsholders is not possible, consider reasonable alternatives such as consulting credible, independent expert resources, including human rights defenders, trade unions and civil society groups. Consult potentially impacted rightsholders both prior to and during projects or activities that may affect them (e.g. through site-level assessments). ▶*see Annex Q8-11 and Q25*

i. In assessing impacts related to human rights, pay special attention to potential adverse impacts on individuals from groups or populations that may have a heightened risk of vulnerability or marginalisation, and to different risks that may be faced by women and men.

j. For enterprises with multiple entities within an enterprise group, support local entities to carry out their own assessments.

2.3 Assess the enterprise's involvement with the actual or potential adverse impacts identified in order to determine the appropriate responses (see 3.1 and 3.3). Specifically, assess whether the enterprise: caused (or would cause) the adverse impact; or contributed (or would contribute) to the adverse impact; or whether the adverse impact is (or would be) directly linked to its operations, products or services by a business relationship. ▶*see Annex Q29-30*

PRACTICAL ACTIONS

a. Consult with business relationships, other relevant enterprises and other relevant stakeholders.

b. Consult with impacted stakeholders and rightsholders or their legitimate representatives.

c. Seek relevant internal or external expertise as needed.

d. If impacted stakeholders or rightsholders disagree with the enterprise's assessment of its involvement with any actual or potential adverse impact, cooperate in good faith with legitimate mechanisms designed to help resolve the disagreements and provide remediation. ▶*see Annex Q51-52*

2.4 Drawing from the information obtained on actual and potential adverse impacts, where necessary, prioritise the most significant RBC risks and impacts for action, based on severity and likelihood. Prioritisation will be relevant where it is not possible to address all potential and actual adverse impacts immediately. Once the most significant impacts are identified and dealt with, the enterprise should move on to address less significant impacts. ▶*see Annex Q3-5 and Q31*

PRACTICAL ACTIONS

a. Identify which potential or actual impacts may be addressed immediately, at least to some degree (e.g. update contract terms with suppliers, amend audit protocols to focus on risks that may have been previously missed during audits).

b. Prioritise for action any activities that are causing or contributing to adverse impacts on RBC issues, based on the enterprise's assessment of their involvement with adverse impacts as per 2.3.

c. For impacts involving business relationships, assess the extent to which business relationships have appropriate policies and processes in place to identify, prevent and mitigate relevant RBC risks themselves.

d. Where it is not possible to address all real and potential adverse impacts directly linked to the enterprise's operations, products or services by business relationships (or to address them to the full extent desirable), evaluate the likelihood and severity of the identified impacts or risks to understand which issues should be prioritised for action.

e. Consult with business relationships, other relevant enterprises and impacted or potentially impacted stakeholders and rightsholders on prioritisation decisions.

f. Seek relevant internal or external expertise as needed.

3

CEASE, PREVENT AND MITIGATE ADVERSE IMPACTS

3.1 **Stop activities that are causing or contributing to adverse impacts on RBC issues, based on the enterprise's assessment of its involvement with adverse impacts as per 2.3. Develop and implement plans that are fit-for-purpose to prevent and mitigate potential (future) adverse impacts.** ▶*see Annex Q32-33*

PRACTICAL ACTIONS

a. Assign relevant senior responsibility for ensuring that activities that cause or contribute to adverse impacts cease, and for preventing activities that may cause or contribute to adverse impacts in the future.

b In the case of complex actions or actions that may be difficult to stop due to operational, contractual or legal issues, create a roadmap for how to stop the activities causing or contributing to adverse impacts, involving in-house legal counsel and impacted or potentially impacted stakeholders and rightsholders.

c. Update the enterprise's policies to provide guidance on how to avoid and address the adverse impacts in the future and ensure their implementation.

d. Provide training that is fit-for-purpose for the enterprise's relevant workers and management.

e. Draw from the findings of the risk assessment to update and strengthen management systems to better track information and flag risks before adverse impacts occur. ▶*see Section 1.2*

f. Consult and engage with impacted and potentially impacted stakeholders and rightsholders and their representatives to devise appropriate actions and implement the plan. ▶*see Annex Q 8-Q11*

g. In the case of collective or cumulative impacts (i.e. where the enterprise is only one of several entities contributing to the adverse impact occurring) and, where appropriate, seek to engage with other involved entities to cease the impacts and prevent them from recurring or to prevent risks from materialising, e.g. through industry initiatives and engagement with governments. ▶*see Annex Box 6*

h. In cases where the enterprise is contributing to adverse impacts or risks that are caused by another entity, it should take necessary steps to cease or prevent its contribution as described above, also building and using leverage to mitigate any remaining impacts to the greatest extent possible. ▶*see Section 3.2 (c) – (e) and Annex Q34*

3.2 Based on the enterprise's prioritisation (*see Section 2.4)*, develop and implement plans to seek to prevent or mitigate actual or potential adverse impacts on RBC issues which are directly linked to the enterprise's operations, products or services by business relationships. Appropriate responses to risks associated with business relationships may at times include: continuation of the relationship throughout the course of risk mitigation efforts; temporary suspension of the relationship while pursuing ongoing risk mitigation; or, disengagement with the business relationship either after failed attempts at mitigation, or where the enterprise deems mitigation not feasible, or because of the severity of the adverse impact. A decision to disengage should take into account potential social and economic adverse impacts. These plans should detail the actions the enterprise will take, as well as its expectations of its suppliers, buyers and other business relationships. ▶*see Annex Q34-40*

PRACTICAL ACTIONS

a. Assign responsibility for developing, implementing and monitoring these plans.

b. Support or collaborate with the relevant business relationship(s) in developing fit-for-purpose plans for them to prevent or mitigate adverse impacts identified within reasonable and clearly defined timelines, using qualitative and quantitative indicators for defining and measuring improvement (sometimes referred to as "corrective action plans"). ▶*see Annex Q38*

c. Use leverage, to the extent possible, to prompt the business relationship(s) to prevent or mitigate adverse impacts or risks. ▶*see Annex Q36 and Q40*

d. If the enterprise does not have sufficient leverage, consider ways to build additional leverage with the business relationship, including for example through outreach from senior management and through commercial incentives. To the extent possible, cooperate with other actors to build and exert collective leverage, for example through collaborative approaches in industry associations, or through engagement with governments. ▶*see Annex Q37*

e. To prevent potential (future) adverse impacts and address actual impacts, seek to build leverage into new and existing business relationships, e.g. through policies or codes of conduct, contracts, written agreements or use of market power. ▶*see Section II, 1.3 and Annex Q36*

f. For human rights impacts, encourage entities causing or contributing to adverse impacts to consult and engage with impacted or potentially impacted rightsholders or their representatives in developing and implementing corrective action plans. ▶*see Annex Q8-Q11*

g. Support relevant suppliers and other business relationships in the prevention or mitigation of adverse impacts or risks, e.g. through training, upgrading of facilities, or strengthening of their management systems, striving for continuous improvement. ▶*see Annex Q38*

h. Consider disengagement from the supplier or other business relationship as a last resort after failed attempts at preventing or mitigating severe impacts; when adverse impacts are irremediable; where there is no reasonable prospect of change; or when severe adverse impacts or risks are identified and the entity causing the impact does not take immediate action to prevent or mitigate them. Any plans for disengagement should also take into account how crucial the supplier or business relationship is to the enterprise, the legal implications of remaining in or ending the relationship, how disengagement might change impacts on the ground, as well as credible information about the potential social and economic adverse impacts related to the decision to disengage. ▶*see Annex Q39*

i. If an enterprise decides to remain in a relationship, it should be prepared to account for its ongoing risk mitigation efforts and be aware of the reputational, financial or legal risks of the continuing connection.

J. Encourage relevant authorities in the country where the impact is occurring to act, e.g. through inspections, enforcement and application of existing laws and regulations. ▶*see Box 6*

4

TRACK IMPLEMENTATION AND RESULTS

4.1 Track the implementation and effectiveness of the enterprise's due diligence activities, i.e. its measures to identify, prevent, mitigate and, where appropriate, support remediation of impacts, including with business relationships. In turn, use the lessons learned from tracking to improve these processes in the future. ▶*see Annex Q41-Q45*

PRACTICAL ACTIONS

a. Monitor and track implementation and effectiveness of the enterprise's own internal commitments, activities and goals on due diligence, e.g. by carrying out periodic internal or third party reviews or audits of the outcomes achieved and communicating results at relevant levels within the enterprise.

b. Carry out periodic assessments of business relationships, to verify that risk mitigation measures are being pursued or to validate that adverse impacts have actually been prevented or mitigated.

c. For human rights impacts the enterprise has, or may, cause or contribute to, seek to consult and engage impacted or potentially impacted rightsholders, including workers, workers' representatives and trade unions. ▶*see Annex Q8-Q11*

d. Seek to encourage periodic reviews of relevant multi-stakeholder and industry initiatives of which the enterprise is a member, including their alignment with this Guidance, and their value to the enterprise in helping it identify, prevent or mitigate adverse impacts linked to its business, taking into account the independence of these initiatives. ▶*see Annex Q12*

e. Identify adverse impacts or risks that may have been overlooked in past due diligence processes and include these in the future.

f. Include feedback of lessons learned into the enterprise's due diligence in order to improve the process and outcomes in the future. ▶*see Annex Q44*

5

COMMUNICATE HOW IMPACTS ARE ADDRESSED

5.1 Communicate externally relevant information on due diligence policies, processes, activities conducted to identify and address actual or potential adverse impacts, including the findings and outcomes of those activities. ▶*see Annex Q46-Q47*

PRACTICAL ACTIONS

a. Publicly report relevant information on due diligence processes, with due regard for commercial confidentiality and other competitive or security concerns, e.g. through the enterprise's annual, sustainability or corporate responsibility reports or other appropriate forms of disclosure. Include RBC policies, information on measures taken to embed RBC into policies and management systems, the enterprise's identified areas of significant risks, the significant adverse impacts or risks identified, prioritised and assessed, as well as the prioritisation criteria, the actions taken to prevent or mitigate those risks, including where possible estimated timelines and benchmarks for improvement and their outcomes, measures to track implementation and results and the enterprise's provision of or co-operation in any remediation.

b. Publish the above information in a way that is easily accessible and appropriate, e.g. on the enterprise's website, at the enterprise's premises and in local languages.

c. For human rights impacts that the enterprise causes or contributes to, be prepared to communicate with impacted or potentially impacted rightsholders in a timely, culturally sensitive and accessible manner, the information above that is specifically relevant to them, in particular when relevant concerns are raised by them or on their behalf. ▶*see Section II, 2.4 and Section II, 2.12*

6

PROVIDE FOR OR COOPERATE IN REMEDIATION WHEN APPROPRIATE

6.1 When the enterprise identifies that it has caused or contributed to actual adverse impacts, address such impacts by providing for or cooperating in their remediation.
▶*see Section 2.3 and Annex Q48-Q50*

PRACTICAL ACTIONS

a. Seek to restore the affected person or persons to the situation they would be in had the adverse impact not occurred (where possible) and enable remediation that is proportionate to the significance and scale of the adverse impact.

b. Comply with the law and seek out international guidelines on remediation where available, and where such standards or guidelines are not available, consider a remedy that would be consistent with that provided in similar cases.
The type of remedy or combination of remedies that is appropriate will depend on the nature and extent of the adverse impact and may include apologies, restitution or rehabilitation (e.g., reinstatement of dismissed workers, recognition of the trade union for the purpose of collective bargaining), financial or non-financial compensation (for example, establishing compensation funds for victims, or for future outreach and educational programmes), punitive sanctions (for example, the dismissals of staff responsible for wrongdoing), taking measures to prevent future adverse impacts. ▶*see Annex Q50*

c. In relation to human rights impacts, consult and engage with impacted rightsholders and their representatives in the determination of the remedy.
▶*see Annex Q8-Q11 and Q50*

d. Seek to assess the level of satisfaction of those who have raised complaints with the process provided and its outcome(s).

6.2 When appropriate, provide for or cooperate with legitimate remediation mechanisms through which impacted stakeholders and rightsholders can raise complaints and seek to have them addressed with the enterprise. Referral of an alleged impact to a legitimate remediation mechanism may be particularly helpful in situations where there are disagreements on whether the enterprise caused or contributed to adverse impacts, or on the nature and extent of remediation to be provided. ▶*see Section II, 2.3 and Annex Q 51-54*

PRACTICAL ACTIONS

a. Cooperate in good faith with judicial or non-judicial mechanisms. For example if a specific instance is submitted to an NCP or through initiatives that provide other types of grievance mechanisms involving the conduct of the enterprise. If the actual adverse impact caused constitutes a criminal or administrative offense, the enterprise may be subject to criminal prosecution or administrative sanctions.

b. Establish operational-level grievance mechanisms (OLGM), for example in-house worker complaint mechanisms or third-party complaint systems. This may involve setting up a complaints process including: a roadmap for remediation and resolving complaints; timelines for resolving grievances; processes to respond to complaints if agreement is not reached or if impacts are particularly severe; determining the scope of the OLGM's mandate; consulting with relevant stakeholders on appropriate forms of OLGMs and ways to resolve complaints that are culturally appropriate and accessible; staffing and resourcing the OLGM; and tracking and monitoring the performance of the OLGM. For human rights impacts, align OLGMs with core criteria of legitimacy, accessibility, predictability, equitability, compatibility with the OECD Guidelines for MNEs, transparency and dialogue-based engagement.

c. Engage with workers' representatives and trade unions to establish a process through which they can raise complaints to the enterprise, for example, through grievance mechanisms set forth in any collective agreements or through Global Framework Agreements.

ANNEX

QUESTIONS RELATED TO THE OVERVIEW OF DUE DILIGENCE FOR RESPONSIBLE BUSINESS CONDUCT

EXAMPLES AND EXPLANATIONS ON DUE DILIGENCE FOR RESPONSIBLE BUSINESS CONDUCT

These examples and explanations are intended to provide selective illustrations of recommendations of the OECD Due Diligence Guidance for Responsible Business Conduct. They do not introduce any new or additional recommendations with respect to due diligence approaches.

Due diligence addresses actual adverse impacts or potential adverse impacts (risks) related to the following topics covered in the OECD Guidelines for MNEs: human rights, including workers and industrial relations, environment, bribery and corruption, disclosure, and consumer interests.
▶*see Section I, Adverse Impacts and Risk*

Q1. What are some examples of adverse impacts on matters covered by the OECD Guidelines for MNEs?

TABLE 2. EXAMPLES OF ADVERSE IMPACTS ON MATTERS COVERED BY THE OECD GUIDELINES FOR MNEs

TOPIC	EXAMPLES OF ADVERSE IMPACTS[1]
Disclosure[2]	• Failing to disclose material information on the financial and operating results of the enterprise; enterprise objectives, major share ownership and voting rights, remuneration policy for members of the board and key executives, and information about board members, related party transactions, foreseeable risk factors, issues regarding workers and other relevant stakeholders, governance structures and policies. • Failing to provide the public and workers with adequate, measureable and verifiable (where applicable) and timely information on the potential environment health and safety impacts of the activities of the enterprise.
Human rights	• Forced labour.[3] • Wage discrimination for equal work or work of equal value. • Gender-based violence or harassment including sexual harassment. • Failing to identify and appropriately engage with indigenous peoples where they are present and potentially impacted by the enterprise's activities. • Involvement in reprisals against civil society and human rights defenders who document, speak out about, or otherwise raise potential and actual human rights impacts associated with projects. • Restriction on people's access to clean water.

TABLE 2. EXAMPLES OF ADVERSE IMPACTS ON MATTERS COVERED BY THE OECD GUIDELINES FOR MNEs

Employment and industrial relations	• Failing to respect the right of workers to establish or join trade unions or representative organisations of their own choosing and have trade unions and representative organisations of their own choosing recognised for the purpose of collective bargaining. *(OECD, 2011, Chapter V, Para. 1.b)* • Failing to engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on terms and conditions of employment. *(OECD, 2011, Chapter V, Para. 1.b)* • Child labour, including worst forms of child labour. *(OECD, 2011, Chapter V, Para. 1.c)* • Discrimination against workers with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, or other status. *(OECD, 2011, Chapter V, Para. 1.e)* • Failing to adapt machinery, equipment, working time, organisation of work and work processes to the physical and mental capacities of workers. *(OECD, 2011, Chapter V, 1.e; ILO, 1981, No. 155)* • Failing to replace hazardous substances by harmless or less hazardous substances wherever possible. *(ILO, 1988, No.167)* • Payment of wages that do not meet the basic needs of workers and their families. *(OECD, 2011, Chapter V, Para. 4.b)* • Threatening to transfer the whole or part of an operation unit in order to hinder workers from forming or joining a trade union. *(OECD, 2011, Chapter V, Para. 7)*
Environment	• Ecosystem degradation through land degradation, water resource depletion, and/or destruction of pristine forests and biodiversity. • Unsafe levels of biological, chemical or physical hazards in products or services. • Water pollution (e.g. through discharging waste water without regard to adequate wastewater infrastructure).

TABLE 2. EXAMPLES OF ADVERSE IMPACTS ON MATTERS COVERED BY THE OECD GUIDELINES FOR MNEs

Bribery, Bribe Solicitation and Extortion	• Bribery of public officials to win public procurement contracts. • Bribery of public officials to obtain favourable tax treatment or other preferential treatment or access to confidential information. • Bribery of public officials to obtain customs clearance. • Bribery of public officials to obtain authorisations or permits. • Selling products to government agencies at an elevated price to provide public officials with a share of the profit. • Bribing public officials to ignore or avoid regulations or controls. • Providing gifts, meals and entertainment to those with whom the enterprise does business without adequate controls or records. • Receiving gifts from business partners or public officials without adequate controls or record.
Consumer Interests	• Goods and services do not meet all agreed or legally required standards for consumer health and safety, including those pertaining to health warnings and safety information. *(OECD, 2011, Chapter VIII, Para 1).* • Failing to provide accurate, verifiable and clear information that is sufficient to enable consumers to make informed decisions, including information on the prices and, where appropriate, content, safe use, environmental attributes, maintenance, storage and disposal of goods and services. *(OECD, 2011, Chapter VIII, Para. 2)* • Representations or omissions of information, or any other practices, that are deceptive, misleading, fraudulent or unfair. *(OECD, 2011, Chapter VIII, Para. 4)*

1. *This list is illustrative and not exhaustive. Adverse impacts may be caused or contributed to by an enterprise, or be directly linked through a business relationship.*
2. *The concept of risk of adverse impacts may be particularly challenging to understand when applied to the chapter on "Disclosure" in the OECD Guidelines for MNEs, which primarily concerns potential impacts on corporate governance, financial markets, investors and workers. For that reason, the OECD Guidelines for MNEs provide principles and standards against which activities can be benchmarked and tracked.*
3. *Universal Declaration of Human Rights, Articles 4 and 13; ILO Declaration on Fundamental Principles and Rights at Work.*

Due diligence should also be adapted to the nature of the adverse impact on RBC issues, such as on human rights, the environment and corruption. This involves tailoring approaches for specific risks and taking into account how these risks affect different groups, such as applying a gender perspective to due diligence when appropriate. ▶*see Section I, Characteristics of Due Diligence – Due diligence is commensurate with risk (risk-based)*

Q2. How can an enterprise integrate gender issues into its due diligence?

Applying a gender perspective to due diligence means thinking through how real or potential adverse impacts may differ for or may be specific to women.

➔ **FOR EXAMPLE**, it is important to be aware of gender issues and women's human rights in situations where women may be disproportionately impacted:

- In contexts where women face severe discrimination.
- In contexts where the enterprise's activities significantly affect the local economy, environment and access to land and livelihoods.
- In conflict and post-conflict areas.
- In sectors and global supply chains in which large numbers of women are employed, such as apparel, electronics, tourism, health and social care, domestic work, agriculture and fresh cut flowers.

Additionally it involves adjusting, as appropriate, the actions that enterprises take to identify, prevent, mitigate and address those impacts to ensure these are effective and appropriate.

➔ **FOR EXAMPLE**

- Collecting and assessing sex-disaggregated data and understanding whether enterprise activities impact differently on men and women.
- Developing, designing and evaluating gender sensitive and gender responsive policies and plans to mitigate and address real and potential adverse impacts identified.
- Identifying overlapping/ accumulated vulnerabilities (e.g. indigenous, illiterate, female worker).
- Developing gender sensitive warning systems and protection of whistleblowers.
- Supporting women's equal and meaningful participation in consultations and negotiations.
- Assessing whether women benefit equitably in compensation payments or other forms of restitution.

- Consulting women outside the presence of men and facilitating separate spaces for women to express opinions and provide input on business decisions.
- Identifying gender-specific trends and patterns in actual or potential adverse impacts that have been overlooked in the due diligence processes.
- Assessing whether grievance mechanisms are gender-sensitive, taking into consideration the obstacles that may prevent women from accessing them.

Due diligence can involve prioritisation (risk-based) – Where it is not feasible to address all identified impacts at once, an enterprise should prioritise the order in which it takes action based on the severity and likelihood of the adverse impact. ▶*see Section I, Characteristics of Due Diligence – Due diligence can involve prioritisation (risk-based)*

Q3. How can an enterprise make decisions with respect to prioritisation?

As noted in the Guidance, it may not always be possible for enterprises to identify and respond to all adverse impacts related to their activities and business relationships immediately. In this respect, the OECD Guidelines for MNEs also clarify that where "enterprises have large numbers of suppliers, they are encouraged to identify general areas where the risk of adverse impacts is most significant and, based on this risk assessment, prioritise suppliers for due diligence"[5] Enterprises are responsible for addressing any adverse impacts that they have caused or contributed to.

The significance of an adverse impact is understood as a function of its likelihood and severity. Severity of impacts will be judged by their scale, scope and irremediable character.

Scale refers to the gravity of the adverse impact.

Scope concerns the reach of the impact, for example the number of individuals that are or will be affected or the extent of environmental damage.

Irremediable character means any limits on the ability to restore the individuals or environment affected to a situation equivalent to their situation before the adverse impact.

Severity is not an absolute concept and it is context specific. For examples of indicators of scale, scope and irremediable character across adverse impacts covered by the OECD Guidelines for MNEs (Table 3). These indicators are illustrative and will vary according to an enterprise's operating context.

5. OECD (2011), Commentary on General Policies, Para 16.

TABLE 3. EXAMPLES OF INDICATORS OF SCALE, SCOPE AND IRREMEDIABLE CHARACTER

ADVERSE IMPACT	EXAMPLES OF SCALE	EXAMPLES OF SCOPE	EXAMPLES OF THE IRREMEDIABLE CHARACTER
Environment	• Extent of impact on human health • Extent of changes in species composition • Water use intensity (% use of total available resources) • Degree of waste and chemical generation (tons; % of generation)	• Geographic reach of the impact • Number of species impacted	• Degree to which rehabilitation of the natural site is possible or practicable • The length of time remediation would take
Corruption	• Monetary amount of the bribe • Loss of life or severe bodily harm caused by bribery • Criminal nature of the bribe • Extent of impact on markets, people, environment and society due to decisions made based on bribery • Size of the profit gained from the bribery	• Frequency at which bribes are paid • Geographic spread of bribery • Number and/or level of officials, employees or agents engaged in bribery • Extent of activities linked with bribery • Number of identifiable groups impacted by decisions based on bribery	• Extent of damage to society due to loss of public funds • Extent to which activities undertaken and enabled by bribery will lead to irremediable adverse impacts
Labour	• Extent of impact on workers' health or safety • Whether the violation concerns a fundamental right at work	• Number of workers/ employees impacted • Extent to which impacts are systemic (e.g. to a particular geography, industry or sub-sector) • Extent to which some groups are disproportionately affected by the impacts (e.g. minorities, women, etc.)	• Extent to which the impact can be rectified (e.g. through compensation, reinstatement, etc.) • Whether the workers affected can be restored to the prior enjoyment of the right in question • The extent to which intimidation of workers for forming or joining a trade union will effectively deny workers the right to representation

TABLE 3. EXAMPLES OF INDICATORS OF SCALE, SCOPE AND IRREMEDIABLE CHARACTER

ADVERSE IMPACT	EXAMPLES OF SCALE	EXAMPLES OF SCOPE	EXAMPLES OF THE IRREMEDIABLE CHARACTER
Human Rights	Extent of infringement of access to basic life necessities or freedoms (e.g. education, livelihood, etc.)	• Number of people impacted • % of identifiable groups of people impacted	• The extent to which the impact can be rectified (e.g. through compensation or restitution) • Whether the people affected can be restored to their exercise of the right in question
Disclosure	• Extent to which the inadequate or false disclosure of information is material • Extent of impacts on markets, people, environment, and society due to decisions made based on the inadequate or false disclosure	• Extent to which decisions were made based on inadequate or false disclosure • Number of people (e.g. shareholders) impacted • Number of identifiable groups impacted by decisions made based on false or inadequate disclosure	Extent to which lack of or false disclosure will lead to irreparable financial losses or irremediable adverse impacts
Consumer interests	• Extent of impact on human health or safety • Extent of financial loss to consumers	• Number of consumers impacted • Number of identifiable groups of consumers impacted • % of identifiable group of consumers impacted	The extent to which the impact can be rectified (e.g. through compensation or restitution)

The OECD Guidelines for MNEs themselves do not attempt to rank the severity of adverse impacts. It is not necessary for an impact to have more than one of these characteristics (scale, scope and irremediable character) to be considered 'severe', although it is often the case that the greater the scale or the scope of an impact, the less it is 'remediable'.

Where the risk of adverse impacts is *most significant* will be specific to the enterprise, its sector and its business relationships. In some instances this may be a judgement call. Therefore enterprises may wish to consult with relevant stakeholders on how to prioritise and communicate their rationale through their RBC policies. Publically communicating the rationale behind how prioritisation decisions are made and why can be useful for establishing trust in the enterprise's due diligence approach. In some cases prioritisation may also be informed by domestic legal obligations.

➔ **FOR EXAMPLE**, certain domestic laws require enterprises in a certain jurisdiction to conduct due diligence to avoid and address the risk of human trafficking in their supply chains or of sourcing minerals that finance conflict.

Although enterprises should *prioritise* their due diligence based on significance of risk, the options available to them to respond to identified risks will depend on legal and practical limitations, such as their ability to effect change in the behaviour of their business relationships, and how crucial that supplier is to the enterprise. ▶*see Annex Q7 and Q34-Q40*

Q4. At what stages of the due diligence process is prioritisation relevant?

Prioritisation will be necessary where it is not feasible for enterprises to identify and respond to all adverse impacts associated with their activities and business relationships immediately. Prioritisation of significant risks or impacts will be relevant both when enterprises identify impacts, as well as when they seek to prevent and mitigate impacts. Impacts that are prioritised for prevention and mitigation will also be those that should be tracked to ensure they are addressed. ▶*see Annex Q24, Q31, Q45 on how prioritisation can be applied to these steps in practice*

Q5. How does prioritisation differ for human rights risks than for other adverse impacts?

Overall the process of prioritisation for human rights impacts will reflect recommendations in Section II, 2.4 of the Guidance. The OECD Guidelines for MNEs state that in the case of human rights, severity is a greater factor than likelihood in considering prioritisation. Thus where prioritisation is necessary enterprises should begin with those human rights impacts that would be most severe, recognising that a delayed response may affect remediability.

➔ **FOR EXAMPLE**, if a potential adverse impact can result in loss of life, it may be prioritised even if it is less likely (e.g. establishment of measures to prevent damage and loss life in case of natural disasters at a power facility).

Due diligence is appropriate to an enterprise's circumstances – The nature and extent of due diligence can be affected by factors such as the size of the enterprise, the context of its operations, its business model, its position in supply chains, and the nature of its products or services
▶*see Section I, Characteristics of Due Diligence - Due Diligence is appropriate to an enterprise's circumstances*

Q6. How can resource constraints be addressed?

Due diligence involves human and financial resource implications. While resource constraints may be a challenge for all enterprises, small enterprises particularly may have fewer personnel and financial resources to carry out due diligence. At the same time, they often have greater flexibility in policy-making and implementation and may have fewer impacts or suppliers to manage as compared to larger enterprises. The size or resource capacity of an enterprise does not change its responsibility to conduct due diligence commensurate with the risk, but may affect how an enterprise carries it out. Enterprises with resource constraints may rely more heavily on collaborative approaches in carrying out due diligence and may have to make more careful decisions in the context of prioritisation. They may also take advantage of existing resources such as model policies or public information on risks in certain supply chains and seek technical assistance from industry associations they are members of. ▶*see Table 4 for more information*

Q7. How can due diligence be appropriate to an enterprise's circumstances?

How an enterprise carries out due diligence can be affected by factors such as the size of the enterprise, the context of its operations, its business model, positions in supply chains, and the nature of its products or services. ▶*see Table 4 for examples*

TABLE 4. EXAMPLES OF HOW AN ENTERPRISE'S DUE DILIGENCE MAY BE ADAPTED TO BE APPROPRIATE TO ITS CIRCUMSTANCES

Factors	Examples
Size of the enterprise	• A SME with limited leverage over its suppliers and limited resources to allocate towards building the capacity of suppliers to meet RBC requirements, may consider establishing robust prequalification processes whereby only suppliers that meet high thresholds of RBC are engaged. In doing so the SME reduces the extent of resources necessary in identifying, monitoring or preventing impacts once a supplier has been engaged. • A large multinational with numerous suppliers and business relationships across a range of higher-risk contexts, may draw from in-country offices with allocated and trained personnel responsible for overseeing due diligence on the ground.

TABLE 4. EXAMPLES OF HOW AN ENTERPRISE'S DUE DILIGENCE MAY BE ADAPTED TO BE APPROPRIATE TO ITS CIRCUMSTANCES

Context of the enterprise's operations	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, whereas an enterprise operating in safer contexts may engage directly with impacted or potentially impacted stakeholders and rightsholders.
Business model of the enterprise	An infrastructure enterprise with long-term investments in developing economies may find that it is effective to engage with the government and help them address systemic issues in the region where it is operating alongside other risk prevention and mitigation measures, as a means of preventing adverse impacts linked to its operations in the long term. Conversely, it may not be appropriate for a bank financing a shorter-term project (e.g. upgrading of a facility) in a developing economy to address systemic issues within the region, but rather may focus its efforts on carrying out robust human rights impact assessments of its financing and tailoring provisions of the financing appropriately.
Position of the enterprise in the supply chain	A downstream enterprise (e.g. retailer) may carry out assessments on mid-stream suppliers to assess how they are carrying out due diligence on their upstream suppliers to identify risks of child labour. An enterprise operating mid-stream in a supply chain may establish traceability to upstream business relationships operating in higher-risk areas to identify risks of child labour. In both cases, child labour would be prioritised, but the way each enterprise identified the risk is different depending on their position in the supply chain.
Nature of the enterprise's products or 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.

Due diligence is informed by engagement with stakeholders – Stakeholders are persons or groups who have interests that could be affected by an enterprise's activities.
▶*see Section I, Characteristics of Due Diligence-Informed by stakeholders*

Q8. Who are the enterprise's stakeholders?

Stakeholders are persons or groups who have interests that are or could be impacted by an enterprise's activities. Not all individuals and groups considered as stakeholders will have interests that can be affected by a specific activity carried out by an enterprise. It will therefore be important for the enterprise to identify the individuals and groups with interests that must be taken into account with respect to a specific activity (relevant stakeholders). Moreover, due diligence concerns the interests of stakeholders that have been affected (impacted stakeholders) as well as those whose interests have not been affected but could be (potentially impacted stakeholders). Additionally, not all interests are of equal importance and it is not necessary to treat all stakeholders in the same way. Where the interest is individual human rights or collective rights (held by groups such as indigenous peoples) the stakeholders whose human rights are or may be affected can be referred to as "rightsholders".

Stakeholders will differ depending on the enterprise and its activities.

➔ **FOR EXAMPLE,** impacted and potentially impacted stakeholders and rightsholders may include:

- communities at local, regional or national level
- workers and employees including under informal arrangements within supply chains and trade unions
- consumers or end-users of products

Additionally, relevant stakeholders that may be important for meaningful engagement may include:

- NGOs, local civil society organisations, NHRIs
- community-based organisations and local human rights defenders
- industry peers
- host governments (local, regional and national)
- business partners
- investors/shareholders

Many resources exist to help enterprises identify their stakeholders (e.g. OECD, 2015).

In situations where there are a vast number of impacted or potentially impacted stakeholders or rightsholders, an enterprise may engage with credible stakeholder representatives, in particular where engaging with individuals can undermine certain rights or collective interests.

➔ **FOR EXAMPLE,** when deciding to restructure or close a factory, it may be important to engage with trade unions, rather than individual workers, in order to mitigate the employment impacts of the decision, as the right of workers to form or join trade unions and their right to bargain collectively are internationally-recognised human rights.

Enterprises can prioritise the most severely impacted or potentially impacted stakeholders or rights-holders for engagement. The degree of impact on stakeholders or rightsholders may inform the degree of engagement.

Q9. What is "meaningful stakeholder engagement"?

- Stakeholder engagement involves interactive processes of engagement with relevant stakeholders. Stakeholder engagement can take place through, for example, meetings, hearings or consultation proceedings. Meaningful stakeholder engagement is characterised by two-way communication and depends on the good faith of the participants on both sides.[6] It is also responsive and on-going, and includes in many cases engaging with relevant stakeholders before decisions have been made.
- Two-way engagement means that the enterprise and stakeholders freely express opinions, share perspectives and listen to alternative viewpoints to reach a mutual understanding. It also means that relevant stakeholders have the opportunity to help design and carry out engagement activities themselves.
- Both the enterprise and the stakeholder are expected to act in good faith in engagement activities. This means that the enterprise engages with the genuine intention to understand how relevant stakeholder interests are affected by its activities. It means that the enterprise is prepared to address adverse impacts it causes or contributes to and that stakeholders honestly represent their interests, intentions and concerns.
- Responsive engagement means that the enterprise seeks to inform its decision by eliciting the views of those likely to be affected by the decision. It is important to engage potentially impacted stakeholders and rightsholders prior to taking any decisions that may impact them.[7] This involves the timely provision of all information needed by the potentially impacted stakeholders and rightsholders to be able to make an informed decision as to how the decision of the enterprise could affect their interests. It also means there is follow-through on implementation of agreed

6. OECD (2011), Commentary on General Policies, Para 25.

7. In some cases, this may be required, for example, when the right to information is part of the realisation of human rights.

commitments, ensuring that adverse impacts to impacted and potentially impacted stakeholders and rightsholders are addressed including through provision of remedies when enterprises have caused or contributed to the impact(s).

- Ongoing engagement means that stakeholder engagement activities continue throughout the lifecycle of an operation or activity and are not a one-off endeavour.

Meaningful stakeholder engagement is a key component of the due diligence process.

However this Guidance is not intended to serve as a comprehensive overview of this issue. Many resources exist to help enterprises carry out and deal with common challenges with respect to stakeholder engagement activities (e.g. OECD, 2015c).

Q10. When is stakeholder engagement important in the context of due diligence?

Meaningful stakeholder engagement is important throughout the due diligence process. Engaging with impacted and potentially impacted stakeholders and rightsholders may be especially relevant when an enterprise is:

- identifying actual or potential adverse impacts in the context of its own activities.
- engaging in assessment of business relationships with respect to real or potential adverse impacts.
- devising prevention and mitigation responses to risks of adverse impacts caused or contributed to by the enterprise.
- identifying forms of remedy for adverse impacts caused or contributed to by the enterprise and when designing processes to enable remediation.
- tracking and communicating on how actual or potential identified human rights impacts in the context of its own activities are being addressed.

Additionally, in some cases, stakeholder engagement or consultation is a right in and of itself.[8]

➔ **FOR EXAMPLE,** the right of workers to form or join trade unions and their right to bargain collectively are internationally-recognised human rights. For this reason, it is important to engage with trade unions or workers' representatives when engaging with workers on these issues. Moreover, industrial relations is a form of stakeholder engagement.

For certain types of adverse impacts which result in collective harms (such as corruption which collectively harms the populations of the jurisdiction in which it occurs or greenhouse gas emissions which contribute to collective, transboundary harms), broad engagement with impacted or

8. *For example, the UN Declaration on the Rights of Indigenous Peoples provides that States consult and cooperate with indigenous peoples concerned in order to obtain their free, prior and informed consent (FPIC) in a number of situations, including the approval of projects affecting their land and territories or other resources (see Articles 19 and 32). The ILO Convention No. 169, which is legally binding for countries that have ratified it, requires State Parties to consult with indigenous peoples with the objective of reaching agreement or consent on proposed measures (see Article 6).*

potentially impacted stakeholders and rightsholders may not be possible. In these cases, engagement with credible stakeholder representatives or proxy organisations (e.g. NGOs, representative public bodies, etc.) may be useful.

Beyond stakeholder engagement, enterprises may also wish to consult with experts on specific issues or contexts (e.g. academics, NGOs, local organisations) for advice when developing and implementing due diligence activities.

Q11. How can an enterprise engage with potentially vulnerable stakeholders?

Identifying and seeking to remove potential barriers to stakeholder engagement (e.g. language, culture, gender and power imbalances, divisions within the community etc.) is important to ensuring it is effective.

➔ **FOR EXAMPLE,** sharing information orally in a community where literacy is low.

Additionally some individuals or groups may face heightened risks of vulnerability or marginalisation, for example due to social stigmatisation. Often the most vulnerable stakeholders will also be the most significantly affected by an enterprise's activities. For example, stakeholders such as women, children, and socially marginalised communities may be affected more significantly by an enterprise activity, or in different ways, and may need additional attention in the context of stakeholder engagement activities.

Many resources exist on how to deal with potential barriers to engagement and engaging with specific vulnerable stakeholder groups.[9]

Enterprises can collaborate at an industry or multi-industry level as well as with relevant stakeholders throughout the due diligence process, although they always remain responsible for ensuring that their due diligence is effectively carried out.

▶*see Section I, Characteristics of Due Diligence, Box 2*

Q12. How can enterprises collaborate in carrying out due diligence?

Many of the due diligence recommendations in the Guidance may be carried out in collaboration with others, such as other industry actors, in partnership with trade unions or through multi-stakeholder initiatives.

➔ **FOR EXAMPLE,** enterprises may partner with or enter directly into agreements with trade unions in order to facilitate worker involvement in the design and implementation of due diligence processes, the implementation of standards on workers' rights and the raising of grievances. Agreements with trade unions can take various forms and can be made at the workplace, enterprise, sectoral or international level. They include collective bargaining agreements, Global Framework Agreements, protocols and memoranda of understanding.

9. See, for example, OECD (2016c), Annexes B-D.

Collaboration can be beneficial in pooling knowledge on sector risks and solutions, increasing leverage, to the extent feasible, with shared business relationships, and making due diligence more efficient for all, for example through recognition of existing assessments of business relationships and through common reporting frameworks for business relationships. Cost sharing and savings is often a benefit to sector collaboration. ▶*see Annex Q18, Q27-Q28, Q37 and Box 5*

BOX 3. GOOD GOVERNANCE FOR DUE DILIGENCE COLLABORATIVE INITIATIVES

The following list includes examples of good governance that may help an enterprise in determining whether the collaborative initiative that it is engaged with is credible.

The initiative:

- has established a functioning, accessible and effective grievance mechanism that enables stakeholders to raise concerns relating to the activities of the initiative itself, without fear of retribution*
- has a process for enabling stakeholder and expert consultation on the objectives and activities of the initiative.
- has an effective process for communicating details of actual or potential adverse impacts to participating enterprises in a timely manner in order to support enterprises in performing their own due diligence activities.
- has a process for regular review, including monitoring and evaluating whether the initiative itself is meeting its own aims and objectives, including, as necessary, updating of its policies, activities and any guidance provided to participating enterprises.
- has given consideration to where there could be actual or potential conflicts of interest between the management personnel of the initiative and companies, and has established processes to manage potential conflicts of interest.
- publicly provides details of its own internal governance structure, staffing, resources and oversight mechanisms.
- reports on its evaluations of whether it is meeting its own aims and objectives in relation to responsible sourcing practices.
- allows for mutual recognition, subject to appropriate quality control, of other due diligence initiatives.

**This refers to grievance mechanisms pertaining to the initiative's activities and not to grievance mechanisms that initiatives may establish to facilitate the provision of remedy between impacted stakeholders or rightsholders and the members of the initiative.*

Participation in an initiative does not shift responsibility from the enterprise to the initiative for adverse impacts that it causes, contributes to or to which it is directly linked.

Where an enterprise engages in collaboration in carrying out due diligence it should first assess the quality of the initiative. This could include:

- Seeking the views of relevant stakeholders about the credibility of the initiative.
- Assessing whether the initiative and its processes are credible, meaning whether they align with the recommendations in this Guidance.
- Ensuring that collaborative approaches are applied and tailored to the enterprise in the ways necessary to constitute sufficiently robust due diligence.
- Being active participants in the collaboration.
- Applying good governance when the collaboration is carried out through a formal initiative. ▶*see Box 3*

Q13. Can collaboration pose risks under competition law?

While in many cases enterprises can collaborate on due diligence without breaching competition law, enterprises and the collaborative initiatives in which they are involved should take proactive steps to understand competition law issues in their jurisdiction and avoid activities which can be seen as breach of competition law.

➔ **FOR EXAMPLE,** enterprises and the collaborative initiatives in which they are involved may:

- Seek the advice of competition authorities if they are in doubt as to whether a particular course of conduct or co-operative activity may be viewed as contrary to competition law and therefore raise regulatory risks.
- Establish transparency measures around collaborative initiatives to mitigate competition concerns. Competition authorities could be more sceptical of initiatives or agreements amongst competitors if conduct is completely private. Furthermore, transparency can help to bring to light potentially problematic issues and thus ensure they are addressed quickly.
- Establish anti-trust compliance programmes. Advice on how to best design and enforce compliance programmes is often provided by competition authorities in specific jurisdictions.

Each jurisdiction will have different rules with respect to competition law issues; however, there are some guiding questions enterprises may consider when assessing concerns under competition law with regard to their RBC initiatives.

FOR EXAMPLE

- Does the collaboration or initiative involve an agreement between competitors?
- Can the collaboration or initiative be viewed as a per se violation of competition law? (i.e. does it involve price fixing, bid rigging (collusive tenders), output restrictions, and market division (or sharing)?
- Does the collaboration or initiative have an anti-competitive effect (i.e. impacts on consumer markets such as higher prices or limiting availability of goods/services), regardless of the fact that it does not seek to restrict competition?
- On balance, do the pro-competitive effects of the collaboration or initiative outweigh the anti-competitive effects?
- Are there public interest benefits produced by the collaborative or initiative that can be included in or override a balancing test? ▶*see Capobianco, Gillard and Bijelic, 2015*

QUESTIONS RELATED TO THE DUE DILIGENCE PROCESS

A.1

EMBED RESPONSIBLE BUSINESS CONDUCT INTO POLICIES AND MANAGEMENT SYSTEMS

Devise, adopt and disseminate a combination of policies on RBC issues that articulate the enterprise's commitments to the principles and standards contained in the OECD Guidelines for MNEs and its plans for implementing due diligence, which will be relevant for the enterprise's own operations, its supply chain and other business relationships. ▶*see Section II, 1.1*

Q14. What goes into RBC policies? ▶*see Section II, 1.1*

As noted in the Guidance, an enterprise's RBC policies will include commitments on matters covered by the OECD Guidelines for MNEs and will address in more detail commitments with respect to the enterprise's most significant risks.

It may also be useful for an enterprise to use RBC policies to explain how it prioritises in the context of its RBC due diligence (i.e. why some risks are considered more significant than others).

RBC polices can also stipulate how an enterprise will implement its responsibilities – how it will approach due diligence, stakeholder engagement, and remediation. In this regard it can also outline the enterprise's expectations in implementing its RBC policy with respect to workers (including its employees, temporary workers and others who perform work for it) and its business relationships. ▶*see Annex Q18*

The enterprise's RBC polices may be tailored to local contexts or operations.

For example, a subsidiary of a large MNE operating in a country with specific labour risks may adapt the RBC policy of their parent to address these context-specific issues.

Q15. What expertise can be drawn upon in developing RBC policies? ▶*see Section II, 1.1*

Strong model policies already exist for many sectors in the context of industry or multi-stakeholder initiatives. An enterprise may choose to adopt or build upon these, provided that they fulfil the recommendations under Section II, 1.1 of the Guidance and are appropriate to the enterprise's sector or geography.[10]

Consultation with relevant stakeholders may be useful in developing RBC policy. This may be particularly relevant in contexts in which strong model policies do not already exist. Guidance from employer organisations, industry associations, relevant NGOs, or multi-stakeholder initiatives can also be helpful in developing policy approaches. ▶*see Annex Q8-11*

Involving the relevant units of an enterprise in policy development can help in identifying realistic and efficient approaches to implementation of a policy. ▶*see Annex Q16*

10. For example, see OECD (2016a), "Model Supply Chain Policy for a Responsible Global Supply Chain of Minerals from Conflict-Affected and High-Risk Areas"; see also OECD (2017a), "Model Enterprise Policy for Responsible Agriculture Supply Chains".

Seek to embed the enterprise's policies on RBC issues into the enterprise's oversight bodies. Embed the enterprise's policies on RBC issues into management systems so that they are implemented as part of the regular business processes, taking into account the potential independence, autonomy and legal structure of these bodies that may be foreseen in domestic law and regulations. ▶*see Section II, 1.2*

Q16. Which teams or business units will be relevant to consider when developing and aligning objectives with the enterprise's RBC policies?

▶*see Section I, Characteristics of Due Diligence- The Essentials; Section II, 1.2*

What alignment across teams and business units will look like in practice will depend heavily on an enterprise's specific characteristics such as the nature of its activities, size, and the nature of the specific risks it faces. Enterprises can consider which units of their business operations could impact observance of its RBC policies to identify which must be considered in ensuring aligned objectives.

These may include:

- Those making high-level decisions about the enterprise (e.g. boards and high-level management).
- Those in charge of compliance (e.g. legal, compliance, human resources, environment departments, on the ground management).
- Those making decisions about new business relationships (e.g. sourcing departments, procurement departments, sales departments, investment fund managers. ▶*see Table 5*
- Those in charge of development or oversight of products and operations linked to risk (e.g. product designers, operational and technical leads).
- Those responsible for sales and marketing of products or services.

These units may also be involved in actually carrying out steps of a due diligence approach (such as developing RBC policies and implementing management systems or identifying or preventing and mitigating impacts).

Depending on an enterprise's structure it will also be important to ensure alignment across subsidiary bodies, franchises or local offices with core commitments and processes, although these bodies may tailor their RBC policies to the local context. ▶*see Annex Q14*

TABLE 5. EXAMPLE OF DEPARTMENTS AND FUNCTIONS POTENTIALLY RELEVANT TO IMPLEMENTATION OF DUE DILIGENCE

DEPARTMENTS AND/OR FUNCTIONS	ISSUES*
Sustainability, CSR, Ethical sourcing	Potentially many/all of the issues under the OECD Guidelines for MNEs as these departments/functions are often the lead/focal point/coordinator on RBC issues
Environment and/or social	• environment • health and safety • human rights • other social issues where no other department / function addresses
Human resources	• employment and industrial relations • occupational health and safety • human rights • recruitment
Worker representatives, trade union representatives	• employment and industrial relations • occupational health and safety • human rights
Operations, production	• environment • occupational health and safety • human rights • consumer protection
Legal	• legal compliance • employment and industrial relations • anti-bribery & corruption • human rights • consumer protection • disclosure • contracting with business relationships
Compliance, ethics/integrity	• compliance more generally • anti-bribery & corruption
Procurement, supply chain, business relationships	• full range of OECD Guidelines for MNEs issues in the supply chain, with business relationships • screening, contracting and monitoring supply chain/business relationships for these issues

TABLE 5. EXAMPLE OF DEPARTMENTS AND FUNCTIONS POTENTIALLY RELEVANT TO IMPLEMENTATION OF DUE DILIGENCE

Sales and marketing	• human rights • consumer protection • disclosure
Community development	• stakeholder engagement • environment • community health & safety • human rights • disclosure
External affairs, reporting	• stakeholder engagement • disclosure
Risk Management	• potentially all issues
Audit	• potentially all issues
Senior Management	• potentially all issues
Board/Owners	• potentially all issues

** Non-exhaustive list of issues under the OECD Guidelines for MNEs that may be particularly relevant to the department / function to consider in carrying out their role in due diligence or contributing their expertise*

Q17. What are the distinctions in the role of the board and management in ensuring RBC is embedded? ▶*see Section II, 1.2*

Boards will generally be involved in approving an enterprise's RBC policies. They may also be involved in taking decisions about a business strategy which may have implications for RBC. Additionally, they may intervene in instances where the RBC policies are not being implemented and request management to take action. It can be useful to appoint board member(s) with expertise on and responsibility for RBC issues. In this respect the G20/OECD Principles of Corporate Governance recognised that an important responsibility of the board of public enterprises is to oversee the risk management system and systems designed to ensure that the corporation obeys applicable laws, including tax, competition, labour, environmental, equal opportunity, anti-corruption, and health and safety laws (OECD, 2015a, Ch.VI). Management, on the other hand, will be responsible for developing a strategy to ensure the RBC policy is implemented.

While the role of boards and management is distinct, in practice high-level management personnel may sit on enterprise boards and thus play a dual role.

Incorporate RBC expectations and policies into engagement with suppliers and other business relationships. ▶*see Section II, 1.3*

Q18. How can RBC expectations be built into business relationships?

▶*see Section II, 1.3*

In addition to articulating expectations of business relationships in the enterprise's RBC policies, additional steps can be taken to ensure that RBC expectations are built into business relationships.

➔ **FOR EXAMPLE,** as noted in the Guidance, expectations of new business relationships can be communicated and agreed to through formal agreements or documentation (e.g. through supplier codes of conduct, joint venture contracts, side letters to investee entities etc.). These agreements or documents may include:

- Expectations that business relationships meet the OECD Guidelines for MNEs and/or the Guidance or aligned standards.
- Expectations about transparency, monitoring and reporting by the business relationships.
- Specification about whether/how the business relationships are expected to cascade requirements to their own business relationships through the supply chain or value chain.
- Grounds for terminating the contract due to failure to meet expectations regarding the OECD Guidelines for MNEs.

Departments in charge of making decisions on new business relationships may consider RBC criteria before entering a new business relationship. This may be done through the application of pre-qualification processes, bidding criteria, or screening criteria which takes into account RBC issues.

In many instances a business relationship (such as a supplier) will have many customers and may provide services and products to more than one industry sector. With this in mind, in some instances it may be impractical or burdensome for an enterprise to impose its own expectations of its suppliers/business relationships without considering existing or potentially conflicting expectations placed on the business relationship by their other customers/relationships. Enterprises can address this challenge by:

- aligning with international and industry-wide standards with respect to supply chain due diligence expectations.
- collaborating with other industry actors on common expectations of business relationships, including through common RBC policies and reporting frameworks. ▶*see Annex Q12*
- engaging with business relationships on how to reduce conflicting requirements and streamline them across customers, and specifying additional initiatives, policies, or programs for mutual recognition.

A.2

IDENTIFY AND ASSESS ACTUAL AND POTENTIAL ADVERSE IMPACTS ASSOCIATED WITH THE ENTERPRISE'S OPERATIONS, PRODUCTS OR SERVICES

Carry out a broad scoping exercise to identify all areas of the business, across its operations and relationships, including in its supply chains, where RBC risks are most likely to be present and most significant. ▶*see Section II, 2.1*

Q19. What is meant by scoping and how broad should an enterprise's scoping exercise be? ▶*see Section II, 2.1*

Scoping refers to an initial process of identification of general areas of significant risk across an enterprise's own operations (e.g. activities and product lines) and its business relationships (including all stages of the supply chain or value chain). Scoping is intended to be broad and to serve as an initial exercise to enable prioritisation. Assessment *(under Section II, 2.2)*, on the other hand, refers to a more in-depth process that seeks to identify and evaluate prioritised risks related to a specific business activity or relationship. ▶*see Annex Q23-Q28*

How scoping is undertaken in practice, particularly with respect to scoping risks across business relationships will vary according to the characteristics of an enterprise.

➔ **FOR EXAMPLE,** an institutional investor may rely on market-research services and other external resources (civil society reports, media etc.) to scope for risks in its investment portfolio, whereas a retailer may map the structure of its supply chain and identify general areas of risk based on specific geographic, sectoral, product or enterprise factors.

However, if it is brought to the enterprise's attention (e.g. through reports, stakeholder engagement, grievance mechanism) that a product line or subcomponent is associated with particular risks, it is important to consider the information alongside other information gathered during the scoping exercise.

BOX 4. WHERE DOES SUPPLY CHAIN MAPPING FIT INTO THE SCOPING AND ASSESSMENT PROCESS?

During the scoping process, it will be important for enterprises to map their general operations and the structure of their supply chains in order to identify higher-risk activities, geographies, products or business relationships. As the enterprise hones-in on these higher-risk areas, it may then carry out a more detailed mapping of its actual individual business relationships in order to identify specific relationships for further assessment. *(continued on next page)*

BOX 4. WHERE DOES SUPPLY CHAIN MAPPING FIT INTO THE SCOPING AND ASSESSMENT PROCESS?

For example, an automotive enterprise may identify during its scoping exercise that its batteries are likely to hold more significant risks than its other components, based on known sector information. At this juncture, it is unlikely that the enterprise will have detailed information on specific sub-suppliers and countries of origin to commence detailed assessment of its battery supply chain. Rather, they would first seek to gather additional information on where its batteries are actually being made, mapping the higher-risk stages of the supply chain for these products, the likely countries of origin for the materials in the battery, and the quality and nature of any due diligence carried out by high-risk sub-suppliers. Only then can the enterprise move on to prioritise individual business relationships for in-depth assessment and action.

For example, after looking across its product lines, an enterprise operating in the footwear sector may identify its leather footwear as being associated with significant risks in light of labour and environmental risks linked to the tanning process. The enterprise may then map specific business relationships (e.g. tanneries) linked to the production of its leather products in order to prioritise individual suppliers operating in higher-risk geographies for further assessment.

Q20. What is meant by sector, product, geographic, and enterprise-level risks?

▶*see Section II, 2.1*

Considering sector risks, product risks, geographic risk factors and enterprise-level risk factors may be helpful in scoping risks in an enterprise's own operations as well as its business relationships. These risk factors are determined by past impacts and emerging issues.

- Sector risks are risks that are prevalent within a sector globally as a result of the characteristics of the sector, its activities, its products and production processes. For example, the extractive sector is often associated with risks related to a large environmental footprint and impacts on local communities. In the garment and footwear sector, risks associated with respect for trade union rights, occupational health and safety and low wages are prevalent, amongst others.[11]

11. See OECD(2017a) for more information on risks in the garment and footwear sector; see OECD (2016c) for more information on risks linked to the extractives sector.

- Product risks are risks related to inputs or production processes used in the development or use of specific products. For example, garment products with beading or embroidery hold a higher risk of informal employment and precarious work and phones and computers may contain components that are at risk of being mined from conflict areas.
- Geographic risks are conditions in a particular country which may make sector risks more likely. Geographic risk factors can generally be classified as those related to the regulatory framework (e.g. alignment with international conventions), governance (e.g. strength of inspectorates, rule of law, level of corruption), socio-economic context (e.g. poverty and education rates, vulnerability and discrimination of specific populations) and political context (e.g. presence of conflict).
- Enterprise-level risks are risks associated with a specific enterprise such as weak governance, a poor history of conduct in relation to respecting human rights, labour rights, anti-corruption standards, environmental standards, or a lack of culture around RBC.

Q21. What are example sources of information for desk-based research?

▶*see Section II, 2.1*

Most sector and product risks as well as situations in particular countries are well known or easily understood from information that is readily available. For instance, hazardous environmental and health effects of technical processes and products are generally sufficiently understood within sectors.

Reports provided by international organisations, civil society organisations, NHRIs, government agencies, trade unions, and employer and business associations may provide valuable information throughout the due diligence process, but particularly during the scoping phase. Media articles may also provide an understanding of the local, regional, and national social and political situation. ▶*see Table 6 for a list of document-based resources*

It is important for enterprises to evaluate the accuracy and credibility of resources that they rely on for risk information. This is especially true for inherited sources, such as previous baseline assessments and research done by a partner, acquired enterprise, or peer enterprise and other secondary sources. This can be done through triangulating information to compare it with other sources, considering the nature and source of the information, considering the date of publication and consulting with third parties such as civil society organisations on points of doubt. However, information presented in external reports does not need to be completely verified for an enterprise to use it as a starting point to dig further.

TABLE 6. EXAMPLE OF DEPARTMENTS AND FUNCTIONS POTENTIALLY RELEVANT TO IMPLEMENTATION OF DUE DILIGENCE

Primary Sources	• Contracts, licenses, relevant regulation and legislation, enterprise policy describing the legal and regulatory regime applicable to the project or activity. • Baseline studies/impact assessments commissioned by other parties, or during earlier phases of the project. • Data produced by government bodies on employment, poverty levels, health and education standards, wages, conditions of work and occupational health and safety, etc. • Census data, data on income and poverty rates (this may be unreliable in some developing economy contexts). • Land mapping and other information about the project or activity. • Key indicators collected through geographical information systems maps and other sources. • Other existing materials or inherited information in the case of acquisition (if obtainable). • Local community grievances and demand records.
Secondary Sources	• Studies and indices by academics, NHRIs, government agencies and industry bodies. • Studies and reports by inter-governmental organisations and multilateral and bilateral development institutions. • Studies and indices developed by NGOs and sectoral, national and international trade union organisations. • Information about community investment or development programs related to other industry projects in the area or region. • Studies undertaken by communities, for example indigenous peoples or their representative organisations, about key issues that may be relevant to project development. • Available reports prepared by other enterprises operating in the local area or region.

Q22. How might information deficits be addressed? ▶*see Section II, 2.1 - 2.2*

Certain strategies can be useful in addressing deficits in information on risks linked to an enterprise's own activities and its business relationships, taking into account relevant circumstances and real limitations.

➔ **FOR EXAMPLE**

- Grievance mechanisms and other monitoring platforms (e.g. national monitoring committees) can be established to alert enterprises to real or potential adverse impacts they may not have identified themselves.
  ▶*see Annex Q54*
- Information or claims about actual or potential adverse impacts do not have to be completely verified in order to trigger further assessment.
- Enterprises can engage with key stakeholders and experts to better understand sector, product or geographic risks, for example, through roundtables.

Starting with the significant areas of risk identified above, carry out iterative and increasingly in-depth assessments of prioritised operations, suppliers and other business relationships in order to identify and assess specific actual and potential adverse RBC impacts. ▶*Section II, 2.2*

Q23. How can an enterprise assess risks of adverse impacts in its own activities?
▶*see Section II, 2.2*

In many cases, enterprises are already carrying out self-assessments or engaging in external audits or inspections on key risks in their sector, and in some contexts, such assessments are regulated under domestic law. For example, labour inspections, environmental inspections required for licensing, environmental impact assessments, anti-corruption compliance management systems, know-your-counterparty processes, financial audits, human rights impact assessments, and product-licensing processes are all examples of common risk assessments that an enterprise may already be carrying out or co-operating with relevant authorities on. Companies may modify or complement existing assessments to reflect international standards and RBC recommendations.

In addition to standard assessments that an enterprise may already employ, additional internal assessments may be necessary to understand potential risks or actual adverse impacts with respect to an enterprise's own activities in order to ensure alignment with the RBC expectations in the OECD Guidelines for MNEs.

➔ **FOR EXAMPLE**, an enterprise may commission an external review of the implementation of its discrimination and sexual harassment policies.

➔ **FOR EXAMPLE**, a subsidiary may conduct environmental impact assessments related to its activities and share them with a parent company.

Q24. How can an enterprise prioritise which of its own operations or business relationships to assess first? ▶*see Section II, 2.2*

For many enterprises, especially larger ones, it will not be possible to assess real or potential adverse impacts across all operations and business relationships. Enterprises may prioritise operations or business relationships for assessment where the risk of adverse impacts is most significant ▶*see Section II, 2.4 and Annex, Q3 for more guidance on most significant impacts.*

Some considerations in determining the above include:

- The operation or business relationship's operations are in a country that holds higher-risk (e.g. presence of conflict, presence of vulnerable groups, weak rule of law, high rates of corruption, etc.).
- The operation or business relationship involves an activity or production process that is higher-risk (characterised by high employment of informal work, use of hazardous chemicals, use of heavy machinery, etc.).
- Risks were identified in a previous assessment.

Importantly, business relationships are categorised as "high-risk" and prioritised for further assessment on the basis of their risk profile and not on the strength of their relationship with the enterprise.

➔ **FOR EXAMPLE,** an electronics enterprise may flag enterprises it sources from which operate in the extraction of minerals in conflict-affected and high-risk regions as being "high-risk" despite the fact that the electronics enterprise does not have direct contractual relationships with these business relationships.

At times, further prioritisation may be needed amongst high-risk business relationships. In these cases, with a view of working towards assessing all existing high-risk business relationships, the enterprise may prioritise the assessment of high-risk business relationships that are most significant in terms of the percentage of product that the enterprise sources (or countries in terms of the percentage of sourcing).

Q25. How can an enterprise carry out an assessment of business relationships prioritised during its scoping exercise? ▶*see Section II, 2.2*

During the scoping exercise, the enterprise identifies broad categories of risks linked to its business relationships. Assessments are more detailed evaluations of prioritised risks which follow from a scoping exercise. Examples of forms of assessments include supplier self-assessments, on-site inspections and audits, amongst others. The type of assessment that an enterprise employs will be tailored to the nature of the risk.

FOR EXAMPLE

- On-site inspections may be appropriate to assess risks related to occupational health and safety, product safety and environmental performance (amongst other risks).
- Document reviews may be appropriate when reviewing an enterprise's compliance with financial reporting standards.
- Worker interviews and focus group discussions may be appropriate when assessing labour and human rights risks, particularly in relation to those risks that are sensitive and generally undocumented. In recognition that workers may not feel comfortable sharing honest responses with management, interviews and focus group discussions may need to be carried out in some cases by trusted third parties.
- Stakeholder engagement and consultations with relevant civil society organisations may be appropriate when assessing negative impacts on local communities of enterprise activities.

Q26. What can an assessment of business relationships cover and who should conduct these assessments? ▶*see Section II, 2.2*

For most types of risks, an assessment will cover the following:

- Actual adverse impacts or risks of impacts caused or contributed to by the business relationship (e.g. unsafe handling of chemicals; payment of bribes to officials), including those associated with forthcoming projects or future activities.
- The capacity and willingness of the business relationship to carry out due diligence.
- The adequacy of due diligence carried out, including the measures that the enterprise or its business relationship is implementing to prevent and mitigate adverse impacts (e.g. policy, compliance management systems, assessments of sub-suppliers, facility upgrading, providing access to grievance mechanisms).

It is useful that those carrying out assessments demonstrate the following competencies:

- Expertise on the relevant risks that the enterprise is assessing for (e.g. human rights, health and safety, corruption), including an understanding of the best methodology for identifying actual and potential adverse impacts within the local context.
- Knowledge of international and national standards related to the adverse impact.
- Capability to conduct the assessment within the local context (e.g. language skills).

It is not likely that one individual will have the above competencies across all risk areas and across all contexts. In light of this challenge, assessments may be conducted by teams that have, together, all of the above competencies.

Q27. When to assess business relationships? ▶*see Section II, 2.2*

Enterprises are encouraged to carry out assessments:

- of existing high-risk business relationships (i.e. business relationships that involve geographies, products or sectors, that have been identified as presenting high risks of adverse impacts) that have not yet been assessed.
- prior to forming new first-tier high-risk business relationships. ▶*see Annex Q18*
- when the context is likely to have changed among high-risk business relationships.

In some cases, risks of adverse impact are so prevalent in a particular region that assessing individual business relationships will not produce any new information. In this case, the enterprise may choose to focus immediately on preventing and mitigating adverse impacts.

➔ **FOR EXAMPLE,** an enterprise may learn that sexual harassment is prevalent in an export processing zone (EPZ). Recognising how difficult it is to identify specific incidents of sexual harassment, the enterprise may choose not to assess suppliers first but rather to encourage suppliers to carry out activities to prevent sexual harassment (e.g. training of management).

In some cases, existing credible assessments of business relationships may already exist. Where available, enterprises are encouraged to review their findings and then focus efforts on preventing or mitigating identified adverse impacts and monitoring progress.

Q28. How can enterprises assess business relationships with whom they do not have contractual relationships? ▶*see Section, 2.2*

There are various tools and approaches to assess high-risk business relationships when the enterprise does not have a contractual relationship to help overcome challenges of visibility and leverage.

➔ **FOR EXAMPLE,** in order to improve visibility, enterprises may:

- request their business relationships to disclose information necessary for the enterprise to assess risks related to their suppliers and business relationships, such as information related to sub-suppliers and sub-contractors, or country of origin. Enterprises may create and use common reporting templates within a sector to reduce undue burden on business relationships. ▶*see Annex Q12*
- use an existing traceability or chain of custody scheme[12] to gain visibility of its business relationships further up the supply chain. This is most relevant for product-oriented enterprises with physical supply chains.

12. Traceability is the process by which enterprises track materials and products through the supply chain.

Where possible, in order to assess business relationships further up the supply chain for adverse impacts, enterprises may:

- use existing credible assessments of business relationships further up the supply chain, such as assessments shared through a collaborative initiative or passed down through cascading disclosure or flow down provisions[13] on written agreements or contracts.
- if no credible assessments exist, through information collected through cascading reporting, flow down provisions or traceability, shared business relationships with other industry actors can be identified to carry out or commission assessments of common business relationships.
- assess the due diligence process of business relationships operating at control points in its supply chain. ▶*see Box 5*

BOX 5. ENGAGEMENT WITH BUSINESS RELATIONSHIPS OPERATING AT CONTROL POINTS IN THE SUPPLY CHAIN

Enterprises can identify control points (sometimes referred to as "choke points") by taking into consideration:

- key points of transformation in the supply chain where traceability or chain of custody information may be aggregated or lost.
- the number of actors, for example where there are relatively few enterprises that process or handle a majority of inputs that they pass further down into a supply chain.
- the greatest point of leverage of enterprises towards the end of a supply chain.
- points where schemes and audit programmes already exist to leverage these systems and avoid duplication.

'Control point enterprises' will likely have greater visibility and/or leverage over their own suppliers and business relationships further up the supply chain than enterprises closer towards consumers or end-users. Conducting due diligence on control point enterprises to determine whether they are in turn conducting due diligence in line with this Guidance provides some comfort that risks of adverse impact directly linked to suppliers have been identified, prevented and mitigated. Identification and engagement with control points may be carried out through: including requirements in contracts with supplier and business relationships that control points be identified (on a confidential basis); and by asking suppliers/business relationships to source from the control point enterprises that meet the expectations of this Guidance, by using confidential information-sharing systems on suppliers and/or through industry wide schemes to disclose actors further up the supply chain.

13. *Cascading disclosure refers to when an enterprise discloses information to immediate downstream purchases, who then pass them down to their purchases; A flow down provision is a provision within a general contract that is incorporated into sub tier agreements.*

Assess the enterprise's involvement with the actual or potential adverse impacts identified in order to determine the appropriate responses. Specifically, assess whether the enterprise (a) caused (or would cause) the adverse impact; or (b) contributed (or would contribute) to the adverse impact; or whether (c) the adverse impact is (or would be) directly linked to its operations, products or services by a business relationship. ▶*see Section II, 2.3*

Q29. What is meant by adverse impacts that are "caused", "contributed to" by the enterprise or are "directly linked" to its operations, products or services by a business relationship? ▶*see Section II, 2.3*

Cause: An enterprise "causes" an adverse impact if the enterprise's activities[14] on their own are sufficient to result in the adverse impact.

➔ **FOR EXAMPLE,** if an enterprise discriminates against women or racial minorities in its hiring practices or if an enterprise pays a bribe to a foreign public official.

Contribute: An enterprise "contributes to" an impact if its activities, in combination with the activities of other entities cause the impact, or if the activities of the enterprise cause, facilitate or incentivise another entity to cause an adverse impact. Contribution must be substantial, meaning that it does not include minor or trivial contributions.

The substantial nature of the contribution and understanding when the actions of the enterprise may have caused, facilitated or incentivised another entity to cause an adverse impact may involve the consideration of multiple factors. The following factors can be taken into account:

- the extent to which an enterprise may encourage or motivate an adverse impact by another entity, i.e. the degree to which the activity increased the risk of the impact occurring.
- the extent to which an enterprise could or should have known about the adverse impact or potential for adverse impact, i.e. the degree of foreseeability.
- the degree to which any of enterprise's activities actually mitigated the adverse impact or decreased the risk of the impact occurring.

The mere existence of a business relationship or activities which create the general conditions in which it is possible for adverse impacts to occur does not necessarily represent a relationship of contribution. The activity in question should substantially increase the risk of adverse impact.

➔ **FOR EXAMPLE,** consider a retailer that sets a very short lead time for delivery of product despite knowing from similar products in the past that the production time is not feasible, and restricting the use of pre-approved sub-contracting.

- The action of setting a shorter than feasible lead time and restricting the use of sub-contracting increased the risk of excessive overtime at the level of the manufacturer.

14. OECD (2011), Chapter IV, Para 42. states that "'Activities can include both actions and omissions."

- The degree of foreseeability of the impact may be high because the retailer knew that lead times for similar past products were not feasible and that short lead times commonly result in excessive overtime in the sector.
- If no mitigating steps were taken to decrease the risk of the impact occurring, the retailer may be contributing to excessive overtime at the level of the manufacturer.

→ **FOR EXAMPLE,** consider a private equity investor which invests in a steel plant. The investor sits on the board of the steel plant and regularly interacts with its management. The investor votes against installing costly equipment which treats run-off from the plant. As a result of the lack of run-off treatment, the drinking water of a local community is polluted by the run-off.

- Encouraging management of the project to avoid installing technology which may prevent or mitigate environmental impacts on water sources increases the risk of adverse impacts.
- The degree of foreseeability may be high if it is commonly known among environmental management professionals in the steel industry that water treatment equipment is required to avoid pollution of drinking water.
- If the investor undertook due diligence and supported an alternative treatment plan for the run off, the risk of pollution of the water supply and the foreseeability of that impact would have been lower, moving the investor away from a relationship of contribution.

Directly linked: "Linkage" is defined by the relationship between the adverse impact and the enterprise's products, services or operations through another entity (i.e. business relationship). "Directly linked" is not defined by direct contractual relationships, for example "direct sourcing".

→ **FOR EXAMPLE,** if an enterprise sources cobalt mined using child labour which is then used in its products the enterprise can be directly linked to the adverse impact (i.e. child labour). In this case, the enterprise did not cause or contribute to the adverse impact itself, but nevertheless there still can be a direct link between the enterprise's products and the adverse impact through its business relationships with the entities involved in its sourcing of the cobalt (i.e. with the smelter, minerals trader, and mining enterprise using child labour).

An enterprise's relationship to adverse impact is not static. It may change, for example as situations evolve and depending upon the degree to which due diligence and steps taken to address identified risks and impacts decrease the risk of the impacts occurring.

Generally an enterprise is most likely to cause an adverse impact in the context of activities associated with its own operations and an enterprise is most likely to be directly linked to adverse impacts that are caused by business relationships. Contribution can occur in the context of activity related to an enterprise's own operations or through a business relationship.

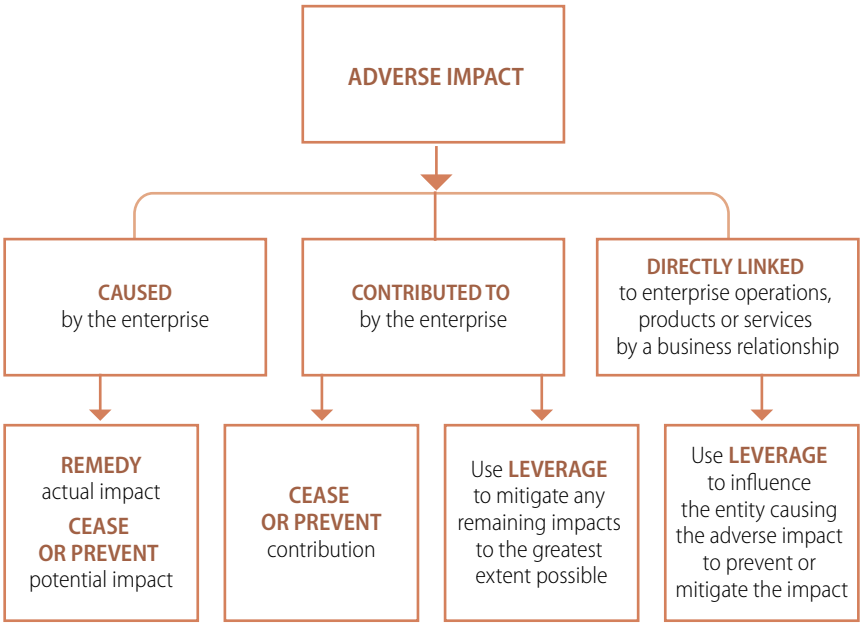
The above characterisations are not intended to override any legal liability issues. Domestic law may have specific approaches or rules for determining relationship to impact for the purpose of informing legal liability. For example, enterprises found to be guilty of criminal acts of bribery will likely be considered to have caused or contributed to the impact under domestic laws on anti-corruption.

Q30. Why does the way an enterprise is involved with adverse impacts matter?

▶*see Section II, 2.3*

The relationship of an enterprise to an adverse impact (i.e. whether it is caused or contributed to by the enterprise or whether it is directly linked by a business relationship) is an important consideration as it determines how an enterprise should respond to an impact and whether there is also a responsibility to provide or cooperate in remediation. ▶*see Figure 2*

FIGURE 2. Addressing adverse impacts



Note: More specific guidelines for addressing human rights adverse impacts are listed in OECD (2011), Chapter IV.

Drawing from the information obtained on actual and potential adverse impacts, where necessary, prioritise the most significant RBC risks and impacts for action, based on severity and likelihood. Prioritisation will be relevant where it is not possible to address all potential and actual adverse impacts immediately. Once the most significant impacts are identified and dealt with, the enterprise should move on to address less significant impacts. ▶*see Section II, 2.4*

Q31. How can an enterprise prioritise its actions when seeking to prevent and mitigate adverse impacts across its activities and business relationships?

▶*see Section I, Characteristics of Due Diligence – Due diligence can involve prioritisation (risk-based); Section II, 2.4*

When prioritising actions for response, the significance of the actual or potential harm is the most important factor.[15] However, recognising that enterprises may be exposed to a variety of significant adverse impacts, the imminence of harm may be considered secondarily.

➔ **FOR EXAMPLE,** if a factory is found to be at imminent risk of a fire due to dangerous electrical systems, priority may be given to ensuring that the building is made safe and workers are made aware of how to respond in the case of a fire before addressing a risk of water contamination which is potentially equally severe, but not expected to occur within the next 5 years.

15. *In the case of prioritising risks to human rights, the severity of a potential adverse impact should take precedence over the likelihood.*

A.3

CEASE, PREVENT AND MITIGATE ADVERSE IMPACTS

Stop activities that are causing or contributing to adverse impacts on RBC issues, based on the enterprise's assessment of its involvement with adverse impacts. Develop and implement plans that are fit-for-purpose to prevent and mitigate potential (future) adverse impacts. ▶*see Section II, 3.1*

Q32. What is the difference between preventing adverse impacts and mitigating adverse impacts? ▶*see Section II, 3.1*

Prevention refers to activities that are intended to avoid an adverse impact occurring in the first place (e.g. which reduce the risk of an adverse impact occurring); whereas **mitigation** refers to activities that reduce the impact when an adverse impact does occur. Prevention is the primary goal of due diligence.

FOR EXAMPLE

- With respect to occupational health and safety the removal of the hazard is recognised as the best means to prevent injuries and ill health in the first instance.
- Installation of water treatment processes may mitigate water pollution impacts by decreasing the level of effluents in the water.

FOR EXAMPLE

- Engaging in collective action in high-risk areas to train local entities on resisting solicitation of bribes and improving local government capacity to monitor and enforce anti-bribery laws can help to prevent bribery in the future.
- Co-operating with criminal prosecutions on bribery and duly reporting officials who solicited bribes can mitigate impact of bribery.

Q33. How should an enterprise prevent and mitigate actual or potential impacts it may cause or contribute to? ▶*see Section II, 3.1*

First and foremost, enterprises should cease any activities that are causing or contributing to actual adverse impacts.

There are a number of measures that an enterprise may take to prevent or mitigate future adverse impacts in its own operations.

FOR EXAMPLE

- Adaptation/modification measures: At times adaption or modification of aspects of an enterprise's operations, products or services may be necessary to preventing or mitigating impacts, for example, rerouting an oil pipeline to avoid potential health risks to local communities, changing production processes to avoid the use of toxic substances.
- Facility upgrading: Some impacts may only be prevented by investing in facility and equipment improvements. Such investments may include: lighting, ventilation, access to fire exits, new machinery, technology to control adverse impacts, etc.
- Policies: The development of enterprise policies and accompanying protocols for their implementation can be in of themselves a means of preventing impacts from occurring. For example, an enterprise policy to not discriminate in the hiring process and accompanying processes can help prevent discrimination. ▶*see Section II, 1.1-1.2*
- Training: Effective training of workers, employees and management can help to prevent adverse impacts from occurring. Training may cover a wide range of issues such as, but not limited to, the enterprise's policies and protocols, laws and obligations, safe handling of machinery, chemicals, etc., and awareness raising on how to identify risks. ▶*see Section II, 1.2(f); 1.3(d)*
- Red-flag systems: This involves identifying red-flags, or indicators for risks, and developing procedures for the enterprise to follow if risks of causing or contributing to adverse impact are identified.
- Address systemic issues: Enterprises retain responsibility to address adverse impacts that they cause or contribute to, even when operating in contexts where systemic issues are prevalent. While it is not the responsibility of enterprises to resolve systemic issues at a societal level, enterprises may find that addressing such challenges may be effective in preventing or mitigating adverse impacts. ▶*see Box 6 for more information on addressing systemic risks*

BOX 6. ADDRESSING SYSTEMIC ISSUES

Systemic issues refer to problems or challenges that are prevalent within a context and are driven by root causes outside of the enterprise's immediate control, but that nonetheless increase the risk of adverse impacts within the enterprise's own operations or supply chain. Systemic risks may arise from governance failures and the failure of governments to fulfil their duty to enforce the laws and protect human rights. Example systemic issues include poor access to schools and high rates of poverty which can increase the risk of child labour, extensive bribery and corruption within the government, systematic discrimination of minority groups and the widespread harassment and abuse of women and girls within society. Although enterprises are not responsible for the failure of governments, the decision to conduct activities in contexts where systemic risks exist will increase the nature and extent of due diligence.

There are a number of ways that enterprises can seek to address risks linked to systemic issues. For example, enterprises may:

- **Collaborate across sectors** – Systemic risks often touch many sectors within a given context. Therefore, enterprises may choose to co-ordinate and collaborate across sectors to scale-up effective prevention and mitigation measures. In this way, the problem is not merely pushed from one industry to another.*
- **Engage government** - Acknowledging that there are legal and practical limits, in contexts in which the government is not fulfilling its duty to protect, enterprises may use their leverage with government (local or national) to encourage the government to affect change, for example through better enforcement of laws and regulations, or facilitation of RBC. Engagement may include a number of measures, such as open letters to the government, engagement through multi-stakeholder initiatives, participation in dialogues, etc. Enterprises may also engage with home governments to encourage them to advocate for RBC.
- **Identify effective existing initiatives** – For common sectoral risks, enterprises may be able to draw on recommended prevention and mitigation approaches developed by governments, industry associations, multi-stakeholder initiatives, or peers in the sector. Identifying existing initiatives and their objectives will help an enterprise understand how it can utilise existing strategies to prevent and mitigate systemic risks. For example, an enterprise may be able to rely on existing grievance mechanisms within the community.

Efforts to address systemic issues may take much time before tangible results are seen, however, this should not undermine or discourage action to try to respond to systemic issues. Nonetheless, enterprises operating in contexts with systemic issues driving adverse impacts in their own operations and supply chain should be prepared to be transparent in their decision and rationale for remaining and consider whether they are able to responsibly continue to operate in or source from such contexts during the course of any of the above efforts. In many cases, increased efforts will be necessary to monitor and prevent adverse impacts in their own operations or in their supply chains while seeking to address more systemic issues at the same time.

** For example, in contexts in which child labour is a systemic risk, eliminating child labour from one sector may simply push children into employment in another. Therefore, cross-sectoral approaches are encouraged.*

Based on the enterprise's prioritisation, develop and implement plans to seek to prevent or mitigate actual or potential adverse impacts on RBC issues which are directly linked to the enterprise's operations, products or services by business relationships. ▶*see Section II, 3.2*

Q34. How can an enterprise seek to prevent and mitigate actual or potential impacts directly linked to its operations, products or services by a business relationship? ▶*see Section II, 3.2*

The expectation that enterprises seek to prevent or mitigate adverse impacts directly linked to their operations, products or services by a business relationship is not intended to shift responsibility from the entity causing or contributing to an adverse impact to the enterprise with which it has a business relationship.[16] The responsibility for the impact remains with the entity or entities that are causing or contributing to the impacts.[17] However, while the enterprise may not be able to address the impact itself, it should seek to influence its business relationship to prevent or mitigate the adverse impacts. ▶*see Section I, Characteristics of Due Diligence -Due diligence does not shift responsibilities*

In this respect, actions that can be taken to seek to prevent and mitigate adverse impacts linked to a business relationship include:

- Modifying business operations or activities to prevent and mitigate adverse impacts linked to the enterprise's business relationships. ▶*see Annex Q35*
- Using leverage to affect change in the practices of the entity that is causing the adverse impact(s) to the extent possible. ▶*see Annex Q36-37*
- Supporting business relationships in the prevention or mitigation of adverse impact(s). ▶*see Annex Q38*
- Disengaging from the business relationship. ▶*see Annex Q39*
- Addressing systemic issues. ▶*see Box 6*

Q35. How can an enterprise modify its operations or activities to prevent and mitigate adverse impacts linked to its business relationships? ▶*see Section II, 3.2*

Many of the management systems that an enterprise establishes under Section II, 1.1 of the Guidance work to prevent and mitigate impacts in its supply chain by either decreasing the likelihood of engaging with high-risk business relationships in the first place or by increasing its leverage with new suppliers/ business relationships. These can include measures related to building RBC expectations into business relationships such as establishing pre-qualification or bidding criteria based on RBC standards.

Additional measures that an enterprise may take to prevent and mitigate adverse impacts linked to its business relationships involve adaptation or modification of aspects of its operations, products or services.

16. OECD (2011), Chapter II, Para. 12.
17. Id.

For example, embedding due diligence considerations into the product design process through considering potential RBC risks of a product alongside other features, such as feasibility, cost and demand, and determining whether to take a product from design to development, can avoid risks in the future.

Q36. How can an enterprise use its leverage? ▶*see Section II, 3.2(c)-(e)*

Leverage is considered to exist "where the enterprise has the ability to effect change in the wrongful practices of the entity that causes the harm."[18] What is an appropriate approach to using leverage will depend on the impact in question, the degree of leverage an enterprise possesses with its business relationship, and other characteristics specific to the sector and/or nature of the business relationship. Enterprises may also pursue a combination of approaches in applying leverage.

➔ **FOR EXAMPLE,** using leverage may include as appropriate to the sector and the specific situation:

- Engagement with the business relationship to urge them to prevent and/or mitigate impacts through letter-writing, emails, telephone calls or face-to-face meetings with the business relationship at operational, senior management and/or board level to express views on RBC issues.
- Building expectations around RBC and due diligence specifically into commercial contracts.
- Linking business incentives – such as the commitment to long-term contracts and future orders – with performance on RBC.
- For investors, attendance and speaking at Annual General Meetings to express views on RBC matters and using voting rights to express views on RBC issues, requesting information from and engaging with investee companies to obtain relevant information and make expectations clear.
- Engagement with regulators and policymakers on RBC issues for them to effect change in the wrongful practices of the entity causing the harm.
- Communicating the possibility of disengagement if expectations around RBC are not respected (e.g. through contractual clauses, enterprise policies, meeting with management of the business relationship).

At times an enterprise may face limitations to using leverage or may not have leverage on its own. ▶*see Annex Q37*

18. OECD (2011), Commentary on General Policies, Para 19.

Q37. How can a lack of leverage be addressed?

Where an enterprise lacks leverage with its business relationships, it may seek to increase its leverage to the extent possible.

FOR EXAMPLE, the enterprise may:

- Introduce RBC and due diligence expectations into commercial contracts.
- Establish commercial incentives linked to RBC criteria.
- Establish longer-term relationships with its suppliers or business relationships.

Enterprises that do not have leverage with their business relationships may increase their leverage to the extent practicable by communicating common expectations and carrying-out activities in collaboration.

FOR EXAMPLE

- Enterprises sourcing from the same supplier may develop and share a common set of RBC requirements of the supplier. Similarly, enterprises sourcing from the same supplier may use their combined leverage to encourage the shared suppliers to implement effective corrective action measures with due consideration for competition law. ▶*see Annex Q13*
- Enterprises within a sector may work at a sector-wide or regional level to identify and engage suppliers that operate at common control points in the sector supply chain.
- Enterprises may join geographic or issue-specific initiatives that seek to prevent and mitigate adverse impacts in the areas identified (e.g. country, commodity or sector roundtables, multi-stakeholder initiatives and on-the-ground programmes).
- Minority investors may write a joint letter to an investee company signalling expectations on RBC and encouraging the company to prevent/mitigate impacts as relevant.

The OECD Guidelines for MNEs also recognise that "there are practical limitations on the ability of enterprises to effect change in the behaviour of their suppliers."[19] In addition, laws of corporate governance may in some cases limit an enterprise's ability to control or influence behaviour, such as between shareholders and investee companies, boards and management and parent enterprises and its subsidiaries and/or joint ventures. The degree of leverage an enterprise has over the business relationship causing the adverse impact is useful in considering what it can do to persuade that entity to take action, however enterprises have a responsibility to carry out due diligence and effectively exercise any leverage they may have.

19. OECD (2011), Commentary on General Policies, Para 21.

Q38. How can an enterprise support a business relationship in the prevention or mitigation of adverse impacts? ▶*see Section II, 3.2(b) and 3.2(g)*

An enterprise may support its business relationships in implementing measures under Section II, 3.2 of the Guidance.

➔ **FOR EXAMPLE,** an enterprise may:

- Partner with suppliers/business relationships to develop and implement corrective action plans that are time-bound and outcome-oriented.
- Provide technical guidance to suppliers/business relationships – for example, in the form of training, management systems upgrading, etc.
- Facilitate participation of suppliers/business relationships in broader sector-wide initiatives or regional initiatives to prevent impacts.
- Facilitate linkages of suppliers/business relationships with local service providers.
- Facilitate access to financing for suppliers/business relationships to help implement corrective action plans, for example, through direct financing, low-interest loans, guarantees of continued sourcing, and assistance in securing financing.

Q39. How can an enterprise approach disengagement? ▶*see Section II, 3.2 (h)*

As stated in the Guidance, disengagement from a business relationship may be appropriate as a last resort after failed attempts at preventing or mitigating severe impacts; when adverse impacts are irremediable; where there is no reasonable prospect of change; or when severe adverse impacts or risks are identified and the entity causing the impact does not take immediate action to prevent or mitigate them. A real possibility of disengagement is necessary in many instances for an enterprise's leverage to be effective. In these situations enterprises should also consider and address the potential adverse impacts of a decision to disengage. If an enterprise determines that disengagement is the most appropriate action, there are a range of actions that it may take to ensure that its process for disengagement is responsible.

➔ **FOR EXAMPLE,** the enterprise:

- Should comply with national laws, international labour standards and the terms of collective bargaining agreements.
- May articulate escalation measures for disengagement upfront with the business relationship.
- May provide detailed information supporting the decision to disengage to management and to the trade union, where one exists.
- Where feasible, it is important to provide sufficient notice of the disengagement to the business relationship.[20]

20. In instances where severe adverse impacts have been identified or where the enterprise does not deem prevention or mitigation of the adverse impact feasible, it may not be possible for the enterprise to provide sufficient notice to its business relationship.

In some instances it may be not be possible or practicable for an enterprise to end a business relationship.

FOR EXAMPLE

- Where the term of the business relationship is dictated by contract or practical considerations (e.g. an investment in a pooled portfolio; where an investment manager's clients do not agree that divestment is appropriate, a fixed-term contract).
- Where the supplier is a crucial business relationship[21] (e.g. a rare earth mineral crucial to core product which is only available from a small group of suppliers operating in a high-risk context).

In these cases it is recommended that enterprises report the situation internally, continue to monitor the business relationship, for example, through maintaining a knowledge database, and revisit their decision to continue the business relationship where circumstances change or as part of the enterprise's long term strategy to systemically respond to all adverse impacts. It may also be in the enterprise's interest to explain the decision not to end the business relationship, how this decision aligns with their policies and priorities, what actions are being taken to attempt to apply leverage to mitigate the impacts, and how the business relationship will continue to be monitored in the future.

Q40. How can an enterprise seek to prevent and mitigate adverse impacts linked to business relationships with whom it does not have a contractual relationship?

▶*see Section II, 3.2*

There are a number of ways in which an enterprise may seek to prevent and mitigate adverse impacts linked to business relationships with whom it does not have a contractual relationship.

FOR EXAMPLE, enterprises may:

- Request contractual business relationships to direct their activities towards business relationships that have been pre-qualified.
- Direct sourcing or other forms of business activities towards business relationships operating at control-points in the supply chain that have credible due diligence processes for their suppliers (in the context of supply chains). ▶*see Box 5*
- Identify and work directly with high-risk business relationships with whom the enterprise does not have a contractual relationship to prevent and mitigate impacts in a similar fashion to the activities described under Q34.

21. A relationship could be deemed as crucial if it provides a product or service that is essential to the enterprise's business, and for which no reasonable alternative source exists.

A.4

TRACK IMPLEMENTATION AND RESULTS

Track the implementation and effectiveness of the enterprise's due diligence activities, i.e. its measures to identify, prevent, mitigate and, where appropriate, support remediation of adverse impacts, including with business relationships. In turn, use the lessons learned from tracking to improve these processes in the future. ▶*see Section II, 4.1*

Q41. What information is tracked under due diligence? ▶*see Section II, 4.1*

Tracking involves first and foremost assessing whether identified adverse impacts have been responded to effectively. In addition to following up on responses to identified adverse impacts enterprises may review their due diligence process, or relevant multi-stakeholder and industry initiatives, more broadly to ensure that they are effective. This can occur periodically or be triggered when tracking activities reveal that significant adverse impacts are not being effectively addressed.

Establishing appropriate qualitative and quantitative indicators can be helpful to tracking.

➔ **FOR EXAMPLE,** relevant indicators may include:

- Percentage of impacted stakeholders engaged who feel adverse impacts have been adequately addressed.
- Percentage/number of agreed action points that have been implemented according to planned timelines.
- Percentage of impacted stakeholders who feel channels for raising grievances are accessible, equitable and effective.
- Rate of recurring issues related to the identified adverse impact(s).

Indicators may be context specific and vary according the objectives and actions associated with the enterprises due diligence process.

Q42. How can an enterprise track implementation and results? ▶*see Section II, 4.1*

How an enterprise tracks its implementation and results, including whether impacts have been effectively addressed, will vary based on the context in which the enterprise operates, its size, and the risks that it faces through its own activities and in its business relationships. In many cases, an enterprise will need to look across a range of inputs, including assessment data, data from grievance mechanisms, and stakeholder feedback to get a full picture as to whether impacts are being addressed.

FOR EXAMPLE, if an enterprise seeks to track how well it is addressing child labour linked to its direct suppliers across a range of countries it may consider the following:

- At the site level, the enterprise may:
  - track progress of individual suppliers against corrective action plans for eliminating child labour.
  - gather feedback from workers, workers' representatives and trade unions on whether or not child labour is effectively being addressed at each site.
  - track cases of child labour identified and how those cases were handled (i.e. what remedy was provided).
- At the global level, the enterprise may review assessment data, reported grievances, and credible reports collected across all of its high-risk suppliers or higher-risk geographies on an annual basis to review trends and progress against preventing and mitigating child labour.

How often an enterprise tracks progress is likewise dependent upon the nature and severity of the real or potential adverse impact the enterprise is tracking. For example, for more severe impacts there is a greater urgency to determine that adverse impacts are being effectively addressed.

In many cases, activities to track implementation and results can be integrated into relevant, existing internal monitoring and reporting processes.

Q43. Who is involved in tracking implementation and results within an enterprise?

▶*see Section II, 4.1*

Responsibility for tracking implementation and results may be assigned to a number of individuals across business units or offices within the enterprise, as relevant.

FOR EXAMPLE

- A sourcing office within an enterprise may have the primary responsibility for tracking the implementation of supplier assessments and corresponding corrective action measures.
- An enterprise's buying department may hold the primary responsibility of tracking rates at which orders are placed late, changed, or cancelled – all practices which may contribute to labour risks with their suppliers.
- Operational level staff may seek feedback from impacted stakeholders and rightholders on whether the impacts have been addressed (e.g. through consulting local communities, collecting feedback from people who attend meetings and forums, taking note of issues brought to remediation procedures).

Senior management oversight of an enterprise's progress with respect to implementation and results can provide a more complete picture of the enterprise's progress across the organisation as a whole.

For example, systems that collect information at a local level (e.g. supplier assessment data), but then are aggregated at a centralised department (e.g. headquarters or regional office) may help to identify trends more widely and can be used as a basis for sharing lessons learned across the enterprise.

Q44. How can an enterprise respond to the results of its tracking?

▶*see Section II, 4.1 (e)-(f)*

Tracking provides the enterprise with an understanding of whether the systems it has put into place are effectively enabling the enterprise to avoid and address adverse impacts in its own activities and in its supply chain or whether systems could be modified to be made more effective.

FOR EXAMPLE

- If an enterprise's supplier assessment does not reveal any fire safety risks and the supplier then has a fire, the enterprise may respond by reviewing how it assesses fire safety of its suppliers.
- If an enterprise implements internal training and other control measures against the payment of bribes for licenses, and the enterprise learns through external reporting that the payment of bribes for licenses persists, it may revise its internal controls to better prevent and mitigate future infractions.

Where an enterprise's due diligence processes or approach are not effective, an internal assessment to understand why may be useful. Consulting employees involved in the due diligence processes and external relevant stakeholders in this process may be helpful. Establishing senior oversight of tracking also helps to ensure that lessons learned are taken into account and due diligence systems can be continuously improved.

Q45. How to prioritise tracking activities? ▶*see Section II, 4.1*

Prioritisation for tracking activities should align with prioritisation decisions made in the context of prevention and mitigation. In other words, enterprises should prioritise tracking those adverse impacts they assessed to be most significant and took action to prevent and mitigate. A broader assessment of due diligence processes may be undertaken periodically or triggered when significant impacts are not being effectively addressed. ▶*see Annex Q3 and Q31*

A.5

COMMUNICATE HOW IMPACTS ARE ADDRESSED

Communicate externally relevant information on due diligence policies, processes, activities conducted to identify and address actual or potential adverse impacts, including the findings and outcomes of those activities. ▶*see Section II, 5.1*

Q46. What are appropriate forms of communicating publicly and to impacted stakeholders? ▶*see Section II, 5.1*

As outlined in Section II, 5.1 of the Guidance there is flexibility in the form of public communication, provided that the information is easily accessible by the public. In addition, some jurisdictions or stock exchanges may have specific reporting requirements with respect to due diligence.

Where an enterprise causes or contributes to human rights impacts it should communicate the relevant information to impacted or potentially impacted rightsholders in a timely, culturally sensitive and accessible manner. Accessibility of information means that it is not only physically accessible, but also understandable and disclosed at a time and in a format, language, and location that will best ensure those for whom it is intended will notice it and be able to use it effectively. This information should be "sufficient to demonstrate the adequacy of an enterprise's response to the particular human rights impact involved" and "in turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality."[22]

The form of communication should also be accessible to the intended audience.

➔ **FOR EXAMPLE**, enterprises may choose to communicate through:

- in-person meetings
- online dialogues
- consultation with impacted or potentially impacted rightsholders
- formal public reports[23]
- the sharing of audit or assessment findings with trade unions
- through an appropriate intermediary

In identifying the appropriate form of communicating with stakeholders the following guiding questions may be useful:

- Who is the audience?
- How can the audience access information?
- What barriers in accessibility might exist for certain marginalised or vulnerable groups?
- What is the capacity of the audience (language, literacy, location, time, availability, technical competence)?

22. UN (2011), Principle 21, Commentary.
23. Id.

- Are there privacy or safety issues?
- What have impacted or potentially impacted stakeholders and rightholders indicated they find important and useful in terms of information content and methods of information sharing?

Enterprises may also wish to communicate with impacted or potentially impacted stakeholders and rightsholders in case of significant adverse impacts cause or contributed to by business relationships.

Appropriate forms of communication in these situations may include:

- Sharing labour, human rights, or environmental audit or assessment results with impacted or potentially impacted rightsholders, while respecting confidentiality requirements.
- Communicating with impacted or potentially impacted rightsholders in collaboration with the relevant business relationship(s).
- Communicating with impacted or potentially impacted rightsholders through a multi-stakeholder or industry initiative that may have closer contact with the rightsholders.

Q47. When information is commercially sensitive, how can relevant information still be communicated? ▶*see Section II, 5.1*

Communication should be carried out with due regard for commercial confidentiality and other competitive or security concerns.

→ FOR EXAMPLE

- Domestic law may sometimes prevent certain disclosures, or outline areas of protected commercial information.
- Contracts between the enterprise and its business relationships may prevent certain information from being disclosed (e.g. the identity of clients).
- Commercial confidentiality considerations may prevent certain disclosures (e.g. price information, supplier relationships)
- Where there are potential risks to stakeholders or staff (including arising from the disclosure of personal information) full disclosure may not be an option.

However, in certain circumstances, disclosing information may be fundamental to the corporate responsibility to respect human rights.

FOR EXAMPLE

- Informing workers about their exposure to hazardous substances.
- Disclosure of the results of product or environmental testing necessary for the effective protection of the rights to life or health.
- Disclosure of information about hazardous substances necessary for the effective provision of medical treatment in the aftermath of an industrial disaster.

Certain approaches may be useful in communicating information to the extent possible while respecting confidentiality concerns.

FOR EXAMPLE

- limiting access to sensitive information to those approved by the information provider.
- anonymising the source of information.
- providing a valid explanation or justification, where possible, for why the information has not been shared.
- using third parties or innovative technologies that allow disclosure of key information while protecting commercially sensitive data, for example, to disclose certain information in aggregate or without identifying specific business relationships.
- delaying reporting until persons are no longer at risk, for example after a grievance or risk has been addressed.
- providing assurance through other methods, such as inviting an independent third party to review the enterprise's due diligence processes and disclosing their findings publicly or to a relevant collaborative initiative.

A.6

PROVIDE FOR OR COOPERATE IN REMEDIATION WHEN APPROPRIATE

Q48. What is the relationship of remediation to due diligence?

▶*see Section II, 6*

The provision of a remedy is not a component of due diligence but a separate, critical process that due diligence should enable and support. Grievance and remediation processes interact with, and may ultimately support due diligence by providing channels through which the enterprise can become aware of and respond to RBC impacts. Inputs and feedback from remediation processes can help strengthen identification of real and potential adverse impacts by highlighting issues that may not have received sufficient attention, and by providing inputs on how to effectively respond to adverse impacts. However the following examples and explanations are not intended to serve as a comprehensive overview of remedy.

When the enterprise identifies that it has caused or contributed to actual adverse impacts, address such impacts by providing for or cooperating in their remediation. ▶*see Section II, 6.1*

Q49. What is meant by "remediation" and "remedy"? ▶*see Section II, 6.1 and 6.2*

"Remediation" and "remedy" refer to both the processes of providing remedy for an adverse impact and to the substantive outcomes (i.e. remedy) that can counteract, or "make good", the adverse impact.

Q50. How can an enterprise identify appropriate forms of remedy? ▶*see Section II, 6.1*

The type of remedy or combination of remedies that is appropriate will depend on the nature and extent of the adverse impact ▶*see Section II, 6.1(b)*. Appropriate forms of remediation are articulated under Section II 6.1(b) of the Guidance, however, the following may also be helpful in determining appropriate forms of remedy:

- Existing standards – In some cases domestic and international standards or laws exist on what constitutes appropriate forms of remedy.
- Precedent – Where domestic and international standards do not exist, the enterprise may seek to be consistent with what was provided in similar cases.
- Stakeholder preferences – The perspective of those affected on what is appropriate remedy is important for human rights impacts.

When appropriate, provide for or cooperate with legitimate remediation mechanisms through which impacted stakeholders and rightsholders can raise complaints and seek to have them addressed with the enterprise. ▶*see Section II, 6.2*

Q51. What are "legitimate remediation mechanisms"? ▶*see Section II, 6.2*

Legitimate remediation mechanisms can include State-based or non-State-based process through which grievances concerning enterprise-related adverse impacts can be raised and remedy can be sought.[24]

FOR EXAMPLE

- Legal processes such as prosecution, litigation and arbitration are common examples of state-based processes that enable remediation.
- Non-judicial state-based mechanisms such as specialist government bodies, consumer protection agencies, regulatory oversight bodies, environmental protection agencies.
- The National Contact Points to the OECD Guidelines for MNEs are a State-based non-judicial mechanism through which issues can be raised about implementation of the OECD Guidelines for MNEs in specific instances. ▶*see Box 8*
- Operational level grievance mechanisms where they meet the core criteria of legitimacy, accessibility, predictability, equitability, compatibility with the OECD Guidelines for MNEs, transparency and being dialogue-based.
- Global Framework Agreements between companies and Global Trade Unions, multi-stakeholder grievance mechanisms, community grievance mechanisms, collective bargaining agreements, and enterprise supply chain grievance mechanisms are all examples of non-State-based processes that could enable remediation.

BOX 7. THE ROLE OF THE STATE TO ENSURE ACCESS TO EFFECTIVE REMEDY

As part of their duty to protect against enterprise-related human rights abuse, States must take appropriate steps to ensure, through judicial administrative, legislative or other appropriate means, that when such abuses occur within their territory and jurisdiction, those affected have access to effective remedy. The OECD Guidelines for MNEs are not meant to establish legal concepts around liability, including among enterprises. Domestic courts will use their own concepts and tests in considering accountability for harm and appropriate remedy. However, if enterprises choose to operate in countries where the State does not fulfil its Duty to Protect, this does not absolve the enterprise of its responsibility to provide remedy where an enterprise has caused or contributed to an adverse impact.

24. OECD (2011) Chapter, IV, Para. 46.

BOX 8. NATIONAL CONTACT POINTS OF THE OECD GUIDELINES FOR MNEs

The OECD Guidelines for MNEs have a built-in non-judicial grievance mechanism through the National Contact Points (NCPs). NCPs are established by Adherents to the OECD Investment Declaration. NCPs have the mandate of furthering the effectiveness of the OECD Guidelines for MNEs by: undertaking promotional activities, handling enquiries and contributing to the resolution of issues that arise relating to the implementation of the OECD Guidelines for MNEs in specific instances.* Any individual or organisation can bring a specific instance (case) against an enterprise to the NCP where the enterprise is operating or based regarding the enterprise's operations anywhere in the world. NCPs facilitate access to consensual and non-adversarial procedures, such as conciliation or mediation, to assist the parties in dealing with the issues. NCPs are required to issue final statements upon concluding the specific instance processes. NCPs can also make recommendations based on the circumstances of the specific instance.

**Specific instances is the term used in the Guidelines to describe practical issues that may arise with the implementation of the Guidelines.*

Q52. What does it mean to "cooperate with legitimate remediation mechanisms"?

▶*see Section II, 6.2*

If an enterprise may have caused or contributed to an adverse impact, the enterprise may engage with any of the various systems under Section II, 6.2(a)-(c) of the Guidance to determine whether it has caused or contributed to the adverse impact and to provide remedy in such cases.

However, if an enterprise has not caused or contributed to an adverse impact, but is rather directly linked to the impact, the enterprise may still take a role in remediation, despite not having an expectation to provide for remedy itself. For example, the enterprise may use its leverage, to the extent practicable, with its business relationship to compel the business relationship to participate in processes to provide for remedy. Where relevant, the enterprise may provide information which can facilitate investigations or dialogue.

Q53. In which circumstances are various processes to enable remediation appropriate?

▶*see Section II, 6.2*

The appropriate process to enable remediation will be dependent upon several factors including legal obligations, stakeholder preferences, availability of mechanisms, the nature of the adverse impact and where the adverse impact occurs (i.e. within the enterprise's own operations or its supply chain).

FOR EXAMPLE

- In some cases, enterprises may have an obligation to participate in state-based judicial grievance mechanisms or may be subject to criminal prosecution.
- Within an enterprise's own operations, operational-level grievance mechanisms can be an effective means of providing for such remediation when they meet the core criteria of: legitimacy, accessibility, predictability, equitability, compatibility with the OECD Guidelines for MNEs and transparency, and are based on dialogue and engagement with a view to seeking agreed solutions.[25]
- The options available may be more limited in relation to complaints that may be raised in an enterprise's supply chain (i.e. rather than its own operations). Enterprises may establish or participate in processes that are feasible and appropriate to their circumstances, whether that involves establishing their own supply chain grievance mechanism, participating in a multi-stakeholder grievance mechanism or joining a Global Framework Agreement.

Q54. What is the difference between an early warning system and a process to enable remediation? ▶*see Section II, 6.2*

The objective of an early warning system is to identify risks (or actual impacts) related to an enterprise's own activities or its business relationships.

FOR EXAMPLE, an enterprise might establish a worker hotline to provide an opportunity for workers to raise concerns about issues affecting their rights, such as health and safety conditions.

The objective of a process to enable remediation is to provide remedy to people who have been harmed.

FOR EXAMPLE, a worker may raise a complaint against management for unfair firing. The worker and the enterprise are brought together to determine an adequate remedy (e.g. reinstatement, compensation, etc.).

A single system – such as a grievance mechanism – can operate as both an early warning system and provide processes to enable remediation.

25. OECD (2011) Chapter, IV, Para. 46.

APPENDIX

RECOMMENDATION OF THE COUNCIL ON THE OECD DUE DILIGENCE GUIDANCE FOR RESPONSIBLE BUSINESS CONDUCT

As adopted on 30 May 2018

THE COUNCIL,

HAVING REGARD to Article 5 b) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

HAVING REGARD to the Declaration on International Investment and Multinational Enterprises [C(76)99/FINAL], the Decision of the Council on the OECD Guidelines for Multinational Enterprises [C(2000)96/FINAL] (hereafter the "Decision on the Guidelines"), the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the Recommendation of the Council on Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas [C/MIN(2011)12/FINAL], the Recommendation of the Council on the Policy Framework for Investment [C(2015)56/REV1], the Recommendation of the Council on the OECD-FAO Guidance for Responsible Agricultural Supply Chains [C(2016)83], the Recommendation of the Council on the Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector [C(2016)100] and the Recommendation of the Council on the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector [C(2017)63];

CONSIDERING that OECD Ministers encouraged the OECD to develop a set of general due diligence guidelines that can be applied to any sector [C/MIN(2017)9/FINAL];

RECALLING that the common aim of governments recommending the observance of the Guidelines for Multinational Enterprises (hereafter the "Guidelines") is to promote responsible business conduct;

RECALLING FURTHER that the Decision on the Guidelines provides that the Investment Committee shall, in co-operation with National Contact Points, pursue a proactive agenda in collaboration with stakeholders to promote the effective observance by enterprises of the principles and standards contained in the Guidelines with respect to particular products, regions, sectors or industries;

CONSIDERING the efforts of the international community to promote responsible business conduct globally in order to strengthen and harmonise the implementation of standards for human rights, labour, the environment, and anti-corruption and to support a level playing field for business that takes into account their impacts on society and the environment;

RECOGNISING that responsible business conduct across all sectors of the economy is critical to sustainable development;

NOTING that the Guidelines recommend that enterprises carry out risk-based due diligence to identify, prevent and mitigate actual and potential adverse impacts related to disclosure, human rights, employment and industrial relations, the environment, bribery and corruption, and consumer interests in their own operations, supply chains and other business relationships;

RECOGNISING that governments, enterprises, trade unions, civil society organisations and international organisations can draw on their respective competences and roles to promote and support responsible business conduct, including in supply chains;

HAVING REGARD to the OECD Due Diligence Guidance for Responsible Business Conduct [C(2018)42/ADD1] (hereafter "the Guidance"), that may be modified as appropriate by the Investment Committee, in particular as due diligence practices evolve and become more effective in avoiding and addressing adverse impacts on society and the environment;

HAVING REGARD to the United Nations' Guiding Principles on Business and Human Rights and the International Labour Organization's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy which contain due diligence recommendations with which this Guidance seeks to align;

RECOGNISING the valuable collaboration between the OECD and relevant intergovernmental organisations in the development and future implementation of the Guidance;

NOTING that due diligence is ongoing and responsive, involves multiple processes and objectives, should aim to prevent adverse impacts on society and the environment in the first instance, and should be risk-based, appropriate to an enterprise's circumstances, adapted to deal with the limitations of working with business relationships, and informed by meaningful engagement with stakeholders;

On the proposal of the Investment Committee;

I. RECOMMENDS that Members and non-Members adhering to this Recommendation (hereafter the "Adherents") and, where relevant, their National Contact Points to the Guidelines (hereafter the "NCPs"), actively promote the use of the Guidance by enterprises operating in or from their territories with the aim of ensuring that they observe internationally agreed standards of responsible business in order to prevent the adverse impacts of their activities and contribute to sustainable development;

II. RECOMMENDS, in particular, that Adherents take measures to actively support and monitor the adoption of the due diligence framework set out in the Guidance according to which the enterprises operating in or from their territories should:

1. embed responsible business conduct into their policies and management systems;
2. identify and assess actual and potential adverse impacts associated with their operations, products or services;
3. cease, prevent and mitigate adverse impacts;
4. track implementation and results;
5. communicate how impacts are addressed; and
6. provide for or cooperate in remediation when appropriate;

III. RECOMMENDS that Adherents and where relevant their NCPs, with the support of the OECD Secretariat, ensure the widest possible dissemination of the Guidance and its active use by enterprises, as well as promote the use of the Guidance as a resource for stakeholders such as industry associations, trade unions, civil society organisations, multi-stakeholder initiatives, and sector-initiatives, and regularly report to the Investment Committee on any monitoring, dissemination and implementation activities;

IV. INVITES Adherents and the Secretary-General to disseminate this Recommendation;

V. INVITES non-Adherents to take due account of and adhere to the present Recommendation;

VI. INSTRUCTS the Investment Committee to monitor the implementation of the Recommendation and to report to Council no later than five years following its adoption and as appropriate thereafter.

REFERENCES

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OECD DUE DILIGENCE GUIDANCE FOR RESPONSIBLE BUSINESS CONDUCT

The OECD Guidelines for Multinational Enterprises acknowledge and encourage the positive contributions that business can make to economic, environmental and social progress, and also recognise that business activities can result in adverse impacts related to workers, human rights, the environment, bribery, consumers and corporate governance.
This Guidance helps businesses to understand and implement due diligence for responsible business conduct. It also seeks to promote a common understanding on responsible business conduct amongst governments and stakeholders.

https://mneguidelines.oecd.org/

OECD