



NORGES BANK
INVESTMENT MANAGEMENT

Organisation for Economic Co-operation and Development
(OECD)
Investment Division, Directorate for Financial and Enterprise Affairs

Delivered via e-mail: investment@oecd.org

Date: 06.02.2017
Your ref.: [Reference]
Our ref.: RUR

Response to the public consultation on the OECD Due Diligence Guidance for Responsible Business Conduct and the Due Diligence Companion

Thank you for the opportunity to provide comments to the OECD's consultation on the Due Diligence Guidance for Responsible Business Conduct (**the Guidance**) and the Due Diligence Companion (**the Companion**).

Norges Bank Investment Management is the investment management division of the Norwegian Central Bank and is responsible for investing the Norwegian Government Pension Fund Global. As of 30 September 2016, the fund was invested in USD 892 billion of assets globally.

As a financial investor and minority shareholder in more than 9,000 companies globally, we support the development of sustainability and corporate governance standards and practices at international and market levels, and seek to promote adherence to recognised international principles. The UN Global Compact, the UN Guiding Principles on Business and Human Rights (UNGP), the G20/OECD Principles of Corporate Governance and the OECD Guidelines for Multinational Enterprises are important foundational principles and points of reference for good practice. We aim to base our practices on such principles and expect the companies we invest in to strive to apply them.

We wish to take this opportunity to express our support of how the OECD, in order to promote the effective observance of the Guidelines for Multinational Enterprises (**the Guidelines**), has developed practical sectoral guidance concerning responsible business conduct to help companies apply the Guidelines, and how it has now undertaken to provide such practical guidance at a general level. We believe the Guidance, written in plain language and including examples of good practices, can provide valuable practical support to companies in their application of the Guidelines.

We would nevertheless emphasise that such guidance should be explanatory in style, and careful to draw distinctions between expectations and examples of best practice. The Guidance would be additional to existing sector guidance and the commentaries of the Guidelines. Notwithstanding the

Norges Bank Investment Management is a part of Norges Bank – The Central Bank of Norway

POSTAL ADDRESS
P.O. Boks 0179 Sentrum,
NO-0107 Oslo

OFFICE ADDRESS
Bankplassen 2,
Oslo, Norway

Tel. +47 24 07 30 00
Fax +47 24 07 30 01
Web www.nbim.no

Registration of
Business Enterprises
NO 937 884 117 MVA



breadth and complexity of issues a general guidance should cover, we believe that the present draft may be made more impactful if it were more concise.

Ensure alignment of text with other guidance documents

The OECD confirms that the sectoral guidance, and the Guidance drawn from the due diligence approaches contained in these, should not create any new responsibilities or recommendations in addition to those in the Guidelines. Further, the Guidance is not intended to reinterpret the Guidelines. It is important that the Guidance therefore does not use language that is unnecessarily loose when discussing central concepts in the Guidelines and that examples are carefully chosen to best exemplify issues of general interest.

Norges Bank Investment Management has been part of the Advisory Group supporting the OECD in its work on developing guidance for the financial sector. The Advisory Group has given input to the drafting of the OECD paper on responsible business conduct for institutional investors. In this instance, we would like to highlight two mentions in the draft Guidance:

- The OECD Working Party on Responsible Business Conduct has previously opined that “[...] A minority shareholding can therefore in principle be seen as a business relationship under the Guidelines, even if this is not spelled out in the text of the Guidelines itself.” The associated question of ‘directly linked’ in the context of financial investors, for instance diversified investment managers which hold minority shareholdings in listed companies, has nevertheless not been authoritatively clarified by the OECD. During the work in the Advisory Group, we have held that such further clarification would be helpful. We believe this is particularly important as neither the OECD Guidelines nor the UN Guiding Principles on Business and Human Rights were developed with such relationships in mind. On this background, we would suggest that the specific mention of “minority investments” under “scope of this Guidance” is either removed, somehow qualified or generalised to “investments”.
- The relationship between an investor, through ownership of shares bought in a secondary market, and an investee company, is different from supply or other value chain relationships. There is for one, no direct tie, operationally or contractually, between investor and investee company. During the work of the Advisory Group, we emphasised the importance of giving an accurate representation of the agents responsible for corporate decision making and change – and how these are held accountable by shareholders. On this basis, we think that the mention of minority investors as one of two examples under leverage on page 21 of the draft Guidance should be removed. Investments in listed companies do not typically involve the elements mentioned in this section about the potential for creating leverage, such as “contractual arrangements, pre-qualification requirements, voting trusts, licence or franchise agreements” and we therefore believe relevant context to be missing in the paragraph. In a general guidance document such as this one, we believe more straightforward examples of the concept of leverage and its potential dynamics would be more purposeful.



Effective corporate governance anchored at board level is a prerequisite for responsible business conduct

The G20/OECD Principles of Corporate Governance are the governance basis the Guidelines are premised on. The Guidance makes a general reference to the governance principles and the interlinks between the two sets of guidelines, as well as specific reference to the disclosure recommendations of the governance principles.

When referring to the assignment of board level responsibilities as a key action for embedding responsible business conduct into policy and management systems, we recommend the Guidance include text from the governance principles directly and not only as a footnote reference. Additionally, we also believe the importance of an efficient corporate governance system for responsible business conduct should be further emphasised in the Guidance. Including relevant text from the governance principles directly may be one means of achieving this.

The relevance of materiality to responsible business conduct

As stated in the Guidance, due diligence can be included within broader enterprise risk management systems, provided that it goes beyond simply identifying and managing material risks to the enterprise itself to include the risks of harm related to matters covered by the Guidelines. The risk of adverse impacts is a starting point for understanding responsible business conduct as this is laid out in the Guidelines.

When it comes to how companies could communicate how it has addressed adverse impacts, the Guidance suggests that companies could disclose timely and accurate information on all material matters regarding their activities, structure, financial situation, performance, ownership and governance as set out in the Guidelines and in the OECD Principles of Corporate Governance.

We believe the Guidance would benefit from being clearer on what is meant by material matters. At least, the Guidance should remind the reader that materiality in this instance may not be limited to what are material risks to the business in a strict financial sense. This may be of particular relevance when talking about human rights, even if disclosure practices on such matters is an emerging field, and may involve real dilemmas or at times be sensitive.

Salient issues and the UN Guiding Principles on Business and Human Rights

When the Guidelines were updated in 2011, a new chapter on human rights was added. This was aligned with the UN Guiding Principles on Business and Human Rights (UNGPs) and reinforced procedures for addressing human rights violations. In relation to human rights impacts, therefore, the Guidance seeks to align with the UNGPs, as well as the ILO Declaration on Fundamental Principles and Rights at Work, relevant ILO Conventions and Recommendations, and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.

The Guidelines recommend enterprises to prioritise potentially severe adverse impacts. Further guidance for identifying what severity means have been developed under the UNGPs and centre around the concept of salient issues, i.e. human rights at risk of the most severe negative impacts through an enterprise's activities. The Guidance recommends that enterprises should seek to



prioritise the most severe impacts for action first, but makes mention of salient issues only once in the document (page 20) and then with no direct reference to the UNGPs. We think that the Guidance may benefit from introducing the concept of salient issues earlier in the document and that this could include a mention of how the severity of impacts may be assessed by their scale, scope and irremediable nature.

Finally, we would like to take this opportunity to mention that at present, there is significant heterogeneity in the organisation and functioning of the national contact points (NCPs). Norges Bank Investment Management, as a global investor, supports the OECDs ambition to achieve a uniform application of the Guidelines across all national NCPs in instances where enterprises may be responsible for or contribute to adverse impacts and where mediation is needed. Particularly instances in supply or other value chains may have challenging cross-border dimensions. The basic principle, as we understand it, is that specific complaints concerning a company's responsibility for or contribution to an adverse impact must first be addressed by that company's "home NCP". We believe that practical guidance on such issues would enhance the NCP mediation process, and further promote widespread and consistent application of the Guidelines by relevant parties.

Yours sincerely,

Petter Johnsen

CIO Equity Strategies

Runa Urheim

Senior Analyst Ownership Strategies