



BIAC SUBMISSION TO THE ANNUAL OECD ROUNDTABLE ON CORPORATE RESPONSIBILITY

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Good Public Governance Is a Prerequisite for FDI and Facilitates CR

1. FDI has a positive impact on host countries' economies due to the additional financial, technological and managerial resources associated to it. In addition, many foreign investors decide to engage on voluntary activities related to corporate responsibility (CR) in order to increase the benefits of FDI to the societies in which they operate. They are investing significant resources in policies such as fostering an atmosphere of trust between management and workers, protecting the environment, supporting national science and technology policies and engaging in community relations.

2. CR activities must not be misunderstood though as alternatives or substitutes for government action to promote the sustainable development of societies. Governments and businesses have distinct responsibilities which need to be clearly defined and kept separate.

3. The responsibility of companies is to efficiently provide goods and services to their customers and through this, yield adequate returns for their capital providers. When they engage in additional CR activities companies do this on a voluntary basis and because they believe it is good for their long-term competitiveness.

4. Governments need to provide a well functioning legal, political, social and economic environment in which companies can operate successfully. The quality of the business and investment environment provided by government is the precursor to investment (domestic and foreign) and investors' ability to pursue voluntary CR activities, not the other way round.

5. The importance of countries' positive approach to investment is currently being highlighted in the 'Policy Framework for Investment' initiative. This project, which is being developed by OECD and non-OECD countries in collaboration with the OECD business community, aims at promoting shared views among governments and the business community on what constitutes "good policies" for attracting foreign direct investment.

6. The discussion in the Meeting of the Task Force on the Policy Framework on 13 June confirmed again that an attractive investment environment includes ensuring government accountability and transparency, a rigorous enforcement of the rule of law, a strong commitment to fight bribe solicitation and corruption, liberal trade and investment regimes, labour market flexibility, human resource and infrastructure development and a level playing field between domestic and foreign investors.

7. Countries which are determined to provide such an investment environment are much better positioned to attract investment and to stimulate investors' CR activities that bring additional benefit to their societies than countries who fail to provide an attractive policy framework for investment.

The OECD Declaration and the Guidelines – A package that cannot be untied

8. The close relationship between government policies, FDI and CR described is also reflected in the OECD Declaration on International Investment and Multinational Enterprises.

9. The 30 OECD and 9 non-OECD countries that adhere to the Declaration commit themselves in particular to the two policy goals, which are of key importance for any government determined to provide a good environment for foreign investors. Adhering governments have agreed not to discriminate against multinational enterprises and to avoid imposing legal requirements on multinational companies that conflict with those of another Member country.

10. In turn, the countries adhering to the Declaration address through the OECD Guidelines for Multinational Enterprises recommendations for voluntary good corporate conduct to foreign investors that cover a broad range of corporate issues. In addition, they establish structures which – usually in co-operation with business – promote the Guidelines and their effective implementation into actual business practices.

11. The Guidelines are an integral part of the OECD Declaration from which they cannot be separated. Any government which would try to promote and implement the Guidelines without committing itself to a healthy investment regime would be unlikely to succeed in attracting FDI and stimulating FDI related CR activities.

The OECD MNE Guidelines – A valuable reference tool for business

12. Literally hundreds of CR guidelines, recommendations, principles and voluntary commitments have been developed so far. This vast variety of instruments reflects that there is no one-size fits all approach to CR. It leaves companies the necessary flexibility to use those tools which fit best their needs.

13. There are instruments that may more practically oriented than the OECD Guidelines for Multinational Enterprises and some might be better applicable for specific sectors or companies. However, the Guidelines are the cornerstone of CR.

14. Their particular value for multinational companies stems from the fact that they were drafted in close partnership with business, labour unions and NGOs and that they were endorsed by 39 governments from OECD and non-OECD countries. This strong backing gives the Guidelines a high credibility in the business community and hence practical relevance for company operations.

15. In addition, the Guidelines draw on a structure of National Contact Points (NCPs) established by governments that adhere to the OECD Declaration on International Investment and Multinational Enterprises. The task of the NCPs is to promote the Guidelines, to handle inquiries about their content and to contribute to the bona fide resolution of issues that arise relating to implementation of the Guidelines in practical cases (“specific instances”). In particular, NCPs are expected to offer a forum for confidential discussion and to assist the business community, employee organisations and other parties concerned in dealing with issues raised by interested parties.

16. About 95 requests to consider specific instances have been filed with NCPs since the Guidelines’ revision in 2000. The experience gained from the specific instances indicates that the Guidelines have served as an effective tool for resolving issues with companies. In the majority of the cases the allegations made against companies have either been found unsubstantiated or the parties involved agreed on how to solve the issue at stake. Therefore, the Guidelines are a valuable instrument that helps separating between relevant criticism and false allegations.

17. The bona fide nature of the Guidelines and the confidentiality of their implementation procedures are major “selling”-arguments to motivate companies to work closely with the

relevant National Contact Points. There have been cases where the confidentiality requirement was not respected by all parties involved. Labour unions and NGOs have occasionally used issues at stake in pending specific instances for public campaigns. This is detrimental though to the credibility and practical relevance of the guidelines among businesses. Therefore, NCPs must do whatever they can to preserve the confidential and bona fide nature of the Guideline implementation procedure.

18. The cases mentioned below exemplify how well functioning implementation procedures of the Guidelines can work for the benefit of companies that decide to cooperate with NCPs in the handling of specific instances:

Example 1

19. Two NGOs brought an issue to the attention of an NCP regarding the business conduct of the subsidiaries and partners of two national companies in a non-OECD country. Allegations were made by the NGOs that the subsidiary enterprises of the two national companies failed to observe the Guidelines in the area of human rights and environmental considerations.

20. The NCP took into consideration information from the NGOs, the companies concerned, a trade union, the national embassy in the host country and an NGO in the host country. The NCP also held several meetings with reference to the specific instances which included all parties concerned. Furthermore, the NCP, together with the two companies and the trade union, travelled to the area to further investigate the situation.

21. The NCP came to the conclusion that the companies have not failed to observe the OECD Guidelines. It encouraged them though to enhance the knowledge of the personnel employed at their subsidiaries about the Guidelines and concluded the proceeding.

Example 2

22. In many cases the role of the NCP successfully facilitates the dialogue between the parties concerned. One such case involved a company with its origin in a OECD country and an NGO. The NGO brought to the attention of the NCP allegations of corporate misconduct and non-observance of the Guidelines in the form of insufficiently respected labour rights in one of the company's factories in a non-OECD country.

23. The NCP invited both parties individually to clarify their points of view and subsequently organised a meeting between the two parties and the NCP for an open dialogue. The two parties agreed upon better transparency by the company and continuing external monitoring, disclosure and verification. They also agreed that communication in the future should be improved and both parties welcomed the opportunity the NCP had given for a constructive discussion and a furthering of information exchange between industry and NGOs. The NCP stepped back at this point but may be asked to step back in by either the company or the NGO in the event that communication between them breaks down.

Business support for the Guidelines' promotion

24. Since the revision of the Guidelines in 2000 the OECD business community was actively involved in promoting awareness about and effective implementation of the Guidelines. BIAAC members have appointed experts who act as focal points for the Guidelines. Through seminars and conferences, web-links, publications and co-operation with investment promotion agencies BIAAC members have continuously informed about the content of the Guidelines. In addition, they have been very active in assisting companies which are confronted with specific instances. The BIAAC Secretariat has installed a webpage link containing promotional material and started publishing the Guidelines 'Business Brief' on various procedural and substantive issues related to the Guidelines.

25. In an attempt to adapt the use of the Guidelines against Bribe Solicitation, BIAAC has been promoting the Guidelines as an instrument with a high potential in the future. Together with interested Members of the OECD Working Group on Bribery BIAAC has set up a 'Joint Task Force on Bribe Solicitation' whose work BIAAC is co-ordinating. The Task Force has met twice since October 2004 and BIAAC is currently conducting a survey on mechanisms in OECD countries that companies can use if they are faced with bribe solicitation. The goal is to compile an inventory that helps to increase countries' and companies' awareness about mechanisms available and to arrange an easily accessible information venue for companies to use when faced with bribe solicitation.

Challenges regarding the application of the Guidelines in non-adhering countries

26. The principles for voluntary good business conduct expressed by the Guidelines are relevant for the world-wide activities of foreign investors. However, the Guidelines always have to be seen in the context of the local environment in which the firms operate.

27. The implementation of the Guidelines into business practice in developing and emerging countries is often challenging. In many countries outside the OECD foreign investors operate in legal, economic, social and political environments which are less conducive to core business activities and to possible additional CR activities than in developed countries.

28. Governments and civil society should therefore not create unrealistic expectations as regards CR in developing countries. Companies may find it difficult to increase or maintain their operations, which are beneficial to the host countries, when they are confronted with too high expectations.

29. Meeting high standards of business integrity and CR is particularly a challenge in weak governance zones (WGZ). WGZ are countries or regions where the functioning of even the basic legal, political, social and economic infrastructure is limited. In these zones businesses need practical assistance which helps them to operate with integrity and to promote the goals of CR in the host societies. Therefore, the OECD business community has asked the OECD to collaborate with other international organizations such as the World Bank in order to explore development of a pilot instrument for the dissemination of practical information on doing business in weak governance zones. The information provided would also have to help in clarifying the very distinct roles companies and governments have to play in WGZ. BIAAC would view this undertaking as a positive commitment by the OECD Governments to build a partnership to develop a positive approach regarding business integrity and CR in WGZ.