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Council

OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES: UPDATE 2011

(Note by the Secretary-General)

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1. The OECD Guidelines for Multinational Enterprises (hereafter “the Guidelines”) form part of the OECD Declaration on International Investment and Multinational Enterprises (hereafter “the Declaration”). Since the adoption of the Declaration in 1976, the OECD has promoted international co-operation on investment policy through a balanced framework of principles and standards addressed to governments and enterprises. The other elements of the Declaration contain commitments by governments to provide national treatment for foreign-controlled enterprises, to avoid conflicting requirements on enterprises and to cooperate regarding investment incentives and disincentives. As part of a Review of the Guidelines in 2000, the Council adopted the Decision on the OECD Guidelines for Multinational Enterprises (hereafter “the Decision”), establishing the system of National Contact Points in each adhering country to promote the Guidelines, respond to enquiries and contribute to the resolution of issues relating to the implementation of the Guidelines in specific instances.

2. The Declaration and Guidelines have attracted wide support from non-Members: eight non-OECD Members (Argentina, Brazil, Egypt, Morocco, Latvia, Lithuania, Peru and Romania) have adhered to the Declaration and a number of others have recently requested to adhere (Costa Rica, Colombia, Jordan, Serbia, Tunisia and Ukraine).

3. The Guidelines are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. They provide non-binding principles and standards for responsible business conduct in a variety of areas, consistent with applicable laws and internationally recognised standards. Attached to the Guidelines is a unique implementation and grievance mechanism that can assist enterprises and their stakeholders in resolving practical issues related to recommendations contained in the Guidelines. The Guidelines are the only multilaterally agreed and comprehensive code of responsible business conduct that governments have committed to promoting. The Guidelines’ recommendations express the shared values of the governments of the countries from which a large share of international direct investment originates and which are home to many of the largest multinational enterprises. The Guidelines aim to promote positive contributions by enterprises to economic, environmental and social progress.

4. Since the Review of the Guidelines in 2000, the landscape for international investment and multinational enterprises has continued to change rapidly. The world economy is built around new and more complex patterns of production and consumption. Non-OECD countries are attracting a larger share of world investment and multinational enterprises from non-adhering countries have grown in importance. At the same time, the financial and economic crisis and the loss of confidence in open markets, the need to address climate change, and reaffirmed international commitments to development goals have prompted renewed calls from governments, the private sector and social partners for high standards of responsible business conduct.

5. Accordingly, at the 2009 Ministerial Council Meeting of 24-25 June 2009, Ministers welcomed further consultation on the updating of the Guidelines to increase their relevance and clarify private sector responsibilities, and, on 4 May 2010, the forty-two adhering governments to the Declaration agreed on the terms of reference for carrying out an update of the Guidelines [DAF/INV(2010)5/FINAL]. The agreed purpose of the update was to ensure the continued role of the Guidelines as a leading international instrument for the promotion of responsible business conduct.

6. At the 2010 Ministerial Council Meeting of 27-28 May 2010, Ministers welcomed the formal launch of the update of the Guidelines and noted the important role they play in contributing to responsible business conduct and, thus, to broad societal support for open markets [C/MIN(2010)6/FINAL, paragraph 12.6].

7. The update of the Guidelines has enjoyed a high level of sustained involvement and support by many parties. It has been given high priority over the last year by the Investment Committee, its Working Party and seven other actively involved OECD bodies.¹ A transparent, participatory and inclusive consultation process was held throughout the update to solicit the inputs of the business community, labour representatives, non-governmental organisations as well as of non-member governments and international organisations. In this regard, it can be noted that multi-stakeholder consultations were held in 2009 and 2010. Representatives from non-adhering countries, China, India, Indonesia, the Russian Federation, Saudi Arabia and South Africa were invited to become full participants in the update process [C(2010)150]. The United Nations Secretary-General's Special Representative for Business and Human Rights and the International Labour Organisation provided essential inputs to the development of the revised text of the Guidelines.

8. The proposed updates to the Guidelines were developed in the Working Party of the Investment Committee (in which the non-Member adherents to the Declaration are full participants) and, on 29 April 2011, were approved by the adhering governments meeting in the Investment Committee in enlarged session.

9. The scope of the Guidelines has been broadened by a new chapter on human rights and by the important updates made to other chapters of the Guidelines, including the alignment of the chapter on Employment and Industrial Relations with the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy and the integration in the chapter on Bribery and Combating Corruption of the principles set out in the OECD Good Practice Guidance on Internal Controls, Ethics and Compliance [part of the Recommendation of the Council on Further Combating Bribery in International Business Transactions, C(2010)159/REV1/FINAL]. The proposed updates to the General Policies Chapter clarify the application of the Guidelines to the issue of responsible management of supply chain relationships.

10. The updates to the Decision and the attached Procedural Guidance strengthen the implementation procedures of the Guidelines, foster functional equivalence and further enhance the role of National Contact Points as the key government institution for furthering the effective implementation of the Guidelines. The agreement to reinforce peer learning among National Contact Points is particularly welcome.

11. The update also further enhances the role of the Investment Committee. It calls upon the Committee to engage with non-adhering countries on matters covered by the Guidelines in order to create a level playing field and to co-operate with those non-adhering countries that have expressed a particular interest in promoting the principles and standards of the Guidelines. It also invites the Committee to continue to work closely with stakeholders and partner organisations. Finally, the Committee will pursue a proactive agenda to promote the effective observance by enterprises of the principles and standards contained in the Guidelines and to encourage the positive contributions that multinational enterprises can make, in the context of the Guidelines, to economic, environmental and social progress. Adhering governments will be expected to make available the necessary resources for the implementation of the Guidelines in accordance with their budget priorities and processes.

12. The amendments to the Guidelines will be adopted by adherents to the Declaration and the Council is called upon to adopt the amendments to the Decision.

¹ The Committee on Corporate Governance, the Employment and Social Affairs Committee, the Environment Policy Committee, the Working Group on Bribery in International Business Transactions, the Consumer Policy Committee, the Competition Committee and the Committee on Fiscal Affairs.

Proposed Action

13. In the light of the preceding, the Secretary-General invites the Council to adopt the following draft conclusions:

THE COUNCIL

- a) noted documents C(2011)59 and ADD1;
- b) welcomed the amendments to the Guidelines for Multinational Enterprises adopted by governments adhering to the Declaration on International Investment and Multinational Enterprises, as set out in Appendix II to C(2011)59;
- c) adopted the amended Decision on the OECD Guidelines for Multinational Enterprises, as set out in Appendix III to C(2011)59.

APPENDIX I

REPORT OF THE CHAIR OF THE WORKING PARTY OF THE INVESTMENT COMMITTEE ON THE UPDATE OF THE GUIDELINES FOR MULTINATIONAL ENTERPRISES

The update of the Guidelines was an open and inclusive process that benefitted from the active participation of the 42 adhering governments; BIAC, TUAC and OECD Watch; several non-adhering countries; officials from the International Labour Organisation and other UN organisations; seven OECD policy bodies and their Secretariats and countless support staff and numerous subject-specific experts. The extensive involvement of Professor Ruggie, UN Special Representative on Business and Human Rights, is particularly noteworthy. The update also drew on contributions made in the context of numerous general and subject-specific consultations.

I wish to thank everyone involved in the process for their persistence, contributions and support during the negotiations. The outcome of this collective effort is something of which we can all be proud. The updated Guidelines are a balanced package that will consolidate and reinforce the Guidelines' position as the world's foremost, government-backed instrument for responsible business conduct. Achievements include:

- ***A new human rights chapter.*** The new human rights recommendations benefitted greatly from the work of the UN Special Representative on business and human rights and are in line with the *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*.
- ***A new approach to due diligence and supply chain.*** The new recommendations adopt a more sophisticated approach to responsible supply chain management and represent significant progress relative to earlier concepts.
- ***Important changes in some of the specialised chapters.*** The updated chapter on Employment and Industrial Relations has been aligned with the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. In this regard it is noted that, for example, recommendation 4b is derived from the ILO MNE Declaration. In interpreting this recommendation, the ILO context and developed practices regarding this provision should be taken into account. The chapter on "Combating Bribery, Bribe Solicitation and Extortion" enlarges the scope of the chapter by including acceptance of bribes, private-to-private bribery, discouraging facilitation payments, and enhanced recommendations on compliance systems. Important changes have been made to the chapter on "Environment". The "Consumer Interests" chapter highlights the importance of sustainable consumption and consumer education. Useful clarifications have been added to the "Disclosure" and "Taxation" chapters.
- ***Clearer and reinforced procedural guidance.*** The new implementation procedures clarify the roles of National Contact Points (NCPs), reinforce the principle of functional equivalence, provide more

specific guidance on the structure of National Contacts Points, and strengthen peer learning. They also preserve the Guidelines' problem-solving character and reinforce the proactive agenda for implementation (that is, governments' active assistance and support for responsible business conduct).

The updated Guidelines will require changes to policies and practices by adhering countries and multinational enterprises. At the OECD, there is an informal understanding that, when a legal instrument is adopted or revised, a reasonable length of time – approximately six months – is needed in order to implement its provisions. In addition, it is important to note that the revisions to the Guidelines do not have retroactive application.

With respect to the updated chapter on “Taxation”, I have taken note of Brazil's position that its domestic legislation regarding tax issues shall prevail for Brazilian authorities and enterprises domiciled in Brazil in the implementation of the Guidelines. Brazil further states that its position should be seen in conjunction with the footnote in Commentary paragraph 106.

I would like to reiterate that the Guidelines state that governments adhering to the Guidelines should not use them for protectionist purposes nor use them in a way that calls into question the comparative advantage of any country where multinational enterprises invest.

I took note of the fact that some countries interpret Internet freedom as freedom of expression, assembly and association online in the internet. Besides, Brazil pointed out that some important principles which may regard this issue are individual privacy, network neutrality, cultural diversity and innovation.

I also note that some NCPs, in the context of making recommendations at the conclusion of a specific instance procedure, have expressed a view regarding an enterprise's observance of the Guidelines. Other NCPs have focused exclusively on future-oriented recommendations to encourage enterprises to more effectively implement the Guidelines.

Many delegations stressed during the discussions of the new recommendation on stakeholder consultations (Chapter II.A14) that consultations with indigenous peoples may pose special challenges and, for this reason, may require special care. Other delegations emphasised that the groups cited in paragraph 40 of the human rights commentary might also require special care in the context of consultations.

The update also raised new issues and highlighted the need for further work in several areas. In my view, the following areas would be particularly worthy of additional work:

- ***Reference instruments and initiatives.*** During the negotiations, it became apparent that the number of instruments and initiatives that are relevant to the Guidelines far surpasses the possibility for introducing explicit references to them in the texts of the Guidelines. For this reason, there is general agreement that, as part of follow up on the updated Guidelines, a resource document be compiled bringing together descriptions and links to all of these references and initiatives. The exact scope and form of this document would be determined by the Investment Committee at a future date. The Box contains a preliminary, non-exhaustive list of references and initiatives that we agreed are useful for clarifying aspects of the Guidelines and their implementation procedures and that could be included in this resource document.
- ***Supply chains and due diligence.*** The terms of reference for the update call for an exploration of the merits of making due diligence one of the general operational principles of Chapter II of the Guidelines (General Policies) taking into account leading businesses' experiences. The discussion of all the complex issues surrounding the supply chains and due diligence recommendations had

not sufficiently matured. In order to reach a compromise, we “carved out” certain subject areas from the scope of these recommendations. Recognising that thinking in this area is very much in a state of flux, the Working Party has agreed to do further analytical work on the added value of bringing the excluded subject matters -- competition, science and technology and taxation -- back into the scope of the supply chain and due diligence recommendations.

- ***Exploring the Benefits of Deepening Cooperation with National Human Rights Institutes.*** National Human Rights Institutes (NHRIs) are independent bodies established by national governments for the purpose of advancing and defending human rights at the domestic level. Professor Ruggie suggested the NHRIs might have a role in implementing his *Guiding Principles*. A number of these institutes provided expert advice on the updates of the Guidelines and proposed that their work be acknowledged in the Guidelines and that they possibly be integrated into the implementation procedures as partner organisations. In my view, the Investment Committee should explore the potential benefits of doing this as well as institutional modalities for deepening cooperation with them.
- ***Relevance of the Guidelines for the financial sector.*** The terms of reference for the update foresaw work on the “application of the Guidelines to multinational financial institutions”. Due to time constraints, the treatment of this issue in the updated text is limited to a short reference in the commentary on General Policies. During the update, there was a general understanding that was in line with earlier conclusions, reached at the 2007 Corporate Responsibility Roundtable, that the Guidelines are addressed *inter alia* to multinational enterprises operating in the financial sector. I would advocate undertaking further work in this area as part of the proactive agenda for Guidelines implementation, in close co-operation with the relevant parties, such as the International Finance Corporation, the UN Principles for Responsible Investment, the UN Environment Programme Finance Initiative the Equator Principles, and the team of Professor Ruggie. The practical meaning of the Guidelines’ due diligence recommendations for the financial sector has been identified as a theme deserving serious attention and there has been demand for future work in this area from the financial sector representatives with whom we consulted.
- ***Other sectoral issues.*** Other sectoral issues, including extractive industry transparency and responsible investment in agriculture, also received considerable attention during the update. The OECD investment policy community has already worked on these issues. Most recently, it has supported extractive industry transparency by adopting the *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict Affected and High Risk Areas*. Further work on mineral supply chains and responsible investment in agriculture is already being undertaken in the context of various OECD investment initiatives.
- ***Level playing field and outreach.*** In order to create a level playing field, I would encourage the Investment Committee to intensify co-operation with emerging economies that do not currently adhere to the Guidelines. It will be particularly important to establish effective co-operation with the many significant initiatives for responsible business conduct that are being developed in these countries with a view to furthering the exchange of ideas and developing synergies between these initiatives and Guidelines implementation. The networks of our stakeholders will be a significant resource for deepening our contacts with these countries.

To conclude, adhering countries can be proud of the improvements made during the update. Now, implementation will be a key element for the continued success of the Guidelines. In this light, I would urge the OECD, NCPs and our stakeholders to actively promote the updated Guidelines.

Box: Preliminary List of Reference Instruments and Initiatives²

General Policies:

- United Nations Global Compact
- International Organization for Standardization, ISO 26000 : 2010, Guidance on Social Responsibility
- International Financial Corporation Policy and Performance Standards on Social and Environmental Sustainability (last revised in 2006; currently being updated)
- Equator Principles (2003, 2006)
- United Nations Principles of Responsible Investment (2005)

Disclosure:

- OECD Principles of Corporate Governance
- OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones
- OECD Guidelines for Pension Fund Governance (2009) and related OECD Recommendation [C(2009)57]
- Global Reporting Initiative (GRI)
- Initiative on company payments to governments of host countries:
 - Extractive Industry Transparency Initiative (EITI)
 - Joint work of the OECD Committee on Fiscal Affairs and Development Assistance Committee informed by the outputs from the Informal Task Force on Tax and Development; and
 - Future guidance from other bodies, including the International Accounting Standards Board.

Human Rights:

- International Bill of Human Rights:
 - Universal Declaration of Human Rights
 - International Covenant on Civil and Political Rights
 - International Covenant on Economic, Social and Cultural Rights
- United Nations Guiding Principles on Business and Human Rights
- United Nations Declaration on the Rights of Indigenous Peoples
- United Nations Convention on the Rights of Children
- Voluntary Principles on Security and Human Rights

Employment and Industrial Relations:

- International Labour Organization Declaration on Fundamental Principles and Rights at Work
- Principles concerning fundamental rights in the eight ILO core conventions, as set out in the

²

This list is a preliminary, non-binding and non-exhaustive list of instruments and initiatives, which will be included in the resource document to be compiled after the Update. Some of these instruments and initiatives are referenced in the Commentaries to the Guidelines. This list is without prejudice to the positions of adhering countries in relation to these instruments and initiatives.

Declaration on Fundamental Principles and Rights at Work

Environment:

- Rio Declaration on Environment and Development and Agenda 21
- Copenhagen Declaration on Social Development
- United Nations Framework Convention on Climate Change
- United Nations Environment Program Finance Initiative (UNEP FI)
- International treaties on Persistent Organic Pollutants
- United Nations Millennium Declaration
- Convention on Biological Diversity
- ADEME Bilan Carbone
- Standards of the International Organization for Standardization (ISO)
- Greenhouse Gas Protocol Initiative

Combating Bribery, Bribe Solicitation and Extortion:

- OECD Good Practice Guidance on Internal Controls, Ethics and Compliance and related OECD Recommendation [C(2009)159/REV1/FINAL]

Consumer Interests:

- OECD Recommendation on Principles and Good Practices for Financial Education and Awareness [C(2005)55/REV1]
- OECD Recommendations on Good Practices for Enhanced Risk Awareness and Education on Insurance Issues [C(2008)22], on Good Practices for Financial Education Relating to Private Pensions [C(2008)23] and on Good Practices on Financial Education and Awareness Relating to Credit [C(2009)62]; Consumer Education: Policy Recommendations of the OECD's Committee on Consumer Policy (2009)
- OECD Guidelines Governing the Protection of Privacy and Trans-border Flows of Personal Data (1980) and related OECD Recommendation [C(80)58/FINAL]
- OECD Guidelines for the Security of Information Systems and Networks: Towards a Culture of Security (2002) and related OECD Recommendation [C(2002)131]
- OECD Anti-Spam Toolkit of Recommended Policies and Measures (2006)
- OECD Guidelines for Consumer Protection in the Context of Electronic Commerce (1999) and related OECD Recommendation [C(99)184/FINAL]
- Seoul Declaration for the Future of the Internet Economy
- United Nations Guidelines on Consumer Policy (1999)
- Other initiatives of the OECD Committee on Consumer Policy, the OECD Committee on Financial Markets and other international organisations such as the International Chamber of Commerce, the International Organization for Standardization and the United Nations

Taxation:

- OECD Model Tax Convention on Income and on Capital
- OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
- United Nations Model Double Taxation Convention between Developed and Developing Countries

APPENDIX II

PROPOSED AMENDMENT OF ANNEX I OF THE DECLARATION ON INTERNATIONAL INVESTMENT AND MULTINATIONAL ENTERPRISES [C(76)99/FINAL AS AMENDED]

OECD Guidelines for Multinational Enterprises: Recommendations for responsible business conduct in a global context

Preface

1. The *OECD Guidelines for Multinational Enterprises* (the *Guidelines*) are recommendations addressed by governments to multinational enterprises. The *Guidelines* aim to ensure that the operations of these enterprises are in harmony with government policies, to strengthen the basis of mutual confidence between enterprises and the societies in which they operate, to help improve the foreign investment climate and to enhance the contribution to sustainable development made by multinational enterprises. The *Guidelines* are part of the *OECD Declaration on International Investment and Multinational Enterprises* the other elements of which relate to national treatment, conflicting requirements on enterprises, and international investment incentives and disincentives. The *Guidelines* provide voluntary principles and standards for responsible business conduct consistent with applicable laws and internationally recognised standards. However, the countries adhering to the *Guidelines* make a binding commitment to implement them in accordance with the *Decision of the OECD Council on the OECD Guidelines for Multinational Enterprises*. Furthermore, matters covered by the *Guidelines* may also be the subject of national law and international commitments.
2. International business has experienced far-reaching structural change and the *Guidelines* themselves have evolved to reflect these changes. With the rise of service and knowledge-intensive industries and the expansion of the Internet economy, service and technology enterprises are playing an increasingly important role in the international marketplace. Large enterprises still account for a major share of international investment, and there is a trend toward large-scale international mergers. At the same time, foreign investment by small- and medium-sized enterprises has also increased and these enterprises now play a significant role on the international scene. Multinational enterprises, like their domestic counterparts, have evolved to encompass a broader range of business arrangements and organisational forms. Strategic alliances and closer relations with suppliers and contractors tend to blur the boundaries of the enterprise.
3. The rapid evolution in the structure of multinational enterprises is also reflected in their operations in the developing world, where foreign direct investment has grown rapidly. In developing countries, multinational enterprises have diversified beyond primary production and extractive industries into manufacturing, assembly, domestic market development and services.

Another key development is the emergence of multinational enterprises based in developing countries as major international investors.

4. The activities of multinational enterprises, through international trade and investment, have strengthened and deepened the ties that join the countries and regions of the world. These activities bring substantial benefits to home and host countries. These benefits accrue when multinational enterprises supply the products and services that consumers want to buy at competitive prices and when they provide fair returns to suppliers of capital. Their trade and investment activities contribute to the efficient use of capital, technology and human and natural resources. They facilitate the transfer of technology among the regions of the world and the development of technologies that reflect local conditions. Through both formal training and on-the-job learning enterprises also promote the development of human capital and creating employment opportunities in host countries.
5. The nature, scope and speed of economic changes have presented new strategic challenges for enterprises and their stakeholders. Multinational enterprises have the opportunity to implement best practice policies for sustainable development that seek to ensure coherence between economic, environmental and social objectives. The ability of multinational enterprises to promote sustainable development is greatly enhanced when trade and investment are conducted in a context of open, competitive and appropriately regulated markets.
6. Many multinational enterprises have demonstrated that respect for high standards of business conduct can enhance growth. Today's competitive forces are intense and multinational enterprises face a variety of legal, social and regulatory settings. In this context, some enterprises may be tempted to neglect appropriate principles and standards of conduct in an attempt to gain undue competitive advantage. Such practices by the few may call into question the reputation of the many and may give rise to public concerns.
7. Many enterprises have responded to these public concerns by developing internal programmes, guidance and management systems that underpin their commitment to good corporate citizenship, good practices and good business and employee conduct. Some of them have called upon consulting, auditing and certification services, contributing to the accumulation of expertise in these areas. Enterprises have also promoted social dialogue on what constitutes responsible business conduct and have worked with stakeholders, including in the context of multi-stakeholder initiatives, to develop guidance for responsible business conduct. The *Guidelines* clarify the shared expectations for business conduct of the governments adhering to them and provide a point of reference for enterprises and for other stakeholders. Thus, the *Guidelines* both complement and reinforce private efforts to define and implement responsible business conduct.
8. Governments are co-operating with each other and with other actors to strengthen the international legal and policy framework in which business is conducted. The start of this process can be dated to the work of the International Labour Organisation in the early twentieth century. The adoption by the United Nations in 1948 of the Universal Declaration of Human Rights was another landmark event. It was followed by the ongoing development of standards relevant for many areas of responsible business conduct – a process that continues to this day. The OECD has contributed in important ways to this process through the development of standards covering such areas as the environment, the fight against corruption, consumer interests, corporate governance and taxation.
9. The common aim of the governments adhering to the *Guidelines* is to encourage the positive contributions that multinational enterprises can make to economic, environmental and social

progress and to minimise the difficulties to which their various operations may give rise. In working towards this goal, governments find themselves in partnership with the many businesses, trade unions and other non-governmental organisations that are working in their own ways toward the same end. Governments can help by providing effective domestic policy frameworks that include stable macroeconomic policy, non-discriminatory treatment of enterprises, appropriate regulation and prudential supervision, an impartial system of courts and law enforcement and efficient and honest public administration. Governments can also help by maintaining and promoting appropriate standards and policies in support of sustainable development and by engaging in ongoing reforms to ensure that public sector activity is efficient and effective. Governments adhering to the *Guidelines* are committed to continuous improvement of both domestic and international policies with a view to improving the welfare and living standards of all people.

I. Concepts and Principles

1. The *Guidelines* are recommendations jointly addressed by governments to multinational enterprises. They provide principles and standards of good practice consistent with applicable laws and internationally recognised standards. Observance of the *Guidelines* by enterprises is voluntary and not legally enforceable. Nevertheless, some matters covered by the *Guidelines* may also be regulated by national law or international commitments.
2. Obeying domestic laws is the first obligation of enterprises. The *Guidelines* are not a substitute for nor should they be considered to override domestic law and regulation. While the *Guidelines* extend beyond the law in many cases, they should not and are not intended to place an enterprise in situations where it faces conflicting requirements. However, in countries where domestic laws and regulations conflict with the principles and standards of the *Guidelines*, enterprises should seek ways to honour such principles and standards to the fullest extent which does not place them in violation of domestic law.
3. Since the operations of multinational enterprises extend throughout the world, international co-operation in this field should extend to all countries. Governments adhering to the *Guidelines* encourage the enterprises operating on their territories to observe the *Guidelines* wherever they operate, while taking into account the particular circumstances of each host country.
4. A precise definition of multinational enterprises is not required for the purposes of the *Guidelines*. These enterprises operate in all sectors of the economy. They usually comprise companies or other entities established in more than one country and so linked that they may co-ordinate their operations in various ways. While one or more of these entities may be able to exercise a significant influence over the activities of others, their degree of autonomy within the enterprise may vary widely from one multinational enterprise to another. Ownership may be private, State or mixed. The *Guidelines* are addressed to all the entities within the multinational enterprise (parent companies and/or local entities). According to the actual distribution of responsibilities among them, the different entities are expected to co-operate and to assist one another to facilitate observance of the *Guidelines*.
5. The *Guidelines* are not aimed at introducing differences of treatment between multinational and domestic enterprises; they reflect good practice for all. Accordingly, multinational and domestic enterprises are subject to the same expectations in respect of their conduct wherever the *Guidelines* are relevant to both.

6. Governments wish to encourage the widest possible observance of the *Guidelines*. While it is acknowledged that small- and medium-sized enterprises may not have the same capacities as larger enterprises, governments adhering to the *Guidelines* nevertheless encourage them to observe the *Guidelines*' recommendations to the fullest extent possible.
7. Governments adhering to the *Guidelines* should not use them for protectionist purposes nor use them in a way that calls into question the comparative advantage of any country where multinational enterprises invest.
8. Governments have the right to prescribe the conditions under which multinational enterprises operate within their jurisdictions, subject to international law. The entities of a multinational enterprise located in various countries are subject to the laws applicable in these countries. When multinational enterprises are subject to conflicting requirements by adhering countries or third countries, the governments concerned are encouraged to co-operate in good faith with a view to resolving problems that may arise.
9. Governments adhering to the *Guidelines* set them forth with the understanding that they will fulfil their responsibilities to treat enterprises equitably and in accordance with international law and with their contractual obligations.
10. The use of appropriate international dispute settlement mechanisms, including arbitration, is encouraged as a means of facilitating the resolution of legal problems arising between enterprises and host country governments.
11. Governments adhering to the *Guidelines* will implement them and encourage their use. They will establish National Contact Points that promote the *Guidelines* and act as a forum for discussion of all matters relating to the *Guidelines*. The adhering Governments will also participate in appropriate review and consultation procedures to address issues concerning interpretation of the *Guidelines* in a changing world.

II. General Policies

Enterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders. In this regard:

- A. Enterprises should:
 1. Contribute to economic, environmental and social progress with a view to achieving sustainable development.
 2. Respect the internationally recognised human rights of those affected by their activities.
 3. Encourage local capacity building through close co-operation with the local community, including business interests, as well as developing the enterprise's activities in domestic and foreign markets, consistent with the need for sound commercial practice.
 4. Encourage human capital formation, in particular by creating employment opportunities and facilitating training opportunities for employees.
 5. Refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to human rights, environmental, health, safety, labour, taxation, financial incentives, or other issues.

6. Support and uphold good corporate governance principles and develop and apply good corporate governance practices, including throughout enterprise groups.
 7. Develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate.
 8. Promote awareness of and compliance by workers employed by multinational enterprises with respect to company policies through appropriate dissemination of these policies, including through training programmes.
 9. Refrain from discriminatory or disciplinary action against workers who make *bona fide* reports to management or, as appropriate, to the competent public authorities, on practices that contravene the law, the *Guidelines* or the enterprise's policies.
 10. Carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.
 11. Avoid causing or contributing to adverse impacts on matters covered by the *Guidelines*, through their own activities, and address such impacts when they occur.
 12. Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.
 13. In addition to addressing adverse impacts in relation to matters covered by the *Guidelines*, encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of responsible business conduct compatible with the *Guidelines*.
 14. Engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision making for projects or other activities that may significantly impact local communities.
 15. Abstain from any improper involvement in local political activities.
- B. Enterprises are encouraged to:
1. Support, as appropriate to their circumstances, cooperative efforts in the appropriate fora to promote Internet Freedom through respect of freedom of expression, assembly and association online.
 2. Engage in or support, where appropriate, private or multi-stakeholder initiatives and social dialogue on responsible supply chain management while ensuring that these initiatives take due account of their social and economic effects on developing countries and of existing internationally recognised standards.

III. Disclosure

1. Enterprises should ensure that timely and accurate information is disclosed on all material matters regarding their activities, structure, financial situation, performance, ownership and governance. This information should be disclosed for the enterprise as a whole, and, where appropriate, along business lines or geographic areas. Disclosure policies of enterprises should be tailored to the nature, size and location of the enterprise, with due regard taken of costs, business confidentiality and other competitive concerns.
2. Disclosure policies of enterprises should include, but not be limited to, material information on:
 - a) The financial and operating results of the enterprise;
 - b) Enterprise objectives;
 - c) Major share ownership and voting rights, including the structure of a group of enterprises and intra-group relations, as well as control enhancing mechanisms;
 - d) Remuneration policy for members of the board and key executives, and information about board members, including qualifications, the selection process, other enterprise directorships and whether each board member is regarded as independent by the board;
 - e) Related party transactions;
 - f) Foreseeable risk factors;
 - g) Issues regarding workers and other stakeholders;
 - h) Governance structures and policies, in particular, the content of any corporate governance code or policy and its implementation process.
3. Enterprises are encouraged to communicate additional information that could include:
 - a) value statements or statements of business conduct intended for public disclosure including, depending on its relevance for the enterprise's activities, information on the enterprise's policies relating to matters covered by the *Guidelines*;
 - b) policies and other codes of conduct to which the enterprise subscribes, their date of adoption and the countries and entities to which such statements apply;
 - c) its performance in relation to these statements and codes;
 - d) information on internal audit, risk management and legal compliance systems;
 - e) information on relationships with workers and other stakeholders.
4. Enterprises should apply high quality standards for accounting, and financial as well as non-financial disclosure, including environmental and social reporting where they exist. The standards or policies under which information is compiled and published should be reported. An annual audit should be conducted by an independent, competent and qualified auditor in order to provide an external and objective assurance to the board and shareholders that the financial

statements fairly represent the financial position and performance of the enterprise in all material respects.

IV. Human Rights

States have the duty to protect human rights. Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:

1. Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.
2. Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.
3. Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.
4. Have a policy commitment to respect human rights.
5. Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.
6. Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.

V. Employment and Industrial Relations

Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices and applicable international labour standards:

1.
 - a) Respect the right of workers employed by the multinational enterprise to establish or join trade unions and representative organisations of their own choosing;
 - b) Respect the right of workers employed by the multinational enterprise to have trade unions and representative organisations of their own choosing recognised for the purpose of collective bargaining, and 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;
 - c) Contribute to the effective abolition of child labour, and take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency;
 - d) Contribute to the elimination of all forms of forced or compulsory labour and take adequate steps to ensure that forced or compulsory labour does not exist in their operations;
 - e) Be guided throughout their operations by the principle of equality of opportunity and treatment in employment and not discriminate against their 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, unless selectivity concerning worker

- characteristics furthers established governmental policies which specifically promote greater equality of employment opportunity or relates to the inherent requirements of a job.
2.
 - a) Provide such facilities to workers' representatives as may be necessary to assist in the development of effective collective agreements;
 - b) Provide information to workers' representatives which is needed for meaningful negotiations on conditions of employment;
 - c) Provide information to workers and their representatives which enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole.
 3. Promote consultation and co-operation between employers and workers and their representatives on matters of mutual concern.
 4.
 - a) Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country;
 - b) When multinational enterprises operate in developing countries, where comparable employers may not exist, provide the best possible wages, benefits and conditions of work, within the framework of government policies. These should be related to the economic position of the enterprise, but should be at least adequate to satisfy the basic needs of the workers and their families;
 - c) Take adequate steps to ensure occupational health and safety in their operations.
 5. In their operations, to the greatest extent practicable, employ local workers and provide training with a view to improving skill levels, in co-operation with worker representatives and, where appropriate, relevant governmental authorities.
 6. In considering changes in their operations which would have major employment effects, in particular in the case of the closure of an entity involving collective lay-offs or dismissals, provide reasonable notice of such changes to representatives of the workers in their employment and their organisations, and, where appropriate, to the relevant governmental authorities, and co-operate with the worker representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects. In light of the specific circumstances of each case, it would be appropriate if management were able to give such notice prior to the final decision being taken. Other means may also be employed to provide meaningful co-operation to mitigate the effects of such decisions.
 7. In the context of *bona fide* negotiations with workers' representatives on conditions of employment, or while workers are exercising a right to organise, not threaten to transfer the whole or part of an operating unit from the country concerned nor transfer workers from the enterprises' component entities in other countries in order to influence unfairly those negotiations or to hinder the exercise of a right to organise.
 8. Enable authorised representatives of the workers in their employment to negotiate on collective bargaining or labour-management relations issues and allow the parties to consult on matters of mutual concern with representatives of management who are authorised to take decisions on these matters.

VI. Environment

Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development. In particular, enterprises should:

1. Establish and maintain a system of environmental management appropriate to the enterprise, including:
 - a) Collection and evaluation of adequate and timely information regarding the environmental, health, and safety impacts of their activities;
 - b) Establishment of measurable objectives and, where appropriate, targets for improved environmental performance and resource utilisation, including periodically reviewing the continuing relevance of these objectives; where appropriate, targets should be consistent with relevant national policies and international environmental commitments; and
 - c) Regular monitoring and verification of progress toward environmental, health, and safety objectives or targets.
2. Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights:
 - a) 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, which could include reporting on progress in improving environmental performance; and
 - b) Engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.
3. Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle with a view to avoiding or, when unavoidable, mitigating them. Where these proposed activities may have significant environmental, health, or safety impacts, and where they are subject to a decision of a competent authority, prepare an appropriate environmental impact assessment.
4. Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage.
5. Maintain contingency plans for preventing, mitigating, and controlling serious environmental and health damage from their operations, including accidents and emergencies; and mechanisms for immediate reporting to the competent authorities.
6. Continually seek to improve corporate environmental performance, at the level of the enterprise and, where appropriate, of its supply chain, by encouraging such activities as:

- a) Adoption of technologies and operating procedures in all parts of the enterprise that reflect standards concerning environmental performance in the best performing part of the enterprise;
 - b) Development and provision of products or services that have no undue environmental impacts; are safe in their intended use; reduce greenhouse gas emissions; are efficient in their consumption of energy and natural resources; can be reused, recycled, or disposed of safely;
 - c) Promoting higher levels of awareness among customers of the environmental implications of using the products and services of the enterprise, including, by providing accurate information on their products (for example, on greenhouse gas emissions, biodiversity, resource efficiency, or other environmental issues); and
 - d) Exploring and assessing ways of improving the environmental performance of the enterprise over the longer term, for instance by developing strategies for emission reduction, efficient resource utilisation and recycling, substitution or reduction of use of toxic substances, or strategies on biodiversity.
7. Provide adequate education and training to workers in environmental health and safety matters, including the handling of hazardous materials and the prevention of environmental accidents, as well as more general environmental management areas, such as environmental impact assessment procedures, public relations, and environmental technologies.
 8. Contribute to the development of environmentally meaningful and economically efficient public policy, for example, by means of partnerships or initiatives that will enhance environmental awareness and protection.

VII. Combating Bribery, Bribe Solicitation and Extortion

Enterprises should not, directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper advantage. Enterprises should also resist the solicitation of bribes and extortion. In particular, enterprises should:

1. Not offer, promise or give undue pecuniary or other advantage to public officials or the employees of business partners. Likewise, enterprises should not request, agree to or accept undue pecuniary or other advantage from public officials or the employees of business partners. Enterprises should not use third parties such as agents and other intermediaries, consultants, representatives, distributors, consortia, contractors and suppliers and joint venture partners for channelling undue pecuniary or other advantages to public officials, or to employees of their business partners or to their relatives or business associates
2. Develop and adopt adequate internal controls, ethics and compliance programmes or measures for preventing and detecting bribery, developed on the basis of a risk assessment addressing the individual circumstances of an enterprise, in particular the bribery risks facing the enterprise (such as its geographical and industrial sector of operation). These internal controls, ethics and compliance programmes or measures should include a system of financial and accounting procedures, including a system of internal controls, reasonably designed to ensure the maintenance of fair and accurate books, records, and accounts, to ensure that they cannot be used for the purpose of bribing or hiding bribery. Such individual circumstances and bribery risks should be regularly monitored and re-assessed as necessary to ensure the enterprises' internal controls, ethics and compliance programme or measures are adapted and continue to be effective,

and to mitigate the risk of enterprises becoming complicit in bribery, bribe solicitation and extortion.

3. Prohibit or discourage, in internal company controls, ethics and compliance programmes or measures, the use of small facilitation payments, which are generally illegal in the countries where they are made, and, when such payments are made, accurately record these in books and financial records.
4. Ensure, taking into account the particular bribery risks facing the enterprise, properly documented due diligence pertaining to the hiring, as well as the appropriate and regular oversight of agents, and that remuneration of agents is appropriate and for legitimate services only. Where relevant, a list of agents engaged in connection with transactions with public bodies and State-owned enterprises should be kept and made available to competent authorities, in accordance with applicable public disclosure requirements.
5. Enhance the transparency of their activities in the fight against bribery, bribe solicitation and extortion. Measures could include making public commitments against bribery, bribe solicitation and extortion, and disclosing the management systems and the internal controls, ethics and compliance programmes or measures adopted by enterprises in order to honour these commitments. Enterprises should also foster openness and dialogue with the public so as to promote its awareness of and co-operation with the fight against bribery, bribe solicitation and extortion.
6. Promote employee awareness of and compliance with company policies and internal controls, ethics and compliance programmes or measures against bribery, bribe solicitation and extortion through appropriate dissemination of such policies, programmes or measures and through training programmes and disciplinary procedures.
7. Not make illegal contributions to candidates for public office or to political parties or to other political organisations. Political contributions should fully comply with public disclosure requirements and should be reported to senior management.

VIII. Consumer Interests

When dealing with consumers, enterprises should act in accordance with fair business, marketing and advertising practices and should take all reasonable steps to ensure the quality and reliability of the goods and services that they provide. In particular, they should:

1. Ensure that the goods and services they provide meet all agreed or legally required standards for consumer health and safety, including those pertaining to health warnings and safety information.
2. 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. Where feasible this information should be provided in a manner that facilitates consumers' ability to compare products.
3. Provide consumers with access to fair, easy to use, timely and effective non-judicial dispute resolution and redress mechanisms, without unnecessary cost or burden.
4. Not make representations or omissions, nor engage in any other practices, that are deceptive, misleading, fraudulent or unfair.

5. Support efforts to promote consumer education in areas that relate to their business activities, with the aim of, *inter alia*, improving the ability of consumers to: *i*) make informed decisions involving complex goods, services and markets, *ii*) better understand the economic, environmental and social impact of their decisions and *iii*) support sustainable consumption.
6. Respect consumer privacy and take reasonable measures to ensure the security of personal data that they collect, store, process or disseminate.
7. Co-operate fully with public authorities to prevent and combat deceptive marketing practices (including misleading advertising and commercial fraud) and to diminish or prevent serious threats to public health and safety or to the environment deriving from the consumption, use or disposal of their goods and services.
8. Take into consideration, in applying the above principles, *i*) the needs of vulnerable and disadvantaged consumers and *ii*) the specific challenges that e-commerce may pose for consumers.

IX. Science and Technology

Enterprises should:

1. Endeavour to ensure that their activities are compatible with the science and technology (S&T) policies and plans of the countries in which they operate and as appropriate contribute to the development of local and national innovative capacity.
2. Adopt, where practicable in the course of their business activities, practices that permit the transfer and rapid diffusion of technologies and know-how, with due regard to the protection of intellectual property rights.
3. When appropriate, perform science and technology development work in host countries to address local market needs, as well as employ host country personnel in an S&T capacity and encourage their training, taking into account commercial needs.
4. When granting licenses for the use of intellectual property rights or when otherwise transferring technology, do so on reasonable terms and conditions and in a manner that contributes to the long term sustainable development prospects of the host country.

Where relevant to commercial objectives, develop ties with local universities, public research institutions, and participate in co-operative research projects with local industry or industry associations.

X. Competition

Enterprises should:

1. Carry 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 the activities may have anti-competitive effects.
2. Refrain from entering into or carrying out anti-competitive agreements among competitors, including agreements to:
 - a) fix prices;

- b) make rigged bids (collusive tenders);
 - c) establish output restrictions or quotas; or
 - d) share or divide markets by allocating customers, suppliers, territories or lines of commerce.
3. Co-operate with investigating competition authorities by, among other things and subject to applicable law and appropriate safeguards, providing responses as promptly and completely as practicable to requests for information, and considering the use of available instruments, such as waivers of confidentiality where appropriate, to promote effective and efficient co-operation among investigating authorities.
4. Regularly promote employee awareness of the importance of compliance with all applicable competition laws and regulations, and, in particular, train senior management of the enterprise in relation to competition issues.

XI. Taxation

1. It is important that enterprises contribute to the public finances of host countries by making timely payment of their tax liabilities. In particular, enterprises should comply with both the letter and spirit of the tax laws and regulations of the countries in which they operate. Complying with the spirit of the law means discerning and following the intention of the legislature. It does not require an enterprise to make payment in excess of the amount legally required pursuant to such an interpretation. Tax compliance includes such measures as providing to the relevant authorities timely information that is relevant or required by law for purposes of the correct determination of taxes to be assessed in connection with their operations and conforming transfer pricing practices to the arm's length principle.

Enterprises should treat tax governance and tax compliance as important elements of their oversight and broader risk management systems. In particular, corporate boards should adopt tax risk management strategies to ensure that the financial, regulatory and reputational risks associated with taxation are fully identified and evaluated.

APPENDIX III

PROPOSED AMENDMENT OF THE DECISION OF THE COUNCIL ON THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES [C(2000)96/FINAL]

THE COUNCIL,

Having regard to the Convention on the Organisation for Economic Co-operation and Development of 14th December 1960;

Having regard to the OECD Declaration on International Investment and Multinational Enterprises (the “Declaration”), in which the Governments of adhering countries (“adhering countries”) jointly recommend to multinational enterprises operating in or from their territories the observance of Guidelines for Multinational Enterprises (the “Guidelines”);

Recognising that, since operations of multinational enterprises extend throughout the world, international co-operation on issues relating to the Declaration should extend to all countries;

Having regard to the Terms of Reference of the Investment Committee, in particular with respect to its responsibilities for the Declaration [C(84)171(Final), renewed in C/M(95)21];

Considering the Report on the First Review of the 1976 Declaration [C(79)102(Final)], the Report on the Second Review of the Declaration [C/MIN(84)5(Final)], the Report on the 1991 Review of the Declaration [DAFFE/IME(91)23], and the Report on the 2000 Review of the Guidelines;

Having regard to the Second Revised Decision of the Council of June 1984 [C(84)90], amended June 1991 [C/MIN(91)7/ANN1] and repealed on 27 June 2000 [C(2000)96/FINAL];

Considering it desirable to enhance procedures by which consultations may take place on matters covered by these Guidelines and to promote the effectiveness of the Guidelines;

On the proposal of the Investment Committee:

DECIDES:

I. National Contact Points

1. Adhering countries shall set up National Contact Points to further the effectiveness of the *Guidelines* by undertaking promotional activities, handling enquiries and contributing to the resolution of issues that arise relating to the implementation of the *Guidelines* in specific instances, taking account of the attached procedural guidance. The business community, worker organisations, other non-governmental organisations and other interested parties shall be informed of the availability of such facilities.
2. National Contact Points in different countries shall co-operate if such need arises, on any matter related to the *Guidelines* relevant to their activities. As a general procedure, discussions at the national level should be initiated before contacts with other National Contact Points are undertaken.
3. National Contact Points shall meet regularly to share experiences and report to the Investment Committee.
4. Adhering countries shall make available human and financial resources to their National Contact Points so that they can effectively fulfil their responsibilities, taking into account internal budget priorities and practices.

II. The Investment Committee

1. The Investment Committee (“the Committee”) shall periodically or at the request of an adhering country hold exchanges of views on matters covered by the *Guidelines* and the experience gained in their application.
2. The Committee shall periodically invite the Business and Industry Advisory Committee to the OECD (BIAC), and the Trade Union Advisory Committee to the OECD (TUAC) (the “advisory bodies”), OECD Watch, as well as other international partners to express their views on matters covered by the *Guidelines*. In addition, exchanges of views with them on these matters may be held at their request.
3. The Committee shall engage with non-adhering countries on matters covered by the *Guidelines* in order to promote responsible business conduct worldwide in accordance with the *Guidelines* and to create a level playing field. It shall also strive to co-operate with non-adhering countries that have a special interest in the *Guidelines* and in promoting their principles and standards.
4. The Committee shall be responsible for clarification of the *Guidelines*. Parties involved in a specific instance that gave rise to a request for clarification will be given the opportunity to express their views either orally or in writing. The Committee shall not reach conclusions on the conduct of individual enterprises.
5. The Committee shall hold exchanges of views on the activities of National Contact Points with a view to enhancing the effectiveness of the *Guidelines* and fostering functional equivalence of National Contact Points.
6. In fulfilling its responsibilities for the effective functioning of the *Guidelines*, the Committee shall take due account of the attached procedural guidance.
7. The Committee shall periodically report to the Council on matters covered by the *Guidelines*. In its reports, the Committee shall take account of reports by National Contact Points and the views

expressed by the advisory bodies, OECD Watch, other international partners and non-adhering countries as appropriate.

8. The Committee shall, in co-operation with National Contact Points, pursue a proactive agenda that promotes the effective observance by enterprises of the principles and standards contained in the *Guidelines*. It shall, in particular, seek opportunities to collaborate with the advisory bodies, OECD Watch, other international partners and other stakeholders in order to encourage the positive contributions that multinational enterprises can make, in the context of the *Guidelines*, to economic, environmental and social progress with a view to achieving sustainable development, and to help them identify and respond to risks of adverse impacts associated with particular products, regions, sectors or industries.

III. Review of the Decision

This Decision shall be periodically reviewed. The Committee shall make proposals for this purpose.

Procedural Guidance

I. National Contact Points

The role of National Contact Points (NCPs) is to further the effectiveness of the *Guidelines*. NCPs will operate in accordance with core criteria of visibility, accessibility, transparency and accountability to further the objective of functional equivalence.

A. Institutional Arrangements

Consistent with the objective of functional equivalence and furthering the effectiveness of the *Guidelines*, adhering countries have flexibility in organising their NCPs, seeking the active support of social partners, including the business community, worker organisations, other non-governmental organisations, and other interested parties.

Accordingly, the National Contact Points:

1. Will be composed and organised such that they provide an effective basis for dealing with the broad range of issues covered by the *Guidelines* and enable the NCP to operate in an impartial manner while maintaining an adequate level of accountability to the adhering government.
2. Can use different forms of organisation to meet this objective. An NCP can consist of senior representatives from one or more Ministries, may be a senior government official or a government office headed by a senior official, be an interagency group, or one that contains independent experts. Representatives of the business community, worker organisations and other non-governmental organisations may also be included.
3. Will develop and maintain relations with representatives of the business community, worker organisations and other interested parties that are able to contribute to the effective functioning of the *Guidelines*.

B. Information and Promotion

The National Contact Point will:

1. Make the *Guidelines* known and available by appropriate means, including through on-line information, and in national languages. Prospective investors (inward and outward) should be informed about the *Guidelines*, as appropriate.
2. Raise awareness of the *Guidelines* and their implementation procedures, including through co-operation, as appropriate, with the business community, worker organisations, other non-governmental organisations, and the interested public.
3. Respond to enquiries about the *Guidelines* from:
 - a) Other National Contact Points;
 - b) The business community, worker organisations, other non-governmental organisations and the public; and
 - c) Governments of non-adhering countries.

C. Implementation in Specific Instances

The National Contact Point will contribute to the resolution of issues that arise relating to implementation of the *Guidelines* in specific instances in a manner that is impartial, predictable, equitable and compatible with the principles and standards of the *Guidelines*. The NCP will offer a forum for discussion and assist the business community, worker organisations, other non-governmental organisations, and other interested parties concerned to deal with the issues raised in an efficient and timely manner and in accordance with applicable law. In providing this assistance, the NCP will:

1. Make an initial assessment of whether the issues raised merit further examination and respond to the parties involved.
2. Where the issues raised merit further examination, offer good offices to help the parties involved to resolve the issues. For this purpose, the NCP will consult with these parties and where relevant:
 - a) Seek advice from relevant authorities, and/or representatives of the business community, worker organisations, other non-governmental organisations, and relevant experts;
 - b) Consult the NCP in the other country or countries concerned;
 - c) Seek the guidance of the Committee if it has doubt about the interpretation of the *Guidelines* in particular circumstances;
 - d) Offer, and with the agreement of the parties involved, facilitate access to consensual and non-adversarial means, such as conciliation or mediation, to assist the parties in dealing with the issues.
3. At the conclusion of the procedures and after consultation with the parties involved, make the results of the procedures publicly available, taking into account the need to protect sensitive business and other stakeholder information, by issuing:
 - a) A statement when the NCP decides that the issues raised do not merit further consideration. The statement should at a minimum describe the issues raised and the reasons for the NCP's decision.
 - b) A report when the parties have reached agreement on the issues raised. The report should at a minimum describe the issues raised, the procedures the NCP initiated in assisting the parties and when agreement was reached. Information on the content of the agreement will only be included insofar as the parties involved agree thereto.
 - c) A statement when no agreement is reached or when a party is unwilling to participate in the procedures. This statement should at a minimum describe the issues raised, the reasons why the NCP decided that the issues raised merit further examination and the procedures the NCP initiated in assisting the parties. The NCP will make recommendations on the implementation of the *Guidelines* as appropriate, which should be included in the statement. Where appropriate, the statement could also include the reasons that agreement could not be reached.

The NCP will notify the results of its specific instance procedures to the Committee in a timely manner.

4. In order to facilitate resolution of the issues raised, take appropriate steps to protect sensitive business and other information and the interests of other stakeholders involved in the specific instance. While the procedures under paragraph 2 are underway, confidentiality of the proceedings will be maintained. At the conclusion of the procedures, if the parties involved have not agreed on a resolution of the issues raised, they are free to communicate about and discuss these issues. However, information and views provided during the proceedings by another party involved will remain confidential, unless that other party agrees to their disclosure or this would be contrary to the provisions of national law.
5. If issues arise in non-adhering countries, take steps to develop an understanding of the issues involved, and follow these procedures where relevant and practicable.

D. Reporting

1. Each NCP will report annually to the Committee.
2. Reports should contain information on the nature and results of the activities of the NCP, including implementation activities in specific instances.

II. Investment Committee

1. The Committee will consider requests from NCPs for assistance in carrying out their activities, including in the event of doubt about the interpretation of the *Guidelines* in particular circumstances.
2. The Committee will, with a view to enhancing the effectiveness of the *Guidelines* and to fostering the functional equivalence of NCPs:
 - a) Consider the reports of NCPs.
 - b) Consider a substantiated submission by an adhering country, an advisory body or OECD Watch on whether an NCP is fulfilling its responsibilities with regard to its handling of specific instances.
 - c) Consider issuing a clarification where an adhering country, an advisory body or OECD Watch makes a substantiated submission on whether an NCP has correctly interpreted the *Guidelines* in specific instances.
 - d) Make recommendations, as necessary, to improve the functioning of NCPs and the effective implementation of the *Guidelines*.
 - e) Co-operate with international partners.
 - f) Engage with interested non-adhering countries on matters covered by the *Guidelines* and their implementation.
3. The Committee may seek and consider advice from experts on any matters covered by the *Guidelines*. For this purpose, the Committee will decide on suitable procedures.
4. The Committee will discharge its responsibilities in an efficient and timely manner.

5. In discharging its responsibilities, the Committee will be assisted by the OECD Secretariat, which, under the overall guidance of the Investment Committee, and subject to the Organisation's Programme of Work and Budget, will:
- a) serve as a central point of information for NCPs that have questions on the promotion and implementation of the *Guidelines*;
 - b) collect and make publicly available relevant information on recent trends and emerging practices with regard to the promotional activities of NCPs and the implementation of the *Guidelines* in specific instances. The Secretariat will develop unified reporting formats to support the establishment and maintenance of an up-to-date database on specific instances and conduct regular analysis of these specific instances;
 - c) facilitate peer learning activities, including voluntary peer evaluations, as well as capacity building and training, in particular for NCPs of new adhering countries, on the implementation procedures of the *Guidelines* such as promotion and the facilitation of conciliation and mediation;
 - d) facilitate co-operation between NCPs where appropriate; and
 - e) promote the *Guidelines* in relevant international forums and meetings and provide support to NCPs and the Committee in their efforts to raise awareness of the *Guidelines* among non-adhering countries.