

**The Globalization of Labor Standards  
Managing Risk in a Changing World Economy  
A Roundtable  
Chicago | Tuesday, September 28, 2010**

<b>Time</b>	<b>Agenda Item</b>	<b>Speaker(s)</b>
8:00 – 8:30 AM	Registration and Continental Breakfast	
8:30 – 8:45 AM	Welcome	Doug Darch
8:45 – 9:30 AM	<p><b>The Changing Framework for Labor Relations and the impact of Labor Standards</b> The impetus for the globalization of labor and employment standards and the role of non-sovereign entities (ILO, treaties), NGOs and trade unions in their adoption.</p>	<p>Professor Matthew Finkin, Director, Program in Comparative Labor and Employment Law &amp; Policy Center for Advanced Study, University of Illinois Moderator: Kevin Coon</p>
9:30 – 10:45 AM	<p><b>Role of OECD Guidelines and the U.S. National Contact Point for U.S.-based corporations doing business globally</b> The role of the U.S. National Contact Point (US NCP) in promoting the OECD Guidelines for Multinational Enterprises ("MNE"); how the USNCP resolves complaints against companies; common business decisions which may generate complaints; and the proactive steps companies can take to avoid or resolve them.</p>	<p>Diane Reimer Bean, U.S. National Contact Point, OECD Guidelines for Multinational Enterprises, Bureau of Economic, Energy and Business Affairs, United States Department of State Moderator: Kevin Coon</p>
10:45 – 11:00 AM	Break	
11:00 AM – 12:15 PM	<p><b>The Role of NGOs and Trade Unions and the risks to Employers in the new Labor Relations Framework</b> Labor unions and NGOs have been significantly influencing the implementation and enforcement of international labor standards on a global basis. Unions are merging and devoting considerable resources to provide global influence. NGOs are actively exposing alleged violations of labor and human rights standards, creating significant risk to brands and investment. This session will assist employers in understanding these risks and incorporating global strategies to meet the challenges they create.</p>	<p>Brent Wilton, The International Organization of Employers; and Adam Greene, United States Council for International Business Moderator: Kevin Coon</p>
12:15 PM – 1:00 PM	Lunch	
1:00 PM – 1:45 PM	<p><b>Keynote speaker</b> Hector Morales will discuss political, economic, and business trends in Latin America including a focus on international labor and human rights standards.</p>	<p>Hector E. Morales, Jr., Baker &amp; McKenzie Of Counsel and former United States Ambassador to the Organization of American States</p>
1:45 – 2:15 PM	<p><b>Labor Unrest in China: Dealing with Strikes and Wage Demands</b> With high profile strikes and other labor disturbances erupting in China earlier this year, the</p>	<p>Andreas Lauffs, Baker &amp; McKenzie Partner, China Moderator: Doug Darch</p>

	<p>key question for multinationals is how will this new assertiveness by China's workforce impact their China operations and what can they do in response? In the aftermath of the labor unrest, the umbrella union ACFTU has become more active and new regulations are being considered on collective bargaining and on wage distribution.</p>	
2:15 – 2:45 PM	<p><b>European Works Councils and Transnational Restructurings</b></p> <p>At the European Union level as well as in most of the large European countries we see a growing trend to make business change, such as restructuring, more difficult for companies. "Flexibility" is looked at in many countries as giving employers an amount of freedom that should be counter-balanced by works councils and union interference. In addition, the rights of the European Works Councils have been recently substantially tightened and experience already shows that European Works Councils will play a much more important role in planning for transnational flexibilities. This session will provide some insights into options employers do have, the role of works councils and unions and where their rights have recently been substantially strengthened, and what employers can do to make use of their flexibility options.</p>	<p>Guenther Heckelmann, Baker &amp; McKenzie Partner, Frankfurt Moderator: Doug Darch</p>
2:45 – 3:00 PM	Break	
3:00 – 4:00 PM	<p><b>Latin America, the ILO Conventions and the structure of Trade Unions.</b></p> <p>ILO conventions often establish certain minimum standards or call for the enactment of legislation in certain key areas relating to collective and individual labor relations, and certain ILO conventions are or could become part of the legally enforceable provisions in certain Latin American countries (e.g.: Venezuela). Therefore, becoming aware of their existence and possible application in the region is of primary importance to multinational companies doing business in the region. It is also important to note that in some cases the filing of complaints before the ILO's Committee on Freedom of Association could have certain implications if they involve petitions for enforcement of ILO standards.</p> <p>Unions in Latin America are structured and operate based on the realities and circumstances of the region and, particularly, of each country. The trade unions in Mexico have suffered a notable change. New players have appeared in the labor-political arena and the reaction of American and European organizations has now become quite evident. The knowledge of this new mosaic and its tendencies will definitely be of interest to multinational companies doing business in Mexico.</p>	<p>Carlos Felce, Baker &amp; McKenzie Partner, Caracas; and Jorge De Regil, Baker &amp; McKenzie Partner, Mexico City Moderator: Doug Darch</p>
4:00 – 4:15 PM	Wrap Up and Adjourn	Kevin Coon

## Transnational Labor Standards: An Overview

Remarks Prepared by Professor Matthew Finkin for Conference Sponsored by Baker & McKenzie, Chicago, Illinois, September 27, 2010

### I. Introduction

Institutions and norms of transnational labour law normally arise to solve collective action problems. . . . Successful norms of transnational labour law rarely interfere with any country's comparative advantage in trade (such as low wages generally). Rather, they arise as solutions to games (known in game theory as Stag Hunts), where a cooperative solution exists that is optimal for all countries but that will not be reached if countries rationally fear that others will defect to pursue short-term advantage. Examples of such norms include bans on child labour or the use of certain industrial toxins, work practices that are not in any country's long-term interest but that can be a source of short-term advantage if one's trading rivals are working to eradicate them. One important implication of this approach is that failures of transnational regulation normally reflect low trust that one's rivals will adhere to a cooperative solution.

Alan Hyde & Mona Ressaissi, *Unions Without Borders: Recent Developments in the Theory, Practice and Law of Transnational Unionism*, 14 CANADIAN LAB. & EMP. L.J. 271 (2008).

### II. Public Law

#### A. The World Trade Organization (WTO)

##### 1. Declaration Adopted at the 1996 Ministerial Meeting in Singapore

“We renew our commitment to the observance of internationally recognized core labour standards. The International Labour Organization (ILO) is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them. We believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards. We reject the use of labour standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-

wage developing countries, must in no way be put into question. In this regard, we note that the WTO and ILO Secretariats will continue their existing collaboration.”

2. Even so, some argue for more active WTO role under Art. XX of the General Agreement on Tariffs and Trade under which the WTO may take measures “[N]ecessary to protect public morals” (Article XX(a)), “necessary to protect human, animal or plant life or health” (Article XX(b)), and “relating to the products of prison labour” (Article XX(e)).

B. The International Labour Organization (ILO)

1. Tripartism and reliance on voluntary state action

2. Recent initiatives

a. Declaration of Fundamental Principles and Rights at Work (1998)

. . . [A]ll Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely:

(a) freedom of association and the effective recognition of the right to collective bargaining;

(b) the elimination of all forms of forced or compulsory labour;

(c) the effective abolition of child labour; and

(d) the elimination of discrimination in respect of employment and occupation.

b. “Decent Work” Agenda & the Connection to International Financing

In 2003, the International Finance Corporation (IFC), the lending arm of the World Bank, announced that in addition to taking account of the rights referenced in (b), (c), and (d) above, it would include (a) in making loan decisions.

Nineteen global financial groups have adopted the ‘Equator principles’, based on the policies and principles of the World Bank relating to the environmental and social impact of infrastructure projects funded by private banks. The Asian Development Bank (but not yet the African Development Bank) has agreed to co-operate with the ILO in promoting fundamental principles and rights at work. The European Bank for Reconstruction and Development (EBRD) approved core labour standards for guiding its work in 2003, but still refuses to include the principles of freedom of association and the right to collective bargaining. The growing technical and policy co-operation between the ILO and the international financial institutions may, in the long term, break down this resistance and promote social responsibility in investment policies.

BOB HEPPLE, LABOUR LAWS AND GLOBAL TRADE 65 (2005).

- c. Does “one size fit all” in connecting labor law to economic development?

Compare Brian Langille, *Imaging Post-“Geneva Consensus” Labor Law for Post “Washington Consensus” Development*, 31 COMP. LAB. L. & POL’Y J. 523 (2010) with Anne Trebilcock, *Putting the Record Straight About International Labor Standards Setting*, 31 COMP. LAB. L. & POL’Y J. 533 (2010).

3. As a basis for criticism of U.S. law

*See, e.g.,* Human Rights Watch, *Violations of Workers' Freedom of Association in the United States by European Multinational Corporations* (Sept. 2010) (available at <http://www.hrw.org>).

C. U.S. Trade Law: 19 U.S.C. § 2411 *et seq.*

§ 2411. Actions by United States Trade Representative

(a) Mandatory action.

(1) If the United States Trade Representative determines under section 304(A)(1) [19 USCS § 2414(a)(1)] that—

\* \* \*

(B) an act, policy, or practice of a foreign country—

(i) violates, or is inconsistent with, the provision of, or otherwise denies benefits to the United States under, any trade agreements, or

(ii) is unjustifiable and burdens or restricts United States commerce;

the Trade Representative shall take action authorized in subsection (c), subject to the specific direction, if any, of the President regarding any such action . . .

\* \* \*

(b) Discretionary action. If the Trade Representative determines under section 304(a)(1) [19 USCS § 2414(a)(1)] that—

(1) an act, policy, or practice of a foreign country is unreasonable or discriminatory and burdens or restricts United States commerce, and

(2) action by the United States is appropriate, the Trade Representative shall take all appropriate and feasible action authorized under subsection (c), subject to the specific direction, if any, of the President regarding any such action . . .

\* \* \*

[Subsection (c) allows the suspension or withdrawal of the benefits of a trade agreement, imposition of duties or restriction on imports or services, and other action.]

\* \* \*

(d) Definitions and special rules . . .

(3) . . .

(B) Acts, policies, and practices that are unreasonable include, but are not limited to, any act, policy, or practice, or any combination of acts, policies, or practices, which—

\* \* \*

(iii) constitutes a persistent pattern of conduct that—

(I) denies workers the right of association,

(II) denies workers the right to organize and bargain collectively,

(III) permits any form of forced or compulsory labor,

(IV) fails to provide a minimum age for the employment of children, or

(V) fails to provide standards for minimum wages, hours of work, and occupational safety and health of workers.

(C)(i) Acts, policies, and practices of a foreign country described in subparagraph (B)(iii) shall not be treated as being unreasonable if the Trade Representative determines that—

(I) the foreign country has taken, or is taking, actions that demonstrate a significant and tangible overall advancement in providing throughout the foreign country (including any designated zone within the foreign country) the rights and other standards described in the subclauses of subparagraph (B)(iii), or

(II) such acts, policies, and practices are not inconsistent with the level of economic development of the foreign country.

#### D. Trade Agreements

##### (1) Multi-national

###### (a) North American Agreement on Labor Cooperation (NAALC)

The obligations, administrative structure and complaint process under NAALC are succinctly summarized in JAMES ATLESON ET AL., *INTERNATIONAL LABOR LAW: CASES AND MATERIALS* 275–337 (West 2008). After reviewing the several complaints brought through the NAALC process, which tests whether the signatory is adequately enforcing its labor laws, one of its closest observers, Prof. Lance Compa of Cornell University, concluded:

The instruments and institutions are flawed. But they create spaces, terrains, platforms and other metaphorical foundations where advocates can unite across frontiers and plant their feet to promote new norms, mobilize actors, call to account government and corporations, disseminate research findings, launch media campaigns, educate each other and the public, challenge traditional notions of sovereignty, give legitimacy to their cause by invoking human rights and labor rights principles—in sum, to redefine debates and discourse by breaking up old frameworks and shaping new ones.

In each of these cases new alliances were built among groups that had hardly ever communicated until the NAALC complaint gave them a concrete venue for working together. For leaders and activists of independent Mexican trade unions in particular, access to international allies and to a mechanism for

scrutiny of repressive tactics long hidden from international public view provided strength and protection to build their movement.

\* \* \*

Asking workers to turn to the NAALC to air their grievances must be joined by honest cautions that it cannot directly result in regained jobs, union recognition, or back pay for violations. . . . Gains come obliquely, over time, by pressing companies and governments to change their behavior, by sensitizing public opinion, by building ties of solidarity, and taking other steps to change the climate for workers' rights advances.

*Id.* at 328.

(b) Dominican Republic—Central America—United States Free Trade Agreement (CAFTA-DR) § 16.2.1(a): “[a] Party shall not fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement.”

*See* Letter of July 30, 2010, to the Guatemalan government from the U.S. Secretary of Labor and U.S. Trade Representatives requesting consultations with the Government of Guatemala: “Based on this examination and review of matters of law and facts, the Government of Guatemala appears to be failing to meet its obligations under Article 16.2.1(a) with respect to effective enforcement of Guatemalan labor laws related to the right of association, the right to organize and bargain collectively, and acceptable conditions of work.” The request was triggered by complaint of the AFL-CIO and Guatemalan labor organizations on August 23, 2008, of murder and intimidation of union leaders.

(c) Ongoing negotiations for an eight country Trans-Pacific Partnership (U.S., Australia, New Zealand, Chile, Peru, Brunei, Singapore, and Vietnam) 159 DLR (August 18, 2010) at A-4.

## 2. Bi-lateral

The United States has 17 free trade agreements (FTA), the labor provisions of which are similar to CAFTA, recognizing the ILO's statements of fundamental rights. The Australian FTA seems to go further. Under it, the parties will "strive to ensure that . . . internationally recognized labour principles and rights [as set out] are recognized and protected" by its law. Art. 18.1. Labour law for the U.S. is limited to federal laws enforceable by action of the federal government. Art. 18.7.

### E. Extra-Territorial Impact of Domestic Law

1. With rare exceptions, U.S. labor and employment law has no extraterritorial application. *Compare* *Asplundh Tree Expert Co. v. NLRB*, 365 F.3d 168 (3d Cir. 2004) *with* *ILA v. NLRB*, 56 F.3d 205 (D.C. Cir. 1995).
  
2. Foreign law may have an effect on the conduct of multi-national business' employment policies in the United States. *See, e.g.*, Directive 95/46 EC (the "Data Protection Directive"), Art. 25
  1. The Member States shall provide that the transfer to a third country of personal data which are undergoing processing or are intended for processing after transfer may take place only if, without prejudice to compliance with the national provisions adopted pursuant to the other provisions of this Directive, the third country in question ensures an adequate level of protection,
  2. The adequacy of the level of protection afforded by a third country shall be assessed in the light of all the circumstances surrounding a data transfer operation or set of data transfer operations; particular consideration shall be given to the nature of the data, the purpose and duration of the proposed processing operation or operations, the country of origin and country of final destination, the rules of law, both general and sectoral, in

force in the third country in question and the professional rules and security measures with are complied with in that country.

- a) Safe Harbor (<http://www.export.gov/safeharbor>)
- b) Agreement with Data Control Authority in each state
- c) Individual agreement: and the issue of actual consent

### III. Private Action

#### A. “Soft Law”: OECD Guidelines on Employment and Industrial Relations

[These will be discussed in substance by the representative of OECD. What follows is a brief summary.]

The OECD Guidelines provide for National Contact Points (NCPs) which are responsible for encouraging observation of the Guidelines, handling enquiries about them, assisting in solving problems, gathering information on national experiences, and reporting annually to the OECD Committee on Multinational Enterprises (CIME). There are four types of NCP structure currently in use: a single government office, a multi-department government office, a tripartite body and quadripartite body including NGOs. The Guidelines provide for ‘specific instances,’ a procedure that allows interested parties to draw the attention of an NCP to the alleged non-observance of the Guidelines by a TNC. The CIME can issue ‘clarifications’ on the application of the Guidelines in specific circumstances. . . . The procedures have been criticised on the grounds that NCPs have almost ceased to exist in some countries, and that CIME ‘clarifications’ show an extremely cautious, even opaque attitude to interpreting the Declaration so as rarely to favour the trade union position, an unswerving adherence to the national treatment principle, and give priority to national systems of industrial relations and labour law. Despite attempts by the OECD to revitalise the NCPs, there is little reason to expect that Guidelines will have a significant impact. . . .

BOB HEPPLE, *LABOUR LAWS AND GLOBAL TRADE*, *supra* note 84 (footnotes omitted). *See also* “OECD Guidelines: Useful for Workers’ Rights?,” *Clean Clothes Campaign Newsletter No. 21* (May 2006) *reprinted in* ATLESON ET AL., *INTERNATIONAL LABOR LAW*, *supra* at 256–57. However, the casebook’s authors observe, “Despite its limitations, some unions have been able

to use the OECD Guidelines to promote their agenda. However, they advance more by public relations or inter-union solidarity measures than through pressure brought from the OECD.” *Id.* at 257.

## B. Unilateral Corporate Codes and the Regulation of Supply Chains

### 1. Rationale

First, the corporate codes are a response to public pressure from consumers, investors, trade unions, and NGOs. TNCs [transnational corporations] wish to avoid negative publicity—or worse still, organised boycotts. . . . Secondly, many managers believe that the benefits of good employment (and environmental) practices outweigh the costs. Those costs include monitoring and corrective action. The benefits may be improved employee morale, lower labour turnover, fewer accidents, enhanced product quality, and greater consumer and investor confidence. Thirdly, the codes can be used to strengthen the power of senior central management. This is particularly the case with outsourcing guidelines which enable central management to dictate the labour practices of sub-contractors and suppliers as part of a monitoring process which leads to better product quality. Contractors, too, may welcome a level playing field in the otherwise cut-throat competition for supply contracts. By complying with code standards, they may be assured of long-term contractual relationships and protect themselves from ‘free-riders.’ Corporate social responsibility, says the US Council for International Business (USCIB), is ‘good business’ helping to maintain ‘the competitiveness of companies over time and in highly diverse parts of the world.’

BOB HEPPLE, *LABOUR LAWS AND GLOBAL TRADE*, *supra* at 71 (footnote omitted).

### 2. Examples

Nike’s Code of Conduct is appended. Others generated by groups rather than individual companies that might be consulted such as SA 8000—Social Accountability Standards (<http://www.sa-intl.org>) and Rugmark (<http://www.rugmark.org/home.php>)

### 3. The Problem of Monitoring: Accuracy and Transparency

- a) by for-profit enterprise, *e.g.*, PriceWaterhouse Coopers
- b) by non-profits, *e.g.*, Social Accountability International,

<http://www.sa.intl.org>

#### 4. Role of NGOs

- a) NGOs with corporate participation, *e.g.*, Fair Labor Association,

<http://www.fairlabor.org>

- b) NGOs without corporate participation, *e.g.*, Worker Rights

Consortium, <http://www.workersrights.org>

- c) NGOs that appeal to public opinion critical of corporate behavior,

*e.g.*, the National Labor Committee, <http://www.nlenet.org>

#### 5. Effectiveness

*See generally* Richard Locke, Matthew Amengual & Askay Mangla, *Virtute Out of Necessity? Compliance Commitment and the Improvement of Labor Conditions in Global Supply Chains*, 37 *POLITICS & SOCIETY* 319 (2009).

#### 6. Is a Code a Contract?

*Doe I v. Wal-Mart Stores Inc.*, 572 F.3d 677 (9th Cir. 2009).

#### C. Bi-Lateral Framework Agreements

A number of companies have negotiated “framework agreements” with international union federations or, in Europe, with European Works Councils (EWC), governing their labor policies abroad either directly or of those of companies they contract with.

Appended is the Framework Agreement between IKEA and the International Federation of Building and Woodworkers’ (1998).

1. Contractual Status

In an agreement made with an independent body having legal personality distinguishable from a unilateral corporate policy dealt with in *Doe I v. Wal-Mart Stores, supra?*

Note that IKEA commits itself and its contractors to “adopt positive views of the activities of trade unions and an open attitude to their organizing activity.” This would appear to commit IKEA and its contractors to remain at least neutral in the face of union organization in the United States. None of these agreements have been challenged under § 8(e) of the National Labor Relations Act. Matthew Finkin, *Employer Neutrality as Hot Cargo*, 2 NOTRE DAME J.L. ETHICS & PUB. POL’Y 541 (2006).

- C. Transnational Union Action

*See generally* Alan Hyde & Mona Russaissi, *Unions Without Borders: Recent Developments in the Theory, Practice and Law of Transnational Unionism*, 14 CANADIAN LAB. & EMP. L.J. 271 (2008).

1. European Works Councils (EWC): a step in that direction?

a) Volkswagen and Rolls Royce have established worldwide works councils.

2. Transnational Union Information-Sharing and Coordination

*E.g., Andrew Banks & John Russo, The Development of International Campaign-Based Network Structures: A Case Study of the IBT and ITF World Council of UPS Unions, 20 COMP. LAB. L. & POL'Y J. 542 (1999).*

a) <http://www.unionnetwork.org>

b) International Center for Trade Union Rights (<http://www.ictur.org>)

3. Closer ties

Steelworkers and (USA) and Unite (U.K.).

4. Transnational Collective Bargaining?

**Appended**

Nike, Inc. Code of Conduct

IKEA Framework Agreement

Social Responsibility of Daimler Chrysler

# NIKE, Inc. CODE of CONDUCT

At Nike, we believe that although there is no finish line, there is a clear starting line.

Understanding that our work with contract factories is always evolving, this Code of Conduct clarifies and elevates the expectations we have of our factory suppliers and lays out the minimum standards we expect each factory to meet.

It is our intention to use these standards as an integral component to how we approach NIKE, Inc. sourcing strategies, how we evaluate factory performance, and how we determine with which factories Nike will continue to engage and grow our business.

As we evolve our business model in sourcing and manufacturing, we intend to work with factories who understand that meeting these minimum standards is a critical baseline from which manufacturing leadership, continuous improvement and self-governance must evolve.

Beyond the Code, Nike is committed to collaborating with our contract factories to help build a **leaner, greener, more empowered and equitable supply chain**. And we will continue to engage with civil society, governments, and the private sector to affect systemic change to labor and environmental conditions in countries where we operate.

We expect our contract factories to share Nike's commitment to the goals of reducing waste, using resources responsibly, supporting workers' rights, and advancing the welfare of workers and communities. We believe that partnerships based on transparency, collaboration and mutual respect are integral to making this happen.

Our Code of Conduct binds our contract factories to the following specific minimum standards that we believe are essential to meeting these goals.

## **EMPLOYMENT is VOLUNTARY**

The contractor does not use forced labor, including prison labor, indentured labor, bonded labor or other forms of forced labor. The contractor is responsible for employment eligibility fees of foreign workers, including recruitment fees.

## **EMPLOYEES are AGE 16 or OLDER**

Contractor's employees are at least age 16 or over the age for completion of compulsory education or country legal working age, whichever is higher. Employees under 18 are not employed in hazardous conditions.

## **CONTRACTOR does NOT DISCRIMINATE**

Contractor's employees are not subject to discrimination in employment, including hiring, compensation, promotion or discipline, on the basis of gender, race, religion, age, disability, sexual orientation, pregnancy, marital status, nationality, political opinion, trade union affiliation, social or ethnic origin or any other status protected by country law.

## **FREEDOM of ASSOCIATION and COLLECTIVE BARGAINING are RESPECTED**

To the extent permitted by the laws of the manufacturing country, the contractor respects the right of its employees to freedom of association and collective bargaining. This includes the right to form and join trade unions and other worker organizations of their own choosing without harassment, interference or retaliation.

## **COMPENSATION is TIMELY PAID**

Contractor's employees are timely paid at least the minimum wage required by country law and provided legally mandated benefits, including holidays and leaves, and statutory severance when employment ends. There are no disciplinary deductions from pay.

## **HARASSMENT and ABUSE are NOT TOLERATED**

Contractor's employees are treated with respect and dignity. Employees are not subject to physical, sexual, psychological or verbal harassment or abuse.

## **WORKING HOURS are NOT EXCESSIVE**

Contractor's employees do not work in excess of 60 hours per week, or the regular and overtime hours allowed by the laws of the manufacturing country, whichever is less. Any overtime hours are consensual and compensated at a premium rate. Employees are allowed at least 24 consecutive hours rest in every seven-day period.

## **REGULAR EMPLOYMENT is PROVIDED**

Work is performed on the basis of a recognized employment relationship established through country law and practice. The contractor does not use any form of home working arrangement for the production of Nike-branded or affiliate product.

## **The WORKPLACE is HEALTHY and SAFE**

The contractor provides a safe, hygienic and healthy workplace setting and takes necessary steps to prevent accidents and injury arising out of, linked with or occurring in the course of work or as a result of the operation of contractor's facilities. The contractor has systems to detect, avoid and respond to potential risks to the safety and health of all employees.

## **ENVIRONMENTAL IMPACT is MINIMIZED**

The contractor protects human health and the environment by meeting applicable regulatory requirements including air emissions, solid/hazardous waste and water discharge. The contractor adopts reasonable measures to mitigate negative operational impacts on the environment and strives to continuously improve environmental performance.

## **The CODE is FULLY IMPLEMENTED**

As a condition of doing business with Nike, the contractor shall implement and integrate this Code and accompanying Code Leadership Standards and applicable laws into its business and submit to verification and monitoring. The contractor shall post this Code, in the language(s) of its employees, in all major workspaces, train employees on their rights and obligations as defined by this Code and applicable country law; and ensure the compliance of any sub-contractors producing Nike branded or affiliate products.

## International Federation of Building and Wood Workers' (IFBWW)

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### FaxNews No. 124 - Special edition

29 May 1998

*IFBWW-IKEA agreement on rights of workers*

#### [Introduction](#)

#### [The Agreement](#)

#### [Appendix: Code of Conduct regarding the rights of workers](#)

At the International Federation of Building and Wood Workers' (IFBWW) Wood and Forestry Committee meeting in Geneva on Monday 25 May 1998, IKEA, one of the world's largest retail chains within the furniture sector and IFBWW signed a cooperation agreement on matters concerning working conditions, the natural environment and health and safety for workers at enterprises throughout the world that manufacture and supply goods for IKEA.

Under the terms of this agreement IKEA will demand of its suppliers that their workers enjoy working conditions which at least comply with national legislation or national agreements. Suppliers must, furthermore, respect any relevant ILO Conventions and Recommendations relating to their operations. This means, for example, that no child labour can be tolerated and that workers have unrestricted rights to join trade unions and to free collective bargaining. These rules already apply at manufacturing companies owned by IKEA.

The Agreement was signed by Mr Stig Holmqvist, International Procurement Strategies Director of IKEA and Mr Gunnar A Karlsson, Chair of the IFBWW Wood and Forestry Committee and President of the Swedish Wood Workers Union. The Agreement was subsequently endorsed by the IFBWW Executive Committee on 28 May 1998. The final Agreement was preceded by an earlier round of negotiations between IKEA and Nordic Federation of Building and Wood Workers which culminated in a Joint Declaration signed on 13 March 1998 (see FaxNews no. 118).

The Agreement will cover almost 1,000,000 workers.

## Agreement Between IKEA and the International Federation of Building and Wood Workers, IFBWW

**IKEA is one of the world's leading home furnishing companies, with procurement in some 70**

**countries, and retailing in approximately 30 countries. The company is faced every day with cultural differences and diverse economic and social conditions.**

**IKEA's development confirms the growing globalisation and trade in manufactured goods. For a number of years the company has operated an internal Code of Conduct on ethical and social conditions in its relations with contractors all over the world.**

**The IFBWW and IKEA have each built up international experience over the years and are agreed on the advantages of long-term, stable rules of conduct for all parties in both producer and purchaser countries, which may also provide standards for industries other than the wood industry.**

**The Code of Conduct which is attached in Appendix 1, signifies that IKEA is demanding of its contractors that their employees have conditions of employment which do at least fulfil the requirements of their national legislation. The suppliers must respect those ILO Conventions and Recommendations which apply to their business. It means that child labour is not acceptable and that the workers are free to join trade unions and take part in free collective bargaining.**

**A similar Code of Conduct also applies to manufacturing companies owned by IKEA. The Code of Conduct in Appendix 1 will be available at all work-places in the appropriate languages.**

**A Monitoring Group will be appointed with two members from IKEA and two members from the IFBWW. The Monitoring Group will meet at least twice a year, and the parties shall provide relevant information in order to carry out its mandate. The group shall aim to hold its meetings at suppliers' premises.**

**If suppliers do not observe the Code of Conduct as in Appendix 1, the Monitoring Group will review the matter and propose appropriate measures. However, it is always IKEA's responsibility to regulate conditions of collaboration with its suppliers.**

**Geneva, Switzerland, 25 May 1998**

**IKEA INTERNATIONAL A/S**  
*Stig Holmqvist*

**IFBWW's Wood and Forestry Committee**  
*Gunnar A. Karlsson*

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**Appendix 1 to the Agreement between IKEA and the International Federation of Building and Wood Workers, IFBWW:**

## **Code of Conduct regarding the rights of workers**

### **1. Employment must be freely chosen**

No coercion may be used, including forced labour, slavery or non-voluntary work in prisons (ILO Conventions nos. 29 and 105). Nor must workers be asked to make "deposits" or leave their ID as pledges with their employers.

## **2. No discrimination in employment**

There will be equal opportunities and equal treatment regardless of race, colour, gender, creed, political views, nationality, social background or any other special characteristics (ILO Conventions nos. 100 and 111).

## **3. Child labour must not be used**

Child labour must not occur. Only workers aged 15 and over, or over the age of compulsory education if higher, may be employed (ILO Convention no. 138). Exceptions to this rule may only be made if national legislation provides otherwise.

## **4. Respect for the right to freedom of association and free collective bargaining**

The right of all workers to form and belong to trade unions shall be recognised (ILO Conventions nos. 87 and 98). Workers' representatives may not be discriminated against and must have access to all the work-places necessary to exercise their functions as trade unions representatives (ILO Convention 135 and Recommendation 143). Employers shall adopt positive views of the activities of trade unions and an open attitude to their organising activities.

## **5. Adequate wages must be paid**

Wages and conditions of work must fulfil at least the requirements laid down in national agreements or national legislation. Unless wage deductions are permitted by national legislation they may not be made without express permission of the workers concerned. All workers must be given written, understandable information in their own language about wages before taking up their work, and the details of their wages in writing on each occasion that wages are paid.

## **6. Working time must not be unreasonable**

Working time should follow the appropriate legislation or national agreements for each trade.

## **7. Working conditions must be decent**

Working environments must be safe, hygienic and the best health and safety conditions must be promoted considering current knowledge of the trade and any special hazards. Physical abuse, the threat of physical abuse, unusual penalties or punishments, sexual or other forms of harassment and threats by the employer shall be strictly forbidden.

## **8. Conditions of employment must be established**

Employers' obligations to workers according to national labour legislation and regulations on social protection based on permanent employment must be respected. Apprenticeships that do not truly aim to provide knowledge must not be permitted. The parties shall work towards creating permanent employment.

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***This agreement is online:***

***[http://homepages.iprolink.ch/~fitbb/INFO\\_PUBS\\_SOLIDAR/FaxNews\\_124.html](http://homepages.iprolink.ch/~fitbb/INFO_PUBS_SOLIDAR/FaxNews_124.html)***

# **Social Responsibility Principles of DaimlerChrysler**

## **Preamble**

DaimlerChrysler acknowledges its social responsibility and the nine principles that form the basis of the Global Compact. In order to achieve these shared goals, Daimler Chrysler has agreed upon the following principles with the international employee representatives.

We support the United Nations' initiative and want to work with other companies and institutions to prevent the irreversible process of globalization from causing fear and alarm among the people all over the globe; we want to show the human face of globalization, among other things by creating and preserving jobs.

We are convinced that social responsibility is an important factor for the long-term success of our company. This also applies to our shareholders, business partners, customers and employees. Only then can we contribute towards world peace and prosperity in the future.

Heeding this responsibility, however, requires that we be competitive and remain so in the long term. Taking social responsibility is indispensable for a value-based company management.

The following principles, that are orientated at the conventions of the International Labor Organization, have been implemented by DaimlerChrysler worldwide, and in establishing them, diversity in culture and social values have been duly acknowledged and heeded.

## **Human rights**

DaimlerChrysler respects and supports compliance with the internationally accepted human rights.

### **Forced Labor**

DaimlerChrysler condemns all forms of forced and compulsory labor.

### **Child Labor**

DaimlerChrysler supports the effective abolition of exploitative child labor.

Children must not be inhibited in their development. Their health and safety must not be adversely affected. Their dignity must be respected.

### **Equal opportunities**

DaimlerChrysler undertakes to uphold equal opportunities with respect to employment and to refrain from discrimination in any form unless national law expressly provides for selection according to specific criteria. Discrimination against employees based on gender, race, disability, origin, religion, age or sexual orientation is not acceptable.

### **Equal pay for equal work**

Within the scope of national legislation, DaimlerChrysler respects the principle of “equal pay for work of equal value”, e.g. for men and women.

### **Relations with employees and employee representatives**

- DaimlerChrysler acknowledges the human right to form trade unions.

During organization campaigns the company and the executives will remain neutral; the trade unions and the company will comply with basic democratic principles, and thus, they will ensure the employees can make a free decision. DaimlerChrysler respects the right to collective bargaining.

Elaboration of this human right is subject to national statutory regulations and existing agreements. Freedom of association will be granted even in those countries in which freedom of association is not protected by law.

- Cooperation with employees, employees’ representatives and trade unions will be constructive. The aim of such cooperation will be to seek a fair balance between the commercial interests of the company and the interests of the employees. Even where there is disagreement, the aim will always be to work out a solution that permits constructive cooperation in the long term.

- It is the aim of the company to involve and inform the individual employees as directly as possible. Conduct towards and communication with employees shall be characterized by respect and fairness.

### **Working conditions**

DaimlerChrysler is opposed to all exploitative working conditions.

### **Protection of health**

DaimlerChrysler ensures health and safety at the workplace to a level no less than required by national legislation and supports the continuous improvement of working conditions.

### **Compensation**

DaimlerChrysler honors the right to reasonable compensation of a level no less than the legally established minimum-wage and the local job market.

### **Working hours**

DaimlerChrysler guarantees compliance with national provisions and agreements regarding working hours and regular, paid holidays.

### **Training**

DaimlerChrysler supports training of employees with the aim of good performance and high quality work.

### **Suppliers**

DaimlerChrysler supports and encourages its suppliers to introduce and implement equivalent principles in their own companies. DaimlerChrysler expects its suppliers to incorporate these principles as a basis for relations with DaimlerChrysler.

DaimlerChrysler regards the above as a favorable basis for enduring business relations.

### **Implementation procedure**

These principles are binding upon DaimlerChrysler throughout the world. For all employees, including executives, the principles will be set down in the Integrity Code and then implemented.

These principles will be made available to all employees and their representatives in an appropriate form. The methods of communication will be previously discussed with the employee representatives.

The senior managers of each business unit are responsible for ensuring compliance with these principles; they will take appropriate measures in respect of implementation. They will designate contacts to whom business partners, customers and employees can turn in case of difficulty. Any complaint brought to the managers' attention in this way shall not result in adverse consequences for the complainant.

Corporate Audit will also examine compliance with these principles in its reviews and will include them in the audit criteria.

In addition, Corporate Audit has established a general open line. This shall be the point to accept allegation of non-compliance with these principles at a decentralized level. Upon indication of violation, Corporate Audit will take appropriate action.

The corporate management will regularly report to and consult with the international employee representatives on social responsibility of the company and the implementation of these principles.

Auburn Hills, September 2002

DaimlerChrysler

for the DC World Employee Committee  
on behalf of the International Metalworkers  
Federation (IMF)

Jürgen E. Schrempp

Günther Fleig

Erich Klemm

Nate Gooden



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REPRESENTING EMPLOYER ORGANIZATIONS THROUGHOUT THE WORLD

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**“THE GLOBALIZATION OF LABOR STANDARDS  
MANAGING RISK IN A CHANGING WORLD ECONOMY”**

**A ROUNDTABLE  
Baker & McKenzie**

**UNIONS: POSITIONING FOR GLOBAL INFLUENCE**

**Tuesday, 28 September 2010**

**Brent Wilton  
Deputy Secretary General**



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REPRESENTING EMPLOYER ORGANIZATIONS THROUGHOUT THE WORLD

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- Driven by impact of Globalisation and role of MNE's
- Weakening of national trade union membership and influence
- Greater interest in sectoral solidarity
- Creation of Global Union Federations
  - Not new (International Trade Union Secretariats)
  - But new focus
    - international
    - coordinated (Global Union Council)
  - International Trade Union Confederation versus the GUFs



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REPRESENTING EMPLOYER ORGANIZATIONS THROUGHOUT THE WORLD

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- there are eleven of them
- have own « personality »
- co-ordinating forum - goal - global collective bargaining
- variety of means of action - varies between GUFs



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REPRESENTING EMPLOYER ORGANIZATIONS THROUGHOUT THE WORLD

## International Framework Agreements (IFAs)

Some 84 individual agreements (1 USA Chiquita)

- mainly European (French/German) but Japan, South Africa, Australia, New Zealand

- Most Active Union Network International (Services) IMF, BWI, ICEM – some multi GUF

- numbers versus quality debate

- What are they?
  - Negotiated and signed agreement between a GUF and an MNE to apply to operations globally
  - Supply chain extension (various ways)
  - Fundamental purpose – facilitate unionisation, recognition, neutrality but!
  - Incorporation of ILO standards, Global Compact, OECD guidelines etc.
  - Complaint/dispute procedures
  - Seen by GUFs as Industrial Relations NOT CSR
  - Legal status uncertainv – does it matter?



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REPRESENTING EMPLOYER ORGANIZATIONS THROUGHOUT THE WORLD

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- What drives them?
  - Union – civil society pressure
  - company needs
    - expansion
    - problem solving
    - image
  - European works councils
- Trend is increasing
  - Move to regional/sectoral being explored
  - GUFs drawing on European Union experience
  - Number of US company European operations have European Framework Agreements



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REPRESENTING EMPLOYER ORGANIZATIONS THROUGHOUT THE WORLD

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- Other means: Union mergers/co-operation
  - Mixed results
  - Unite (UK) and United States steel workers (unveiled 2008). Not a lot so far but continuing to explore options i.e. MNE company unions
  - T-Mobile US /Deutsche Telecom – re application of European rights in US operations
  - Company networks: Coca Cola, Nestlé, Fedex, DHL, HSBC etc. – bottom up



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REPRESENTING EMPLOYER ORGANIZATIONS THROUGHOUT THE WORLD

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- Use of IT /call phone technology
  - UNI on second life
  - Virtual strikes IBM 2007
  - Facebook, You Tube – organising tools
  - Exportation of strikes

- 
- A faint, light-colored world map is visible in the background of the slide, showing the outlines of continents and countries.
- Linked to global policy pushes
    - Trade and labour linkage
    - Precarious employment
    - Living wage/minimum wage
    - Outsourcing
    - Supply chain behaviour



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REPRESENTING EMPLOYER ORGANIZATIONS THROUGHOUT THE WORLD

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- Many tools – codes of conduct for example written for a different time
- Legitimacy/representativity not important
- Speed of impact increasing
- Union unity versus employers?

UNITED STATES COUNCIL FOR  
INTERNATIONAL BUSINESS

# The Globalization of Labor Standards: Managing Risks in a Changing World Economy – A Roundtable

September 28, 2009



**Adam B. Greene**  
Vice President, Labor Affairs  
& Corporate Responsibility

## 1) Business & Human Rights

- UN Sub-Commission on the Promotion and Protection of Human Rights – inventory of relevant instruments
- Draft UN “Norms” (treaty) on the Responsibilities of Transnational Corporations and Other Business Enterprises (2003)
- Strongly supported by NGOs & human rights organizations
- Rejected by the UN Commission on Human Rights

## UN Mandate (2005-2008)

- Special Representative of the Secretary General (SRSG) – John Ruggie, Harvard (2005)
- Identify existing standards on CR & accountability;
- Explore the role of States in effective regulation;
- Clarify the concepts of “complicity” and “sphere of influence”;
- Develop methodologies for human rights impact assessments;
- Compile a compendium of best practices

## Ruggie Framework

- Objective analysis and extensive consultation
- Clear rejection of the “norms” approach
- **Protect, Respect, Remedy:**
  - State duty to protect human rights.
  - Corporate responsibility to respect human rights.
  - Access to remedies.
- Adopted by the UN Human Rights Council

## State Duty to Protect

- Government obligation to proactively implement and enforce the law.
- Culture of compliance:
  - Corporate law
  - CSR policies
- International cooperation on conflict zones
- Investment agreements & contracts
- Export credits

## Corporate Responsibility to Respect

- “Do no harm” – compliance
- Proactive steps beyond compliance to ensure responsibility to respect:
  - Dilemma situations
  - Due diligence:
    - Scope: country context, company impacts, relationships
    - Content: Issues covered (UDHR, ILO core conventions, etc.)
    - Components: policy, impact assessments, integration, tracking performance

## Access to Remedies

- Judicial remedies:
  - Functioning court systems
- Non-judicial remedies:
  - Stakeholder engagement processes
  - Dispute mechanisms (example: OECD Guidelines)
  - ADR / mediation

## Second Ruggie Mandate (2008-2011)

- Operationalize the “Protect, Respect, Remedy” framework
- Present “guiding principles” on business and human rights to States and business
- Identify key challenges where guidance is needed
- Shift from mapping and research to making recommendations
- Final report by June 2011.

## State Duty to Protect

### Guiding Principles on:

- Ensuring Policy Coherence
- Doing business with business
- Fostering a “rights-respecting” corporate culture
- Responding to heightened risks
- Extraterritoriality
- Multilateral engagement

## Corporate Responsibility to Respect

### Guiding Principles on:

- Statement of commitment
- Assessing actual and potential adverse impacts
- Integrating human rights throughout operations
- Remediating adverse impacts
- Tracking & Communicating performance
- Managing tensions & ambiguities
- Value chains

## Access to Remedies

### Guiding Principles on:

- State-based & non-judicial mechanisms
- Operational/Company-level and Industry mechanisms

## 2) OECD Guidelines for Multinational Enterprises

### 2010 Update:

- Structure: part of OECD Declaration on Investment or stand alone?
- Content: proposals to update:
  - Human rights, climate change, financial education, disclosure, supply chain
- Complaint process:
  - Functional equivalence of NCPs, financial sector, parallel proceedings, timelines for cases.

## OECD Guidelines for Multinational Enterprises

NGO & Union top priorities:

- Complaint mechanism:
  - Still seeking a legally-binding instrument
  - Uniform requirements for National Contact Points
- Supply chains:
  - Hold MNE's accountable for entire supply chain

### 3) ISO 26000: Guidance on Social Responsibility

- Guidance with voluntary recommendations
- For any type of organization, of any size, operating anywhere in the world
- Not:
  - for certification
  - a management system standard
  - for regulatory or contractual use
  - an “international standard” under the WTO agreements

## ISO 26000 - SR Principles

- Accountability
- Transparency
- Ethical Behavior
- Respect Stakeholder Interests
- Respect for the Rule of Law
- Respect for International Norms on Behavior
- Respect for Human Rights

## ISO 26000 - SR Core Issues

- Organizational Governance
- Human Rights
- Labor Practices
- The Environment
- Fair Operating Practices
- Consumer Issues
- Community Involvement & Development

## ISO 26000 - Integrating SR into the Organization

- Relationship of the organization characteristics to SR
- Understanding the Social Responsibility of the organization
- Practices for Integrating SR into the Organization
- Communication on SR
- Enhancing Credibility regarding SR
- Reviewing and Improving the Organizations Actions
- Voluntary Initiatives on SR

## ISO 26000 - Key Industry Concerns

- ISO Working Group process
- Content of the text:
  - Applicability to all organizations
  - Level of detail, tone & readability
- Confusion between “guidance” & “standard”
  - NGO push to make 26000 a “minimum requirement”
- Misuse of ISO 26000:
  - National versions for certification
  - Contracts & procurement

Thank You

# Labor Unrest in China: Dealing with Strikes and Wage Demands

Chicago, September 28, 2010

Andreas Lauffs

Head of China Employment Law Group

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# Recent Incidents of Labor Unrest

# Big Picture Issues

- Higher living costs
- Labor shortages
- Greater awareness of legal rights
- Government promises:
  - Increase wage levels
  - Reform “hukou” system / better protection of migrant workers

# What is Different About Recent Labor Unrest?

- Length of strikes
- Effectiveness of strikes
- Wage focus
- Employee demands regarding unions
- Targets mostly Japanese and Taiwanese plants

# Government Unsure How to React

## – Supports wage increases

- Decrease wage disparity
- Increase domestic consumption

## – However, also cause for concern

- Opposes independent employee organization
- Local gov't fearful of impact on local business

## – Public security forces

- In some cases, refuse to intervene
- In other cases, brutal crackdown

# Strikes and Other Wage Pressures

# Strikes – The Basics

- No right to strike
- Not prohibited either
- Role of Unions
  - Act as mediators
  - Not authorized to lead strikes
  - All strikes are “wildcat” strikes

# Employers' Legal Options

- Termination of employees
- Wage deductions
- Claims against employees
- Replacement of striking workers

# Issues for Employers to Consider

- Relations with local government
- PR/Media
- May inflame the situation
- Long-term morale of company employees

# What are More Practical Options?

- Notify labor bureau immediately
- Find “true” representatives
- Express willingness to negotiate
- Sometimes, encourage them to find legal counsel

Unions

# Union Powers

- Demand collective bargaining
- Consultation rights
- Right to notice prior to termination
- Monitor employer compliance

# Effectiveness of Unions in Practice

- Absent or irrelevant in recent unrest
- Inherent paradox in its role
  - ACFTU controlled by CCP
  - Maintain stability or represent employees?
- Rarely exercise statutory powers
  - Often controlled by management
  - For ACFTU, local gov't concerns outweigh employees'

# Future Strategy of ACFTU

- Renewed unionization campaign
- Next step: collective bargaining
- May become more “representative”
- Chairman of labor union on payroll of ACFTU
- Automatic withholding of labor union fees

# Collective Bargaining

- Bargaining process
  - Negotiation
  - Employee Vote
  - Labor bureau approval
- In practice, significant defects
- Gov't recognition of problem, but little action so far
- Use Guangdong province as “guinea pig”
  - Draft Guangdong Province regs
  - Draft Guangzhou regs
  - Draft Shenzhen regs

# Practical Collective Bargaining Tips

- Prepare draft of agreement
- Make term as long as possible
- Insert “zipper” clause
- Grievance procedures
- Do not include any content unless absolutely necessary

Looking to the Future –  
How Can Multi-  
Nationals Adjust?

# Preventing Strikes and Labor Unrest

- Compliance – necessary but not sufficient
- Initiate collective bargaining now?
- Increase pay
- More dialogue with employees

# Union Issues for Multi-nationals

## – Companies without unions

- Maintain union avoidance strategy or cooperate?
- If cooperate, how to influence union establishment?

## – Companies with unions

- Make unions more representative?
- Establish ERCs (职工代表大会)?
- ✓ May make collective bargaining easier
- ✓ May make Art. 4 consultation easier
- ✓ But, may be more aggressive than union

# How Can Companies React to Wage Pressures?

- Cut costs through other means
- Increased productivity – more mechanization
- Relocation to cheaper areas
- May Lead to downsizing:
  - Art. 41 procedures
  - Mutual termination
  - Let fixed-terms expire – but this option is limited
  - Keep in mind severance costs

# Our Publications



**September 2008**

**News**

**Privacy Commissioner clarifies "criminalizing data leakage"**

*A response to the Privacy Commissioner to criminalize certain uses of data*

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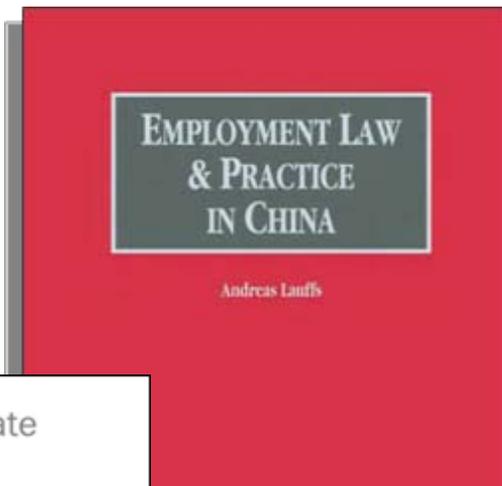
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**October 2008**

**ACFTU Claims Success in Recent Unionization Campaign**

The All China Federation of Trade Unions (ACFTU) reached its target of establishing unions of Fortune Global 500 companies in China. In June 2008, the ACFTU launched a new Fortune Global 500 campaign, which targets China of less than 50%.

Sun Chaoxin, the deputy head of ACFTU, said in October 2008 that the unionization rate in Fortune Global 500 companies had reached 82%. The ACFTU established unions in 90% of all foreign-invested and in all foreign-invested enterprises.

During the national congress, which also approved amendments to the Labor Law, the ACFTU also proposed amendments to the Labor Law to set forth the rules governing the operation of labor unions. Most of the amendments will affect the membership of the labor unions.

Another amendment would require the labor unions to establish a "preparation fee" to support the union's activities. While some provinces are opposing such fees, there is no such fee in the Labor Union Charter in China. Because the Labor Union Charter is the law, the ACFTU will try to enforce the Charter.

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**Privacy Matters**

**Client Alert**

**Anti-discrimination Legislation is Passed**

On August 30, the Standing Committee of the National People's Congress passed the Employment Promotion Law, which will take effect on January 1, 2008. Most of the new law's provisions are actually directed towards local labor bureaus and urge them to take more active measures to encourage job creation. However, the Fair Employment section of the law will expand anti-discrimination protections for employees and job applicants, and increase the risk of legal liability for companies that engage in discriminatory practices.

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**Global Labour, Employment, And Employee Benefits**

**Special Pensions Issue**

**The Global Employer™**

Employers and employees worldwide focus on pension plans and how to protect their nest egg

**Employment Newsletter**

Quarter 3, 2008

www.bakermckenzie.com

**Asia Pacific Law@Work**

Welcome to the Quarter 3 2008 Baker & McKenzie Asia Pacific employment newsletter, Pacific Law@Work.

As usual we have updates from a variety of Asia Pacific jurisdictions including Australia, China, Hong Kong, Japan, Singapore, Thailand and Vietnam. On the legislative front, China's Implementing Regulations for the Employment Contract Law have finally been issued and long-awaited Race Discrimination Ordinance has been gazetted in Hong Kong. There is also news from Australia and Hong Kong and employers in Japan may need to rethink their own requirements.

Asia Pacific Law@Work is designed to give you a snapshot of the updates and changes in laws and practices throughout the region. Please let us know if you require any further information, or have any queries relating to jurisdictions in Europe and the Americas that members of our extensive Global Employment Group can help with.

With best regards,

*Jennifer Van Dale*

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# Awards

**Tier 1 Law Firm for Employment in Hong Kong and China**  
*Asia Pacific Legal 500, 2009/2010*

**Ranked No. 1 Employment Law Firm**  
*PLC Which Lawyer?*  
*Global Employment Top Ten Firms Leading in China*

**Tier 1 Law Firm for Employment in China**  
*Chambers Asia 2010, 2009*

**International Employment Firm of the Year in China**  
*China Law & Practice Award 2008*  
*(in association with IFLR and Asialaw)*

**Leading Firm in China and Highly Recommended in Hong Kong for Labour and Employee Benefits**  
*PLC Which Lawyer? 2010, 2009, 2008, 2007 Yearbook*

**PRC Labor Lawyer of the Year Award**  
*China Staff HR Awards*  
*2004, 2002, 2000, 1999*

**China Client Choice Award**  
*International Law Office 2008, 2007, 2006, 2005*

# The Globalization of Labor Standards

Managing Change in the European Union –  
Labor Relations between  
Flexibility and Security

Guenther Heckelmann

Chicago, Illinois, USA

September 28, 2010



## Topics Covered

- The Historic Struggle between Flexibility and Security in the EU
- Current Developments at EU Level
- Trends re External Flexibility
- Trends re Internal Flexibility
- The Role of CBAs: A Contradictory Picture
- Lessons Learned for Employers

# The Historic Struggle between Flexibility and Security in the EU

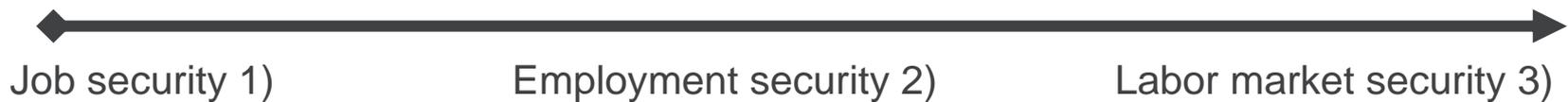
# The Historic Struggle between Flexibility and Security in the EU

- The traditional European model: Strong protection for employees
  - The Euroclerosis debate in the 80ies/the influence of the US discussions
  - The struggle between social partners and countries
  - The influence of the world economy
- The current state of play: Flexi-curity in various forms and degrees\*

\* "Improve business environment and opportunities" while "tackling unemployment and sustaining social cohesion" (Report of the EU Commission: Annual Policy Strategy for 2010)

# The Historic Struggle between Flexibility and Security in the EU

## From Job to Labor Market Security\*



- 1) Protection of a specific job/task
- 2) Protection of employment by multiple jobs/tasks
- 3) Protection of employment and labor market policies + social rights

\* Source: Security in Labor Markets – Combining Flexibility with Security For Decent Work, Economic and Labor Market Papers, ILO, 2007/12

# The Historic Struggle between Flexibility and Security in the EU

- Components of Flexi-curity\*:
  - Secure but somewhat more flexible contractual arrangements
  - Active labor market policies
  - Reliable and responsible life long learning
  - Modern social security systems
  - Supportive and productive social dialogue
- The degree of emphasis on some of the Flexi-curity aspects differs strongly from country to country

\* See: “Common principles of flexi-curity: More and better jobs through flexibility and security” (EU Commission, 2007)

# The Historic Struggle between Flexibility and Security in the EU

- ➔ Current macro trend: Maintaining external job security against providing limited internal flexibility combined with government subsidies (“pact for jobs”), in some countries coupled with a slightly increased flexibility re definite employment contracts

# The Historic Struggle between Flexibility and Security in the EU

- The picture at country level from a macro perspective\*
  - Still heavily regulated environments with strong ideological confrontations: France, Spain, Italy, Portugal, Greece
  - Strong regulatory environments but with a more pragmatic approach of social partners: Germany, Netherlands, Austria (Belgium in-between)
  - Pragmatic consensual climate: The Nordic countries
  - New kids on the block: The Eastern European countries
  - High flexibility countries: UK and Ireland

\* This is a big picture summary only. Details vary between countries. Surprising flexibility pockets are found even in highly regulated environments. To the contrary, even in high flexibility countries some strong regulatory sprinkles exist

# Current Developments at EU Level

## Current Developments at EU Level

- Current trend: Tighten employee rights without going overboard
- Changes in the EWC Directive
  - The core: Substantial increase of information and consultation rights
  - But: Rejection of far reaching further union demands\*

\* For example: Reduction of threshold to establish an EWC, inclusion of JVs and franchise operations, loosening of confidentiality requirements, renegotiation obligations for all existing EWC agreements, increase the role of union representatives

## Current Developments at EU Level

- So far, the Directive does not contain the definition of **information**. This now changes. The new Article 2 provides for “information” to be a “transmission of data by the employer to the employees’ representatives in order to enable them to acquaint themselves with the subject matter and to examine it; information shall be given at such time, in such fashion and with such content as are appropriate to enable employees’ representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare for consultations with the competent organ of the ... undertaking or ... group of undertakings”

## Current Developments at EU Level

- In addition to the currently existing definition of “**consultation**”, meaning “the establishment of dialogue and exchange of views between employees’ representatives and central management or any more appropriate level of management” it is now added that the “consultation” shall take place “at such time, in such fashion and with such content as enables employees’ representatives to express an opinion on the basis of the information provided about the proposed measure to which the consultation is related, without prejudice to the responsibilities of the management, and within a reasonable time, which may be taken into account within the ... undertaking or ... group of undertakings”

## Current Developments at EU Level

- The new Directive has been adopted on June 5, 2009 and shall take effect on June 5, 2011. We already see that EWCs will use the revised wording of the proposal to already now come to a more fine-tuned procedure before the EWCs. When planning for transnational measures companies must take this into account
- Interesting phenomenon: The cultural background of judges and its implication on rulings in countries

## Current Developments at EU Level

- Many courts granted EWCs preliminary injunctions to hold corporate restructurings without proper information and consultation of the EWC:
  - Decision of a French court of November 2006 against Gaz de France in conjunction with the planned merger with Suez (confirmed by the court of appeals)
  - Comparable decision of a French court in the Alcatel-Lucent case
- EWCs make use of these powers (see attempts of EWC of Thomson of February 2007 and Michelin of April 2007)

## Current Developments at EU Level

- ➔ Lessons learned: EWC processes are manageable but need to be managed; careful planning needed; companies often underestimate time needed for preparation
- Further practical developments
  - Some companies meanwhile use the EWC model to build world employee bodies (PSA/Peugeot Citroën, IKEA, France Telecom)
  - Some companies attempt not only to inform and consult but reach framework agreements with EWCs (latest: GM/Opel, Alstom and Schneider) and even unions directly (Thales, ArcelorMittal)

## Current Developments at EU Level

- Attempts to tighten the SE Directive to strengthen employee representation

# Trends re External Flexibility

## Trends re External Flexibility

- Main topics: Hirings, terminations, restructurings, outsourcing
- Hirings: Security aspects still predominant
  - Indefinite employment contracts continue to be the norm (with corresponding termination restrictions)
  - Definite employment contracts still viewed skeptically (tendencies for flexibilities, however, visible in Spain, Germany and Poland; interesting ECJ decision in re Mangold)

## Trends re External Flexibility

- Terminations: No major tendencies for increased flexibility visible
  - In most countries still strong termination protection of employees
  - Social justification needed in most countries – criteria often difficult to meet / no relaxation of criteria seen
  - Main exceptions: Belgium, Austria, Denmark and UK/Ireland (there, however, enlarged practical relevance of discrimination legislation)

## Trends re External Flexibility

- Restructurings: Main issues are works council and union participation
  - Flexibility up to certain minimum thresholds in most countries\*
  - Above thresholds information and consultation of the plans necessary with the works councils/unions
  - Consent of works councils/unions not required but substantial delaying potential of employee reps. during the process

\* Differences exist from country to country. Often applied rule: 10 % of the workforce affected, however, modifications in many countries depending on size of the business and timeframe of the planned redundancies, also often hard caps applicable

## Trends re External Flexibility

- Most countries do not have hard cap on timing of consultations (exception, for instance, Italy with 75 days)
- Required depth of information differs from country to country\*
- Works councils/unions often make use of their delay potentials. Usual timeline: Between several weeks up to 9 – 12 months for information and consultation period, depending on country and circumstances

\* On the lighter side: UK, Italy, Belgium; at the heavy end: France; in-between with tendency to heaviness: Germany and the Netherlands

## Trends re External Flexibility

- Courts currently increase works council/union rights by easily granting preliminary injunctions against employer plans for lack of information and consultation
  - Decision of the Douai court (France) of June 2010 against Total to reopen a refinery in Dunkerque for lack of proper information and consultation of works council
  - Decision of the Chartres court (France) of February 2010 against Philips to reinstate 200 workers it had made redundant when it closed its plant in Dreux with alleged lack of proper works council involvement

## Trends re External Flexibility

- Decision of the Munich labor court (Germany) of December 2008 against Nokia Siemens Networks to postpone a planned restructuring until proper information and consultation of the works council\*
- UK Coal Mining vs. NUM (UK court) of 2007 made it clear that where there are 20+ employees employers must start collectively consulting with employee representatives before any final decision on a restructuring has been taken on redundancies
- Similar trends existing in most other countries

\* This decision is particularly important as the Munich labor court traditionally always refused to grant preliminary injunctions to works councils

## Trends re External Flexibility

- Obligation to negotiate social plans: Tendencies: In the economic downturn and in light of reduced governmental aids in many countries the price tag for social plans raised substantially (classic example in France: Employers in the sandwich between lack of government funding and works council/union demands concerning early retirement schemes)
- Special trend in the Netherlands: “Discovery” of supervisory boards by employee reps.

## Trends re External Flexibility

### – Outsourcing

- Legal basis similar across EU – Ground rule: Automatic transfer
- Differences, however, apply to the right of rejection (not available for employees in many countries but existing in others, for instance in Germany)
- Be aware: Cultural differences in interpretations apply (tendency of courts in many countries: Assume automatic transfer; tendency in France: Reject automatic transfer)
- Special trend: “(Perceived) hired guns” court rulings in France
- The role of works councils/unions

Trends re Internal Flexibility

## Trends re Internal Flexibility

- General principle: Changes in compensation arrangements and working conditions are difficult to achieve unilaterally (i.e. without employee consent), unless it concerns simple ancillary rules (like travel expense policies, etc.)
- To a certain extent changes are, however, achievable through works agreements and collective bargaining agreements (unless employee consent additionally required)

## Trends re Internal Flexibility

- Practical observation: Given the economic conditions many unions/works councils are willing to concede flexibility which employers have used and subsequently employees accept (trend will most likely, however, stop if economy improves)
- Often seen: “Do ut des agreements” cost concessions of works councils/unions against prevention of reduction of redundancies or allocation of production (examples: Daimler, GM/Opel or Schaeffler in Germany, Czech Airlines in Czech Republic, Honda and Toyota in France)

## Trends re Internal Flexibility

- In some countries even sector level “pact for work” CBAs exist (example: Germany or Italy)
- Flexibility re working time increased in some areas (example: Stretched working time accounts or lower reference periods for averaging weekly hours) available in some CBAs or in some countries (example: Hungary, Lithuania, Poland or Portugal)

## Trends re Internal Flexibility

- Interesting development: In Spain: Ius Variadi, allowing for significant unilateral changes in the working time
- Short-time work gained significant practical relevance in many countries (currently 18 in Europe) (reduction in working time and pay with available government grants)

# The Role of CBAs: A Contradictory Picture

## The Role of CBAs: A Contradictory Picture

- Interesting court decisions at EU level as well as in France, Ireland and Germany
  - European Court of Human Rights: *Demir vs. Turkey* (November 2008): The right to freedom of association in Article 11 of the European Court on Human Rights now includes the right to bargain collectively as being an “essential element” in the principle of freedom of association (reversing the court’s opinion in earlier cases)
  - Ireland: *Ryanair* decision (2007) of the Irish Supreme Court: Employers have a fundamental right not to recognize trade unions (destiny of this decision remains to be seen in light of the *Demir vs. Turkey* decision of the European Court of Human Rights)

## The Role of CBAs: A Contradictory Picture

- Germany: The Federal Labor Court ruled in June 2010 that competing unions (even if only small) can enter into competing CBAs at company level (reversing the traditional stands of the court allowing the validity of only one CBA at company level being the one having the most relevance for employees)

## The Role of CBAs: A Contradictory Picture

- The Paris court (April 2010) approved a new law of January 1, 2009 in which the legislator has defined threshold values for negotiation rights (following the Spanish model) that are derived from works council election results. Unions which have obtained less than 10 % of the votes can no longer conclude company CBAs. Furthermore, the signing trade unions must totalize at least 30 % of the votes for any shop level CBA to be valid. Union membership figures are not taken into consideration. Industry-wide sectoral agreements require at least 8 % of the combined election votes for all works councils within the concerned sector. Contrary to the court of first instance, the court of appeal upheld the law (contradicting somewhat the approach of the Federal Labor Court in Germany)

# Lessons Learned for Employers

## Lessons Learned for Employers

- Have no illusions: Flexibility exists but only in pockets
- Flexibility to be found more re cost-cutting measures than re restructurings
- If works council/union consents for cost-cutting measures are needed: Hurry up before economy starts fully to recover

## Lessons Learned for Employers

- For restructurings
  - Planning, planning, planning!
  - Rush jobs have boomerang effects
  - Take time perspective into account (otherwise works councils/unions have even more leverage)
  - Do realistic budgeting

# Any Questions?

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# The Globalization of Labor Standards

## Managing Change in Latin America

– ILO conventions, their implication and reception

**Carlos A. Felce**

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Chicago, Illinois, USA

September 28, 2010



# General Principles of Employment and Labor Law in Latin America

1. Territoriality in the application of labor legislation, notion of public policy provisions, general prohibition to waive labor rights and possible exceptions.
2. Employee protection principle (application, interpretation and preservation – indivisibility – )
3. Reality principle (substance over form)
4. Preservation of the employment relationship
5. Non arbitrary discrimination

# General Principles of Employment and Labor Law in Latin America

6. Employment agreements:  
written v. oral; indefinite v. temporary
7. Mandatory social contributions  
(e.g.: social security).
8. Protection of rights to unionize, compel the employer to negotiate collective bargaining agreements and file collective grievances (including possibility to strike)

# The Importance of ILO conventions

- As a source of labor rights or provisions in Latin America
  - In Argentina, ratified ILO conventions constitute a source of labor rights or provisions which may be enforced by the labor courts and/or administrative authorities (it is not so clear whether ILO conventions which are not ratified may be applied or enforced).
  - In Brazil, Chile and Colombia, only ratified ILO conventions may be applied or enforced.
  - In Venezuela, ratified ILO conventions constitute a source of labor rights or provisions which may be enforced by the labor courts and/or administrative authorities, and non ratified ILO conventions and recommendations could also be applied in the absence of a solution contained in the internal constitutional and legal provisions or in the applicable collective bargaining agreement or arbitral award, or in the applicable individual employment agreement.

# The Importance of ILO conventions

- As a source of labor rights or provisions in Latin America
  - Specific case of Venezuela:
    - A) Constitutional and legal provisions (this should include ratified ILO conventions)
    - B) Collective bargaining agreements or arbitral awards
    - C) The individual employment agreement.
    - D) “*The principles inspiring the Labor Legislation, such as those explicitly or impliedly contained in constitutional statements or in the Conventions and Recommendations adopted in the International Labor Organization and in the national court decisions and commentators”.* [Organic Labor Law, Art. 60] (this should include non ratified ILO conventions and recommendations)

# The Importance of ILO conventions

- As a source of labor rights or provisions in Latin America

- Specific case of Venezuela:

- However, the Constitution states (Art. 23):

*"The treaties, pacts and conventions relating to human rights, signed and ratified by Venezuela, have constitutional hierarchy and prevail in the internal order, provided that they contain provisions relating to their enjoyment and exercise which are more favorable than the ones set forth in this Constitution and in the laws of the Republic, and are of immediate and direct application by the courts and other agencies of Public Power."*

# The Importance of ILO conventions

- As a source of labor rights or provisions in Latin America
  - Specific case of Venezuela:
  - Based on the foregoing constitutional provision, a proposed amendment to the Organic Labor Law would give preference even over constitutional and legal provisions to ILO international conventions ratified by Venezuela and relating to human rights which are more favorable than the Venezuelan constitutional or legal provisions. In addition, this proposed reform would maintain the same rank for ILO conventions ratified by Venezuela which do not relate to human rights and finally would provide that ILO recommendations (and, presumably, conventions which have not been ratified?) would apply only after a solution has not been found in all prior sources of labor provisions including ratified ILO conventions. In our view, this system could be applied even without reforming the Organic Labor Law.

## ILO conventions ratified in some LA countries

(Source: ILO's Web page)

Argentina	<b>Ratified:</b> 75	<b>In force:</b> 65	<b>Denunciation:</b> 2	
Brazil	<b>Ratified:</b> 95	<b>In force:</b> 79	<b>Denunciation:</b> 14	
Chile	<b>Ratified:</b> 60	<b>In force:</b> 50	<b>Denunciation:</b> 10	
Colombia	<b>Ratified:</b> 60	<b>In force:</b> 54	<b>Denunciation:</b> 6	
Mexico	<b>Ratified:</b> 78	<b>In force:</b> 67	<b>Denunciation:</b> 8	
Venezuela	<b>Ratified:</b> 54	<b>In force:</b> 50	<b>Denunciation:</b> 4	

# Fundamental ILO conventions

## The ILO's Declaration on Fundamental Principles and Rights at Work of 1998

<b>A</b>	Freedom of Association and effective recognition of the right to collective bargaining	<b>Conventions:</b> 87, 98
<b>B</b>	Elimination of all forms of forced or compulsory labor	<b>Conventions:</b> 29, 105
<b>C</b>	Effective abolition of child labor	<b>Conventions:</b> 138, 182
<b>D</b>	Elimination of discrimination in respect of employment and occupation	<b>Conventions:</b> 100, 111

# Fundamental ILO conventions

## The ILO's Declaration on Fundamental Principles and Rights at Work of 1998

1

Most of the LA countries referenced in this presentation have ratified most of the ILO's conventions relating to the Declaration.

C	Subject	ARG	BRA	CH	COL	MEX	VEN
29	Forced Labour	✓	✓	✓	✓	✓	✓
87	Freedom of Association and Protection of the Right to Organise	✓	✗	✓	✓	✓	✓
98	Right to Organise and Collective Bargaining	✓	✓	✓	✓	✗	✓
100	Equal Remuneration	✓	✓	✓	✓	✓	✓
105	Abolition of Forced Labour	✓	✓	✓	✓	✓	✓
111	Discrimination (Employment and Occupation)	✓	✓	✓	✓	✓	✓
138	Minimum Age	✓	✓	✓	✓	✗	✓
182	Worst Forms of Child Labour	✓	✓	✓	✓	✓	✓

2

When not ratifying it, they often have internal constitutional and/or legal provisions establishing said Principles and Rights.

# ILO's Committee on Freedom of Association

- Established in: 1951
- Purpose: Examining complaints about violations of freedom of association, whether or not the country concerned ratified the relevant conventions.

## CFA in action

- In over 50 years of work, the CFA has examined over 2,300 cases. More than 60 countries on five continents have acted on its recommendations and have informed it of positive developments on freedom of association during the past 25 years. In the last decade alone, more than 2,000 trade unionists worldwide were released from prison after this ILO committee examined their cases.

# ILO's Committee on Freedom of Association

## – Procedure Highlights:

- Complaints may be brought against a member state by employers' and workers' organizations.
- The CFA is a Governing Body committee, and is composed of an independent chairperson and three representatives each of governments, employers, and workers.
- If it decides to receive the case, it establishes the facts in dialogue with the government concerned.
- If it finds that there has been a violation of freedom of association standards or principles, it issues a report through the Governing Body and makes recommendations on how the situation could be remedied.
- Governments are subsequently requested to report on the implementation of its recommendations.
- In cases where the country has ratified the relevant instruments, legislative aspects of the case may be referred to the Committee of Experts.
- The CFA may also choose to propose a "direct contacts" mission to the government concerned to address the problem directly with government officials and the social partners through a process of dialogue.

# Any Questions?

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# Argentina



# Argentina

Member since 1919

76 Conventions ratified (65 in force)

<a href="#">C. 1</a>	Hours of Work (Industry) Convention, 1919 (No. 1)	30.11.1933
<a href="#">C. 2</a>	Unemployment Convention, 1919 (No. 2)	30.11.1933
<a href="#">C. 3</a>	Maternity Protection Convention, 1919 (No. 3)	30.11.1933
<a href="#">C. 6</a>	Night Work of Young Persons (Industry) Convention, 1919 (No. 6)	30.11.1933
<a href="#">C. 8</a>	Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8)	30.11.1933
<a href="#">C. 9</a>	Placing of Seamen Convention, 1920 (No. 9)	30.11.1933
<a href="#">C. 11</a>	Right of Association (Agriculture) Convention, 1921 (No. 11)	26.05.1936
<a href="#">C. 12</a>	Workmen's Compensation (Agriculture) Convention, 1921 (No. 12)	26.05.1936
<a href="#">C. 13</a>	White Lead (Painting) Convention, 1921 (No. 13)	26.05.1936
<a href="#">C. 14</a>	Weekly Rest (Industry) Convention, 1921 (No. 14)	26.05.1936
<a href="#">C. 16</a>	Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16)	26.05.1936
<a href="#">C. 17</a>	Workmen's Compensation (Accidents) Convention, 1925 (No. 17)	14.03.1950
<a href="#">C. 18</a>	Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18)	24.09.1956
<a href="#">C. 19</a>	Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)	14.03.1950
<a href="#">C. 21</a>	Inspection of Emigrants Convention, 1926 (No. 21)	14.03.1950
<a href="#">C. 22</a>	Seamen's Articles of Agreement Convention, 1926 (No. 22)	14.03.1950
<a href="#">C. 23</a>	Repatriation of Seamen Convention, 1926 (No. 23)	14.03.1950
<a href="#">C. 26</a>	Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)	14.03.1950

<a href="#">C. 27</a>	Marking of Weight (Packages Transported by Vessels) Convention, 1929 (No. 27)	14.03.1950
<a href="#">C. 29</a>	Forced Labour Convention, 1930 (No. 29)	14.03.1950
<a href="#">C. 30</a>	Hours of Work (Commerce and Offices) Convention, 1930 (No. 30)	14.03.1950
<a href="#">C. 31</a>	Hours of Work (Coal Mines) Convention, 1931 (No. 31) Withdrawn Convention	24.09.1956
<a href="#">C. 32</a>	Protection against Accidents (Dockers) Convention (Revised), 1932 (No. 32)	14.03.1950
<a href="#">C. 35</a>	Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35)	17.02.1955
<a href="#">C. 36</a>	Old-Age Insurance (Agriculture) Convention, 1933 (No. 36)	17.02.1955
<a href="#">C. 41</a>	Night Work (Women) Convention (Revised), 1934 (No. 41)	14.03.1950
<a href="#">C. 42</a>	Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42)	14.03.1950
<a href="#">C. 45</a>	Underground Work (Women) Convention, 1935 (No. 45)	14.03.1950
<a href="#">C. 50</a>	Recruiting of Indigenous Workers Convention, 1936 (No. 50)	14.03.1950
<a href="#">C. 52</a>	Holidays with Pay Convention, 1936 (No. 52)	14.03.1950
<a href="#">C. 53</a>	Officers' Competency Certificates Convention, 1936 (No. 53)	17.02.1955
<a href="#">C. 58</a>	Minimum Age (Sea) Convention (Revised), 1936 (No. 58)	17.02.1955
<a href="#">C. 68</a>	Food and Catering (Ships' Crews) Convention, 1946 (No. 68)	24.09.1956
<a href="#">C. 71</a>	Seafarers' Pensions Convention, 1946 (No. 71)	17.02.1955
<a href="#">C. 73</a>	Medical Examination (Seafarers) Convention, 1946 (No. 73)	17.02.1955
<a href="#">C. 77</a>	Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77)	17.02.1955
<a href="#">C. 78</a>	Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78)	17.02.1955

<a href="#"><u>C. 79</u></a>	Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 79)	17.02.1955
<a href="#"><u>C. 80</u></a>	Final Articles Revision Convention, 1946 (No. 80)	14.03.1950
<a href="#"><u>C. 81</u></a>	Labour Inspection Convention, 1947 (No. 81)	17.02.1955
<a href="#"><u>C. 87</u></a>	Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)	18.01.1960
<a href="#"><u>C. 88</u></a>	Employment Service Convention, 1948 (No. 88)	24.09.1956
<a href="#"><u>C. 90</u></a>	Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90)	24.09.1956
<a href="#"><u>C. 95</u></a>	Protection of Wages Convention, 1949 (No. 95)	24.09.1956
<a href="#"><u>C. 96</u></a>	Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96) <i>Has accepted the provisions of Part III</i>	19.09.1996
<a href="#"><u>C. 98</u></a>	Right to Organise and Collective Bargaining Convention, 1949 (No. 98)	24.09.1956
<a href="#"><u>C. 100</u></a>	Equal Remuneration Convention, 1951 (No. 100)	24.09.1956
<a href="#"><u>C. 105</u></a>	Abolition of Forced Labour Convention, 1957 (No. 105)	18.01.1960
<a href="#"><u>C. 111</u></a>	Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	18.06.1968
<a href="#"><u>C. 115</u></a>	Radiation Protection Convention, 1960 (No. 115)	15.06.1978
<a href="#"><u>C. 124</u></a>	Medical Examination of Young Persons (Underground Work) Convention, 1965 (No. 124)	20.06.1985
<a href="#"><u>C. 129</u></a>	Labour Inspection (Agriculture) Convention, 1969 (No. 129)	20.06.1985
<a href="#"><u>C. 135</u></a>	Workers' Representatives Convention, 1971 (No. 135)	23.11.2006
<a href="#"><u>C. 138</u></a>	Minimum Age Convention, 1973 (No. 138) <i>Minimum age specified: 16 years</i>	11.11.1996
<a href="#"><u>C. 139</u></a>	Occupational Cancer Convention, 1974 (No. 139)	15.06.1978
<a href="#"><u>C. 142</u></a>	Human Resources Development Convention, 1975 (No. 142)	15.06.1978

<a href="#">C. 144</a>	Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)	13.04.1987
<a href="#">C. 150</a>	Labour Administration Convention, 1978 (No. 150)	20.02.2004
<a href="#">C. 151</a>	Labour Relations (Public Service) Convention, 1978 (No. 151)	21.01.1987
<a href="#">C. 154</a>	Collective Bargaining Convention, 1981 (No. 154)	29.01.1993
<a href="#">C. 156</a>	Workers with Family Responsibilities Convention, 1981 (No. 156)	17.03.1988
<a href="#">C. 159</a>	Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)	13.04.1987
<a href="#">C. 169</a>	Indigenous and Tribal Peoples Convention, 1989 (No. 169)	3.07.2000
<a href="#">C. 177</a>	Home Work Convention, 1996 (No. 177)	31.07.2006
<a href="#">C. 182</a>	Worst Forms of Child Labour Convention, 1999 (No. 182)	5.02.2001
<a href="#">C. 184</a>	Safety and Health in Agriculture Convention, 2001 (No. 184)	26.06.2006

## Denunciation

<a href="#">C. 4</a>	Night Work (Women) Convention, 1919 (No. 4) Denounced on 3.03.1992	30.11.1933
<a href="#">C. 20</a>	Night Work (Bakeries) Convention, 1925 (No. 20) Denounced on 11.03.1981	17.02.1955

## Denunciation (as a result of the ratification of Convention No. 96)

<a href="#">C. 34</a>	Fee-Charging Employment Agencies Convention, 1933 (No. 34) Denounced on 19.09.1996	14.03.1950
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## Denunciation (as a result of the ratification of Convention No. 138)

<a href="#">C. 5</a>	Minimum Age (Industry) Convention, 1919 (No. 5) Denounced on 11.11.1996	30.11.1933
<a href="#">C. 7</a>	Minimum Age (Sea) Convention, 1920 (No. 7) Denounced on 11.11.1996	30.11.1933
<a href="#">C. 10</a>	Minimum Age (Agriculture) Convention, 1921 (No. 10) Denounced on 11.11.1996	26.05.1936
<a href="#">C. 15</a>	Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15) Denounced on 11.11.1996	26.05.1936
<a href="#">C. 33</a>	Minimum Age (Non-Industrial Employment) Convention, 1932 (No. 33) Denounced on 11.11.1996	14.03.1950

## Denunciation (as a result of the ratification of Convention No. 169)

<a href="#">C. 107</a>	Indigenous and Tribal Populations Convention, 1957 (No. 107) Denounced on 3.07.2000	18.01.1960
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# Brazil



<a href="#">C. 6</a>	Night Work of Young Persons (Industry) Convention, 1919 (No. 6)	26.04.1934
<a href="#">C. 11</a>	Right of Association (Agriculture) Convention, 1921 (No. 11)	25.04.1957
<a href="#">C. 12</a>	Workmen's Compensation (Agriculture) Convention, 1921 (No. 12)	25.04.1957
<a href="#">C. 14</a>	Weekly Rest (Industry) Convention, 1921 (No. 14)	25.04.1957
<a href="#">C. 16</a>	Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16)	8.06.1936
<a href="#">C. 19</a>	Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)	25.04.1957
<a href="#">C. 21</a>	Inspection of Emigrants Convention, 1926 (No. 21)	18.06.1965
<a href="#">C. 22</a>	Seamen's Articles of Agreement Convention, 1926 (No. 22)	18.06.1965
<a href="#">C. 26</a>	Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)	25.04.1957
<a href="#">C. 29</a>	Forced Labour Convention, 1930 (No. 29)	25.04.1957
<a href="#">C. 42</a>	Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42)	8.06.1936
<a href="#">C. 45</a>	Underground Work (Women) Convention, 1935 (No. 45)	22.09.1938
<a href="#">C. 53</a>	Officers' Competency Certificates Convention, 1936 (No. 53)	12.10.1938
<a href="#">C. 80</a>	Final Articles Revision Convention, 1946 (No. 80)	13.04.1948
<a href="#">C. 81</a>	Labour Inspection Convention, 1947 (No. 81)	11.10.1989
<a href="#">C. 88</a>	Employment Service Convention, 1948 (No. 88)	25.04.1957

<a href="#">C. 89</a>	Night Work (Women) Convention (Revised), 1948 (No. 89)	25.04.1957
<a href="#">C. 92</a>	Accommodation of Crews Convention (Revised), 1949 (No. 92)	8.06.1954
<a href="#">C. 93</a>	Wages, Hours of Work and Manning (Sea) Convention (Revised), 1949 (No. 93) Convention not in force	18.06.1965
<a href="#">C. 94</a>	Labour Clauses (Public Contracts) Convention, 1949 (No. 94)	18.06.1965
<a href="#">C. 95</a>	Protection of Wages Convention, 1949 (No. 95)	25.04.1957
<a href="#">C. 97</a>	Migration for Employment Convention (Revised), 1949 (No. 97)	18.06.1965
<a href="#">C. 98</a>	Right to Organise and Collective Bargaining Convention, 1949 (No. 98)	18.11.1952
<a href="#">C. 99</a>	Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99)	25.04.1957
<a href="#">C. 100</a>	Equal Remuneration Convention, 1951 (No. 100)	25.04.1957
<a href="#">C. 102</a>	Social Security (Minimum Standards) Convention, 1952 (No. 102) <i>Has accepted Parts II to X</i>	15.06.2009
<a href="#">C. 103</a>	Maternity Protection Convention (Revised), 1952 (No. 103) <i>With the exception of the occupations and work specified in Article 7, paragraph 1(b) and (c)</i>	18.06.1965
<a href="#">C. 104</a>	Abolition of Penal Sanctions (Indigenous Workers) Convention, 1955 (No. 104)	18.06.1965
<a href="#">C. 105</a>	Abolition of Forced Labour Convention, 1957 (No. 105)	18.06.1965
<a href="#">C. 106</a>	Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106) <i>The Government has declared that the Convention also applies to persons employed in the establishments specified in Article 3, paragraph 1(a), (c) and (d).</i>	18.06.1965

<a href="#">C. 109</a>	Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109) <i>Excluding Part II</i> Convention not in force	30.11.1966
<a href="#">C. 111</a>	Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	26.11.1965
<a href="#">C. 113</a>	Medical Examination (Fishermen) Convention, 1959 (No. 113)	1.03.1965
<a href="#">C. 115</a>	Radiation Protection Convention, 1960 (No. 115)	5.09.1966
<a href="#">C. 116</a>	Final Articles Revision Convention, 1961 (No. 116)	5.09.1966
<a href="#">C. 117</a>	Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117)	24.03.1969
<a href="#">C. 118</a>	Equality of Treatment (Social Security) Convention, 1962 (No. 118) <i>Has accepted Branches (a) to (g)</i>	24.03.1969
<a href="#">C. 119</a>	Guarding of Machinery Convention, 1963 (No. 119)	16.04.1992
<a href="#">C. 120</a>	Hygiene (Commerce and Offices) Convention, 1964 (No. 120)	24.03.1969
<a href="#">C. 122</a>	Employment Policy Convention, 1964 (No. 122)	24.03.1969
<a href="#">C. 124</a>	Medical Examination of Young Persons (Underground Work) Convention, 1965 (No. 124)	21.08.1970
<a href="#">C. 125</a>	Fishermen's Competency Certificates Convention, 1966 (No. 125)	21.08.1970
<a href="#">C. 126</a>	Accommodation of Crews (Fishermen) Convention, 1966 (No. 126)	12.04.1994
<a href="#">C. 127</a>	Maximum Weight Convention, 1967 (No. 127)	21.08.1970
<a href="#">C. 131</a>	Minimum Wage Fixing Convention, 1970 (No. 131) Holidays with Pay Convention (Revised), 1970 (No. 132)	4.05.1983
<a href="#">C. 132</a>	<i>Length of holiday specified: 30 working days. Has accepted the provisions of Article 15, paragraph 1 (a) and (b).</i>	23.09.1998
<a href="#">C. 133</a>	Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133)	16.04.1992
<a href="#">C. 134</a>	Prevention of Accidents (Seafarers) Convention, 1970 (No. 134)	25.07.1996
<a href="#">C. 135</a>	Workers' Representatives Convention, 1971 (No. 135)	18.05.1990
<a href="#">C. 136</a>	Benzene Convention, 1971 (No. 136)	24.03.1993
<a href="#">C. 137</a>	Dock Work Convention, 1973 (No. 137) Minimum Age Convention, 1973 (No. 138)	12.08.1994
<a href="#">C. 138</a>	<i>Minimum age specified: 16 years</i>	28.06.2001
<a href="#">C. 139</a>	Occupational Cancer Convention, 1974 (No. 139)	27.06.1990

<a href="#">C. 140</a>	Paid Educational Leave Convention, 1974 (No. 140)	16.04.1992
<a href="#">C. 141</a>	Rural Workers' Organisations Convention, 1975 (No. 141)	27.09.1994
<a href="#">C. 142</a>	Human Resources Development Convention, 1975 (No. 142)	24.11.1981
<a href="#">C. 144</a>	Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)	27.09.1994
<a href="#">C. 145</a>	Continuity of Employment (Seafarers) Convention, 1976 (No. 145)	18.05.1990
<a href="#">C. 146</a>	Seafarers' Annual Leave with Pay Convention, 1976 (No. 146) <i>Length of annual leave specified: 30 days</i>	24.09.1998
<a href="#">C. 147</a>	Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147)	17.01.1991
<a href="#">C. 148</a>	Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148)	14.01.1982
<a href="#">C. 152</a>	Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152)	18.05.1990
<a href="#">C. 154</a>	Collective Bargaining Convention, 1981 (No. 154)	10.07.1992
<a href="#">C. 155</a>	Occupational Safety and Health Convention, 1981 (No. 155)	18.05.1992
<a href="#">C. 159</a>	Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)	18.05.1990
	Labour Statistics Convention, 1985 (No. 160)	
<a href="#">C. 160</a>	<i>Acceptance of Articles 7 to 10, 12, 13 and 15 of Part II has been specified pursuant to Article 16, paragraph 2, of the Convention.</i>	2.07.1990
<a href="#">C. 161</a>	Occupational Health Services Convention, 1985 (No. 161)	18.05.1990
<a href="#">C. 162</a>	Asbestos Convention, 1986 (No. 162)	18.05.1990
<a href="#">C. 163</a>	Seafarers' Welfare Convention, 1987 (No. 163)	4.03.1997
<a href="#">C. 164</a>	Health Protection and Medical Care (Seafarers) Convention, 1987 (No. 164)	4.03.1997
<a href="#">C. 166</a>	Repatriation of Seafarers Convention (Revised), 1987 (No. 166)	4.03.1997
<a href="#">C. 167</a>	Safety and Health in Construction Convention, 1988 (No. 167)	19.05.2006
<a href="#">C. 168</a>	Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168)	24.03.1993
<a href="#">C. 169</a>	Indigenous and Tribal Peoples Convention, 1989 (No. 169)	25.07.2002
<a href="#">C. 170</a>	Chemicals Convention, 1990 (No. 170)	23.12.1996
<a href="#">C. 171</a>	Night Work Convention, 1990 (No. 171)	18.12.2002
<a href="#">C. 174</a>	Prevention of Major Industrial Accidents Convention, 1993 (No. 174)	2.08.2001
<a href="#">C. 176</a>	Safety and Health in Mines Convention, 1995 (No. 176)	18.05.2006
<a href="#">C. 178</a>	Labour Inspection (Seafarers) Convention, 1996 (No. 178)	21.12.2007
<a href="#">C. 182</a>	Worst Forms of Child Labour Convention, 1999 (No. 182)	2.02.2000
<a href="#">C. 185</a>	Seafarers' Identity Documents Convention (Revised), 2003 (No. 185)	21.01.2010

**Denunciation**

<a href="#">C. 4</a>	Night Work (Women) Convention, 1919 (No. 4) Denounced on 12.05.1937	26.04.1934
<a href="#">C. 96</a>	Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96) Denounced on 14.01.1972	21.06.1957
<a href="#">C. 110</a>	Plantations Convention, 1958 (No. 110) Denounced on 28.08.1970	1.03.1965
<a href="#">C. 158</a>	Termination of Employment Convention, 1982 (No. 158) Denounced on 20.11.1996	5.01.1995

**Denunciation (as a result of the ratification of Convention No. 89)**

<a href="#">C. 41</a>	Night Work (Women) Convention (Revised), 1934 (No. 41) Denounced on 25.04.1957	8.06.1936
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**Denunciation (as a result of the ratification of Convention No. 132)**

<a href="#">C. 52</a>	Holidays with Pay Convention, 1936 (No. 52) Denounced on 23.09.1998	22.09.1938
<a href="#">C. 101</a>	Holidays with Pay (Agriculture) Convention, 1952 (No. 101) Denounced on 23.09.1998	25.04.1957

**Denunciation (as a result of the ratification of Convention No. 138)**

<a href="#">C. 5</a>	Minimum Age (Industry) Convention, 1919 (No. 5) Denounced on 28.06.2001	26.04.1934
<a href="#">C. 58</a>	Minimum Age (Sea) Convention (Revised), 1936 (No. 58) Denounced on 28.06.2001	12.10.1938

**Denunciation (as a result of the ratification of Convention No. 146)**

<a href="#">C. 91</a>	Paid Vacations (Seafarers) Convention (Revised), 1949 (No. 91) Denounced on 24.09.1998	18.06.1965
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**Denunciation (as a result of the ratification of Convention No. 169)**

<a href="#">C. 107</a>	Indigenous and Tribal Populations Convention, 1957 (No. 107) Denounced on 25.07.2002	18.06.1965
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**Denunciation (as a result of the ratification of Convention No.185)**

<a href="#">C. 108</a>	Seafarers' Identity Documents Convention, 1958 (No. 108) Denounced on 21.01.2010	5.11.1963
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**Denunciation of this Convention and ratification of Convention No. 58**

<a href="#">C. 7</a>	Minimum Age (Sea) Convention, 1920 (No. 7) Denounced on 9.01.1974	8.06.1936
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**Denunciation of this Convention and ratification of Convention No. 103**

<a href="#">C. 3</a>	Maternity Protection Convention, 1919 (No. 3) Denounced on 26.07.1961	26.04.1934
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# Chile



<a href="#">C. 1</a>	Hours of Work (Industry) Convention, 1919 (No. 1)	15.09.1925
<a href="#">C. 2</a>	Unemployment Convention, 1919 (No. 2)	31.05.1933
<a href="#">C. 6</a>	Night Work of Young Persons (Industry) Convention, 1919 (No. 6)	15.09.1925
<a href="#">C. 8</a>	Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8)	18.10.1935
<a href="#">C. 9</a>	Placing of Seamen Convention, 1920 (No. 9)	18.10.1935
<a href="#">C. 11</a>	Right of Association (Agriculture) Convention, 1921 (No. 11)	15.09.1925
<a href="#">C. 12</a>	Workmen's Compensation (Agriculture) Convention, 1921 (No. 12)	15.09.1925
<a href="#">C. 13</a>	White Lead (Painting) Convention, 1921 (No. 13)	15.09.1925
<a href="#">C. 14</a>	Weekly Rest (Industry) Convention, 1921 (No. 14)	15.09.1925
<a href="#">C. 16</a>	Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16)	18.10.1935
<a href="#">C. 19</a>	Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)	8.10.1931
<a href="#">C. 20</a>	Night Work (Bakeries) Convention, 1925 (No. 20)	31.05.1933
<a href="#">C. 22</a>	Seamen's Articles of Agreement Convention, 1926 (No. 22)	18.10.1935
<a href="#">C. 24</a>	Sickness Insurance (Industry) Convention, 1927 (No. 24)	8.10.1931
<a href="#">C. 25</a>	Sickness Insurance (Agriculture) Convention, 1927 (No. 25)	8.10.1931
<a href="#">C. 26</a>	Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)	31.05.1933
<a href="#">C. 27</a>	Marking of Weight (Packages Transported by Vessels) Convention, 1929 (No. 27)	31.05.1933
<a href="#">C. 29</a>	Forced Labour Convention, 1930 (No. 29)	31.05.1933

<a href="#">C. 30</a>	Hours of Work (Commerce and Offices) Convention, 1930 (No. 30)	18.10.1935
<a href="#">C. 32</a>	Protection against Accidents (Dockers) Convention (Revised), 1932 (No. 32)	18.10.1935
<a href="#">C. 34</a>	Fee-Charging Employment Agencies Convention, 1933 (No. 34)	18.10.1935
<a href="#">C. 35</a>	Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35)	18.10.1935
<a href="#">C. 36</a>	Old-Age Insurance (Agriculture) Convention, 1933 (No. 36)	18.10.1935
<a href="#">C. 37</a>	Invalidity Insurance (Industry, etc.) Convention, 1933 (No. 37)	18.10.1935
<a href="#">C. 38</a>	Invalidity Insurance (Agriculture) Convention, 1933 (No. 38)	18.10.1935
<a href="#">C. 63</a>	Convention concerning Statistics of Wages and Hours of Work, 1938 (No. 63)	10.05.1957

*Excluding Part III*

<a href="#">C. 80</a>	Final Articles Revision Convention, 1946 (No. 80)	3.11.1949
<a href="#">C. 87</a>	Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)	1.02.1999
<a href="#">C. 98</a>	Right to Organise and Collective Bargaining Convention, 1949 (No. 98)	1.02.1999
<a href="#">C. 100</a>	Equal Remuneration Convention, 1951 (No. 100)	20.09.1971
<a href="#">C. 103</a>	Maternity Protection Convention (Revised), 1952 (No. 103)	14.10.1994
<a href="#">C. 105</a>	Abolition of Forced Labour Convention, 1957 (No. 105)	1.02.1999
<a href="#">C. 111</a>	Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	20.09.1971
<a href="#">C. 115</a>	Radiation Protection Convention, 1960 (No. 115)	14.10.1994
<a href="#">C. 121</a>	Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121)	30.09.1999
<a href="#">C. 122</a>	Employment Policy Convention, 1964 (No. 122)	24.10.1968
<a href="#">C. 127</a>	Maximum Weight Convention, 1967 (No. 127)	3.11.1972
<a href="#">C. 131</a>	Minimum Wage Fixing Convention, 1970 (No. 131)	13.09.1999
<a href="#">C. 135</a>	Workers' Representatives Convention, 1971 (No. 135)	13.09.1999
<a href="#">C. 136</a>	Benzene Convention, 1971 (No. 136)	14.10.1994
<a href="#">C. 138</a>	Minimum Age Convention, 1973 (No. 138)	1.02.1999

*Minimum age specified: 15 years*

<a href="#">C. 140</a>	Paid Educational Leave Convention, 1974 (No. 140)	13.09.1999
<a href="#">C. 144</a>	Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)	29.07.1992
<a href="#">C. 151</a>	Labour Relations (Public Service) Convention, 1978 (No. 151)	17.07.2000
<a href="#">C. 156</a>	Workers with Family Responsibilities Convention, 1981 (No. 156)	14.10.1994
<a href="#">C. 159</a>	Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)	14.10.1994
<a href="#">C. 161</a>	Occupational Health Services Convention, 1985 (No. 161)	30.09.1999
<a href="#">C. 162</a>	Asbestos Convention, 1986 (No. 162)	14.10.1994
<a href="#">C. 169</a>	Indigenous and Tribal Peoples Convention, 1989 (No. 169)	15.09.2008
<a href="#">C. 182</a>	Worst Forms of Child Labour Convention, 1999 (No. 182)	17.07.2000

## Denunciation

<a href="#">C. 4</a>	Night Work (Women) Convention, 1919 (No. 4) Denounced on 27.08.1976	8.10.1931
<a href="#">C. 45</a>	Underground Work (Women) Convention, 1935 (No. 45) Denounced on 30.05.1997	16.03.1946

## Denunciation (as a result of the ratification of Convention No. 121)

<a href="#">C. 42</a>	Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42) Denounced on 30.09.1999	14.10.1994
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## Denunciation (as a result of the ratification of Convention No. 138)

<a href="#">C. 5</a>	Minimum Age (Industry) Convention, 1919 (No. 5) Denounced on 1.02.1999	15.09.1925
<a href="#">C. 7</a>	Minimum Age (Sea) Convention, 1920 (No. 7) Denounced on 1.02.1999	18.10.1935
<a href="#">C. 10</a>	Minimum Age (Agriculture) Convention, 1921 (No. 10) Denounced on 1.02.1999	18.10.1935
<a href="#">C. 15</a>	Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15) Denounced on 1.02.1999	18.10.1935

## Denunciation of this Convention and ratification of Convention No. 103

<a href="#">C. 3</a>	Maternity Protection Convention, 1919 (No. 3) Denounced on 3.10.1997	15.09.1925
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## Denunciation of this Convention and ratification of Convention No. 121

<a href="#">C. 17</a>	Workmen's Compensation (Accidents) Convention, 1925 (No. 17) Denounced on 8.08.2000	8.10.1931
<a href="#">C. 18</a>	Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18) Denounced on 8.08.2000	31.05.1933

# Colombia



<a href="#">C. 1</a>	Hours of Work (Industry) Convention, 1919 (No. 1)	20.06.1933
<a href="#">C. 2</a>	Unemployment Convention, 1919 (No. 2)	20.06.1933
<a href="#">C. 3</a>	Maternity Protection Convention, 1919 (No. 3)	20.06.1933
<a href="#">C. 4</a>	Night Work (Women) Convention, 1919 (No. 4)	20.06.1933
<a href="#">C. 6</a>	Night Work of Young Persons (Industry) Convention, 1919 (No. 6)	13.04.1983
<a href="#">C. 8</a>	Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8)	20.06.1933
<a href="#">C. 9</a>	Placing of Seamen Convention, 1920 (No. 9)	20.06.1933
<a href="#">C. 11</a>	Right of Association (Agriculture) Convention, 1921 (No. 11)	20.06.1933
<a href="#">C. 12</a>	Workmen's Compensation (Agriculture) Convention, 1921 (No. 12)	20.06.1933
<a href="#">C. 13</a>	White Lead (Painting) Convention, 1921 (No. 13)	20.06.1933
<a href="#">C. 14</a>	Weekly Rest (Industry) Convention, 1921 (No. 14)	20.06.1933
<a href="#">C. 16</a>	Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16)	20.06.1933
<a href="#">C. 17</a>	Workmen's Compensation (Accidents) Convention, 1925 (No. 17)	20.06.1933
<a href="#">C. 18</a>	Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18)	20.06.1933
<a href="#">C. 19</a>	Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)	20.06.1933
<a href="#">C. 20</a>	Night Work (Bakeries) Convention, 1925 (No. 20)	20.06.1933
<a href="#">C. 21</a>	Inspection of Emigrants Convention, 1926 (No. 21)	20.06.1933
<a href="#">C. 22</a>	Seamen's Articles of Agreement Convention, 1926 (No. 22)	20.06.1933
<a href="#">C. 23</a>	Repatriation of Seamen Convention, 1926 (No. 23)	20.06.1933
<a href="#">C. 24</a>	Sickness Insurance (Industry) Convention, 1927 (No. 24)	20.06.1933
<a href="#">C. 25</a>	Sickness Insurance (Agriculture) Convention, 1927 (No. 25)	20.06.1933
<a href="#">C. 26</a>	Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)	20.06.1933
<a href="#">C. 29</a>	Forced Labour Convention, 1930 (No. 29)	4.03.1969
<a href="#">C. 30</a>	Hours of Work (Commerce and Offices) Convention, 1930 (No. 30)	4.03.1969
<a href="#">C. 52</a>	Holidays with Pay Convention, 1936 (No. 52)	7.06.1963
<a href="#">C. 80</a>	Final Articles Revision Convention, 1946 (No. 80)	10.06.1947
<a href="#">C. 81</a>	Labour Inspection Convention, 1947 (No. 81) <i>Excluding Part II</i>	13.11.1967
<a href="#">C. 87</a>	Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)	16.11.1976
<a href="#">C. 88</a>	Employment Service Convention, 1948 (No. 88)	31.10.1967

<a href="#"><u>C. 95</u></a>	Protection of Wages Convention, 1949 (No. 95)	7.06.1963
<a href="#"><u>C. 98</u></a>	Right to Organise and Collective Bargaining Convention, 1949 (No. 98)	16.11.1976
<a href="#"><u>C. 99</u></a>	Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99)	4.03.1969
<a href="#"><u>C. 100</u></a>	Equal Remuneration Convention, 1951 (No. 100)	7.06.1963
<a href="#"><u>C. 101</u></a>	Holidays with Pay (Agriculture) Convention, 1952 (No. 101)	4.03.1969
<a href="#"><u>C. 104</u></a>	Abolition of Penal Sanctions (Indigenous Workers) Convention, 1955 (No. 104)	4.03.1969
<a href="#"><u>C. 105</u></a>	Abolition of Forced Labour Convention, 1957 (No. 105)	7.06.1963
<a href="#"><u>C. 106</u></a>	Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106)	4.03.1969
<a href="#"><u>C. 111</u></a>	Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	4.03.1969
<a href="#"><u>C. 116</u></a>	Final Articles Revision Convention, 1961 (No. 116)	4.03.1969
<a href="#"><u>C. 129</u></a>	Labour Inspection (Agriculture) Convention, 1969 (No. 129)	16.11.1976
<a href="#"><u>C. 136</u></a>	Benzene Convention, 1971 (No. 136)	16.11.1976
<a href="#"><u>C. 138</u></a>	Minimum Age Convention, 1973 (No. 138) <i>Minimum age specified: 15 years</i>	2.02.2001
<a href="#"><u>C. 144</u></a>	Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)	9.11.1999
<a href="#"><u>C. 151</u></a>	Labour Relations (Public Service) Convention, 1978 (No. 151)	8.12.2000
<a href="#"><u>C. 154</u></a>	Collective Bargaining Convention, 1981 (No. 154)	8.12.2000
<a href="#"><u>C. 159</u></a>	Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)	7.12.1989
	Labour Statistics Convention, 1985 (No. 160)	
<a href="#"><u>C. 160</u></a>	<i>Acceptance of Articles 7, 8 and 10-15 of Part II has been specified pursuant to Article 16, paragraph 2, of the Convention.</i>	23.03.1990
<a href="#"><u>C. 161</u></a>	Occupational Health Services Convention, 1985 (No. 161)	25.01.2001
<a href="#"><u>C. 162</u></a>	Asbestos Convention, 1986 (No. 162)	25.01.2001
<a href="#"><u>C. 167</u></a>	Safety and Health in Construction Convention, 1988 (No. 167)	6.09.1994
<a href="#"><u>C. 169</u></a>	Indigenous and Tribal Peoples Convention, 1989 (No. 169)	7.08.1991
<a href="#"><u>C. 170</u></a>	Chemicals Convention, 1990 (No. 170)	6.09.1994
<a href="#"><u>C. 174</u></a>	Prevention of Major Industrial Accidents Convention, 1993 (No. 174)	9.12.1997
<a href="#"><u>C. 182</u></a>	Worst Forms of Child Labour Convention, 1999 (No. 182)	28.01.2005

**Denunciation (as a result of the ratification of Convention No. 138)**

<a href="#">C. 5</a>	Minimum Age (Industry) Convention, 1919 (No. 5) Denounced on 2.02.2001	20.06.1933
<a href="#">C. 7</a>	Minimum Age (Sea) Convention, 1920 (No. 7) Denounced on 2.02.2001	20.06.1933
<a href="#">C. 10</a>	Minimum Age (Agriculture) Convention, 1921 (No. 10) Denounced on 2.02.2001	13.04.1983
<a href="#">C. 15</a>	Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15) Denounced on 2.02.2001	20.06.1933

**Denunciation (as a result of the ratification of Convention No. 167)**

<a href="#">C. 62</a>	Safety Provisions (Building) Convention, 1937 (No. 62) Denounced on 6.09.1994	4.03.1969
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**Denunciation (as a result of the ratification of Convention No. 169)**

<a href="#">C. 107</a>	Indigenous and Tribal Populations Convention, 1957 (No. 107) Denounced on 7.08.1991	4.03.1969
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# Mexico



<a href="#">C. 8</a>	Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8)	20.05.1937
<a href="#">C. 9</a>	Placing of Seamen Convention, 1920 (No. 9)	1.09.1939
<a href="#">C. 11</a>	Right of Association (Agriculture) Convention, 1921 (No. 11)	20.05.1937
<a href="#">C. 12</a>	Workmen's Compensation (Agriculture) Convention, 1921 (No. 12)	1.11.1937
<a href="#">C. 13</a>	White Lead (Painting) Convention, 1921 (No. 13)	7.01.1938
<a href="#">C. 14</a>	Weekly Rest (Industry) Convention, 1921 (No. 14)	7.01.1938
<a href="#">C. 16</a>	Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16)	9.03.1938
<a href="#">C. 17</a>	Workmen's Compensation (Accidents) Convention, 1925 (No. 17)	12.05.1934
<a href="#">C. 19</a>	Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)	12.05.1934
<a href="#">C. 21</a>	Inspection of Emigrants Convention, 1926 (No. 21)	9.03.1938
<a href="#">C. 22</a>	Seamen's Articles of Agreement Convention, 1926 (No. 22)	12.05.1934
<a href="#">C. 26</a>	Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)	12.05.1934
<a href="#">C. 27</a>	Marking of Weight (Packages Transported by Vessels) Convention, 1929 (No. 27)	12.05.1934
<a href="#">C. 29</a>	Forced Labour Convention, 1930 (No. 29)	12.05.1934
<a href="#">C. 30</a>	Hours of Work (Commerce and Offices) Convention, 1930 (No. 30)	12.05.1934
<a href="#">C. 42</a>	Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42)	20.05.1937
<a href="#">C. 43</a>	Sheet-Glass Works Convention, 1934 (No. 43)	9.03.1938
<a href="#">C. 45</a>	Underground Work (Women) Convention, 1935 (No. 45)	21.02.1938
<a href="#">C. 46</a>	Hours of Work (Coal Mines) Convention (Revised), 1935 (No. 46) Withdrawn Convention	1.09.1939
<a href="#">C. 49</a>	Reduction of Hours of Work (Glass-Bottle Works) Convention, 1935 (No. 49)	21.02.1938
<a href="#">C. 52</a>	Holidays with Pay Convention, 1936 (No. 52)	9.03.1938
<a href="#">C. 53</a>	Officers' Competency Certificates Convention, 1936 (No. 53)	1.09.1939
<a href="#">C. 54</a>	Holidays with Pay (Sea) Convention, 1936 (No. 54) Convention not in force	12.06.1942

<a href="#">C. 55</a>	Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55)	15.09.1939
<a href="#">C. 56</a>	Sickness Insurance (Sea) Convention, 1936 (No. 56)	1.02.1984
<a href="#">C. 58</a>	Minimum Age (Sea) Convention (Revised), 1936 (No. 58)	18.07.1952
<a href="#">C. 80</a>	Final Articles Revision Convention, 1946 (No. 80)	20.04.1948
<a href="#">C. 87</a>	Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)	1.04.1950
<a href="#">C. 90</a>	Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90)	20.06.1956
<a href="#">C. 95</a>	Protection of Wages Convention, 1949 (No. 95) <i>Excluding Article 11 by virtue of the ratification of Convention No. 173 (acceptance of Part II)</i>	27.09.1955
<a href="#">C. 96</a>	Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96) <i>Has accepted the provisions of Part III</i>	1.03.1991
<a href="#">C. 99</a>	Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99)	23.08.1952
<a href="#">C. 100</a>	Equal Remuneration Convention, 1951 (No. 100)	23.08.1952
<a href="#">C. 102</a>	Social Security (Minimum Standards) Convention, 1952 (No. 102) <i>Has accepted Parts II, III, V, VI and VIII to X</i>	12.10.1961
<a href="#">C. 105</a>	Abolition of Forced Labour Convention, 1957 (No. 105) Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106)	1.06.1959
<a href="#">C. 106</a>	<i>The Government has declared that the Convention also applies to persons employed in the establishments specified in Article 3, paragraph 1.</i>	1.06.1959
<a href="#">C. 108</a>	Seafarers' Identity Documents Convention, 1958 (No. 108)	11.09.1961
<a href="#">C. 109</a>	Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109) Convention not in force	11.09.1961
<a href="#">C. 110</a>	Plantations Convention, 1958 (No. 110)	20.06.1960
<a href="#">C. 111</a>	Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	11.09.1961
<a href="#">C. 112</a>	Minimum Age (Fishermen) Convention, 1959 (No. 112)	9.08.1961
<a href="#">C. 115</a>	Radiation Protection Convention, 1960 (No. 115)	19.10.1983
<a href="#">C. 116</a>	Final Articles Revision Convention, 1961 (No. 116)	3.11.1966
<a href="#">C. 118</a>	Equality of Treatment (Social Security) Convention, 1962 (No. 118) <i>Has accepted Branches (a) to (g)</i>	6.01.1978
<a href="#">C. 120</a>	Hygiene (Commerce and Offices) Convention, 1964 (No. 120)	18.06.1968
<a href="#">C. 123</a>	Minimum Age (Underground Work) Convention, 1965 (No. 123) <i>Minimum age specified: 16 years</i>	29.08.1968
<a href="#">C. 124</a>	Medical Examination of Young Persons (Underground Work) Convention, 1965 (No. 124)	29.08.1968

<a href="#"><u>C. 131</u></a>	Minimum Wage Fixing Convention, 1970 (No. 131)	18.04.1973
<a href="#"><u>C. 134</u></a>	Prevention of Accidents (Seafarers) Convention, 1970 (No. 134)	2.05.1974
<a href="#"><u>C. 135</u></a>	Workers' Representatives Convention, 1971 (No. 135)	2.05.1974
<a href="#"><u>C. 140</u></a>	Paid Educational Leave Convention, 1974 (No. 140)	17.02.1977
<a href="#"><u>C. 141</u></a>	Rural Workers' Organisations Convention, 1975 (No. 141)	28.06.1978
<a href="#"><u>C. 142</u></a>	Human Resources Development Convention, 1975 (No. 142)	28.06.1978
<a href="#"><u>C. 144</u></a>	Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)	28.06.1978
<a href="#"><u>C. 150</u></a>	Labour Administration Convention, 1978 (No. 150)	10.02.1982
<a href="#"><u>C. 152</u></a>	Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152)	10.02.1982
<a href="#"><u>C. 153</u></a>	Hours of Work and Rest Periods (Road Transport) Convention, 1979 (No. 153)	10.02.1982
<a href="#"><u>C. 155</u></a>	Occupational Safety and Health Convention, 1981 (No. 155)	1.02.1984
<a href="#"><u>C. 159</u></a>	Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)	5.04.2001
	Labour Statistics Convention, 1985 (No. 160)	
<a href="#"><u>C. 160</u></a>	<i>Acceptance of Articles 7-9, 11, 12, 14 and 15 of Part II has been specified pursuant to Article 16, paragraph 2, of the Convention.</i>	18.04.1988
<a href="#"><u>C. 161</u></a>	Occupational Health Services Convention, 1985 (No. 161)	17.02.1987
<a href="#"><u>C. 163</u></a>	Seafarers' Welfare Convention, 1987 (No. 163)	5.10.1990
<a href="#"><u>C. 164</u></a>	Health Protection and Medical Care (Seafarers) Convention, 1987 (No. 164)	5.10.1990
<a href="#"><u>C. 166</u></a>	Repatriation of Seafarers Convention (Revised), 1987 (No. 166)	5.10.1990
<a href="#"><u>C. 167</u></a>	Safety and Health in Construction Convention, 1988 (No. 167)	5.10.1990
<a href="#"><u>C. 169</u></a>	Indigenous and Tribal Peoples Convention, 1989 (No. 169)	5.09.1990
<a href="#"><u>C. 170</u></a>	Chemicals Convention, 1990 (No. 170)	17.09.1992
<a href="#"><u>C. 172</u></a>	Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172)	7.06.1993
	Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173)	
<a href="#"><u>C. 173</u></a>	<i>Has accepted the obligations of Part II</i>	24.09.1993
<a href="#"><u>C. 182</u></a>	Worst Forms of Child Labour Convention, 1999 (No. 182)	30.06.2000

**Denunciation (as a result of the ratification of Convention No. 96)**

[C. 34](#) Fee-Charging Employment Agencies Convention, 1933 (No. 34) 21.02.1938  
Denounced on 1.03.1991

**Denunciation (as a result of the ratification of Convention No. 152)**

[C. 32](#) Protection against Accidents (Dockers) Convention (Revised), 1932 (No. 32) 12.05.1934  
Denounced on 10.02.1982

**Denunciation (as a result of the ratification of Convention No. 160)**

[C. 63](#) Convention concerning Statistics of Wages and Hours of Work, 1938 (No. 63) 16.07.1942  
Denounced on 24.04.1988

**Denunciation (as a result of the ratification of Convention No. 167)**

[C. 62](#) Safety Provisions (Building) Convention, 1937 (No. 62) 4.07.1941  
Denounced on 5.10.1990

**Denunciation (as a result of the ratification of Convention No. 169)**

[C. 107](#) Indigenous and Tribal Populations Convention, 1957 (No. 107) 1.06.1959  
Denounced on 5.09.1990

**Denunciation of this Convention and ratification of Convention No. 58**

[C. 7](#) Minimum Age (Sea) Convention, 1920 (No. 7) 17.08.1948  
Denounced on 18.07.1952

**Denunciation of this Convention and ratification of Convention No. 90**

[C. 6](#) Night Work of Young Persons (Industry) Convention, 1919 (No. 6) 20.05.1937  
Denounced on 20.06.1956

**Denunciation of this Convention and ratification of Convention No. 166**

[C. 23](#) Repatriation of Seamen Convention, 1926 (No. 23) 12.05.1934  
Denounced on 15.03.2002

# Venezuela



# Bolivarian Republic of Venezuela

Member from  
1919 to 1957  
and since 1958

54 Conventions ratified (50 in force)

<a href="#">C. 1</a>	Hours of Work (Industry) Convention, 1919 (No. 1)	20.11.1944
<a href="#">C. 2</a>	Unemployment Convention, 1919 (No. 2)	20.11.1944
<a href="#">C. 3</a>	Maternity Protection Convention, 1919 (No. 3)	20.11.1944
<a href="#">C. 6</a>	Night Work of Young Persons (Industry) Convention, 1919 (No. 6)	7.03.1933
<a href="#">C. 11</a>	Right of Association (Agriculture) Convention, 1921 (No. 11)	20.11.1944
<a href="#">C. 13</a>	White Lead (Painting) Convention, 1921 (No. 13)	28.04.1933
<a href="#">C. 14</a>	Weekly Rest (Industry) Convention, 1921 (No. 14)	20.11.1944
<a href="#">C. 19</a>	Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)	20.11.1944
<a href="#">C. 21</a>	Inspection of Emigrants Convention, 1926 (No. 21)	20.11.1944
<a href="#">C. 22</a>	Seamen's Articles of Agreement Convention, 1926 (No. 22)	20.11.1944
<a href="#">C. 26</a>	Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)	20.11.1944
<a href="#">C. 27</a>	Marking of Weight (Packages Transported by Vessels) Convention, 1929 (No. 27)	17.12.1932
<a href="#">C. 29</a>	Forced Labour Convention, 1930 (No. 29)	20.11.1944
<a href="#">C. 41</a>	Night Work (Women) Convention (Revised), 1934 (No. 41)	20.11.1944
<a href="#">C. 45</a>	Underground Work (Women) Convention, 1935 (No. 45)	20.11.1944

<a href="#">C. 80</a>	Final Articles Revision Convention, 1946 (No. 80)	13.09.1948
<a href="#">C. 81</a>	Labour Inspection Convention, 1947 (No. 81)	21.07.1967
<a href="#">C. 87</a>	Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)	20.09.1982
<a href="#">C. 88</a>	Employment Service Convention, 1948 (No. 88)	16.11.1964
<a href="#">C. 95</a>	Protection of Wages Convention, 1949 (No. 95)	10.08.1982
<a href="#">C. 97</a>	Migration for Employment Convention (Revised), 1949 (No. 97)	9.06.1983
<a href="#">C. 98</a>	Right to Organise and Collective Bargaining Convention, 1949 (No. 98)	19.12.1968
<a href="#">C. 100</a>	Equal Remuneration Convention, 1951 (No. 100)	10.08.1982
<a href="#">C. 102</a>	Social Security (Minimum Standards) Convention, 1952 (No. 102) <i>Has accepted Parts II, III, V, VI and VIII to X. Part VI is no longer applicable as a result of the ratification of Convention No. 121. As a result of the ratification of Convention No. 128 and pursuant to Article 45 of that Convention certain parts of the present Convention are no longer applicable. Part III is no longer applicable as a result of the ratification of Convention No. 130.</i>	5.11.1982
<a href="#">C. 105</a>	Abolition of Forced Labour Convention, 1957 (No. 105)	16.11.1964
<a href="#">C. 111</a>	Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	3.06.1971
<a href="#">C. 116</a>	Final Articles Revision Convention, 1961 (No. 116)	16.11.1964
<a href="#">C. 117</a>	Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117)	6.09.1983
<a href="#">C. 118</a>	Equality of Treatment (Social Security) Convention, 1962 (No. 118) <i>Has accepted Branches (a) to (g)</i>	5.11.1982
<a href="#">C. 120</a>	Hygiene (Commerce and Offices) Convention, 1964 (No. 120)	3.06.1971
<a href="#">C. 121</a>	Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121)	10.08.1982
<a href="#">C. 122</a>	Employment Policy Convention, 1964 (No. 122)	10.08.1982
<a href="#">C. 127</a>	Maximum Weight Convention, 1967 (No. 127)	1.02.1984
<a href="#">C. 128</a>	Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128) <i>Has accepted all Parts. Pursuant to Article 4, paragraph 1, of the Convention, the Government has availed itself of the temporary exceptions provided for in Articles 9, paragraph 2; 13, paragraph 2; 16, paragraph 2; 22, paragraph 2. The Government has also availed itself of the temporary exclusion provided for in Article 38, paragraph 1, of the Convention.</i>	1.12.1983

<a href="#">C. 130</a>	Medical Care and Sickness Benefits Convention, 1969 (No. 130)	10.08.1982
<a href="#">C. 138</a>	Minimum Age Convention, 1973 (No. 138) <i>Minimum age specified: 14 years</i>	15.07.1987
<a href="#">C. 139</a>	Occupational Cancer Convention, 1974 (No. 139)	5.07.1983
<a href="#">C. 140</a>	Paid Educational Leave Convention, 1974 (No. 140)	6.09.1983
<a href="#">C. 141</a>	Rural Workers' Organisations Convention, 1975 (No. 141)	5.07.1983
<a href="#">C. 142</a>	Human Resources Development Convention, 1975 (No. 142)	8.10.1984
<a href="#">C. 143</a>	Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)	17.08.1983
<a href="#">C. 144</a>	Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)	17.06.1983
<a href="#">C. 149</a>	Nursing Personnel Convention, 1977 (No. 149)	17.08.1983
<a href="#">C. 150</a>	Labour Administration Convention, 1978 (No. 150)	17.08.1983
<a href="#">C. 153</a>	Hours of Work and Rest Periods (Road Transport) Convention, 1979 (No. 153)	5.07.1983
<a href="#">C. 155</a>	Occupational Safety and Health Convention, 1981 (No. 155)	25.06.1984
<a href="#">C. 156</a>	Workers with Family Responsibilities Convention, 1981 (No. 156)	27.11.1984
<a href="#">C. 158</a>	Termination of Employment Convention, 1982 (No. 158)	6.05.1985
<a href="#">C. 169</a>	Indigenous and Tribal Peoples Convention, 1989 (No. 169)	22.05.2002
<a href="#">C. 182</a>	Worst Forms of Child Labour Convention, 1999 (No. 182)	26.10.2005

## Denunciation

<a href="#">C. 4</a>	Night Work (Women) Convention, 1919 (No. 4) Denounced on 20.11.1944	7.03.1933
<a href="#">C. 103</a>	Maternity Protection Convention (Revised), 1952 (No. 103) Denounced on 28.10.1985	10.08.1982

## Denunciation (as a result of the ratification of Convention No. 138)

<a href="#">C. 5</a>	Minimum Age (Industry) Convention, 1919 (No. 5) Denounced on 15.07.1987	20.11.1944
<a href="#">C. 7</a>	Minimum Age (Sea) Convention, 1920 (No. 7) Denounced on 15.07.1987	20.11.1944

# The Globalization of Labor Standards

## The Mexican Union and Labor Relations Current Scene

Jorge De Regil

Chicago, Illinois USA

September 28, 2010

Background

# Background

The Mexican Constitution of 1917 and the right to Freedom of Association (Article 123-A-XVI)

Federal Labor Law. 1931. 1970

Freedom of Association is recognized both for workers and employers.

Principles of Convention 87 of the ILO took the legal principles of the Mexican Labor Law.

The Law recognizes

Craft Unions or Guilds: Company Unions; Industrial Unions: National Industrial Unions and Multi-trades Labor Unions (These two, are to be formed by workers of the same type of activity) (Art. 360-II)



Trade Unions can be formed by a least 20 workers who are active employees. Trade Unions do not need prior authorization and can be form at any time in which 20 or more workers so decided, but following the general rule of jurisdictional division mention before.

The Labor authorities keep the registry of Trade Unions for the purposes of certifying the constitution of the same and subsequent election of officers. The Labor authorities will grant a certification of elected officers, which will be accepted as power of attorney and representation document (Toma de Nota).



Trade Unions can be part of Federations at State or National Level, and its only prohibition is to intervene in religious matters or enter trade activity with the objective of making profit.

Trade Unions and Federation have been linked to political activities since the days of the Mexican Revolution, at the beginning of the 20<sup>th</sup> Century.

There are three main political affiliations to political parties.

PRI- Congress of Labor

PRD- National Unity of Workers

PT- Communist Oriented Unions



PRI. Traditional Trade Union and Federations, that form the Congress of Labor, such as: CTM, CROC, CROM, CGT, COCEM, CAT, COS, CTC; National Unions of Railroad Workers, Infonavit Workers, etc. They have presence in the whole country.

PRD. UNT, Formed fundamentally by company unions of Socialistic and Independent tendencies, such as Telephone Workers , Pilots, Cabin Crew, Volkswagen, Several Public Universities, Continental Tire, JK Tires, National Nuclear Institute, Mexico City Tram Workers, Mexican Social Security Institute, etc. They have limited presence to certain areas or states in Mexico.

PT. Small Unions that have been formed in the past and with a Marxist Orientation, such as Union of Welders and Metal Workers, Euzkadi, Chapingo Academy, Electrical Workers (SME), and lately the Miners Union.

Some of these Unions move from one group to the other and do not have a very clear philosophy. Miners and Electrical Workers are in this category.

Now, more NGO´s are working with Unions, such as: FAT, CAT, CEREAL, POS, etc.

Practice

# Practice

The Labor Law openly favors Trade Unionism and support the existence of Collective Bargaining Agreement as the main Labor Relation Systems.

Article 450 –II; allows any Union that has jurisdiction on the activity of a company, to file a strike call, claiming the right to enter a Collective Bargaining Agreement, without probing the representation of workers in the company involved.

This practice, sponsored by the PRI Governments, created an incredibly large numbers of Unions and a practice of “Protection or White Contracts”.

When real and active unions representation is present, companies development labor relations activity that has a wide range of practices.



The practice of Labor Relations, is based in the traditional division of small and medium size enterprises vis a vis medium and large companies.

The type of Union also creates different practices. Soft Unions vis a vis strong and aggressive Unions. Labor Relations Teams are formed accordingly to the above division.

From individual and personalized management of Labor Relations, to a professional and solid team.



Notwithstanding that México has ratified 78 International Conventions, the relevant ones are conventions 87, about freedom of Association; 103, about Maternity Protection; Convention 111 about Discrimination and 169 about Indigenous Population. These Conventions are the basis for the few complaints filed with the Freedom of Association Committee (less than 40) and the huge recommendations and discussion about the Committee of Experts and the Application of Standards Committee.

Geneva has been a meeting place for Mexican Trade Union and International Workers Organization.

Special attention is placed to The International Metallurgic Workers Federation, the International Federation of Airline Workers



The large Union Federation of Mexico, CTM and CROC, are members of the International Federation Of Trade Unions (UFTU), based in Brussels.

The AFL-CIO has have contact with all big Mexican federations, such as CTM, CROC, CROM and lately with UNT and the Mineros union. The clear interest of the American Federation is to stop the flow of jobs to Mexico.

The Mineros Union is deeply involved with the International Federation of Metallurgic Workers and it is assumed that this federation received substantial economic benefits from the Mineros and also a participation in all claims against the Mexican Government, in several forums.



The relationships of the AFL-CIO is important with UNT and the Mineros union. The big Mexican federations have not accepted commitments with it and actually have tense relationship in Mexico.

The vast majority of Transnational Company, have a very normal and acceptable labor relations environment.

The alarmist voices in the media are paid by the steelers, UAW, the radical leftist group of the Catholic Church and some NGO'S, but have had very limited success and just in some areas like some border towns and the states of Puebla, Coahuila and Michoacán.

Good and timely labor advice and a professional labor relations and human resources administration have proof to be the right solution.

Thanks!

JORGE A. DE REGIL, PRINCIPAL PARTNER  
BAKER & MCKENZIE.

**Diane Reimer Bean**  
**Foreign Service Officer**  
**U.S. Department of State**

Diane Bean is a 22-year Foreign Service generalist with broad foreign policy experience who has recently joined the State Department's Bureau of Economic, Energy and Business Affairs as the U.S. National Contact Point for the "OECD Guidelines for Multinational Enterprises" regarding responsible corporate behavior. In that role, Mrs. Bean promotes the Guidelines within the United States and abroad and works to resolve specific concerns that may be raised about compliance with the Guidelines.

Mrs. Bean came to the EEB Bureau from the State Department's Office of the Coordinator for Counterterrorism, where, as Director of the Terrorism Information Sharing Office, she negotiated information sharing agreements on known or suspected terrorists. She also has significant experience in congressional relations, including a stint as a Pearson Congressional Fellow on the Homeland Security Committee in the U.S. House of Representatives, specializing there in border security, immigration and foreign policy matters. Mrs. Bean served as a consular officer in Germany and Israel and has held multiple Washington assignments in the Bureau of Consular Affairs, the East Asia & Pacific Affairs Bureau, previously in the EEB Bureau, and as a Watch Officer in the State Department's 24/7 Operations Center. She is the recipient of several State Department awards.

Prior to joining the Foreign Service in 1988, Mrs. Bean, an attorney by training, held USG positions as Assistant General Counsel for the (former) Immigration and Naturalization Service and as Attorney-Advisor in the Department of State's Passport Services Office. In her native state of Colorado, she served as an Assistant Attorney General in the Colorado Attorney General's Office and as a judicial clerk for the Chief Justice of the Colorado Supreme Court.

Mrs. Bean holds a J.D. degree from the University of Denver College of Law and a B.A. from Stanford University. She is married to a retired Foreign Service Officer, James Bean; they have two young adult children.



## Matthew W. Finkin

**Albert J. Harno and Edward W. Cleary Chair in Law**  
**Director, Program in Comparative Labor and Employment Law & Policy**  
**Center for Advanced Study Professor**

Professor Finkin is the Albert J. Harno and Edward J. Cleary Chair in Law. His teaching centers on labor and employment law, in both domestic and comparative context. He is the author or editor, singly or in collaboration, of nine books including *For the Common Good: Principles of American Academic Freedom* (Yale U. Press 2009) (with Robert Post), the award-winning *The Case for Tenure* (Cornell U. Press 1996), and the last several editions of *Labor Law* (with Archibald Cox, Derek Bok, and Robert Gorman), long the leading casebook in American legal education. He is also the author of a substantial body of periodical writing on labor and employment law, comparative law, and legal issues in higher education.

His awards include the Alexander von Humboldt Foundation's Research Prize for "internationally acknowledged achievements in labor law" (1995) and designation by the University of Illinois as a Center of Advanced Study Professor (2009). In 1997, Professor Finkin assumed the general editorship of the *Comparative Labor Law & Policy Journal* with Professor Sanford Jacoby of the Anderson Graduate School of Management at UCLA. He also serves on the editorial boards of several professional periodicals including the *Bureau of National Affairs* series, "International Labor and Employment Laws," the *Canadian Labour and Employment Law Journal*, the *European Labour Law Journal*, and the *Zeitschrift für ausländisches und internationales Arbeits- und Sozialrecht*."

Professor Finkin has taught in the law schools of Southern Methodist University, Duke University, and the University of Michigan and has been a Fulbright Professor at Münster University and a German Marshall Fund Lecturer at Konstanz University.

Since 1999, he has been a member of the governing board of the Institute for Labor Law and Employment Relations in the European Community at Trier, Germany. For over four decades he has been active in the American Association of University Professors including service as general counsel, chair of Committee A on Academic Freedom and Tenure, and on numerous committees.

In addition to his academic work, Professor Finkin is active as a labor arbitrator. He was elected to the National Academy of Arbitrators and serves on several standing arbitral panels in the public and private sectors. He is a fellow of the College of Labor and Employment Lawyers.

### **Education**

LL.M. Yale University  
LL.B. New York University  
A.B. Ohio Wesleyan University

## **ADAM B. GREENE**

### **Vice President, Labor Affairs & Corporate Responsibility United States Council for International Business**

Adam Greene is Vice President of Labor Affairs and Corporate Responsibility for the United States Council for International Business (USCIB: [www.uscib.org](http://www.uscib.org)).

Adam manages USCIB programs on corporate responsibility, including international codes and initiatives, internal management systems, stakeholder engagement, and corporate reporting. His focus areas include business and human rights, supply chain management, anti-corruption and corporate governance.

Adam also manages USCIB involvement in the development of international labor standards in the International Labor Organization and labor policy in the Organization for Economic Cooperation and Development. He leads USCIB work in the area of trade and labor.

Prior to joining USCIB, he was Associate Director of the Global Environment Program at the Stern School of Business at New York University and Manager of Fixed Income Securities for Dean Witter Financial Services. Adam earned a BA from the University of Rochester and an MBA from the NYU Stern School of Business.

#### Professional Affiliations:

- Member, IOE-ICC-BIAC Task Group on business and human rights
- Member, BIAC Task Group on the revision of the OECD Guidelines for Multinational Enterprises
- Co-chair, Industry Stakeholder Group, ISO Working Group on Social Responsibility
- Member, FTSE4Good US Advisory Committee
- Member, World Bank Doing Business Consultative Group on Employing Workers
- Member, ILO-IFC Better Work Advisory Committee
- Member, ILO Sub-Committee on the Tripartite Declaration on Multinational Enterprises and Social Policy
- Executive Vice President, Business Advisory Committee on Labor Affairs, Inter-American Conference of Ministers of Labor
- Member, National Academies Committee on Forced and Child Labor
- Member, ICC Commission on Corporate Responsibility and Anti-Corruption
- Member, IOE Working Group on Corporate Social Responsibility
- Member, US Employer Delegation to the International Labor Conference
- Advisor, U.S. President's Committee on the ILO

#### USCIB is the US affiliate of the:

- International Chamber of Commerce (ICC)
- International Organization of Employers (IOE)
- Business and Industry Advisory Committee (BIAC) to the OECD



**Brent Wilton**

Deputy Secretary-General  
International Organisation of Employers  
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Switzerland

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E-mail: [wilton@ioe-emp.org](mailto:wilton@ioe-emp.org)

A lawyer by profession, Brent Wilton has had twenty-five years' experience in assisting companies with their industrial relations and human resources issues. Brent worked in private legal practice before joining the Employers' Association in New Zealand. During the next thirteen years he was involved in national, regional and enterprise-based bargaining and represented employers in a range of legal matters, both in mediation and in the Labour Court and addressed a wide range of industrial relations and human rights issues across a broad range of industries and sectors in New Zealand, Australia and the Pacific.

After leaving the Auckland Employers in 1999 as Manager of Legal and Advocacy Services, he joined the International Organisation of Employers (IOE) as Senior Adviser, becoming Deputy Secretary-General in 2003.

In his current role, Brent has an oversight of all IOE labour and social policy developments, and has a particular responsibility for Global Industrial Relations and, in particular, the issue of International Framework Agreements (IFAs). He has spoken extensively on their development and wrote the IOE paper on IFAs. He also assisted, through IOE members, a range of MNEs on IFA matters. Brent is also responsible for following the work of the Global Union Federation.

The IOE also acts as the Secretariat to the Employers' Group within the International Labour Organization and represents 148 national employers' organizations in 141 countries.



## Kevin B. Coon

International Partner

Legal Practice

Labour, Employment and Regulatory Compliance Law

### Professional Legal Experience

Counsel, trusted and strategic adviser to corporate and not-for-profit organizations on human resource, labour, employment, regulatory and compliance issues with specific emphasis on;

- International Labour Standards;
- Corporate Social Responsibility
- Codes of Conduct;
- Human Rights;
- Occupational Health and Safety;
- Collective Bargaining;
- Executive Contracts and Compensation;
- Workplace Harassment;
- Positive Employee Relations
- Labour Relations;
- Workplace Privacy;
- Government Relations;
- Officers and Directors due diligence and fiduciary obligations;
- Workers Compensation

Assist with the interpretation, application and compliance with local and international labour, employment and regulatory laws and practices. Develop and implement compliance policies and practices within global and local organizations. Counsel, advise and train executives, managers and supervisors in due diligence, positive employee relations matters and best practices. Draft and design executive contracts related to duties and responsibilities, compensation, benefits and related conditions of employment. Conduct workplace investigations, counseling and training related to Respect in the Workplace, Harassment and Human Rights, Health and Safety, Due Diligence and related matters. Representation and advocacy before various Courts, Coroners Inquest, Administrative Tribunals and Arbitrators. Representation to elected Politicians and Government officials in relation to regulatory, stakeholder and policy initiatives.

## Appointments

### United Nations - International Labour Organization (ILO)

- Employer Representative on the Canadian Delegation to the 90<sup>th</sup> - 94<sup>th</sup> and 97-99<sup>th</sup> sessions of the International Labour Organization's International Labour Conference from 2002-2006 and 2009-10 in Geneva, Switzerland.
- Selected to participate on the Committee, and a select Working Group, which considers the Application of International Labour Standards in member countries, from 2002-2006. In 2001 participated on the Committee and drafting committee considering the Employment Relationship. In 2009-10 participated as one of the two employer representatives on the committee drafting the international labour standard for HIV/AIDS and the World of Work.
- Selected as a delegate on the Canadian Delegation at the Fifteenth American Regional Tri-Partite Meeting of ILO in Peru, December 2002. This meeting addressed issues related to the Director General's Report on the "Social Dimensions of Globalization" and held sessions dealing with "Crisis and Globalization: Possible Answers".
- Selected as an employer delegate to the ILO International Symposium for Employers, on "The Evolving Corporate Social Responsibility Debate", September 2005, Geneva.

### International Organization of Employers (IOE)

- Appointed to the Working Group on Corporate Social Responsibility since 2004. This Working Group is examining the current state of the CSR debate and making recommendations to the IOE.

## Professional Experience

### **Legal and Professional Development**

*Baker & McKenzie* 1989, International Partner, Toronto, 1997

- Practice Group Leader, Labour, Employment and Employee Benefits Law Group, 2005 to present, comprising eighteen professionals and eight support staff.
- Served as Professional Development and Recruitment Partner for the Toronto office from 1999 to 2002.

- Elected North American Representative on the Baker & McKenzie Global Knowledge and Professional Development Committee, 2002-2006. This Sub-Committee of the Executive Committee sets policy and practice for the over three thousand lawyers globally.

**Government of Canada**

- Special Assistant, Stakeholder and Community Relations, Minister of Justice and Attorney General of Canada, 1983-84.
- Parliamentary Assistant, Member of Parliament, House of Commons, 1982-83.
- Royal Canadian Mounted Police, Special Constable, 1985.

**Government of Ontario, Canada**

Policy Advisor, Minister of Labour for Ontario, 1989-90.

- Advisor to the Minister on the development of labour policy, programs and legislation.

Education**Law**

- Bachelor of Laws, 1987.
- Law Society of Upper Canada, Ontario Bar Admission 1989.

**Economics**

- B.A. Honours., International Relations & Economics, 1982.

**Business**

- Kellogg Graduate School of Management, Northwestern University.
  - Management Executive Program, Baker & McKenzie 2000

**Leadership**

- Center for Creative Leadership, Colorado Springs, Baker & McKenzie Leadership Training, 2008



## Douglas Darch

Partner

### Practice Areas

Employment Litigation - General  
Employment Litigation - ERISA  
Employment Advice - Domestic  
Labor Relations/Trade Unions - Counseling  
Labor Relations - Litigation

### Practice Description

Mr. Darch represents and counsels management in the areas of Labor and Employment Law. His practice has a particular emphasis on corporate transactions, labor management restructuring, Taft-Hartley benefit plan modification, corporate campaigns, and labor and employment litigation. Mr. Darch has represented employers in such highly publicized cases as Kyles v. JK Guardian, the Title VII employment testers case; Dubuque Packing, the case establishing the duty to bargain over work relocations under the National Labor Relations Act; and Esmark v. NLRB, which was at the time, the largest corporate restructuring of a publicly held employer.

Mr. Darch has participated in over 100 hearings before the National Labor Relations Board (NLRB), labor arbitrators, in the federal and state courts, and before administrative agencies. His experience includes representation in such matters as Title VII, sexual harassment, Age Discrimination in Employment Act (ADEA), handicap/disability discrimination (ADA), employment-at-will, absenteeism and leave management, retaliatory discharge, race and national origin discrimination, family leave (FMLA), wage and hour, Section 301, pre-emption, veterans status, COBRA, the Employee Retirement Income Security Act (ERISA), state common law claims, discharge arbitrations, and executive employment agreements. Mr. Darch is an experienced appellate court advocate.

His clients include manufacturers, health care and service employers. These employers value strategic planning to meet corporate objectives while avoiding the costs of litigation where possible. He has provided counseling in workforce reductions, severance plans, developing personnel policies, employee handbooks, workplace investigations, maintaining a union-free environment, preparing for and conducting collective bargaining, workforce interruption contingency planning, and corporate/social responsibility. Mr. Darch also has extensive National Labor Relations Board (union) election campaign experience and collective bargaining experience. Before attending law school, Mr. Darch was a naval officer.

**Admissions:**

- United States Supreme Court
- U.S. Court of Appeals for the Third, Fifth, Sixth, Seventh, Tenth, and District of Columbia Circuits
- U.S. District Court for the Central District of Illinois
- U.S. District Court for the Northern District of Illinois (Trial Bar)
- U.S. District Court for the Northern District of Indiana
- U.S. District Court for the Western District of Michigan
- U.S. District Court for the Eastern District of Tennessee
- U.S. District Court for the Eastern and Western Districts of Wisconsin

**Education & Bar Admittance**

University of North Carolina (J.D.); Georgia Tech (B.S.)  
Illinois (1980)

**Pro Bono & Community Involvement**

- Illinois State Bar Association  
Formerly Chair of Individual Rights and Responsibilities Section Council; current member of ERISA Section Council
- Chicago Bar Association  
Formerly Chair of Labor and Employment Committee, current member
- America Bar Association  
Member of Labor and Employment, Development of Law under National Labor Relations Act

**Representative Cases and Assignments**

**Chicago Tribune v. NLRB**, 962 F.2d 712 (7th Cir.) (NLRB decision reversed and discharge of union steward upheld, as there had been no explicit finding of union animus by NLRB)

**Copps Foods**, 301 N.L.R.B. 398 (only appropriate unit in retail food store purchasing boxed meat for resale is wall-to-wall unit)

**Esmark v. NLRB**, 887 F.2d 739 (7th Cir.) (parent corporation not liable for unfair labor practices committed by spun-off subsidiary provided corporate formalities observed)

**Pines v. F. Dohleman Co.** (DIHLR Wisc.) (favorable administrative law judge decision in bench trial on workers' compensation retaliation claim)

**Kinney v. Federal Security**, (U.S. N.D. Ill.), 272 F.3d 924 (7<sup>th</sup> Cir.) (NLRB's petition for injunctive relief under Section 10(j) dismissed; Employer awarded attorney's fees)

**Greensboro News & Record**, 293 N.L.R.B. 1243 (administrative law judge can dismiss complaint without trial if parties have reached a settlement even though general counsel refuses to accept settlement)

**Hickey Electric** (NLRB) (Employer's motion for summary judgment granted, deferral to arbitration process required even when no grievance filed)

**Hull v. Howmet**, (U.S. N.D. Ind.) (workers compensation retaliation case dismissed with prejudice after case removed from state court)

**Innophos** and United Steelworkers (Arbitration before Archer) (discharge of employee on disability leave who falsely described his activities was for just cause)

**International Union of Operating Engineers**, 304 N.L.R.B. 439 (remedy for maintaining unlawful constitutional provision restricting resignations from union membership is to publish notice in union's magazine)

**Cameron v. ITT/Bell & Gossett**, (U.S. N.D. Ill.) (removal of complainant from Illinois Human Rights Commission to federal court on basis of ERISA preemption)

**Kyles v. J.K. Guardian**, (U.S. N.D. Ill.), 222 F.3d 289 (7<sup>th</sup> Cir.) (jury verdict for employer in multi-plaintiff employment testers case)

**Johnson Controls v. Plumbers Local 306**, 145 LRRM 2755 (C.D. Ill.) (arbitration award vacated as arbitrator exceeded his authority under labor agreement), rev'd, 39 F.3d 821 (7th Cir.)

*Mueller Mfg. Co.* and *PACE* (Arbitration before Suardi) (discharge of employee for violating non-harassment policy was for just cause)

*Pease et al. v. Local 707/Randall Industries* 386 F.3d 819 (7th Cir.) (jury verdict in multiple plaintiff/multi-count termination case, affirmed – on appeal)

*Ridings v. Riverside Medical Center* (C.D. Il./ 7<sup>th</sup> Cir.) (summary judgment in multi-count FMLA case granted; as to employee who refused to substantiate need for leave; affirmed on appeal)

*Safety-Kleen*, 279 N.L.R.B. 1117 (administrative law judge can dismiss complainant at close of general counsel's case if no prima facie case established; statute of limitations begins to run when discharged employee becomes suspicious of reason rather than when he has proof positive of unlawful reason)

*Daughtry v. St. Francis Hospital*, (Circuit Court Il./1st Dist.) (bench decision in employee handbook case; affirmed on appeal)

*Moreno v. St. Francis Hospital*, (U.S. N.D. Il. 2001) (summary judgment granted before discovery in COBRA, ERISA denial of benefits claim)

*Terracon*, 339 NLRB No. 35, aff'd, 361 F3d 395 (NLRB/7th Cir.) (employer did not recognize union when it reviewed union authorization cards, as employer had not agreed to be bound by card check; affirmed on appeal)

*Thrall Car Mfg. Co.* and *Boilermakers* (Arbitration before Sinicropi) (unilateral implementation of drug testing policy during term of labor contract upheld)

*Scaccia v. Thrall Car*, (U.S. N.D. Il.) (case dismissed because Plaintiff filed false in forma pauperis affidavit)

*ValleyCrest Landscape Development, Inc. v. Cement Masons* (U.S.D.C. C.D.Cal.) (suit to void labor agreements in withdrawal liability dispute because description of pension plan was false – fraud in execution)

*Thompson v. Waste Management/Medical Service*, (Circuit Court Wis./Dist. II appeal) (employer's motion for summary judgment in multi-plaintiff (17) wrongful discharge case granted; affirmed on appeal)

**Representative Involvement in Strike Situations and Collective Bargaining**

- Howmet Corporation* (Dover, N.J.) (United Steelworkers of America): Assisted in permanent replacement of workforce and negotiation of strike settlement in which all strikers waived reinstatement rights in exchange for termination of pension plan.
- Visiting Nurse Association of Chicago* (Service Employees): Negotiated first and successive collective bargaining agreements for bargaining unit of nurses which has productivity-based compensation system.
- Grant Hospital of Chicago* (Teamsters): Assisted in strike planning and implementation of strike plan in attaining a concessionary agreement in service and maintenance unit.
- JP Industries* (Glass & Pottery): Assisted in purchase of assets of several corporations, renegotiation of labor contracts and hiring of workforce.
- Greensboro News & Record* (Teamsters): Negotiated collective bargaining agreements in mailroom, pressroom and drivers units and assisted in ultimate decertification of union in all three units.
- Massey Ferguson* (UAW): Assisted in negotiating plant closing agreement following expiration of labor contract with elimination pre closing of plant closing pension benefit.
- Northwest Drugs* (IBT): Negotiated permanent subcontracting of delivery operation and wage reduction at drug wholesale warehouse and distribution company.
- Howmet Corporation* (Machinists): Representation in union organizing campaign at casting facility in eastern Virginia.
- Interlake* (United Steel Fabricators): Negotiated first labor contract following raid of IBEW represented unit by independent union.
- Howmet Corporation* (Machinists): Representation in union organizing campaigns in several plants in New Jersey and Connecticut.
- Beltmann North American* (Teamsters): Negotiated successor contract allowing use of part-time employees.
- Interlake* (Carpenters): Negotiated labor agreement in which wage increases were offset in first year by benefit changes.

*Interlake* (Steel Fabricators): Negotiated concessionary wage package and increases in employees co-pay obligation insurance premium; Represented employer during work stoppage.

*Ingersoll-Rand, Blaw-Knox Div.* (UAW): Negotiated plant closing agreement during economic strike.

#### **Articles and Publications**

“Implementing the Family and Medical Leave Act In a Union Workforce,” *Quality Cities*;

Contributing Editor, Updates to *The Developing Labor Law* (BNA) (1998 to date);

Senior Editor, Updates to *Age Discrimination in Employment* (BNA) (2007 to date);

Contributing Editor, Updates to Age Discrimination in Employment, Papers for ABA Mid Winter meetings;

Speaker, “Costing The Labor Agreement” at the American Arbitration Association Program, “Negotiating a Labor Agreement;”

Speaker, Loyola University-Chicago Conference “Labor Law and Collective Bargaining in the New Millennium;”

Speaker, New York University’s 44<sup>th</sup> Annual Conference on Labor Law “Dubuque Packing and the Duty to Bargain –Labor’s New Partnership with Management;”

Speaker, Chicago Bar Association “Top Ten Things the NLRB can do that you don’t know about;”

Editor, “Suits to Compel or Stay Arbitration,” *Fairweather’s Practice and Procedure in Labor Arbitration*, Ray Schoonhoven;

“Understanding Migrant Workers Protection Act,” *Growing Trends*.

“Impact of Benefit Cost Increases and Take-Aways on Collective Bargaining Negotiations and Union Organizing” at Manufacturers Alliance/MAPI Benefits Forum.



## Jorge A. de Regil Gómez

Partner

### Practice Areas

Labor

### Practice Description

Labor Law. With emphasis in collective bargaining, union relations and union negotiations and collective conflicts. Social security, executive transfer, compensations, discrimination, mergers and acquisitions (successor employer and pension rights), OSHA matters. Consultation on international labor conventions and matters related to Freedom of Association.

### Publications, Presentations and Articles

Has written several articles for specialized publications. Has been professor with the Mexican Institute of Fiscal Studies and visiting Professor on Social Security and Labor Law with Universidad Panamericana, Universidad LaSalle, The Arizona State University, Escuela Libre de Derecho, International Center for Labor Studies (Torino, Italy) and has been speaker in numerous seminars organized by ILO, OIE, CCE, COPARMEX, CONCAMIN, AMERICAN CHAMBER OF COMMERCE, ANADE, AESSM, BARRA MEXICANA, etc.

### Professional Affiliations

Titular Member of the Governing Body of the International Labor Organization and of its Freedom of Association Committee in Geneva, Switzerland.

Counselor and Representative of the Employers Coordinating Council of Mexico before the Committee for the New Labor Legislation at the Secretariat of Labor and Social Welfare of the Mexican Government.

Vice president of the Labor Commission of CONCAMIN (Confederation of Industrial Chambers of Mexico) and representative of this Confederation before the International organisms in Social and Labor matters, ILO and IOE in Geneva.

Titular Member of the National Minimum Wage Commission, Titular Member of the National Labor Advisory Council; has been member representing the employers of all the tripartite bodies of Mexico, including the Social Security Institute and the Housing for Workers Fund (IMSS and INFONAVIT).

Former President of the National Association of Corporate Attorneys (ANADE) and former member of the Boar of the Mexican Bar Association.

**Education & Bar Admission**

Mr. de Regil was born in México, D.F., on July 3rd, 1945. Admitted to practice in México in 1969. Mr. de Regil obtained his law degree from the National University of México. Mr. de Regil also had studies in Windsor, Ontario and Washington, D.C. He joined the Firm in 1979.

**Languages**

Spanish and English



## Carlos A. Felce R.

Partner – Despacho de Abogados

### Practice Areas:

Venezuelan employment, labor and social security law.

### Practice Description:

Carlos Felce provides general employment, labor and social security consulting services: international employee transfers; compensation plans; individual and collective bargaining agreement negotiations; restructuring, reorganization and personnel reduction; individual and collective conflicts and litigation; tax-related contributions charged to workers and employers; drafting of labor agreements for the oil industry.

Mr. Felce is also a member of the Steering Committee of the Firm's Latin American Labor and Employment Practice Group.

### Academic Activities

- Professor of Principles of Law and Labor Law for the Postgraduate Course on Industrial Relations, Universidad Católica Andrés Bello (UCAB) from 1996 to- 2004.
- Professor of Collective Bargaining for the Postgraduate Course on Labor Law Universidad Católica Andrés Bello (UCAB) as of 2002.
- Professor of Labor Law II, Universidad Católica Andrés Bello (UCAB) from 2001 to 2006.
- Professor of Principles of Law and Labor Law for the Master's/Specialization on Human Resources/Management, Universidad Metropolitana as of 2001 (teaching in a similar course at the same University prior to this).

### Publications, Presentations and Articles

- *La Legislación Aplicable al Contrato Internacional de Trabajo en el Derecho del Trabajo Venezolano, bajo la Ley de Derecho Internacional Privado* (Law Applicable to International Employment Agreements in Venezuelan Labor Law under the Law on International Private Law) Book in honor of Gonzalo Parra-Aranguren. Addendum 2001. *Colección Libros Homenaje N°1. Fernando Parra Aranguren*. Published by the Supreme Court of Justice, Caracas, Venezuela, 2002.
- *El Régimen de Prestaciones Sociales en la Industria Petrolera* (Termination Indemnity System for the Oil Industry) and Article 672 of the Organic Labor Law. In: *Veintenario.- 1978-1998 Cámara Petrolera de Venezuela*, Ediciones Cámara Petrolera de Venezuela, 1998 (Published by Venezuelan Oil Chamber, 1998).
- Co-author of the book *Nueva Ley Orgánica del Trabajo. Comentarios sobre su Reforma* (New Organic Labor Law. Observations on its Reform). McGraw-Hill Interamericana de Venezuela S.A., Caracas, Venezuela, 1997.
- Several articles published in "*The Global Labour, Employment and Employee Benefits Bulletin*" of Baker & McKenzie.

- Several presentations on Venezuelan labor law topics both in Venezuela and abroad.

**Professional Affiliations:**

- Member of the Caracas Bar Association.
- Labor Advisor of the Venezuelan Petroleum Chamber

**Languages**

Spanish and English

**Education & Bar Admittance**

- Mr. Felce graduated (Summa Cum Laude) from Universidad Católica Andrés Bello Law School (1991). Among other distinctions, he was awarded the Caracciolo Parra León Award in 1991 (First place of his Class), and the Procter & Gamble Curricular and Extracurricular Challenge (Academic year 1990-1991).
- Mr. Felce also obtained a Master's Degree in Law from the University of Illinois College of Law (1993).
- Mr. Felce has been admitted by the Caracas Bar Association.



## Günther Heckelmann

Partner

### Practice Areas

Labour and employment law.

### Practice Description

Günther Heckelmann advises companies in all labour and employment related matters, in particular in conjunction with complex global reorganizations, employment issues in conjunction with multi-jurisdictional mergers and acquisitions, divestitures and post-merger integrations, negotiations with works councils and unions, European Works Council matters, basic principles of HR management as well as the hiring of, and separation from, managerial employees. He is member of the Steering Committee of the Global Labour and Employment Law Practice Group of Baker & McKenzie. From 1998 to 2007 Günther Heckelmann was Managing Partner of Baker & McKenzie Germany.

### Representative Clients, Cases or Matters

- Major restructurings of the European operations of Kraft Foods
- Major restructurings of the European operations of Ecolab
- Major reductions in force at several General Motors plants in Europe
- Employment advice re various complex worldwide acquisitions of Abbott and Abbott's contemplated sale of its diagnostics business to General Electric
- European Works Council advice to numerous Fortune 100 companies

### Publications, Presentations and Articles

Günther Heckelmann regularly speaks at conferences and seminars on labour and employment related issues, in particular in conjunction with integration of businesses and restructurings. His publications include a wide list of books and articles, inter alia Praxishandbuch Betriebsverfassungsrecht, Munich, 2003, and Worldwide Guide to Trade Unions and Works Councils, Chicago, 2000.

### Education & Bar Admittance

Günther Heckelmann joined Baker & McKenzie Frankfurt in 1985. He graduated from the University of Mainz in 1981 and passed his second state exam in 1985. In 1983 he conducted legal studies at the University of California at Berkeley. He is admitted as an attorney specialized in labour and employment law.

### Languages

German, English.



## Andreas Lauffs

Partner, Baker & McKenzie

### Practice Areas

Labor, employment and employee benefits (China)

### Practice Description

Andreas Lauffs is head of the Employment Law Group, which is comprised of dedicated full-time employment lawyers based in Shanghai, Beijing, and Hong Kong. Mr. Lauffs is recognised as a leading employment lawyer by Chambers Asia 2009 and Asia Pacific Legal 500 (2009), as well as various industry and professional bodies. He is a four-time recipient of China Staff's Labor Lawyer of the Year Award, and is regularly quoted by the business media on the impact of China's new labor laws. The Firm's employment global practice and its China employment practice are top ranked in employment law by PLC Which Lawyer? in its list of top 10 global employment firms.

### Practice Description

Mr. Lauffs has nearly two decades of experience advising on employment law and related business issues in China. He regularly counsels multinational employers on their strategic and complex employment and labor union matters, employment aspects of mergers & acquisitions, executive transfer, social insurance and on employment litigation/arbitration. He recently authored *Employment Law & Practice in China*, a book that provides a comprehensive analysis of China's evolving employment laws and their impact on business.

### Publications

Mr. Lauffs is recognised as a leading employment lawyer by various industry and professional bodies, received the 2008 *International Employment Firm of the Year* award (China Law & Practice), the China Staff *Labor Lawyer of the Year* award four times, and is regularly quoted by the business media on the impact of China's new labor laws. The Firm's employment global practice and its China employment practice are ranked *No. 1 Employment Law Firm* by PLC Which Lawyer? in its Global Employment Top Ten Firms. Mr. Lauffs has written several books and numerous articles on PRC employment laws. In May 2008, he published a new book, *Employment Law & Practice in China* (Sweet & Maxwell) which provides a comprehensive analysis of China's evolving employment laws, their application and impact on businesses.

### Professional Associations and Memberships

- German-Chinese Lawyers Association
- American Chamber of Commerce, Hong Kong
- American Chamber of Commerce, Beijing and Shanghai
- American Bar Association

### Education

Mr. Lauffs is admitted to practice law in Germany and New York, and is registered as a foreign lawyer in Hong Kong. He received a law degree, a diploma in Mandarin Chinese

(*summa cum laude*) and a Ph.D. in law on PRC labor law (*magna cum laude*) from Friedrich-Wilhelms-University in Bonn, Germany, as well as an LL.M. degree from Cornell University, New York. He studied Mandarin at National Taiwan Normal University and Chinese law at Beijing University. He served as guest lecturer on Chinese law at Friedrich-Wilhelms-University and acted as a free-lance Chinese interpreter for the German Ministry for Foreign Affairs and other organisations in Germany and in China.

**Admission**

Frankfurt/M.-Germany (1992)

New York~United States (1991)

**Languages**

English, Mandarin and German.



## Hector E. Morales, Jr.

Of Counsel

### **Practice Description**

Ambassador Hector E. Morales, Jr. is Of Counsel in the Firm's Washington, D.C. office. Ambassador Morales has more than 20 years of experience in US commerce in the Americas, both as a businessman and a lawyer. He provides strategic consulting and investment services to leading international businesses, with a particular focus on China, the US and Latin America.

Ambassador Morales most recently served as the United States Representative to the Organization of American States (OAS), the world's oldest multilateral political forum in the Western Hemisphere. Prior to his appointment to the OAS, Ambassador Morales served as US Executive Director to the Inter-American Development Bank (IDB) and as Alternate US Executive Director to the IDB. Ambassador Morales has served as a consultant to companies providing financial services, including the world's leading micro-lender to Latin America and a community development bank based in New York. He has also served as Senior Vice President of Viamericas Corporation, a path-breaking company that offered the first pre-paid money transfer card in the US to the Latin America remittance market, and as President and General Manager of Reliant Energy Argentina.

Ambassador Morales serves concurrently as Vice Chairman of Global Strategic Associates, LLC, in New York City which provides strategic consulting and investment services to leading international businesses, with a particular focus on China, the US and Latin America. Ambassador Morales is also currently a Visiting Scholar at Georgetown University at the Center for Latin American Studies.

### **Education & Admittance**

#### Education:

- J.D., University of Texas School of Law, in Austin, TX (1989)
- B.A., Columbia College, in New York, NY (1985)

#### Admittance:

- Texas

### **Languages**

- Spanish (fluent)
- Portuguese (fair)



# OECD Guidelines for Multinational Enterprises





# **OECD Guidelines for Multinational Enterprises**



# ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

The OECD is a unique forum where the governments of 30 democracies work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

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OECD Publishing disseminates widely the results of the Organisation's statistics gathering and research on economic, social and environmental issues, as well as the conventions, guidelines and standards agreed by its members.

*This work is published on the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of the Organisation or of the governments of its member countries.*

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**Les Principes directeurs de l'OCDE à l'intention des entreprises multinationales**

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## Declaration on International Investment and Multinational Enterprises

27 June 2000

ADHERING GOVERNMENTS<sup>1</sup>

CONSIDERING:

- That international investment is of major importance to the world economy, and has considerably contributed to the development of their countries;
- That multinational enterprises play an important role in this investment process;
- That international co-operation can improve the foreign investment climate, encourage the positive contribution which multinational enterprises can make to economic, social and environmental progress, and minimise and resolve difficulties which may arise from their operations;
- That the benefits of international co-operation are enhanced by addressing issues relating to international investment and multinational enterprises through a balanced framework of inter-related instruments;

DECLARE:

- |  |       |   |
|--|-------|---|
| Guidelines for<br>Multinational<br>Enterprises | I.    | That they jointly recommend to multinational enterprises operating in or from their territories the observance of the Guidelines, set forth in Annex 1 hereto, <sup>2</sup> having regard to the considerations and understandings that are set out in the Preface and are an integral part of them;  |
| National Treatment                             | II.1. | That adhering governments should, consistent with their needs to maintain public order, to protect their essential security interests and to fulfil commitments relating to international peace and security, accord to enterprises operating in their territories and owned or controlled directly or indirectly by nationals of another adhering government (hereinafter referred to as “Foreign-Controlled Enterprises”) treatment under their laws, regulations and administrative practices, consistent with international law and no less favourable than that accorded in like situations to domestic enterprises (hereinafter referred to as “National Treatment”); |

	2.	That adhering governments will consider applying “National Treatment” in respect of countries other than adhering governments;
	3.	That adhering governments will endeavour to ensure that their territorial subdivisions apply “National Treatment”;
	4.	That this Declaration does not deal with the right of adhering governments to regulate the entry of foreign investment or the conditions of establishment of foreign enterprises;
Conflicting Requirements	III.	That they will co-operate with a view to avoiding or minimising the imposition of conflicting requirements on multinational enterprises and that they will take into account the general considerations and practical approaches. <sup>3</sup>
International Investment Incentives and Disincentives	IV.1	That they recognise the need to strengthen their co-operation in the field of international direct investment;
	2.	That they thus recognise the need to give due weight to the interests of adhering governments affected by specific laws, regulations and administrative practices in this field (hereinafter called “measures”) providing official incentives and disincentives to international direct investment;
	3.	That adhering governments will endeavour to make such measures as transparent as possible, so that their importance and purpose can be ascertained and that information on them can be readily available;
Consultation Procedures	V.	That they are prepared to consult one another on the above matters in conformity with the relevant Decisions of the Council;
Review	VI.	That they will review the above matters periodically with a view to improving the effectiveness of international economic co-operation among adhering governments on issues relating to international investment and multinational enterprises.

## Notes

1. As at 27 June 2000 adhering governments are those of all OECD Members, as well as Argentina, Brazil, Chile and the Slovak Republic. The European Community has been invited to associate itself with the section on National Treatment on matters falling within its competence.
2. The text of the *Guidelines for Multinational Enterprises* is reproduced in Part I of this Booklet.
3. The text of General considerations and Practical Approaches concerning Conflicting Requirements Imposed on Multinational Enterprises is available from the OECD Website [www.oecd.org/daf/investment/guidelines/conflict.htm](http://www.oecd.org/daf/investment/guidelines/conflict.htm).

PART I

# **OECD Guidelines for Multinational Enterprises**



## Preface

1. The *OECD Guidelines for Multinational Enterprises* (the *Guidelines*) are recommendations addressed by governments to multinational enterprises. They provide voluntary principles and standards for responsible business conduct consistent with applicable laws. 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.

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, service and technology enterprises have entered 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.

4. The activities of multinational enterprises, through international trade and investment, have strengthened and deepened the ties that join OECD economies to each other and to the rest 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 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 social, economic and environmental 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 standards and principles 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. These efforts have also promoted social dialogue on what constitutes good 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. 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 post-war period has seen the development of this framework, starting with the adoption in 1948 of the Universal Declaration of Human Rights. Recent instruments include the ILO Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development and Agenda 21 and the Copenhagen Declaration for Social Development.

9. The OECD has also been contributing to the international policy framework. Recent developments include the adoption of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and of the OECD Principles of Corporate Governance, the OECD Guidelines for Consumer Protection in the Context of Electronic Commerce, and ongoing work on the OECD Guidelines on Transfer Pricing for Multinational Enterprises and Tax Administrations.

10. 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 firms, 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 continual 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. Observance of the *Guidelines* by enterprises is voluntary and not legally enforceable.
2. 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.
3. A precise definition of multinational enterprises is not required for the purposes of the *Guidelines*. These 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*.
4. 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.
5. 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.
6. 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.

7. 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, the governments concerned will co-operate in good faith with a view to resolving problems that may arise.

8. 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.

9. 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.

10. Governments adhering to the *Guidelines* will promote 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, enterprises should:

1. Contribute to economic, social and environmental progress with a view to achieving sustainable development.
2. Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.
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 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.
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 employee awareness of, and compliance with, company policies through appropriate dissemination of these policies, including through training programmes.
9. Refrain from discriminatory or disciplinary action against employees 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. Encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the *Guidelines*.
11. Abstain from any improper involvement in local political activities.

### III. Disclosure

1. Enterprises should ensure that timely, regular, reliable and relevant information is disclosed regarding their activities, structure, financial situation and performance. 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. Enterprises should apply high quality standards for disclosure, accounting, and audit. Enterprises are also encouraged to apply high quality standards for non-financial information including environmental and social reporting where they exist. The standards or policies under which both financial and non-financial information are compiled and published should be reported.

3. Enterprises should disclose basic information showing their name, location, and structure, the name, address and telephone number of the parent enterprise and its main affiliates, its percentage ownership, direct and indirect in these affiliates, including shareholdings between them.

4. Enterprises should also disclose material information on:

- a) The financial and operating results of the company.
- b) Company objectives.
- c) Major share ownership and voting rights.
- d) Members of the board and key executives, and their remuneration.
- e) Material foreseeable risk factors.
- f) Material issues regarding employees and other stakeholders.
- g) Governance structures and policies.

5. Enterprises are encouraged to communicate additional information that could include:

- a) Value statements or statements of business conduct intended for public disclosure including information on the social, ethical and environmental policies of the enterprise and other codes of conduct to which the company subscribes. In addition, the date of adoption, the countries and entities to which such statements apply and its performance in relation to these statements may be communicated.

- b) Information on systems for managing risks and complying with laws, and on statements or codes of business conduct.
- c) Information on relationships with employees and other stakeholders.

## IV. Employment and Industrial Relations

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

1. a) Respect the right of their employees to be represented by trade unions and other *bona fide* representatives of employees, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on employment conditions.
  - b) Contribute to the effective abolition of child labour.
  - c) Contribute to the elimination of all forms of forced or compulsory labour.
  - d) Not discriminate against their employees with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, unless selectivity concerning employee 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 facilities to employee representatives as may be necessary to assist in the development of effective collective agreements.
  - b) Provide information to employee representatives which is needed for meaningful negotiations on conditions of employment.
  - c) Promote consultation and co-operation between employers and employees and their representatives on matters of mutual concern.
3. Provide information to employees 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.
4. a) Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country.
  - b) Take adequate steps to ensure occupational health and safety in their operations.

5. In their operations, to the greatest extent practicable, employ local personnel and provide training with a view to improving skill levels, in co-operation with employee representatives and, where appropriate, relevant governmental authorities.
6. In considering changes in their operations which would have major effects upon the livelihood of their employees, 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 their employees, and, where appropriate, to the relevant governmental authorities, and co-operate with the employee 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 representatives of employees on conditions of employment, or while employees are exercising a right to organise, not threaten to transfer the whole or part of an operating unit from the country concerned nor transfer employees 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 their employees 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.

## V. 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, including periodically reviewing the continuing relevance of these objectives; 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 employees with adequate 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. 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, by encouraging, where appropriate, 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; 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; and
  - d) research on ways of improving the environmental performance of the enterprise over the longer term.
7. Provide adequate education and training to employees 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.

## VI. Combating Bribery

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. Nor should enterprises be solicited or expected to render a bribe or other undue advantage. In particular, enterprises should:

1. Not offer, nor give in to demands, to pay public officials or the employees of business partners any portion of a contract payment. They should not use subcontracts, purchase orders or consulting agreements as means of channelling payments to public officials, to employees of business partners or to their relatives or business associates.
2. Ensure that remuneration of agents is appropriate and for legitimate services only. Where relevant, a list of agents employed in connection with transactions with public bodies and state-owned enterprises should be kept and made available to competent authorities.
3. Enhance the transparency of their activities in the fight against bribery and extortion. Measures could include making public commitments against bribery and extortion and disclosing the management systems the company has adopted in order to honour these commitments. The enterprise should also foster openness and dialogue with the public so as to promote its awareness of and co-operation with the fight against bribery and extortion.
4. Promote employee awareness of and compliance with company policies against bribery and extortion through appropriate dissemination of these policies and through training programmes and disciplinary procedures.
5. Adopt management control systems that discourage bribery and corrupt practices, and adopt financial and tax accounting and auditing practices that prevent the establishment of “off the books” or secret accounts or the creation of documents which do not properly and fairly record the transactions to which they relate.
6. Not make illegal contributions to candidates for public office or to political parties or to other political organisations. Contributions should fully comply with public disclosure requirements and should be reported to senior management.

## VII. 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 safety and quality of the goods or services they provide. In particular, they should:

1. Ensure that the goods or services they provide meet all agreed or legally required standards for consumer health and safety, including health warnings and product safety and information labels.
2. As appropriate to the goods or services, provide accurate and clear information regarding their content, safe use, maintenance, storage, and disposal sufficient to enable consumers to make informed decisions.
3. Provide transparent and effective procedures that address consumer complaints and contribute to fair and timely resolution of consumer disputes without undue cost or burden.
4. Not make representations or omissions, nor engage in any other practices, that are deceptive, misleading, fraudulent, or unfair.
5. Respect consumer privacy and provide protection for personal data.
6. Co-operate fully and in a transparent manner with public authorities in the prevention or removal of serious threats to public health and safety deriving from the consumption or use of their products.

## VIII. 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 development prospects of the host country.
5. 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.

## IX. Competition

Enterprises should, within the framework of applicable laws and regulations, conduct their activities in a competitive manner. In particular, enterprises should:

1. Refrain from entering into or carrying out anti-competitive agreements among competitors:
  - a) to fix prices;
  - b) to make rigged bids (collusive tenders);
  - c) to establish output restrictions or quotas; or
  - d) to share or divide markets by allocating customers, suppliers, territories or lines of commerce.
2. Conduct all of their activities in a manner consistent with all applicable competition laws, taking into account the applicability of the competition laws of jurisdictions whose economies would be likely to be harmed by anti-competitive activity on their part.
3. Co-operate with the competition authorities of such jurisdictions by, among other things and subject to applicable law and appropriate safeguards, providing as prompt and complete responses as practicable to requests for information.
4. Promote employee awareness of the importance of compliance with all applicable competition laws and policies.

## **X. Taxation**

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 the tax laws and regulations in all countries in which they operate and should exert every effort to act in accordance with both the letter and spirit of those laws and regulations. This would include such measures as providing to the relevant authorities the information necessary for the correct determination of taxes to be assessed in connection with their operations and conforming transfer pricing practices to the arm's length principle.



## PART II

# **Implementation Procedures of the OECD Guidelines for Multinational Enterprises**



## **Decision of the OECD Council on the OECD Guidelines for Multinational Enterprises**

June 2000

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 [C(2000)96];

Having regard to the Second Revised Decision of the Council of June 1984 [C(84)90], amended June 1991 [C/MIN(91)7/ANN1];

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:

To repeal the Second Revised Decision of the Council of June 1984 [C(84)90], amended June 1991 [C/MIN(91)7/ANN1], and replace it with the following:

## I. National Contact Points

1. Adhering countries shall set up National Contact Points for undertaking promotional activities, handling inquiries and for discussions with the parties concerned on all matters covered by the Guidelines so that they can contribute to the solution of problems which may arise in this connection, taking due account of the attached procedural guidance. The business community, employee 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 annually to share experiences and report to the Investment Committee.

## 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”), as well as other non-governmental organisations to express their views on matters covered by the Guidelines. In addition, exchanges of views with the advisory bodies on these matters may be held at their request.
3. The Committee may decide to hold exchanges of views on matters covered by the Guidelines with representatives of non-adhering countries.
4. The Committee shall be responsible for clarification of the Guidelines. Clarification will be provided as required. If it so wishes, an individual enterprise will be given the opportunity to express its views either orally or in writing on issues concerning the Guidelines involving its interests. 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.
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, the views expressed by the advisory bodies, and the views of other non-governmental organisations and non-adhering countries as appropriate.

### **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 (NCP) 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, adhering countries have flexibility in organising their NCPs, seeking the active support of social partners, including the business community, employee organisations, and other interested parties, which includes non-governmental organisations.

Accordingly, the National Contact Point:

1. May be a senior government official or a government office headed by a senior official. Alternatively, the National Contact Point may be organised as a co-operative body, including representatives of other government agencies. Representatives of the business community, employee organisations and other interested parties may also be included.
2. Will develop and maintain relations with representatives of the business community, employee organisations and other interested parties that are able to contribute to the effective functioning of the Guidelines.

#### **B. Information and promotion**

National Contact Points 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, including through co-operation, as appropriate, with the business community, employee 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, employee organisations, other non-governmental organisations and the public; and
- c) governments of non-adhering countries.

### **C. Implementation in specific instances**

The NCP will contribute to the resolution of issues that arise relating to implementation of the Guidelines in specific instances. The NCP will offer a forum for discussion and assist the business community, employee organisations and other 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 party or parties raising them.
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, employee organisations, other non-governmental organisations, and relevant experts.
  - b) Consult the National Contact Point in the other country or countries concerned.
  - c) Seek the guidance of the Investment 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 in dealing with the issues.
3. If the parties involved do not reach agreement on the issues raised, issue a statement, and make recommendations as appropriate, on the implementation of the Guidelines.
4.
  - a) In order to facilitate resolution of the issues raised, take appropriate steps to protect sensitive business and other information. 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.
  - b) After consultation with the parties involved, make publicly available the results of these procedures unless preserving confidentiality would be in the best interests of effective implementation of the Guidelines.

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

## **II. Investment Committee**

1. The Committee will discharge its responsibilities in an efficient and timely manner.
2. 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.
3. The Committee will:
  - a) Consider the reports of NCPs.
  - b) Consider a substantiated submission by an adhering country or an advisory body 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 or an advisory body 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.
4. 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.



## PART III

# Commentaries

**Note by the Secretariat:** *These commentaries have been prepared by the Investment Committee to provide information on and explanation of the Guidelines text and of the Council Decision on Implementation of the Guidelines. They are not part of the Declaration on International Investment and Multinational Enterprises or of the Council Decision on the Guidelines for Multinational Enterprises.*



## Commentary on the OECD Guidelines for Multinational Enterprises

### Commentary on General Policies

1. The General Policies chapter of the *Guidelines* is the first to contain specific recommendations to enterprises. As such it is important for setting the tone and establishing common fundamental principles for the specific recommendations in subsequent chapters.
2. Obeying domestic law is the first obligation of business. The *Guidelines* are not a substitute for nor should they be considered to override local law and regulation. They represent supplementary principles and standards of behaviour of a non-legal character, particularly concerning the international operations of these enterprises. While the *Guidelines* extend beyond the law in many cases, they should not and are not intended to place an enterprise in a situation where it faces conflicting requirements.
3. Enterprises are encouraged to co-operate with governments in the development and implementation of policies and laws. Considering the views of other stakeholders in society, which includes the local community as well as business interests, can enrich this process. It is also recognised that governments should be transparent in their dealings with enterprises, and consult with business on these same issues. Enterprises should be viewed as partners with government in the development and use of both voluntary and regulatory approaches (of which the *Guidelines* are one element) to policies affecting them.
4. There should not be any contradiction between the activity of multinational enterprises (MNEs) and sustainable development, and the *Guidelines* are meant to foster complementarities in this regard. Indeed, links among economic, social, and environmental progress are a key means for furthering the goal of sustainable development.<sup>1</sup> On a related issue, while promoting and upholding human rights is primarily the responsibility of governments, where corporate conduct and human rights intersect enterprises do play a role, and thus MNEs are encouraged to respect human rights, not only in their dealings with employees, but also with respect to others affected by their activities, in a manner that is consistent with host governments'

international obligations and commitments. The Universal Declaration of Human Rights and other human rights obligations of the government concerned are of particular relevance in this regard.

5. The *Guidelines* also acknowledge and encourage the contribution that MNEs can make to local capacity building as a result of their activities in local communities. Similarly, the recommendation on human capital formation is an explicit and forward-looking recognition of the contribution to individual human development that MNEs can offer their employees, and encompasses not only hiring practices, but training and other employee development as well. Human capital formation also incorporates the notion of non-discrimination in hiring practices as well as promotion practices, life-long learning and other on-the-job training.

6. Governments recommend that, in general, enterprises avoid efforts to secure exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation and financial incentives among other issues, without infringing on an enterprise's right to seek changes in the statutory or regulatory framework. The words "or accepting" also draw attention to the role of the state in offering these exemptions. While this sort of provision has been traditionally directed at governments, it is also of direct relevance to MNEs. Importantly, however, there are instances where specific exemptions from laws or other policies can be consistent with these laws for legitimate public policy reasons. The environment and competition policy chapters are examples.

7. The paragraph devoted to the role of MNEs in corporate governance gives further impetus to the recently adopted OECD Principles of Corporate Governance. Although primary responsibility for improving the legal and institutional regulatory framework lies with governments, enterprises also have an interest in good governance.

8. An increasing network of non-governmental self-regulatory instruments and actions address aspects of corporate behaviour and the relationships between business and society. Enterprises recognise that their activities often have social and environmental implications. The institution of self-regulatory practices and management systems by enterprises sensitive to reaching these goals – thereby contributing to sustainable development – is an illustration of this. In turn, developing such practices can further constructive relationships between enterprises and the societies in which they operate.

9. Following from effective self-regulatory practices, as a matter of course, enterprises are expected to promote employee awareness of company policies. Safeguards to protect *bona fide* "whistle-blowing" activities are also recommended, including protection of employees who, in the absence of timely remedial action or in the face of reasonable risk of negative

employment action, report practices that contravene the law to the competent public authorities. While of particular relevance to anti-bribery and environmental initiatives, such protection is also relevant to other recommendations in the *Guidelines*.

10. Encouraging, where practicable, compatible principles of corporate responsibility among business partners serves to combine a re-affirmation of the standards and principles embodied in the *Guidelines* with an acknowledgement of their importance to suppliers, contractors, subcontractors, licensees and other entities with which MNEs enjoy a working relationship. It is recognised that there are practical limitations to the ability of enterprises to influence the conduct of their business partners. The extent of these limitations depends on sectoral, enterprise and product characteristics such as the number of suppliers or other business partners, the structure and complexity of the supply chain and the market position of the enterprise *vis-à-vis* its suppliers or other business partners. The influence enterprises may have on their suppliers or business partners is normally restricted to the category of products or services they are sourcing, rather than to the full range of activities of suppliers or business partners. Thus, the scope for influencing business partners and the supply chain is greater in some instances than in others. Established or direct business relationships are the major object of this recommendation rather than all individual or *ad hoc* contracts or transactions that are based solely on open market operations or client relationships. In cases where direct influence of business partners is not possible, the objective could be met by means of dissemination of general policy statements of the enterprise or membership in business federations that encourage business partners to apply principles of corporate conduct compatible with the *Guidelines*.

11. Finally, it is important to note that self-regulation and other initiatives in a similar vein, including the *Guidelines*, should not unlawfully restrict competition, nor should they be considered a substitute for effective law and regulation by governments. It is understood that MNEs should avoid potential trade or investment distorting effects of codes and self-regulatory practices when they are being developed.

### Commentary on Disclosure

12. The purpose of this chapter is to encourage improved understanding of the operations of multinational enterprises. Clear and complete information on enterprises is important to a variety of users ranging from shareholders and the financial community to other constituencies such as employees, local communities, special interest groups, governments and society at large. To improve public understanding of enterprises and their interaction with society and the environment, enterprises should be transparent in their

operations and responsive to the public's increasingly sophisticated demands for information. The information highlighted in this chapter may be a supplement to disclosure required under the national laws of the countries in which the enterprise operates.

13. This chapter addresses disclosure in two areas. The first set of disclosure recommendations is identical to disclosure items outlined in the *OECD Principles of Corporate Governance*. The *Principles* call for timely and accurate disclosure on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company. Companies are also expected to disclose sufficient information on the remuneration of board members and key executives (either individually or in the aggregate) for investors to properly assess the costs and benefits of remuneration plans and the contribution of incentive schemes, such as stock option schemes, to performance. The *Principles* contain annotations that provide further guidance on the required disclosures and the recommendations in the *Guidelines* should be construed in relation to these annotations. They focus on publicly traded companies. To the extent that they are deemed applicable, they should also be a useful tool to improve corporate governance in non-traded enterprises; for example, privately held and state owned enterprises.

14. The *Guidelines* also encourage a second set of disclosure or communication practices in areas where reporting standards are still emerging such as, for example, social, environmental, and risk reporting. Many enterprises provide information on a broader set of topics than financial performance and consider disclosure of such information a method by which they can demonstrate a commitment to socially acceptable practices. In some cases, this second type of disclosure – or communication with the public and with other parties directly affected by the firms' activities – may pertain to entities that extend beyond those covered in the enterprises' financial accounts. For example, it may also cover information on the activities of subcontractors and suppliers or of joint venture partners.

15. Many enterprises have adopted measures designed to help them comply with the law and standards of business conduct, and to enhance the transparency of their operations. A growing number of firms have issued voluntary codes of corporate conduct, which are expressions of commitments to ethical values in such areas as environment, labour standards or consumer protection. Specialised management systems are being developed with the aim of helping them respect these commitments – these involve information systems, operating procedures and training requirements. Enterprises are co-operating with NGOs and intergovernmental organisations in developing reporting standards that enhance enterprises' ability to communicate how their activities influence sustainable development outcomes (e.g. the Global Reporting Initiative).

16. The OECD *Principles of Corporate Governance* support the development of high quality internationally recognised standards of accounting, financial and non-financial disclosure, and audit, which can serve to improve the comparability of information among countries. Financial audits conducted by independent auditors provide external and objective assurance on the way in which financial statements have been prepared and presented. The transparency and effectiveness of non-financial disclosure may be enhanced by independent verification. Techniques for independent verification of non-financial disclosure are emerging.

17. Enterprises are encouraged to provide easy and economical access to published information and to consider making use of information technologies to meet this goal. Information that is made available to users in home markets should also be available to all interested users. Enterprises may take special steps to make information available to communities that do not have access to printed media (*e.g.* poorer communities that are directly affected by the enterprise's activities).

18. Disclosure requirements are not expected to place unreasonable administrative or cost burdens on enterprises. Nor are enterprises expected to disclose information that may endanger their competitive position unless disclosure is necessary to fully inform the investment decision and to avoid misleading the investor.

### Commentary on Employment and Industrial Relations

19. This chapter opens with a chapeau that includes a reference to “applicable” law and regulations, which is meant to acknowledge the fact that multinational enterprises, while operating within the jurisdiction of particular countries, may be subject to *national*, *sub-national*, as well as *supra-national* levels of regulation of employment and industrial relations matters. The terms “prevailing labour relations” and “employment practices” are sufficiently broad to permit a variety of interpretations in light of different national circumstances – for example, different bargaining options provided for employees under national laws and regulations.

20. The International Labour Organisation (ILO) is the competent body to set and deal with international labour standards, and to promote fundamental rights at work as recognised in its 1998 Declaration on Fundamental Principles and Rights at Work. The *Guidelines*, as a non-binding instrument, have a role to play in promoting observance of these standards and principles among multinational enterprises. The provisions of the *Guidelines* chapter echo relevant provisions of the 1998 Declaration, as well as the ILO's 1977 Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. The Tripartite Declaration sets out principles in the fields of employment, training, working conditions, and

industrial relations, while the OECD Guidelines cover all major aspects of corporate behaviour. The OECD Guidelines and the ILO Tripartite Declaration refer to the behaviour expected from enterprises and are intended to parallel and not conflict with each other. The ILO Tripartite Declaration can therefore be of use in understanding the *Guidelines* to the extent that it is of a greater degree of elaboration. However, the responsibilities for the follow-up procedures under the Tripartite Declaration and the *Guidelines* are institutionally separate.

21. The first paragraph of this chapter is designed to echo all four fundamental principles and rights at work which are contained in the ILO's 1998 Declaration, namely the freedom of association and right to collective bargaining, the effective abolition of child labour, the elimination of all forms of forced or compulsory labour, and non-discrimination in employment and occupation. These principles and rights have been developed in the form of specific rights and obligations in ILO Conventions recognised as fundamental.

22. The chapter recommends that multinational enterprises contribute to the effective abolition of child labour in the sense of the ILO 1998 Declaration and ILO Convention 182 concerning the worst forms of child labour. Long-standing ILO instruments on child labour are Convention 138 and Recommendation 146 (both adopted in 1973) concerning minimum ages for employment. Through their labour management practices, their creation of high quality, well paid jobs and their contribution to economic growth, multinational enterprises can play a positive role in helping to address the root causes of poverty in general and of child labour in particular. It is important to acknowledge and encourage the role of multinational enterprises in contributing to the search for a lasting solution to the problem of child labour. In this regard, raising the standards of education of children living in host countries is especially noteworthy.

23. The chapter also recommends that enterprises contribute to the elimination of all forms of compulsory labour, another principle derived from the 1998 ILO Declaration. The reference to this core labour right is based on the ILO Conventions 29 of 1930 and 105 of 1957. C. 29 requests that governments "suppress the use of forced or compulsory labour in all its forms within the shortest possible period", while C. 105 requests of them to "suppress and not to make use of any form of forced or compulsory labour" for certain enumerated purposes (e.g. as a means of political coercion or labour discipline), and "to take effective measures to secure [its] immediate and complete abolition". At the same time, it is understood that the ILO is the competent body to deal with the difficult issue of prison labour, in particular when it comes to the hiring-out of prisoners to (or their placing at the disposal of) private individuals, companies or associations.

24. The principle of non-discrimination with respect to employment and occupation is considered to apply to such terms and conditions as hiring,

discharge, pay, promotion, training and retirement. The list of non-permissible grounds for discrimination which is taken from ILO Convention 111 of 1958 considers that any distinction, exclusion or preference on these grounds is in violation of the Convention. At the same time, the text makes clear that the terms do not constitute an exhaustive list. Consistent with the provisions in paragraph 1d), enterprises are expected to promote equal opportunities for women and men with special emphasis on equal criteria for selection, remuneration, and promotion, and equal application of those criteria, and prevent discrimination or dismissals on the grounds of marriage, pregnancy or parenthood.

25. The reference to consultative forms of employee participation in paragraph two of the *Guidelines* is taken from ILO Recommendation 94 of 1952 concerning Consultation and Co-operation between Employers and Workers at the Level of the Undertaking. It also conforms to a provision contained in the 1977 ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. Such consultative arrangements should not substitute for employees' right to bargain over terms and conditions of employment. A recommendation on consultative arrangements with respect to employment arrangements is also part of paragraph eight.

26. In paragraph three of this chapter, information provided by companies to their employees is expected to provide a "true and fair view" of performance. It relates to the following: the structure of the enterprise, its economic and financial situation and prospects, employment trends, and expected substantial changes in operations, taking into account legitimate requirements of business confidentiality. Considerations of business confidentiality may mean that information on certain points may not be provided, or may not be provided without safeguards.

27. In paragraph four, employment and industrial relations standards are understood to include compensation and working-time arrangements. The reference to occupational health and safety implies that MNEs are expected to follow prevailing regulatory standards and industry norms to minimise the risk of accidents and injury to health arising out of, linked with, or occurring in, the course of employment. This encourages enterprises to work to raise the level of performance with respect to occupational health and safety in all parts of their operation even where this may not be formally required by existing regulations in countries in which they operate. It also encourages enterprises to respect employees' ability to remove themselves from a work situation when there is reasonable justification to believe that it presents an imminent and serious risk to health or safety. Reflecting their importance and complementarities among related recommendations, health and safety concerns are echoed elsewhere in the *Guidelines*, most notably in chapters on Consumer Interests and the Environment.

28. The recommendation in paragraph five of the chapter encourages MNEs to recruit an adequate workforce share locally, including managerial personnel, and to provide training to them. Language in this paragraph on training and skill levels complements the text in paragraph four of the General Policies chapter on encouraging human capital formation. The reference to local personnel complements the text encouraging local capacity building in paragraph three of the General Policies chapter.

29. Paragraph six recommends that enterprises provide reasonable notice to the representatives of employees and relevant government authorities, of changes in their operations which would have major effects upon the livelihood of their employees, in particular the closure of an entity involving collective layoffs or dismissals. As stated therein, the purpose of this provision is to afford an opportunity for co-operation to mitigate the effects of such changes. This is an important principle that is widely reflected in the industrial relations laws and practices of adhering countries, although the approaches taken to ensuring an opportunity for meaningful co-operation are not identical in all adhering countries. The paragraph also notes that it would be appropriate if, in light of specific circumstances, management were able to give such notice prior to the final decision. Indeed, notice prior to the final decision is a feature of industrial relations laws and practices in a number of adhering countries. However, it is not the only means to ensure an opportunity for meaningful co-operation to mitigate the effects of such decisions, and the laws and practices of other adhering countries provide for other means such as defined periods during which consultations must be undertaken before decisions may be implemented.

### Commentary on the Environment

30. The text of the Environment Chapter broadly reflects the *principles* and objectives contained in the Rio Declaration on Environment and Development, in Agenda 21 (within the Rio Declaration). It also takes into account the (Aarhus) Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters and reflects *standards* contained in such instruments as the ISO Standard on Environmental Management Systems.

31. Sound environmental management is an important part of sustainable development, and is increasingly being seen as both a business responsibility and a business *opportunity*. Multinational enterprises have a role to play in both respects. Managers of these enterprises should therefore give appropriate attention to environmental issues within their business strategies. Improving environmental performance requires a commitment to a systematic approach and to continual improvement of the system. An environmental management

system provides the internal framework necessary to control an enterprise's environmental impacts and to integrate environmental considerations into business operations. Having such a system in place should help to assure stockholders, employees and the community that the enterprise is actively working to protect the environment from the impacts of its activities.

32. In addition to improving environmental performance, instituting an environmental management system can provide economic benefits to companies through reduced operating and insurance costs, improved energy and resource conservation, reduced compliance and liability charges, improved access to capital, improved customer satisfaction, and improved community and public relations.

33. In the context of these *Guidelines*, "sound environmental management" should be interpreted in its broadest sense, embodying activities aimed at controlling both direct and indirect environmental impacts of enterprise activities over the long-term, and involving both pollution control and resource management elements.

34. In most enterprises, an internal control system is needed to manage the enterprise's activities. The environmental part of this system may include such elements as targets for improved performance and regular monitoring of progress towards these targets.

35. Information about the activities of enterprises and associated environmental impacts is an important vehicle for building confidence with the public. This vehicle is most effective when information is provided in a transparent manner and when it encourages active consultation with stakeholders such as employees, customers, suppliers, contractors, local communities and with the public-at-large so as to promote a climate of long-term trust and understanding on environmental issues of mutual interest.

36. Normal business activity can involve the *ex ante* assessment of the potential environmental impacts associated with the enterprise's activities. Enterprises often carry out appropriate environmental impact assessments, even if they are not required by law. Environmental assessments made by the enterprise may contain a broad and forward-looking view of the potential impacts of an enterprise's activities, addressing relevant impacts and examining alternatives and mitigation measures to avoid or redress adverse impacts. The *Guidelines* also recognise that multinational enterprises have certain responsibilities in other parts of the product life cycle.

37. Several instruments already adopted by countries adhering to the *Guidelines*, including Principle 15 of the Rio Declaration on Environment and Development, enunciate a "precautionary approach". None of these instruments is explicitly addressed to enterprises, although enterprise contributions are implicit in all of them.

38. The basic premise of the *Guidelines* is that enterprises should act as soon as possible, and in a proactive way, to avoid, for instance, serious or irreversible environmental damages resulting from their activities. However, the fact that the *Guidelines* are addressed to enterprises means that no existing instrument is completely adequate for expressing this recommendation. The *Guidelines* therefore draw upon, but do not completely mirror, any existing instrument.

39. The *Guidelines* are not intended to reinterpret any existing instruments or to create new commitments or precedents on the part of governments – they are intended only to recommend how the precautionary approach should be implemented at the level of enterprises. Given the early stage of this process, it is recognised that some flexibility is needed in its application, based on the specific context in which it is carried out. It is also recognised that governments determine the basic framework in this field, and have the responsibility to periodically consult with stakeholders on the most appropriate ways forward.

40. The *Guidelines* also encourage enterprises to work to raise the level of environmental performance in all parts of their operations, even where this may not be formally required by existing practice in the countries in which they operate.

41. For example, multinational enterprises often have access to technologies or operating procedures which could, if applied, help raise environmental performance overall. Multinational enterprises are frequently regarded as leaders in their respective fields, so the potential for a “demonstration effect” on other enterprises should not be overlooked. Ensuring that the environment of the countries in which multinational enterprises operate also benefits from available technologies is an important way of building support for international investment activities more generally.

42. Enterprises have an important role to play in the training and education of their employees with regard to environmental matters. They are encouraged to discharge this responsibility in as broad a manner as possible, especially in areas directly related to human health and safety.

### **Commentary on Combating Bribery**

43. Bribery and corruption are not only damaging to democratic institutions and the governance of corporations, but they also impede efforts to reduce poverty. In particular, the diversion of funds through corrupt practices undermines attempts by citizens to achieve higher levels of economic, social and environmental welfare. Enterprises have an important role to play in combating these practices.

44. Progress in improving the policy framework and in heightening enterprises’ awareness of bribery as a management issue has been significant. The *OECD Convention of Combating Bribery of Foreign Public Officials (the Convention)*

has been signed by 34 countries and entered into force on 15 February 1999. The Convention, along with the 1997 revised *Recommendation on Combating Bribery in International Business Transactions* and the 1996 *Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials*, are the core instruments through which members of the anti bribery group co-operate to stop the flow of bribes for the purpose of obtaining or retaining international business. The three instruments target the offering side of the bribery transaction. They aim to eliminate the “supply” of bribes to foreign public officials, with each country taking responsibility for the activities of its companies and what happens on its own territory.<sup>2</sup> A monitoring programme has been established to assure effective and consistent implementation and enforcement of the Convention.

45. To address the demand side of bribery, good governance practices are important elements to prevent companies from being asked to pay bribes. In addition, governments should assist companies confronted with solicitation of bribes.

46. Another important development has been the International Chamber of Commerce’s recent update of its *Report on Extortion and Bribery in Business Transactions*. The *Report* contains recommendations to governments and international organisations on combating extortion and bribery as well as a code of conduct for enterprises that focuses on these issues.

47. Transparency in both the public and private domains is a key concept in the fight against bribery and extortion. The business community, non-governmental organisations and governments and inter-governmental organisations have all co-operated to strengthen public support for anti-corruption measures and to enhance transparency and public awareness of the problems of corruption and bribery. The adoption of appropriate corporate governance practices is a complementary element in fostering a culture of ethics within the enterprise.

### **Commentary on Consumer Interests**

48. A brief reference to “consumer interests” was first introduced into the *Guidelines* in 1984, to reflect increasingly international aspects of consumer policies and the impact that the expansion of international trade, product packaging, marketing and sales and product safety can have on those policies. Since that time, the development of electronic commerce and the increased globalisation of the marketplace have substantially increased the reach of MNEs and consumer access to their goods and services. In recognition of the increasing importance of consumer issues, a substantial percentage of enterprises, in their management systems and codes of conduct include references to consumer interests and protections.

49. In light of these changes, and with an eye to helping enhance consumer safety and health, a chapter on *consumer interests* has been added to the *Guidelines* as a result of the current Review. Language in this chapter draws on the work of the OECD Committee on Consumer Policy, as well as that embodied in various individual and international corporate codes (such as those of the ICC), the UN Guidelines on Consumer Policy, and the OECD Guidelines for Consumer Protection in the Context of Electronic Commerce.

50. A variety of consumer protection laws exist that govern business practices. The emerging framework is intended to both protect consumer interests and foster economic growth and places a growing emphasis on the use of self-regulatory mechanisms. As noted, many existing national and international corporate codes of conduct include a reference to some aspect of consumer protection and amplify the commitment of industry to help protect health and safety and build consumer confidence in the marketplace. Ensuring that these sorts of practices provide consumers with effective and transparent protection is essential to help build trust that encourages consumer participation and market growth.

51. The emphasis on alternative dispute resolution in paragraph 3 of the chapter is an attempt to focus on what may in many cases be a more practicable solution to complaints than legal action which can be expensive, difficult and time consuming for everyone involved. It is particularly important that complaints relating to the consumption or use of a particular product that results in serious risks or damages to public health should be resolved in a fair and timely manner without undue cost or burden to the consumer.

52. Regarding paragraph 5, enterprises could look to the OECD Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data as a helpful basis for protecting personal data.

### **Commentary on Science and Technology**

53. In a knowledge-based and globalised economy where national borders matter less, even for small or domestically oriented enterprises, the ability to access and utilise technology and know-how is essential for improving firm performance. Such access is also important for the realisation of the economy-wide effects of technological progress, including productivity growth and job creation, within the context of sustainable development. Multinational enterprises are the main conduit of technology transfer across borders. They contribute to the national innovative capacity of their host countries by generating, diffusing, and even enabling the use of new technologies by domestic enterprises and institutions. The R&D activities of MNEs, when well connected to the national innovation system, can help

enhance the economic and social progress in their host countries. In turn, the development of a dynamic innovation system in the host country expands commercial opportunities for MNEs.

54. The chapter thus aims to promote, within the limits of economic feasibility, competitiveness concerns and other considerations, the diffusion by multinational enterprises of the fruits of research and development activities among the countries where they operate, contributing thereby to the innovative capacities of host countries. In this regard, fostering technology diffusion can include the commercialisation of products which imbed new technologies, licensing of process innovations, hiring and training of S&T personnel and development of R&D co-operative ventures. When selling or licensing technologies, not only should the terms and conditions negotiated be reasonable, but MNEs may want to consider the long-term developmental, environmental and other impacts of technologies for the home and host country. In their activities, multinational enterprises can establish and improve the innovative capacity of their international subsidiaries and subcontractors. In addition, MNEs can call attention to the importance of local scientific and technological infrastructure, both physical and institutional. In this regard, MNEs can usefully contribute to the formulation by host country governments of policy frameworks conducive to the development of dynamic innovation systems.

## Commentary on Competition

55. These *Guidelines* are intended to emphasise the importance of competition laws and policies to the efficient operation of both domestic and international markets, to reaffirm the importance of compliance with those laws and policies by domestic and multinational enterprises, and to ensure that all enterprises are aware of developments concerning the number, scope, and severity of competition laws and in the extent of co-operation among competition authorities. The term “competition” law is used to refer to laws, including both “antitrust” and “antimonopoly” laws, that prohibit collective or unilateral action to: a) abuse market power or dominance; b) acquire market power or dominance by means other than efficient performance; or c) engage in anti-competitive agreements.

56. In general, competition laws and policies prohibit: a) hard core cartels; b) other agreements that are deemed to be anti-competitive; c) conduct that exploits or extends market dominance or market power; and d) anti-competitive mergers and acquisitions. Under the 1998 Recommendation of the OECD Council Concerning Effective Action Against Hard Core Cartels, C(98)35/Final, the anti-competitive agreements referred to in sub a) constitute hard core cartels, but the Recommendation incorporates differences in member countries’ laws, including differences in the laws’ exemptions or provisions allowing for an exception or

authorisation for activity that might otherwise be prohibited. These guidelines should not be interpreted as suggesting that enterprises should not avail themselves of such exemptions or provisions. The categories sub *b*) and *c*) are more general because the effects of other kinds of agreements and of unilateral conduct are more ambiguous, and there is less consensus on what should be considered anti-competitive.

57. The goal of competition policy is to contribute to overall social welfare and economic growth by creating and maintaining market conditions in which the nature, quality, and price of goods and services are determined by market forces except to the extent a jurisdiction considers necessary to achieve other goals. In addition to benefiting consumers and a jurisdiction's economy as a whole, such a competitive environment rewards enterprises that respond efficiently to consumer demand, and enterprises should provide information and advice when governments are considering laws and policies that might reduce their efficiency or otherwise affect the competitiveness of markets.

58. Enterprises should be aware that competition laws are being enacted in a rapidly increasing number of jurisdictions, and that it is increasingly common for those laws to prohibit anti-competitive activities that occur abroad if they have a harmful impact on domestic consumers. Moreover, the growth of cross-border trade and investment makes it more likely that anti-competitive conduct taking place in one jurisdiction will have harmful effects in other jurisdictions. As a result, anti-competitive unilateral or concerted conduct that is or may be legal where it occurs is increasingly likely to be illegal in another jurisdiction. Enterprises should therefore take into account both the law of the country in which they are operating and the laws of all countries in which the effects of their conduct are likely to be felt.

59. Finally, enterprises should understand that competition authorities are engaging in more and deeper co-operation in investigating and challenging anti-competitive activity. *See generally*: Recommendation of the Council Concerning Co-operation between Member Countries on Anticompetitive Practices Affecting International Trade, C(95)130/Final; *Making International Markets More Efficient Through "Positive Comity" in Competition Law Enforcement*, Report of the OECD Committee on Competition Law and Policy, DAFNE/CLP(99)19. When the competition authorities of various jurisdictions are reviewing the same conduct, enterprises' facilitation of co-operation among the authorities promotes consistent and sound decision-making while also permitting cost savings for governments and enterprises.

## Commentary on Taxation

60. Corporate citizenship in the area of taxation implies that enterprises should comply with the taxation laws and regulations in all countries in which they operate, co-operate with authorities and make certain kinds of information available to them. However, this commitment to provide information is not without limitation. In particular, the *Guidelines* make a link between the information that should be provided and its relevance to the enforcement of applicable tax laws. This recognises the need to balance the burden on business in complying with applicable tax laws and the need for tax authorities to have the complete, timely and accurate information to enable them to enforce their tax laws.

61. A member of an MNE group in one country may have extensive economic relationships with members of the same MNE group in other countries. Such relationships may affect the tax liability of each of the parties. Accordingly, tax authorities may need information from outside their jurisdiction in order to be able to evaluate those relationships and determine the tax liability of the member of the MNE group in their jurisdiction. Again, the information to be provided is limited to that which is relevant to the proposed evaluation of those economic relationships for the purpose of determining the correct tax liability of the member of the MNE group. MNEs should co-operate in providing that information.

62. Transfer pricing is another important issue for corporate citizenship and taxation. The dramatic increase in global trade and cross-border direct investment (and the important role played in such trade and investment by MNEs) has meant that transfer pricing tends now to be a significant determinant of the tax liabilities of members of an MNE group. It is recognised that determining whether transfer pricing respects the arm's length standard (or principle) is often difficult both for MNEs and for tax administrations.

63. The Committee on Fiscal Affairs (CFA) of the OECD undertakes ongoing work to develop recommendations for ensuring transfer pricing reflects the arm's length principle. Its work resulted in the publication in 1995 of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD Transfer Pricing Guidelines) which was the subject of the Recommendation of the OECD Council on the Determination of Transfer Pricing between Associated Enterprises (members of an MNE group would normally fall within the definition of Associated Enterprises).

64. The OECD Transfer Pricing Guidelines focus on the application of the arm's length principle to evaluate the transfer pricing of associated enterprises. The Transfer Pricing Guidelines aim to help tax administrations (of both OECD member countries and non-member countries) and MNEs by indicating mutually satisfactory solutions to transfer pricing cases, thereby minimising

conflict among tax administrations and between tax administrations and MNEs and avoiding costly litigation. MNEs are encouraged to follow the guidance in the OECD Transfer Pricing Guidelines, as amended and supplemented, in order to ensure that their transfer prices reflect the arm's length principle.

### Notes

1. One of the most broadly accepted definitions of sustainable development is in the 1987 World Commission on Environment and Development (the Brundtland Commission): "Development that meets the needs of the present without compromising the ability of future generations to meet their own needs."
2. For the purposes of the Convention, a "bribe" is defined as an "... offer, promise, or giv(ing) of any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business". The Commentaries to the Convention (paragraph 9) clarify that "(s)mall 'facilitation' payments do not constitute payments made 'to obtain or retain business or other improper advantage' within the meaning of paragraph 1 and, accordingly, are also not an offence. Such payments, which, in some countries, are made to induce public officials to perform their functions, such as issuing licenses or permits, are generally illegal in the foreign country concerned. Other countries can and should address this corrosive phenomenon by such means as support for programmes of good governance..."

## Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises

1. The Council Decision represents the commitment of adhering countries to further the implementation of the recommendations contained in the text of the *Guidelines*. Procedural guidance for both NCPs and the Investment Committee is attached to the Council Decision.

2. The Council Decision sets out key adhering country responsibilities for the *Guidelines* with respect to NCPs, summarised as follows:

- Setting up NCPs (which will take due account of the procedural guidance attached to the Decision), and informing interested parties of the availability of *Guidelines*-related facilities.
- NCPs in different countries to co-operate with each other as necessary.
- NCPs to meet annually and report to the Committee.

3. The Council Decision also establishes CIME's responsibilities for the *Guidelines*, including:

- Organising exchanges of views on matters relating to the *Guidelines*.
- Issuing clarifications as necessary.
- Holding exchanges of views on the activities of NCPs.
- Reporting to the OECD Council on the *Guidelines*.

4. The Investment Committee is the OECD body responsible for overseeing the functioning of the *Guidelines*. This responsibility applies not only to the *Guidelines*, but to all elements of the Declaration (National Treatment Instrument, and the instruments on International Investment Incentives and Disincentives, and Conflicting Requirements). In the Declaration, Committee seeks to ensure that each element is respected and understood, and that they all complement and operate in harmony with each other.

5. Reflecting the increasing relevance of the *Guidelines* to countries outside the OECD, the Decision provides for consultations with non-adhering countries on matters covered by the *Guidelines*. This provision allows the Committee to arrange periodic meetings with groups of countries interested in *Guidelines* issues, or to arrange contacts with individual countries if the need arises. These

meetings and contacts could deal with experiences in the overall functioning of the *Guidelines* or with specific issues. Further guidance concerning the Committee and NCP interaction with non-adhering countries is provided in the Procedural Guidance attached to the Decision.

## I. Procedural Guidance for NCPs

6. National Contact Points have an important role in enhancing the profile and effectiveness of the *Guidelines*. While it is enterprises that are responsible for observing the *Guidelines* in their day-to-day behaviour, governments can contribute to improving the effectiveness of the implementation procedures. To this end, they have agreed that better guidance for the conduct and activities of NCPs is warranted, including through annual meetings and Committee oversight.

7. Many of the functions in the Procedural Guidance of the Decision are not new, but reflect experience and recommendations developed over the years (e.g. the 1984 Review Report C/MIN(84)5(Final)). By making them explicit the expected functioning of the implementation mechanisms of the *Guidelines* is made more transparent. All functions are now outlined in four parts of the Procedural Guidance pertaining to NCPs: institutional arrangements, information and promotion, implementation in specific instances, and reporting.

8. These four parts are preceded by an introductory paragraph that sets out the basic purpose of NCPs, together with core criteria to promote the concept of “functional equivalence”. Since governments are accorded flexibility in the way they organise NCPs, NCPs should function in a visible, accessible, transparent, and accountable manner. These criteria will guide NCPs in carrying out their activities and will also assist the Committee in discussing the conduct of NCPs.

### **Core Criteria for Functional Equivalence in the Activities of NCPs**

*Visibility.* In conformity with the Decision, adhering governments agree to nominate National Contact Points, and also to inform the business community, employee organisations and other interested parties, including NGOs, about the availability of facilities associated with NCPs in the implementation of the *Guidelines*. Governments are expected to publish information about their contact points and to take an active role in promoting the *Guidelines*, which could include hosting seminars and meetings on the instrument. These events could be arranged in co-operation with business, labour, NGOs, and other interested parties, though not necessarily with all groups on each occasion.

*Accessibility.* Easy access to NCPs is important to their effective functioning. This includes facilitating access by business, labour, NGOs, and other members of the public. Electronic communications can also assist in this regard. NCPs would respond to all legitimate requests for information, and also undertake to deal with specific issues raised by parties concerned in an efficient and timely manner.

*Transparency.* Transparency is an important criterion with respect to its contribution to the accountability of the NCP and in gaining the confidence of the general public. Thus most of the activities of the NCP will be transparent. Nonetheless when the NCP offers its “good offices” in implementing the *Guidelines* in specific instances, it will be in the interests of their effectiveness to take appropriate steps to establish confidentiality of the proceedings. Outcomes will be transparent unless preserving confidentiality is in the best interests of effective implementation of the *Guidelines*.

*Accountability.* A more active role with respect to enhancing the profile of the *Guidelines* – and their potential to aid in the management of difficult issues between enterprises and the societies in which they operate – will also put the activities of NCPs in the public eye. Nationally, parliaments could have a role to play. Annual reports and annual meetings of NCPs will provide an opportunity to share experiences and encourage “best practices” with respect to NCPs. The Committee will also hold exchanges of views, where experiences would be exchanged and the effectiveness of the activities of NCPs could be assessed.

### ***Institutional Arrangements***

9. The composition of NCPs should be such that they provide an effective basis for dealing with the broad range of issues covered by the *Guidelines*. Different forms of organisation (*e.g.* representatives from one Ministry, an interagency group, or one that contained representatives from non-governmental bodies) are possible. It may be helpful for the NCP to be headed by a senior official. NCP leadership should be such that it retains the confidence of social partners and fosters the public profile of the *Guidelines*. NCPs, whatever their composition, are expected to develop and maintain relations with representatives of the business community, employee organisations, and other interested parties.

### ***Information and Promotion***

10. The NCP functions associated with information and promotion are fundamentally important to enhancing the profile of the *Guidelines*. These functions also help to put an accent on “pro-active” responsibilities of NCPs.

11. NCPs are required to make the *Guidelines* better known and available by appropriate means, including in national languages. On-line information may be a cost-effective means of doing this, although it should be noted that universal access to this means of information delivery cannot be assured. English and French language versions will be available from the OECD, and website links to the OECD *Guidelines* website are encouraged. As appropriate, NCPs will also provide prospective investors, both inward and outward, with information about the *Guidelines*. A separate provision also stipulates that in their efforts to raise awareness of the *Guidelines*, NCPs will co-operate with a wide variety of organisations and individuals, including, as appropriate, the business community, employee organisations, other non-governmental organisations, and the interested public.

12. Another basic activity expected of NCPs is responding to legitimate enquiries. Three groups have been singled out for attention in this regard: i) other National Contact Points (reflecting a provision in the Decision); ii) the business community, employee organisations, other non-governmental organisations and the public; and iii) governments of non-adhering countries.

### **Implementation in Specific Instances**

13. When issues arise relating to implementation of the *Guidelines* in specific instances, the NCP is expected to help resolve them. Generally, issues will be dealt with by the NCP in whose country the issue has arisen. Among adhering countries, such issues will first be discussed on the national level and, where appropriate, pursued at the bilateral level. This section of the Procedural Guidance provides guidance to NCPs on how to handle such situations. The NCP may also take other steps to further the effective implementation of the *Guidelines*.

14. In making an initial assessment of whether the issue raised merits further examination, the NCP will need to determine whether the issue is *bona fide* and relevant to the implementation of the *Guidelines*. In this context, the NCP will take into account:

- the identity of the party concerned and its interest in the matter;
- whether the issue is material and substantiated;
- the relevance of applicable law and procedures;
- how similar issues have been, or are being, treated in other domestic or international proceedings;
- whether the consideration of the specific issue would contribute to the purposes and effectiveness of the *Guidelines*.

15. Following its initial assessment, the NCP is expected to respond to the party or parties having raised the issue. If the NCP decides that the issue does not merit further consideration, it will give reasons for its decision.

16. Where the issues raised merit further consideration, the NCP would discuss the issue further with parties involved and offer “good offices” in an effort to contribute informally to the resolution of issues. Where relevant, NCPs will follow the procedures set out in paragraph 2a) through 2d). This could include seeking the advice of relevant authorities, as well as representatives of the business community, labour organisations, other non-governmental organisations, and experts. Consultations with NCPs in other countries, or seeking guidance on issues related to the interpretation of the *Guidelines* may also help to resolve the issue.

17. As part of making available good offices, and where relevant to the issues at hand, NCPs will offer, or facilitate access to, consensual and non-adversarial procedures, such as conciliation or mediation, to assist in dealing with the issues at hand, such as conciliation or mediation. In common with accepted practices on conciliation and mediation procedures, these procedures would be used only upon agreement of the parties concerned.

18. If the parties involved fail to reach agreement on the issues raised, the NCP will issue a statement, and make recommendations as appropriate, on the implementation of the *Guidelines*. This procedure makes it clear that an NCP will issue a statement, even when it feels that a specific recommendation is not called for.

19. Transparency is recognised as a general principle for the conduct of NCPs in their dealings with the public (see para. 8 in “Core Criteria” section, above). However, paragraph C-4 recognises that there are specific circumstances where confidentiality is important. The NCP will take appropriate steps to protect sensitive business information. Equally, other information, such as the identity of individuals involved in the procedures, should be kept confidential in the interests of the effective implementation of the *Guidelines*. It is understood that proceedings include the facts and arguments brought forward by the parties. Nonetheless, it remains important to strike a balance between transparency and confidentiality in order to build confidence in the *Guidelines* procedures and to promote their effective implementation. Thus, while para. C-4 broadly outlines that the proceedings associated with implementation will normally be confidential, the results will normally be transparent.

20. As noted in para. 2 of the “Concepts and Principles” chapter, enterprises are encouraged to observe the *Guidelines* wherever they operate, taking into account the particular circumstances of each host country.

- In the event *Guidelines*-related issues arise in a non-adhering country, NCPs will take steps to develop an understanding of the issues involved. While it may not always be practicable to obtain access to all pertinent information, or to bring all the parties involved together, the NCP may still be in a position to pursue enquiries and engage in other fact finding activities. Examples of such steps could include contacting the management of the firm in the home country, and, as appropriate, government officials in the non-adhering country.
- Conflicts with host country laws, regulations, rules and policies may make effective implementation of the *Guidelines* in specific instances more difficult than in adhering countries. As noted in the commentary to the General Policies chapter, while the *Guidelines* extend beyond the law in many cases, they should not and are not intended to place an enterprise in a situation where it faces conflicting requirements.
- The parties involved will have to be advised of the limitations inherent in implementing the *Guidelines* in non-adhering countries.
- Issues relating to the *Guidelines* in non-adhering countries could also be discussed at NCP annual meetings with a view to building expertise in handling issues arising in non-adhering countries.

### **Reporting**

21. Reporting would be an important responsibility of NCPs that would also help to build up a knowledge base and core competencies in furthering the effectiveness of the *Guidelines*. In reporting on implementation activities in specific instances, NCPs will comply with transparency and confidentiality considerations as set out in para. C-4.

### **Procedural Guidance for the Investment Committee**

22. The Procedural Guidance to the Council Decision provides additional guidance to the Committee in carrying out its responsibilities, including:

- Discharging its responsibilities in an efficient and timely manner.
- Considering requests from NCPs for assistance.
- Holding exchanges of views on the activities of NCPs.
- Providing for the possibility of seeking advice from experts.

23. The non-binding nature of the *Guidelines* precludes the Committee from acting as a judicial or quasi-judicial body. Nor should the findings and statements made by the NCP (other than interpretations of the *Guidelines*) be

questioned by a referral to the Committee. The provision that the Committee shall not reach conclusions on the conduct of individual enterprises has been maintained in the Decision itself.

24. The Committee will consider requests from NCPs for assistance, including in the event of doubt about the interpretation of the *Guidelines* in particular circumstances. This paragraph reflects paragraph C-2c) of the Procedural Guidance to the Council Decision pertaining to NCPs, where NCPs are invited to seek the guidance of the Committee if they have doubt about the interpretation of the *Guidelines* in these circumstances.

25. When discussing NCP activities, it is not intended that the Committee conduct annual reviews of each individual NCP, although the Committee will make recommendations, as necessary, to improve their functioning, including with respect to the effective implementation of the *Guidelines*.

26. A substantiated submission by an adhering country or an advisory body that an NCP was not fulfilling its procedural responsibilities in the implementation of the *Guidelines* in specific instances will also be considered by the Committee. This complements provisions in the section of the Procedural Guidance pertaining to NCPs reporting on their activities.

27. Clarifications of the meaning of the *Guidelines* at the multilateral level would remain a key responsibility of the Committee to ensure that the meaning of the *Guidelines* would not vary from country to country. A substantiated submission by an adhering country or advisory body with respect to whether an NCP interpretation of the *Guidelines* is consistent with Committee interpretations will also be considered. This may not be needed very often, but would provide a vehicle to ensure consistent interpretation of the *Guidelines*.

28. Finally, the Committee may wish to call on experts to address and report on broader issues (e.g. child labour, human rights) or individual issues, or to improve the effectiveness of procedures. For this purpose, the Committee could call on OECD in-house expertise, international organisations, the advisory bodies, NGOs, academics and others. It is understood that this will not become a panel to settle individual issues.

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# OECD Guidelines for Multinational Enterprises

The *OECD Guidelines for Multinational Enterprises* are the most comprehensive instrument in existence today for corporate responsibility multilaterally agreed by governments. Adhering governments - representing all regions of the world and accounting for 85 per cent of foreign direct investment – are committed to encouraging enterprises operating in their territory to observe a set of widely recognised principles and standards for responsible business conduct wherever they operate. This booklet contains the text, implementation procedures and commentary adopted in June 2000, on the occasion of the most recent revision of the *Guidelines*.

Detailed information about adhering governments and actions taken to implement the *Guidelines* is available on the OECD website at [www.oecd.org/daf/investment/guidelines](http://www.oecd.org/daf/investment/guidelines)

The full text of this book is available on line via these links:

[www.sourceoecd.org/finance/9789264055971](http://www.sourceoecd.org/finance/9789264055971)

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# China Employment Law Update

People's Republic of China

BAKER & MCKENZIE

August 2010

## ACFTU Pushes Forward Collective Bargaining and Democratic Management at Enterprises

Recently, various preliminary steps have been taken by the government and the All China Federation of Trade Unions (“**ACFTU**”) to further push collective bargaining and increase “democratic management” at all companies. However, it is apparent that the government and ACFTU are still considering how exactly to implement this policy and no concrete steps have actually been taken so far. Some of the more significant recent developments are as follows:

- At the national level, an amendment to the *PRC Labor Union Law* is reportedly being considered by the ACFTU and the National People's Congress (“**NPC**”), which is expected to be passed into law by the second half of 2011. Among other things, the draft amendments reportedly stipulate more detailed procedures on how to form an employee representative council (“**ERC**”) to strengthen democratic management at enterprises, and try to encourage more collective bargaining at the industry-wide level (currently, collective bargaining is mainly done at the company level). ERCs are somewhat comparable to Works Councils and normally co-exist with enterprise unions.

Another amendment reportedly under discussion is to have all companies pay the union fee (equivalent to 2% of the company's payroll) to the local tax bureau, rather than directly to the company union's bank account like is the case in most cities. This would give the government greater control over how union fees are paid and allocated, so that practices such as companies negotiating with the ACFTU for lower union fees would likely no longer be possible. In a related local development regarding unions fees, local authorities and ACFTU officials in Beijing are planning to have Beijing join the ranks of other localities (e.g. Jiangsu province) in requiring companies without unions to pay a “union preparation fee”, which would be the same amount as the union fee, to the local tax bureau.

- In Guangdong Province, a third draft of the *Guangdong Enterprise Democratic Management Regulations* was posted on the provincial government's website for public comments on August 23. The draft sets out a detailed procedure on how to form an ERC and a description of the ERC's powers. The draft also stipulates that a company may be forced to engage in collective wage bargaining

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if one-third or more of the employees of a company makes such a request. If the company does not respond to such request within the required time (15 days), does not provide conditions or information necessary for the collective bargaining, or bargains in bad faith, and as a result a strike or work slowdown takes place, the employer may not terminate the striking employees. This would be the first time that a law provides specific protection to striking workers since the right to strike was left out of the PRC Constitution of 1982. On the other hand, the draft states that if the employees strike either without first requesting collective bargaining or during collective bargaining, they may face legal consequences.

- Meanwhile, the Shenzhen People's Congress issued a draft of the *Shenzhen Economic Zone Collective Bargaining Regulations* ("**Shenzhen Collective Bargaining Regulations**") for public comment in August 2010. Under the draft, the employees may request the employer to provide information and materials necessary for collective bargaining, which may not be unjustifiably refused by the employer (with narrow exceptions). The draft Shenzhen Collective Bargaining Regulations also prohibit collective bargaining in bad faith, which is defined to include (a) either party willfully delaying the bargaining process by focusing on minor procedural issues, and (b) either party persistently sticking to its position or resisting the other party's reasonable proposals without justification. Employers may be fined for conducting collective bargaining in bad faith, with fines up to RMB50,000, if they fail to correct the violation as ordered by the competent labor bureau.
- In a related development, a draft of the *Payment of Wage Regulations* is under review at the national level, which reportedly contains a provision that if an employer unjustifiably declines employees' request for collective bargaining over wages and fails to correct such violations within the period given by the competent authorities, the employer may be fined up to RMB200,000.
- The national ACFTU, as well as the Beijing ACFTU, have publicly announced that they are considering plans to have the salary of the union chairman paid directly by the ACFTU rather than the company in order to ensure independence from company pressure, though again no concrete implementation steps have been announced. On a related point, the ACFTU has also discussed training professional collective bargaining representatives to be dispatched to companies to assist employees with collective bargaining, and even sending in individuals from outside the company to be union chairman.

## New State Secrets Law

The amended *Law on Protection of State Secrets* (“**State Secrets Law**”) was adopted by the Standing Committee of the NPC on April 29, 2010, and is set to take effect on October 1, 2010. The State Secrets Law has received much attention following the highly publicized arrests and sentencing of four Rio Tinto executives and the sentencing of a US geologist.

Among other changes, one major revision specifically requires Internet service providers and other network operators to cooperate with public security officials, state security officials, and prosecutors in the investigation of any leak of state secrets that may have occurred through the use of their Internet or media networks. The Internet service providers and network operators also are charged with affirmative duties to keep records related to any leak of state secrets, to report such leak to the government authorities, and immediately cease the transmission of any relevant information. The amended law also lists more specific types of actions in relation to state secrets that may lead to criminal penalties.

Although many of these new requirements are specifically imposed on the telecommunications industry, the increased monitoring may be relevant for other companies as well, since the government’s increased vigilance may have an impact on employees’ use of company-provided Internet/Intranet and computer systems to transmit information overseas and companies may need to be more careful than before regarding such transmissions. While the newly amended law has somewhat clarified the previous definition of what constitutes a state secret and what types of actions may lead to criminal liability, government officials still retain broad discretion to determine what type of information would fall under this definition.

## Employee Challenge to Change in Sales Commissions Plan Successful

In August 2010, the Minhang District People’s Court in Shanghai held a textile company liable for the back pay of sales commissions and severance to an employee. The employee had resigned from the company after the company had unilaterally amended its sales commission plan resulting in reduced sales commissions for the employee. The calculation of sales commissions had been set forth in a sales commission plan, which included a clause stating that the company could reasonably amend the plan at its own discretion. The company later unilaterally amended its sales commission plan by calculating the commissions according to the sales collection amount instead of the gross sales revenue, which substantially reduced the

employee's commission. The employee refused to accept the lesser commission amount, and resigned. The Court ordered the company to pay the employee the commission (which was held to constitute part of her salary) according to the original plan. The Court also awarded severance, since the employee resigned as a result of the Company's failure to fully pay the employee's salary in a timely manner.

This case shows that the ability of a company to unilaterally amend non-contractual benefits plans to the detriment of employees may be challenged if consultation procedures under Article 4 of the Employment Contract Law are not followed, despite any language in such plans giving the company the right to unilaterally amend the terms of such plan.

## Employer Ordered To Sign Open-Term Contract After Two Fixed-Term Contracts

On July 29, 2010, the Chengdu Qingyang District People's Court reportedly ordered a company to enter into an open-term employment contract with an employee, a Mr. Fan, effective from January 1, 2010, and to pay double wages for the period between January 1 until the time an open-term contract is executed. Mr. Fan reportedly was transferred to work with the company from one of its sister companies in December 2007 and signed two consecutive one-year employment contracts after 2008. Before the second contract was to expire on December 31, 2009, the company informed Mr. Fan of its decision not to renew his contract and rejected Mr. Fan's request to sign an open-term employment contract.

This case reflects the opinion of some courts that at the end of the second fixed-term contract after 2008, the employer is required to enter into an open-term contract with the employee, regardless of whether it intends to renew the employment contract, upon the employee's request to enter into an open-term contract.

## Employee Raises Successful Claim for Emotional Distress

A court in Tianjin ordered a company to pay RMB333,000 in damages for emotional distress caused to one of its former employees. In order to prevent employee theft, a shoe manufacturing company conducted a body search of every employee everyday before they left work. After one employee was terminated in April 2008, the employee was diagnosed with schizophrenia. She then sued the company for RMB333,000 in damages for emotional distress caused by the body search. The Dongli District People's Court in Tianjin entrusted a forensic psychiatry institution to provide an independent professional

opinion. The institute issued a report testifying that the employee's schizophrenia was in part caused by the body search. The court adopted the report and supported the employee's claim for damages for emotional distress. The legal basis for such decision is a Supreme People's Court interpretation on compensation for emotional distress in tort claims, under which an individual may claim damages if he/she suffers an illegal breach of his/her right of dignity and/or right of freedom.

## Employee Successfully Sued for Defaming Company

A court in Shanghai awarded RMB7,000 to a real estate advertising company for defamation by an employee. As a result of an employee's dissatisfaction with her compensation and the management in the company, her boyfriend posted several articles on the Internet with false statements about illegal conduct by the company. The company sued Ms. Jiang and her boyfriend for damages in relation to the defamation. The Shanghai Jing'an District People's Court deemed the articles as defamatory. Also, the Court ruled that though the articles were not posted by the employee herself, she had provided implied consent to her boyfriend's behavior and was therefore jointly liable for the defamation.

While the case shows that companies in some cases may be able to successfully claim for damages from employees or ex-employees for publicly making defamatory comments about the company, obtaining a substantial award from the court may be difficult.

## Manager at Two Stores Claims Double Wages and Loses

A local manager who was posted to work in two different stores in Shanghai sought to claim double wages from the company after being terminated on the grounds of incompetence. The employee claimed that since he managed two stores (which were branches under the same company), each store should pay him salary. The Zhanglin District Court in Shanghai dismissed the manager's claims in August 2010. The Court held that the manager's claim for double wages could not be justified because the employment contract expressly allows the company to assign the manager to divide his time between two stores.

The case demonstrates the importance of including flexible language in an employment contract.

Should you wish to obtain further information or want to discuss any issues raised in this newsletter with us, please contact:

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## Tax Bureau Orders Back Pay of 15 Years of Social Insurance Plus Late Fee

The local tax bureau in Haikou city in Hainan province ordered a local company to back pay 15 years of unpaid social insurance contributions plus a late fee penalty equal to 0.2% of the unpaid contributions for each day of delay in payment during the past 15 years. The total back payment amount reportedly was RMB4,193,700, and after adding in the late fee penalty, the total amount reached RMB27,215,000. It is reported that in 2008, the tax bureau ordered the company to back pay the contributions several times, but the company rejected such orders.

While normally, local authorities are willing to allow back payments without penalty, this incident shows that authorities are willing to impose a substantial penalty if a company continually refuses to abide by administrative orders for back payment of social insurance.

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# STRIKE IN CHINA HIGHLIGHTS GAP IN WORKERS' PAY

## NEWS REPORTS ALLOWED

### Sentiment Is Growing That the Laborers Deserve More

By KEITH BRADSHER  
and DAVID BARBOZA

FOSHAN, China — After years of being pushed to work 12-hour days, six days a week on monotonous low-wage assembly line tasks, China's workers are starting to push back.

A strike at an enormous Honda transmission factory here in southeastern China has suddenly and unexpectedly turned into a symbol of this nation's struggle with income inequality, rising inflation and soaring property prices that have put home ownership beyond the reach of all but the most affluent.

And perhaps most remarkably, Chinese authorities are letting the strike happen — in a very public way.

In the kind of scene that more often plays out at strikes in America than at labor actions in China, print and television reporters from state-controlled media across the country have started covering the walkout here, even waiting outside the nearly deserted front gate on Friday in hope of any news.

Until now, the authorities had been leery of letting the media report on labor disputes, fearing that it could encourage workers elsewhere to rebel. The new permissiveness, so far at least, coincides with growing sentiment among some officials and economists that Chinese workers deserve higher wages for their role in the country's global export machine.

And, without higher incomes, hundreds of millions of Chinese

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# Strike at Auto Plant Highlights Pay Gap in China

From Page A1

will be unable to play their part in the domestic consumer spending boom on which this nation hopes to base its next round of economic growth.

"This is all because there is a major political debate going on about how to deal with the nation's growing income gap, and the need to do something about wages," said Andreas Lauffs, a lawyer at Baker & McKenzie who specializes in Chinese labor issues.

If wages do rise, that could bring higher prices for Western consumers for goods as diverse as toys at Wal-Mart and iPads from Apple.

The Chinese media may also have found it a little easier, politically, to cover this strike because Honda is a Japanese company, and anti-Japanese sentiment still simmers in China as a legacy of World War II. Certainly, the strike is hitting Honda hard, as the resulting shortage of transmissions and other engine parts has forced the company to halt production at all four of its assembly plants in China.

Honda has an annual capacity of 650,000 cars and minivans in China, like Jazz subcompacts for export to Europe and Accord sedans for the Chinese market. Because Honda's prices in China are similar to what it charges in the United States, the cars tend to be far out of reach financially for most of the workers who make them.

A Honda spokeswoman declined to discuss specific issues in the strike negotiations.

The intense media coverage may evoke historical memories of the 1980 shipyard strike in Gdansk, Poland, that gave rise to the Solidarity movement and paved the way for the fall of Communism in Eastern Europe. But the reality here is much different.

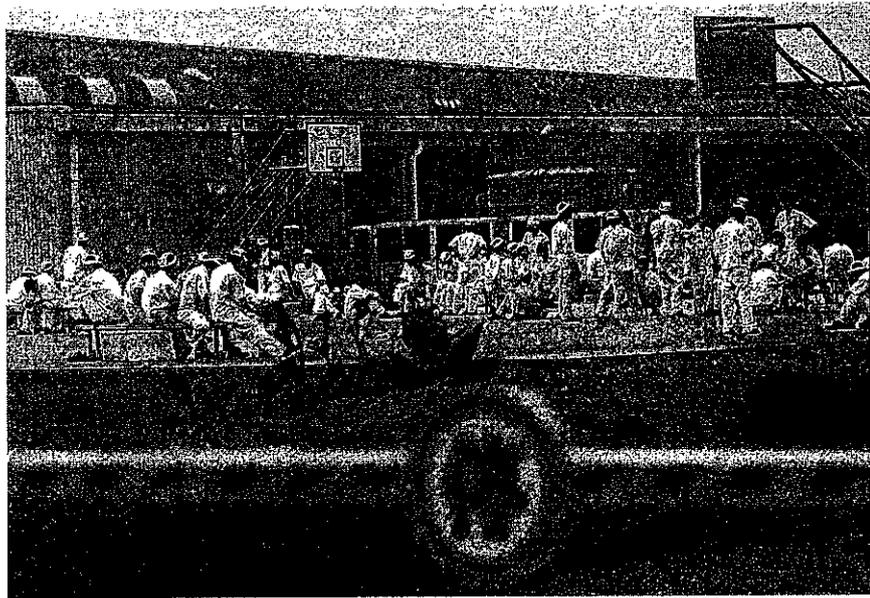
Instead of tens of thousands of grizzled and angry shipyard workers, the Honda strike involves about 1,900 mostly cheerful young people. And the employees interviewed say their goal is more money, not a larger political agenda.

"If they give us 800 renminbi a month, we'll go back to work right away," said one young man, describing a pay increase that would add about \$117 a month to an average pay that is now around \$150 monthly. He said he had read on the Internet of considerably higher wages at other factories in China and expected Honda to match them with an immediate pay increase.

Many workers at other factories in southeastern China already earn \$300 a month, but they do so only through considerable overtime. And even that higher income is not enough to embark on the middle-class dream in China of owning a small apartment and subcompact car. Officially, though, the government is discouraging heavy reliance on overtime, and workers here said that Honda was not assigning much.

The strikers said that Honda

Keith Bradsher reported from Foshan, China, and David Barboza from Shanghai. Bao Beibei contributed research.



CHINA DAILY/REUTERS

The strike at the Honda transmission factory in Foshan has shut down four auto plants as well.

mainly hired recent graduates of high schools or vocational schools. And so, most are in their late teens or early 20s, representing a new generation of employees, many of whom had not been born when the Chinese authorities suppressed protests by students and workers in Tiananmen Square in 1989 — a watershed event whose 21st anniversary falls next Friday.

The profile of striking workers seems to run more along the lines of slightly bookish would-be engineers — perhaps without the grades or money to attend college — rather than political activists. Besides their low wages, the workers seem focused on issues like the factory's air-conditioning not being cool enough, and the unfairness of having to rise from their dormitories as early as 5:30 for a 7 a.m. shift.

Workers said that in addition to their pay, they also received free lodging in rooms that slept four to six in bunk beds. They also get free lunches, subsidized breakfasts for the equivalent of 30 cents and dinners for about \$1.50.

The striking employees said that some senior workers, known as team leaders, had allied themselves with management. But they insisted that the rank-and-file workers were solidly in favor of walkout — a claim impossible to verify.

Although China is run by the Communist Party and has state-controlled unions, the unions are largely charged with overseeing workers, not bargaining for higher wages or pressing for improved labor conditions. And they are not allowed to strike, although China's laws do not have explicit prohibitions against do-

ing so.

Workers at the Honda factory dormitory said that the official union at the factory was not representing them but was serving as an intermediary between them and management. Li Jianming, the national spokesman for the All China Federation of Trade Unions, declined to comment.

The workers here have been on strike since May 21, with no resolution in sight. But the strike did not come to broader notice until Thursday and Friday as Japanese media began reporting the shutdown of Honda assembly plants, and as Chinese media and Internet sites were allowed to report extensively on those activities.

The unusually permissive approach of the authorities toward media coverage of the strike follows a decision to tolerate extensive coverage this month of suicides by workers at the Taiwanese-owned Foxconn factory complex in nearby Shenzhen that supplies Apple and Hewlett-Packard.

The official China Daily newspaper ran a lead editorial on Friday that cited the Honda strike as evidence that government inaction on wages might be fueling tensions between workers and employers. The editorial criticized the Ministry of Human Resources and Social Security for not moving faster to draft a promised amendment to current wage regulations because of what the newspaper described as opposition from employers.

Zheng Qiao, the associate director of the department of employment relations at the China Institute of Industrial Relations in Beijing, said the strike was a significant development in China's labor relations history because the workers appeared to be well organized and united.

"The strike at Honda is the largest strike that has ever happened at a single global company in China," she said, adding that, "such a large-scale, organized strike will force China's labor union system to change, to adapt to the market economy."

## Workers Squeezing Honda With Especially Costly Strike

By KEITH BRADSHER

FOSHAN, China — In going on strike at a transmission factory, workers here have hit Honda by the jugular, although it was not entirely clear at the employees' dormitory on Friday that they realized this.

Transmission factories are the most expensive auto plants of all to build, because they are huge and highly automated. Each costs as much as \$1 billion, more than twice the cost of an assembly plant, and typically, supplies several assembly plants. The factory here supplies four Honda plants in China, all of which have been shut down.

Automakers tend to put transmission factories only in the most politically stable and strike-free countries, because a shutdown for even a day is costly. Until now, China was seen as a safe bet.

Striking at a vital plant to achieve an auto-industry domino effect was a tactic first used to good effect in the United States by the United Automobile Workers. The U.A.W. won recognition from General Motors in 1937 through a sit-down strike at another crucial kind of factory: stamping auto body parts for many other factories.

The U.A.W. has repeatedly held strikes at crucial parts factories to shut down many assembly plants quickly, particularly at G.M. in the 1990s.

But the U.A.W. has benefited from a tight-knit union leadership. Workers here say they are operating more by consensus. And there has been no sign that the Chinese authorities are ready to let a cohesive group of labor activists emerge to lead a national independent union.



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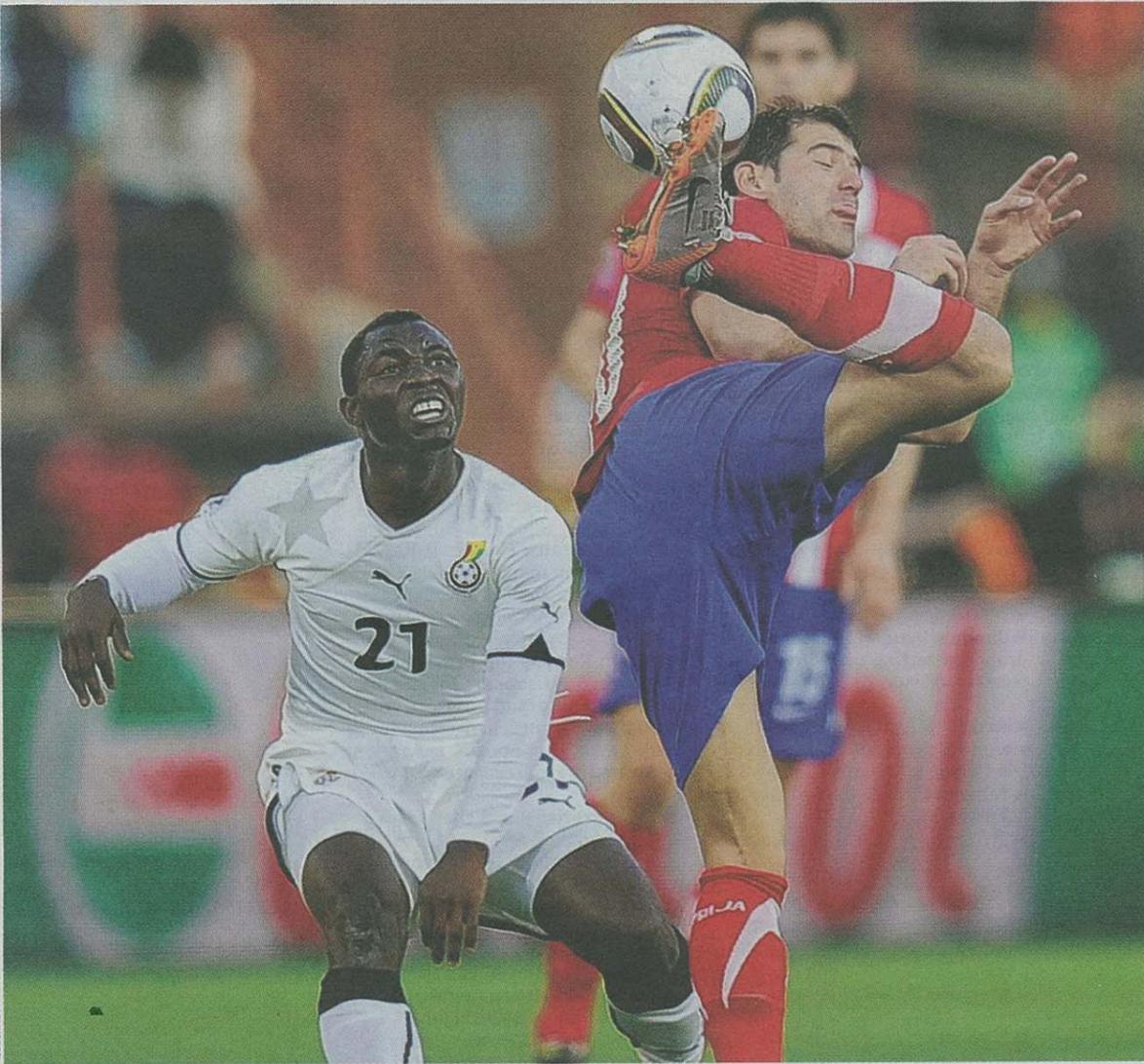
# THE WALL STREET JOURNAL

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ASIA

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**World Cup: Ghana beats Serbia for first win by an African team**



Serbia's Dejan Stankovic, right, vies for the ball as Kwadwo Asamoah of Ghana looks on. Ghana beat Serbia 1-0 on Sunday, marking the first win by an African team at the World Cup. Related article on page 10; continuing coverage at [www.wsj.com/worldcup](http://www.wsj.com/worldcup)

## Honda strike challenges Beijing's sway

By NORIHIKO SHIROUZU

BEIJING—Some workers at a Honda Motor Co. plant in southern China pressed ahead with a strike Sunday as part of a wave of labor unrest that poses a political challenge for the Communist Party, whose authority in the workplace is being undermined by independent labor activists.

A number of workers at the plant agreed to a new wage and benefits package offered by the factory's management and returned to their jobs to resume some production Saturday, company spokesman Takayuki Fujii said.

But he said it was "far too early to declare an end" to the strike at Honda Lock (Guangdong) Co., which produces vehicle-key systems near the industrial city of Guangzhou. Many of the plant's more than 1,500 workers were still on strike.

The success of strikers at three Honda parts factories in southern China in winning concessions is creating a dilemma for the Communist Party, which wants to be seen as supporting better conditions for workers yet is fearful

that strikes led by militant workers could escalate into broader demands for more autonomous unions and pose a threat to its unchallenged rule.

All three strikes have been led by workers acting outside the state-sponsored All China Federation of Trade Unions.

Labor experts monitoring disputes in China said that one of the demands of workers at the key-systems factory is to elect their own leaders in their government-sanctioned union, according to Geoffrey Crothall, spokesman for China Labor Bulletin, a Hong Kong-based labor-rights group.

"Workers at the Honda parts plant are openly stating that the official trade union in their factory is useless," said Mr. Crothall. "That's what workers have told us. It is in the Internet chat rooms. They are very open about it."

Reports of such a move couldn't be independently confirmed by The Wall Street Journal, however.

Labor experts believe the party's leaders are very concerned about a Poland-like scenario where in the late 1980s an independent labor-

Please turn to page 16

## Europe's woes vex Asian exporters

By ALEX FRANGOS

HONG KONG—Economic woes in Europe and the accompanying decline in the euro are already digging into the profits of Asia's manufacturers. The worry is that the pain will spread more broadly if European demand for Asian exports falters.

Companies based in Asia that sell everything from sweaters to solar panels in Europe are feeling the pinch already. Orders placed last year when the euro was 20% stronger against local currencies are now forcing Asian businesses to take losses or renegotiate prices with European customers.

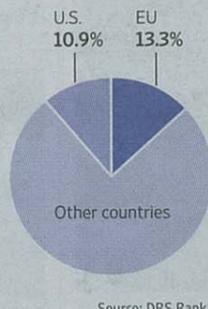
"For euro-based orders, we could lose our shirts and

### Dependents?

Selected Asian economies' exports to the EU, as a percentage of their totals, 2009



Share of Asia's exports that go to the EU and U.S., 2009



Source: DBS Bank

pants and underwear," says Willy Lin, managing director of Milo's Knitwear International Ltd., a 52-year-old,

family-owned sweater maker based in Hong Kong that caters to high-end European labels.

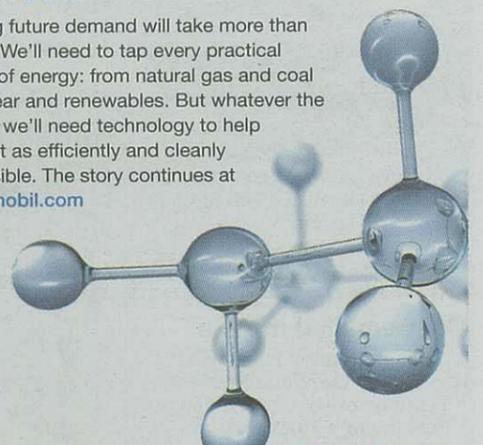
The euro's move could prove a temporary annoyance. The bigger question is whether a slowdown in Europe will sap demand over the longer term for Asian goods. It's critical because Asia's manufacturing economies have become the engines of global growth. And Asia needs Europe as a customer. The European Union accounts for around 13% of exports from Asia's 10 largest economies, excluding Japan, according to Singapore-based bank DBS. The U.S. makes up 11%.

Trade data don't show ill-effects from Europe's stumbles yet. China's May exports grew 48.5% from the year before, or 10.9% on a seasonally adjusted basis from the month before. Korea and Taiwan have also reported strong

Please turn to page 16

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THE WALL STREET JOURNAL.

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FROM PAGE ONE

# Honda strikers challenge Beijing's sway

Continued from first page  
union movement led to the overthrow of the Polish government and contributed to the dismantling of the entire Eastern bloc under the Soviet Union.

Labor experts say the question the Communist Party needs to ask is whether suppressing the move toward allowing more independent labor unions also risks fanning more discontent.

"The recent spate of labor unrest is the result of pent-up unhappiness among China's low-wage workers bubbling up to the surface," said Andreas Lauffs, head of law firm Baker & McKenzie's employment-law group in Hong Kong. "The fact that workers reportedly have started demanding the right to set up independent labor unions adds a political dimension to the labor unrest."

Last month, Honda gave striking workers at a gearbox supplier, who had paralyzed Honda's manufacturing operation in China for 10 days, a 24% increase in pay and benefits. The wildcat strike was led by a group of leaders who rivaled the factory's official, state-led and management-friendly union, which took the side of the company's management and tried to persuade the striking workers to return to work.

Tan Guocheng, one of the strike leaders who was fired along with another worker May 22, said that one of the group's major demands was that "the work union's representatives should be elected by workers."

Mr. Fujii, the Honda spokesman, said the two workers were let go for violating the plant's in-house work and contract rules but not for leading the walkout.

Encouraged by the success of the strike at the gearbox plant, workers at two additional Honda parts plants near Guangzhou walked off the job last week. One strike was resolved midweek after the workers accepted a wage increase.

Mr. Fujii said the workers at the gearbox factory, which was established in 2006, were originally given a chance to select leaders for the official union but opted to receive a leader from a local chapter of the All China Federation of Trade Unions. "Some of the workers are so new at the plant that they apparently don't know that history," Mr.



Striking workers wait outside the Honda Lock (Guangdong) Co. factory in Zhongshan, Guangdong province, on Saturday, as their challenge to Beijing's control grows.

Fujii said. He declined to comment on the situation at the other two parts factories, citing lack of knowledge.

Labor experts say the state-controlled union has a target to start collective bargaining across the board in all companies around China by the end of 2011. Currently wages and other conditions are generally set by management.

However, the global economic crisis has derailed those plans, and there has been little progress towards that objective. From the workers' point of view, "these state-controlled unions don't do anything. And where they exist, they are management-friendly and they don't really represent the employees," said a Western expert who declined to be quoted because of the sensitive nature of his comment.

Workers at the Honda parts plants in southern China decided, in

the absence of help from the official union, to press the issues on their own, calling for higher wages, better work conditions and, in some cases, a new election to install their own leaders in the official unions.

At the gearbox factory, the strike leaders made their demands to management through the official state-controlled union. Honda executives said the union is trying to persuade the strikers to return promptly to work.

Many experts deem it highly unlikely that the government will allow workers such as those at the Honda Lock factory to install labor representatives of their choice. If they did, it would mark a watershed in China's labor movement.

Real change will come when "the Chinese government tolerates a more autonomous worker organization," said Mary Gallagher, a professor at the University of Michigan,

who is an expert on Chinese labor issues.

Beijing is reluctant to clamp down too hard on strikes for fear of appearing unsympathetic to the tens of millions of migrant workers whose relatively cheap labor has made China a preferred place for global companies to produce consumer goods.

The share of national income going to Chinese households has been declining for a decade, meaning that the benefits of China's growth have gone mainly to corporations and the government. Reversing that trend is crucial to achieving Beijing's effort to stem the widening disparity between rich and poor in China.

A growing issue for China's central government is the new sophistication of migrant workers.

They are clearly aware that China's central government has let companies, both foreign-owned and

domestic, get away with some illegal employment practices, according to Mr. Crothall and other labor experts.

One such issue is excessive overtime, especially since the Chinese economy started recovering last year from the global recession. Under national labor law, China limits overtime to 36 hours per month, according to the Baker & McKenzie lawyer, Mr. Lauffs. But at companies across China, workers routinely put in 60 to 100 hours of overtime per month, and many companies are in clear violation of the law, Mr. Lauffs said.

"I wouldn't recommend any multinational company just to assume that all this call for better treatment at the workplace will somehow stop," he said. "I think the workers have become so vocal that anything that is noncompliant will come out, and super low wages will not be sustainable."

# Europe's economic woes worry Asian exporters

Continued from first page  
May trade figures. But exports don't respond instantly.

Cuts in European government spending could have "very negative effects on developing countries that rely on exports for growth," said International Monetary Fund Managing Director Dominique Strauss-Kahn, speaking earlier this month at the Group of 20 meeting of ministers in Busan, South Korea.

Asian economies, especially China, have been criticized for their export-oriented economic models. The countries have pledged to make their economies more reliant on internal demand, creating policies that encourage businesses and consumers to save less and spend more.

"Emerging-market countries have to take actions to advance their own growth to compensate," for a downturn in Europe, said Mr. Strauss-Kahn.

But those shifts could take years to show results. For now, Asia still needs the developed world to sustain its growth. Hence the worry about Europe.

"There are some early signals showing the euro-zone problems are spreading to the global economy," the Bank of Korea said last week even as it announced that Korea's domestic economy is performing well. It's still expected to grow more than 5% this year.

The drooping euro is the most immediate threat.

High-end electronics manufacturers have been among the first exposed. CLSA analyst Saurabh Chugh estimates Taiwanese computer maker Acer Inc. gets half its revenue from Europe. In percentage terms, its earnings fall 5% for every 1% decline in the euro versus the New Taiwan dollar, he estimates. Korean giant Samsung Electronics

Co. counts 15% of its revenue in euros.

China's solar panel industry has been particularly affected. Solarfun Power Holdings Company Ltd., a Shanghai-based solar-equipment manufacturer, gets 85% of its sales in Europe.

The euro's move added a cloud to strong recent profits, among the best since Solarfun was founded in 2005. The company even recently lifted its earnings forecast for 2010, on expectations for continued strong demand despite the euro's drop.

Solarfun figures for every percentage-point decline in the euro versus the Chinese yuan, its profit margins shrink 0.4%, even after accounting for currency hedging.

"It's disruptive," says Solarfun Chief Financial Officer Gareth Kung. The euro's move has forced the company to renegotiate prices with

customers in Europe and work harder to diversify its customer base to China and the U.S.

"Long term, our concern is that the financial crisis in Europe will actually weaken the support for the European government to provide subsidies for the renewable industry," Mr. Kung said.

Some fear Asian banks and corporations that rely heavily on European banks for funding could be hurt by a credit crunch in Europe, or a return of the evaporation of trade finance seen during the 2008 financial crisis.

Of course, it's possible that Europe's debt woes won't cause too much damage in Asia. Some say Asia's export economies will do fine so long as the U.S. keeps growing, even if Europe slows.

Europe's most important economy, Germany, continues to show healthy growth and is likely to bene-

fit from the weak euro. Intra-Asian trade has also picked up on the back of strong local consumer spending.

"You'll see continued pressure on Asian export growth, but it's not enough to be qualitatively less optimistic on Asia overall," says Eric Fishwick, chief economist at CLSA Asia Pacific Markets.

Still, the fears are real. Mr. Lin, whose company makes around a million sweaters a year in factories in China and Hong Kong, says its financial position is strong and the short-term pain is endurable.

Longer term, he worries that the euro's plunge will make his goods more expensive compared with those of competitors in north Africa. And the quick currency moves have made European customers more wary than Americans.

"Everyone is more uncertain," he said. "Nobody wants to hold a lot of stock."

P.3

## Labour law leads to 'huge payouts'

Chinese employees have become keen litigants since Beijing introduced legal tools to fight exploitation at work, **reports Patti Waldmeir in Shanghai.**

Cases can cost multinational companies millions of dollars, say employment lawyers.

China's tough labour contract law, which came into force in 2008, was not aimed at multinational groups, which were not viewed as the biggest exploiters. But it has had unexpected consequences, including a sharp rise in overtime disputes – even though the law does not change the rules on overtime.

"In China, the basic rule is that everybody is entitled to overtime," said Andreas Lauffs, of the US law firm Baker & McKenzie.

Statistics are hard to

come by. But labour lawyers and court reports indicate that the number of employment disputes has soared, with sacked workers increasingly claiming back overtime. Some companies fear potential exposure of up to \$20m (€16m, £14m).

"There is little scope for termination and restructuring in China any more without giving someone a huge payout," said a foreign employment lawyer in Shanghai.

Joseph Deng, of Baker & McKenzie's Shanghai office, said: "Before the labour contract law, most companies saw very little legal risk when terminating employees. Now they are beginning to see the risks as employees are increasingly likely to take a company to court."

[www.ft.com/china](http://www.ft.com/china)

WORLD NEWS

# Use of trainees spurs critics in China

By NORIHIKO SHIROUZU

BEIJING—Recent strikes in China are highlighting a technique widely used by foreign companies to keep costs down: hiring large numbers of trainee workers who can be paid less than the legal minimum wage.

The practice, while legal, has been a source of complaint for at least some workers during recent strikes, and labor experts say foreign companies may have to refrain from overly relying on it.

For companies operating in China, “the whole labor-unrest saga should lead to a rethinking of labor relations,” said Andreas Lauffs, head of law firm Baker & McKenzie’s employment-law group in Hong Kong.

As China’s migrant workers become more aware of their legal rights, they are starting to question some employment practices, such as excessive overtime and the wide use of trainees on the factory floor.

Chinese Premier Wen Jiabao on Tuesday urged better treatment for migrant laborers, and said he recognized that a new generation moving from villages to work in factories wouldn’t be satisfied with the hard conditions their parents endured. His comments, published in the state-run People’s Daily newspaper, didn’t directly address the recent labor unrest.

In a strike at **Honda Motor Co.’s** wholly owned gearbox factory that crippled the Japanese auto maker’s car production for 10 days starting in late May, regular workers were joined by student trainees from local vocational schools in demanding a pay raise and better treatment.

“Factories treat all workers unfairly, but especially trainees,” said Tan Guocheng, one of two strike leaders fired May 22. Honda has said the two workers were let go for violating the plant’s in-house work and contract rules but not for leading the walkout.

In Guangdong province, China’s main manufacturing hub where the Honda transmission factory is located, local law caps the use of student trainees at 30% of a factory’s overall labor force, according to Baker & McKenzie. Mr. Tan said the ratio of trainees at the transmission factory “definitely exceeds 30%.”

Trainees usually come to factories under an internship program, which Baker & McKenzie says isn’t covered by China’s employment law system but under separate, much vaguer sets of national and local regulations.

Mr. Tan and Xiao Lang, the other fired strike leader, suggested that the trainee system is a deliberate way to allow factories to pay workers below minimum wages. The two strike leaders say that in some cases, trainees at the Honda gearbox factory are paid 20% below the minimum wage set by the city of Foshan for qualified workers, which is 920 yuan, or approximately \$135, a month. Baker & McKenzie’s Mr. Lauffs said such a practice is within legal limits in China.

Honda strongly disputes the characterizations made by the two fired workers. Roughly 30% of workers at Honda’s transmission plant in Foshan, or about 600 of the plant’s 1,900 employees, are trainees, said Takayuki Fujii, a Beijing-based company spokesman. They receive “near the minimum wage” in Foshan, he said. He declined to provide a precise wage figure.

The links between foreign companies and local technical schools

run deep in China. In some cases, the schools are partially funded by foreign multinationals, which provide expensive equipment, course material and even trainers to ensure that the schools churn out graduates with specific skills who are able to slot easily into production lines.

The schools often become integrated into factory operations as, in effect, an apprenticeship program. Some students spend their final year on the factory floor, doing a full-time job but being paid as an intern.

The system arose to feed the immense demand for qualified workers in regions of heavy foreign investment, which sometimes lacked educational infrastructure. The schools are supported by local governments, which set them up as part of a package to lure large foreign employers.

Mr. Lauffs of Baker & McKenzie

said that as a result of the wide use of student interns and trainees, “there is a lot of incompliance and noncompliance going on in China with labor rules.”

Honda’s Mr. Fujii said the company doesn’t “knowingly violate specific rules.” The relative high percentage of interns at the Honda transmission plant results from a staff expansion the company undertook in recent months, Mr. Fujii said, as China’s auto market surged.

Next month, the factory plans to promote 390 of the 600 trainees to regular full-time positions, Mr. Fujii said. “We believe our internship program is living up to its purpose, a way for students to test and improve their skills and for the company to discover good talent,” he said.

—Andrew Browne contributed to this article.

## Rules of engagement

The use of trainees has been an issue in recent strikes in China.

### Rules on student hiring arrangements

■ Internship agreements cannot be signed with students in their first year of vocational school or with students below age 16. Internships are supposed to be used to further a student’s vocational training and education, and not as a source of cheap labor.

■ Internships and off-campus work agreements must be signed with the school as a third party.

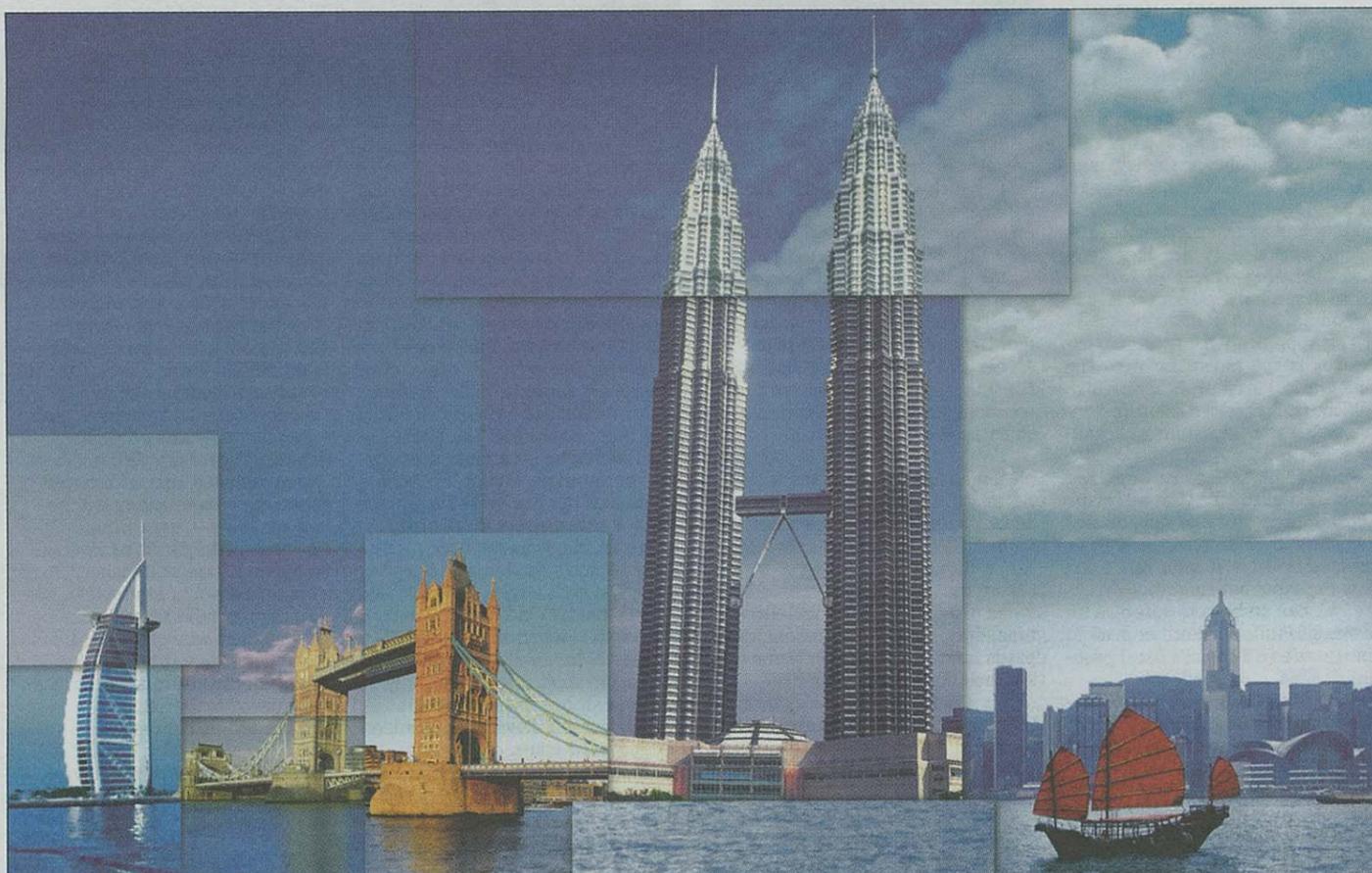
■ In Guangdong province, companies are restricted from having vocational interns account for more than 30% of their work force.

### Legal protection for student workers

■ Student workers are not protected under China’s employment law regime but rather by loose sets of regulations, with few specifics in terms of legal protection.

■ Vocational interns cannot be made to work more than eight hours a day. A student intern needs to be paid “reasonable compensation” (this term is not defined in the law).

Source: Baker & McKenzie



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# BUREAU OF INTERNATIONAL LABOR AFFAIRS

## United States Department of Labor

### Office of Trade and Labor Affairs

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#### *Who We Are...*

The Office of Trade and Labor Affairs (OTLA) was created in October 2006 to coordinate all trade-related labor issues within the Bureau of International Labor Affairs (ILAB). For the past decade, the labor aspects of international trade have gained increasing prominence in U.S. policies. OTLA's mission directly responds to these policies and consists of three main functions:

- Implement trade-related labor policy and coordinate international technical cooperation in support of the labor provisions in free trade agreements.
- Develop and coordinate U.S. Department of Labor positions regarding international economic policy issues and participate in the formulation and implementation of U. S. policy on such issues.
- Provide services, information, expertise, and technical cooperation programs that effectively support the international responsibilities of the U.S. Department of Labor and U.S. foreign labor policy objectives.

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#### *Our Accomplishments*

- OTLA played a key role in the formulation and negotiation of the Labor Chapters in Free Trade Agreements with Chile, Singapore, Australia, Morocco, Central America, the Dominican Republic, Bahrain, Oman, Peru, Colombia, Panama and South Korea.
- OTLA has funded technical cooperation projects in 72 countries to promote the effective enforcement of labor laws, by improving labor inspections systems, including occupational safety and health and mine safety health, as well as promoting workforce development and productive labor management relations.
- OTLA is the principal author of official U.S. government reports on labor matters for all countries the U.S. has signed a Free Trade Agreement with since 2002. The reports include an assessment of labor rights, laws governing child labor, and expected impacts on U.S. employment.

#### *Did you know?*

- All Free Trade Agreements negotiated by the U.S. since 2002 include a Labor Chapter with obligations to respect basic labor rights.
- The Department of Labor funds and manages labor rights projects in over a dozen Free Trade Agreement partner countries, from Central America to the Middle East.
- Department of Labor assistance to Central America established a state of the art website with a searchable database of all the labor laws in the region – 1.7 million hits have been received to date. ([www.levlaboral.com](http://www.levlaboral.com))

For more information about us or our publications or to contact us, please visit our Web site at:  
<http://www.dol.gov/ilab/otla>

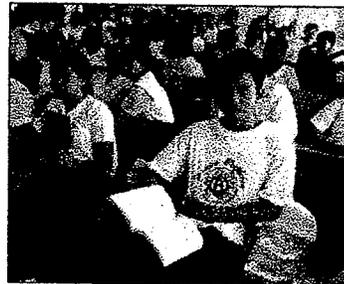


## **BUREAU OF INTERNATIONAL LABOR AFFAIRS**

### **United States Department of Labor**

#### *Who We Are...*

The Bureau of International Labor Affairs (ILAB) leads the U.S. Department of Labor's efforts to ensure that workers around the world are treated fairly and are able to share in the benefits of the global economy. ILAB's mission is to use all available international channels to improve working conditions, raise living standards, protect workers' ability to exercise their rights, and address the workplace exploitation of children and other vulnerable populations.



#### *What We Do...*

##### **Child labor, forced labor and human trafficking**

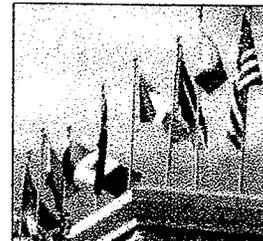
- Our technical assistance program works to reduce the prevalence of the worst forms of child labor around the world by providing increased access to education for children and supporting sustainable livelihood opportunities for adults.
- Our projects, which focus on geographic areas and sectors around the world with a high prevalence of child labor, aim to abolish the worst forms of child labor, including forced labor, trafficking, children affected by armed conflicts, commercial sexual exploitation and hazardous work. We also support activities that are global or inter-regional in scope in areas such as research, data collection and analysis, and collection of best practices;
- Our research, carried out under Congressional mandates and Presidential directives, provides information for policymakers, consumers, and business, labor, and advocacy groups to design and implement policies and strategies to combat child and forced labor.
- We also develop strategic partnerships with governments, business, labor, and civil society groups to implement sustainable models to reduce exploitive labor practices such as child and forced labor.

## Trade and labor affairs

- We work to ensure that internationally-recognized labor principles are included and adhered to in our international trade agreements.
- In support of the President's international economic agenda, we represent the interests and welfare of U.S. workers through our participation in the interagency development and implementation of U.S. international trade and investment policy chaired by the United States Trade Representative.
- We tap into the expertise of multilateral and non-governmental organizations as well as other DOL agencies to help in the implementation of technical assistance projects in order to improve labor law compliance, including occupational safety and health, mine safety, workforce development, and labor management relations.
- Our program has provided \$46 million in funding to establish HIV/AIDS workplace education projects in more than 30 countries. To date the projects have reached over 3 million workers in over 600 enterprises and provided educational workshops and training to over 16,000 workers, managers and agency officials.

## International relations

- We play the lead role within the U.S. government on policy and program issues in the International Labor Organization.
- We have the primary U.S. government responsibility for employment and labor-related issues in several international and regional organizations and groups, such as the Organization for Economic Cooperation and Development, the Organization of American States, the Asia-Pacific Economic Cooperation (APEC) forum, and the meetings of the G-8 and G-20 Labor Ministers.
- ILAB leads the Department's participation in the U.S. – China Strategic and Economic Dialogue that addresses labor issues of mutual concern. ILAB also represents the United States in the U.S. – Vietnam Labor Dialogue, which provides a forum for the two nations to discuss labor-related issues.
- Each year, we host from 250-1,000 international visitors from the public and private sectors, labor unions, academia, and non-governmental organizations to learn about U.S. laws, enforcement practices, and job creation and other programs that deliver training and employment skills to workers.
- We monitor labor developments and advocate for labor rights and standards in countries and regions throughout the world.



## **Highlights:**

- We have funded technical cooperation projects to combat exploitive child labor in over 75 countries worldwide, including 57 projects in Latin America and the Caribbean, 67 in Asia and the Middle East, and 61 in Africa;
- To date, ILAB initiatives have benefited over 1.3 million children by preventing their involvement in, or withdrawing them from, exploitive child labor;
- Since 2000, ILAB has assisted over 72 countries with more than \$200 million by implementing projects to strengthen international core labor standards, improve labor law compliance, and increase economic opportunities for workers.
- In June 2009, in commemoration of World Day against Child Labor, U.S. Secretary of Labor Hilda L. Solis hosted a roundtable with representatives of U.S. companies, unions, employer groups, nongovernmental and international organizations, academia, and others to discuss current challenges and opportunities for addressing child labor worldwide;
- In October 2009, Ministers of Labor from all the democratic governments of the western hemisphere met in Buenos Aires and issued a strong declaration and action plan in support of workers' rights and labor standards. Secretary Solis led the U.S. delegation.
- In April 2010, at the request of President Obama and other G20 leaders, Secretary Solis hosted the first ever meeting of the G20 Labor and Employment Ministers to discuss the impact of the global economic crisis and provide policy recommendations that will put "quality jobs at the heart of the economic recovery."



## BUREAU OF INTERNATIONAL LABOR AFFAIRS United States Department of Labor

### Office of International Relations

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#### *Who we are...*

The U.S. Department of Labor's Bureau of International Labor Affairs' Office of International Relations (OIR) fulfills three functions:

**International Labor Organization:** OIR plays the lead role within the U.S. government on policy and program issues in the International Labor Organization (ILO).

- The ILO is a specialized UN agency that is intended to promote rights at work, foster employment opportunities, and improve working conditions and incomes around the world.
- The ILO is unique among UN specialized agencies because its tripartite structure provides for participation by employers and workers as well as governments. Thus, the U.S. is represented by government officials, American workers and employer representatives.

**International Organizations:** OIR has the lead role in representing the U.S. government in the labor and employment components of several key international organizations, including the Organization for Economic Cooperation and Development (OECD), the G-8 Labor Ministers, the US-EU Working Group on Employment and Labor-related Issues, Asia-Pacific Economic Cooperation (APEC), and the Organization of American States (OAS), Summit of the Americas and the Inter-American Conference of Ministers of Labor (IACML).

- The OECD is a multilateral organization comprising 30 of the world's leading economies representing approximately one billion people and more than half the world's economy. The organization's Employment, Labor and Social Affairs (ELSA) Directorate has been at the forefront of international efforts to address problems of employment, skills development and training, and other related labor issues.
- The G-8 Labor and Employment Ministers Meeting is a unique forum for labor ministers from developed countries to discuss and compare approaches to common employment and training challenges that G-8 countries must address in order to strengthen their labor markets and promote economic growth. The ministers meet once a year.
- US-EU Working Group on Employment and Labor-related issues was established in 1996. Over the years it has sponsored a number of meetings, workshops and conferences that provide an opportunity for exchanging ideas and information on employment- and labor-related issues.
- Asia-Pacific Economic Cooperation (APEC) was established in 1989 to promote economic cooperation and integration in the Asia-Pacific region. OIR is the lead USG agency within APEC's Human Resources Development Working Group (HRDWG), which addresses issues dealing with worker training, education, human resources, productivity, and management.

- The OAS brings together 35 nations of the western hemisphere to strengthen cooperation on democratic values, defend common interests and confront shared problems. The IACML is a meeting of the western hemisphere's Labor Ministers, held about every two years under the auspices of the OAS, to promote hemispheric cooperation on labor issues.

**Foreign Policy:** OIR provides technical and policy advice to senior Department of Labor, Department of State, and other USG agency officials on matters related to international labor and contributes to the conduct of the State Department's labor diplomacy mission in several ways:

- OIR works with the Department of State to prepare and train Foreign Service Officers for duty as labor reporting officers stationed in U.S. embassies abroad. These officers provide critical support to the United States in securing its foreign policy objectives that have a labor component and to DOL in carrying out its international responsibilities.
- OIR manages the Department of Labor's Foreign Visitors Program. Each year, the Department of Labor hosts from 250 - 1,000 international visitors, representing ministries of labor, business groups, universities, trade unions, and other governmental and non-governmental organizations.
- OIR staffs and leads DOL participation in the U.S.– Vietnam Labor Dialogue. The Dialogue was established between the U.S. Department of Labor and the Vietnamese Ministry of Labor in 2000 to provide a forum for the two sides to discuss labor issues, given the absence of labor provisions in the U.S. – Vietnamese Bilateral Trade Agreement.
- OIR Area Advisers stay abreast of labor, political, and economic developments in countries of strategic importance to the United States, such as China and the Middle East, and provide technical and policy advice to senior USG officials in these areas. OIR also conducts research in specialized areas to inform U.S. policy makers.

Bureau of International Labor Affairs  
United States Department of Labor, Washington, DC

*International Cooperation and Programs in the Western Hemisphere*

Overview of the Bureau of International Labor Affairs (ILAB)

ILAB carries out the international responsibilities of the Department of Labor (DOL) under the direction of the Deputy Under Secretary for International Affairs. ILAB conducts research on and formulates international economic, trade, and labor policies in collaboration with other U.S. government agencies and provides international technical assistance in support of U.S. foreign labor policy objectives. ILAB is working together with other U.S. government agencies to create a more stable, secure, and prosperous international economic system in which all workers can achieve greater economic security, share in the benefits of increased international trade, and have safer and healthier workplaces.

Representing the United States in Hemispheric Forums

ILAB plays a lead role within the U.S. government for employment and labor-related policy and programs related to the Organization of American States (OAS), the Summit of the Americas, and the Inter-American Conference of Ministers of Labor (IACML). The IACML is a meeting of the western hemisphere's Labor Ministers, held about every two years under the auspices of the OAS, to promote hemispheric cooperation on labor issues of mutual interest. The XV IACML meeting took place in 2007 in Trinidad and Tobago, and the XVI meeting will take place in Argentina. The next Summit of the Americas will take place in 2009 in Trinidad and Tobago.

Trade Policy and Economic and Labor Research

ILAB participates in the negotiation of the labor components of bilateral and regional trade agreements and helps administer U.S. obligations pertaining to labor under these agreements. The United States currently has Free Trade Agreements (FTAs) in the hemisphere with Canada, Chile, the Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, and Nicaragua. In addition to ILAB's work on trade-related labor policy, the Bureau conducts economic and labor research and publishes congressionally mandated reports related to labor rights, child labor, and the impact of FTAs on U.S. employment. To review ILAB's reports please visit: <http://www.dol.gov/ILAB/media/reports/main.htm>.

Current Technical Assistance Projects and Labor Cooperation in the Western Hemisphere

ILAB currently has more than 30 technical assistance projects in the region in support of the Administration's trade agenda, labor capacity building, and HIV/AIDS workplace education. ILAB also has projects to combat child labor, forced labor, and human trafficking.

***Combating Child Labor, Forced Labor, and Human Trafficking*** - ILAB supports projects in Latin America and the Caribbean in areas and sectors with a high incidence of exploitive child labor. ILAB projects aim to abolish the worst forms of child labor, including forced labor, trafficking, children affected by armed conflicts, commercial sexual exploitation, and hazardous work. ILAB initiatives worldwide have benefited over one million children by preventing their involvement in, or withdrawing them from, exploitive child labor.

***Capacity Building*** - ILAB has received State Department funding to launch projects in Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua. ILAB also partners with the ILO and other organizations to support these capacity building efforts which includes strengthening inspection and mediation systems, increasing public awareness of national labor laws, worker support centers, training as part of the ILO's International Standards Program, reducing discrimination, improving compliance in the agricultural sector, and strengthening the civil service.

***HIV/AIDS Workplace Education*** - ILAB has implemented HIV/AIDS projects in Guyana, Trinidad and Tobago, Barbados, Jamaica, and Haiti to provide accurate information to employers and workers, and to support the development of national and enterprise level workplace policy to address workplace discrimination against HIV/AIDS infected people. ILAB also coordinates with the President's Emergency Plan for Aids Relief and the State Department's Office of the Global AIDS Coordinator.

**International Visitors**

Each year, ILAB hosts hundreds of international visitors, representing ministries of labor, the public and private sectors, and academia to discuss topics of mutual interest, including workforce development, occupational safety and health, pensions, and retirement security. Recent information exchanges have included the participation of officials from Argentina, Bolivia, Brazil, Canada, Colombia, Haiti, Jamaica, Peru, Saint Kitts and Nevis, and Trinidad and Tobago.

**U.S. DOL 2007 Labor Profile Report (Foreign Labor Trends Series)**

The report, available in English and Spanish upon request, provides an overview of U.S. labor laws, institutions, practices, and other related issues.

For additional information about our programs, or to visit us, please contact us at (202) 693-4906 or visit:  
<http://www.dol.gov/ilab/map/countries/americas.htm>

# UN Global Compact – Ten Principles

The UN Global Compact's ten principles in the areas of human rights, labour, the environment and anti-corruption enjoy universal consensus.

The UN Global Compact asks companies to embrace, support and enact, within their sphere of influence, a set of core values in the areas of human rights, labour standards, the environment and anti-corruption:

## Human Rights

- [Principle 1](#): Businesses should support and respect the protection of internationally proclaimed human rights; and
- [Principle 2](#): make sure that they are not complicit in human rights abuses.

## Labour

- [Principle 3](#): Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
- [Principle 4](#): the elimination of all forms of forced and compulsory labour;
- [Principle 5](#): the effective abolition of child labour; and
- [Principle 6](#): the elimination of discrimination in respect of employment and occupation.

## Environment

- [Principle 7](#): Businesses should support a precautionary approach to environmental challenges;
- [Principle 8](#): undertake initiatives to promote greater environmental responsibility; and
- [Principle 9](#): encourage the development and diffusion of environmentally friendly technologies.

## Anti-Corruption

- [Principle 10](#): Businesses should work against corruption in all its forms, including extortion and bribery.

**ILO Convention 29**  
**Forced Labour Convention, 1930**

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Fourteenth Session on 10 June 1930, and

Having decided upon the adoption of certain proposals with regard to forced or compulsory labour, which is included in the first item on the agenda of the Session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this twenty-eighth day of June of the year one thousand nine hundred and thirty the following Convention, which may be cited as the Forced Labour Convention, 1930, for ratification by the Members of the International Labour Organisation in accordance with the provisions of the Constitution of the International Labour Organisation:

*Article 1*

1. (1) Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress the use of forced or compulsory labour in all its forms within the shortest possible period.

1. (2) With a view to this complete suppression, recourse to forced or compulsory labour may be had, during the transitional period, for public purposes only and as an exceptional measure, subject to the conditions and guarantees hereinafter provided.

1. (3) At the expiration of a period of five years after the coming into force of this Convention, and when the Governing Body of the International Labour Office prepares the report provided for in Article 31 below, the said Governing Body shall consider the possibility of the suppression of forced or compulsory labour in all its forms without a further transitional period and the desirability of placing this question on the agenda of the Conference.

*Article 2*

2. (1) For the purposes of this Convention the term **forced or compulsory labour** shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

2. (2) Nevertheless, for the purposes of this Convention, the term **forced or compulsory labour** shall not include—

(a) any work or service exacted in virtue of compulsory military service laws for work of a purely military character;

(b) any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country;

© any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations;

(d) any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population;

(e) minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services.

#### *Article 3*

3. For the purposes of this Convention the term **competent authority** shall mean either an authority of the metropolitan country or the highest central authority in the territory concerned.

#### *Article 4*

4. (1). The competent authority shall not impose or permit the imposition of forced or compulsory labour for the benefit of private individuals, companies or associations.

4. (2) Where such forced or compulsory labour for the benefit of private individuals, companies or associations exists at the date on which a Member's ratification of this Convention is registered by the Director-General of the International Labour Office, the Member shall completely suppress such forced or compulsory labour from the date on which this Convention comes into force for that Member.

*Article 5*

5. (1) No concession granted to private individuals, companies or associations shall involve any form of forced or compulsory labour for the production or the collection of products which such private individuals, companies or associations utilise or in which they trade.

5. (2) Where concessions exist containing provisions involving such forced or compulsory labour, such provisions shall be rescinded as soon as possible, in order to comply with Article 1 of this Convention.

*Article 6*

6. Officials of the administration, even when they have the duty of encouraging the populations under their charge to engage in some form of labour, shall not put constraint upon the said populations or upon any individual members thereof to work for private individuals, companies or associations.

*Article 7*

7. (1) Chiefs who do not exercise administrative functions shall not have recourse to forced or compulsory labour.

7. (2) Chiefs who exercise administrative functions may, with the express permission of the competent authority, have recourse to forced or compulsory labour, subject to the provisions of Article 10 of this Convention.

7. (3) Chiefs who are duly recognised and who do not receive adequate remuneration in other forms may have the enjoyment of personal services, subject to due regulation and provided that all necessary measures are taken to prevent abuses.

*Article 8*

8. (1) The responsibility for every decision to have recourse to forced or compulsory labour shall rest with the highest civil authority in the territory concerned.

8. (2) Nevertheless, that authority may delegate powers to the highest local authorities to exact forced or compulsory labour which does not involve the removal of the workers from their place of habitual residence. That authority may also delegate, for such periods and subject to such conditions as may be laid down in the regulations provided for in Article 23 of this Convention, powers to the highest local authorities to exact forced or compulsory labour which involves the removal of the workers from their place of habitual residence for the purpose of facilitating the movement of officials of the administration, when on duty, and for the transport of Government stores.

*Article 9*

9. Except as otherwise provided for in Article 10 of this Convention, any authority competent to exact forced or compulsory labour shall, before deciding to have recourse to such labour, satisfy itself--

(a) that the work to be done or the service to be rendered is of important direct interest for the community called upon to do work or render the service;

(b) that the work or service is of present or imminent necessity;

(c) that it has been impossible to obtain voluntary labour for carrying out the work or rendering the service by the offer of rates of wages and conditions of labour not less favourable than those prevailing in the area concerned for similar work or service; and

(d) that the work or service will not lay too heavy a burden upon the present population, having regard to the labour available and its capacity to undertake the work.

*Article 10*

10. (1) Forced or compulsory labour exacted as a tax and forced or compulsory labour to which recourse is had for the execution of public works by chiefs who exercise administrative functions shall be progressively abolished.

10. (2) Meanwhile, where forced or compulsory labour is exacted as a tax, and where recourse is had to forced or compulsory labour for the execution of public works by chiefs who exercise administrative functions, the authority concerned shall first satisfy itself--

(a) that the work to be done or the service to be rendered is of important direct interest for the community called upon to do the work or render the service;

(b) that the work or the service is of present or imminent necessity;

(c) that the work or service will not lay too heavy a burden upon the present population, having regard to the labour available and its capacity to undertake the work;

(d) that the work or service will not entail the removal of the workers from their place of habitual residence;

(e) that the execution of the work or the rendering of the service will be directed in accordance with the exigencies of religion, social life and agriculture.

*Article 11*

11. (1) Only adult able-bodied males who are of an apparent age of not less than 18 and not more than 45 years may be called upon for forced or compulsory labour. Except in respect of the kinds of labour provided for in Article 10 of this Convention, the following limitations and conditions shall apply:

(a) whenever possible prior determination by a medical officer appointed by the administration that the persons concerned are not suffering from any infectious or contagious disease and that they are physically fit for the work required and for the conditions under which it is to be carried out;

(b) exemption of school teachers and pupils and officials of the administration in general;

(c) the maintenance in each community of the number of adult able-bodied men indispensable for family and social life;

(d) respect for conjugal and family ties.

11. (2) For the purposes of subparagraph © of the preceding paragraph, the regulations provided for in Article 23 of this Convention shall fix the proportion of the resident adult able-bodied males who may be taken at any one time for forced or compulsory labour, provided always that this proportion shall in no case exceed 25 per cent. In fixing this proportion the competent authority shall take account of the density of the population, of its social and physical development, of the seasons, and of the work which must be done by the persons concerned on their own behalf in their locality, and, generally, shall have regard to the economic and social necessities of the normal life of the community concerned.

#### *Article 12*

12. (1) The maximum period for which any person may be taken for forced or compulsory labour of all kinds in any one period of twelve months shall not exceed sixty days, including the time spent in going to and from the place of work.

12. (2) Every person from whom forced or compulsory labour is exacted shall be furnished with a certificate indicating the periods of such labour which he has completed.

#### *Article 13*

13. (1) The normal working hours of any person from whom forced or compulsory labour is exacted shall be the same as those prevailing in the case of voluntary labour, and the hours worked in excess of the normal working hours shall be remunerated at the rates prevailing in the case of overtime for voluntary labour.

13. (2) A weekly day of rest shall be granted to all persons from whom forced or compulsory labour of any kind is exacted and this day shall coincide as

far as possible with the day fixed by tradition or custom in the territories or regions concerned.

*Article 14*

14. (1) With the exception of the forced or compulsory labour provided for in Article 10 of this Convention, forced or compulsory labour of all kinds shall be remunerated in cash at rates not less than those prevailing for similar kinds of work either in the district in which the labour is employed or in the district from which the labour is recruited, whichever may be the higher.

14. (2) In the case of labour to which recourse is had by chiefs in the exercise of their administrative functions, payment of wages in accordance with the provisions of the preceding paragraph shall be introduced as soon as possible.

14. (3) The wages shall be paid to each worker individually and not to his tribal chief or to any other authority.

14. (4) For the purpose of payment of wages the days spent in travelling to and from the place of work shall be counted as working days.

14. (5) Nothing in this Article shall prevent ordinary rations being given as a part of wages, such rations to be at least equivalent in value to the money payment they are taken to represent, but deductions from wages shall not be made either for the payment of taxes or for special food, clothing or accommodation supplied to a worker for the purpose of maintaining him in a fit condition to carry on his work under the special conditions of any employment, or for the supply of tools.

*Article 15*

15. (1) Any laws or regulations relating to workmen's compensation for accidents or sickness arising out of the employment of the worker and any laws or regulations providing compensation for the dependants of deceased or incapacitated workers which are or shall be in force in the territory concerned shall be equally applicable to persons from whom forced or compulsory labour is exacted and to voluntary workers.

15. (2) In any case it shall be an obligation on any authority employing any worker on forced or compulsory labour to ensure the subsistence of any such worker who, by accident or sickness arising out of his employment, is rendered wholly or partially incapable of providing for himself, and to take measures to ensure the maintenance of any persons actually dependent upon such a worker in the event of his incapacity or decease arising out of his employment.

*Article 16*

16. (1) Except in cases of special necessity, persons from whom forced or compulsory labour is exacted shall not be transferred to districts where the food and climate differ so considerably from those to which they have been accustomed as to endanger their health.

16. (2) In no case shall the transfer of such workers be permitted unless all measures relating to hygiene and accommodation which are necessary to adapt such workers to the conditions and to safeguard their health can be strictly applied.

16. (3) When such transfer cannot be avoided, measures of gradual habituation to the new conditions of diet and of climate shall be adopted on competent medical advice.

16. (4) In cases where such workers are required to perform regular work to which they are not accustomed, measures shall be taken to ensure their habituation to it, especially as regards progressive training, the hours of work and the provision of rest intervals, and any increase or amelioration of diet which may be necessary.

#### *Article 17*

17. Before permitting recourse to forced or compulsory labour for works of construction or maintenance which entail the workers remaining at the workplaces for considerable periods, the competent authority shall satisfy itself-

(1) that all necessary measures are taken to safeguard the health of the workers and to guarantee the necessary medical care, and, in particular, (a) that the workers are medically examined before commencing the work and at fixed intervals during the period of service, (b) that there is an adequate medical staff, provided with the dispensaries, infirmaries, hospitals and equipment necessary to meet all requirements, and (c) that the sanitary conditions of the workplaces, the supply of drinking water, food, fuel, and cooking utensils, and, where necessary, of housing and clothing, are satisfactory;

(2) that definite arrangements are made to ensure the subsistence of the families of the workers, in particular by facilitating the remittance, by a safe method, of part of the wages to the family, at the request or with the consent of the workers;

(3) that the journeys of the workers to and from the workplaces are made at the expense and under the responsibility of the administration, which shall facilitate such journeys by making the fullest use of all available means of transport;

(4) that, in case of illness or accident causing incapacity to work of a certain duration, the worker is repatriated at the expense of the administration;

(5) that any worker who may wish to remain as a voluntary worker at the end of his period of forced or compulsory labour is permitted to do so without, for a period of two years, losing his right to repatriation free of expense to himself.

#### *Article 18*

18, (1) Forced or compulsory labour for the transport of persons or goods, such as the labour of porters or boatmen, shall be abolished within the shortest possible period. Meanwhile the competent authority shall promulgate regulations determining, inter alia, (a) that such labour shall only be employed for the purpose of facilitating the movement of officials of the administration, when on duty, or for the transport of Government stores, or, in cases of very urgent necessity, the transport of persons other than officials, (b) that the workers so employed shall be medically certified to be physically fit, where medical examination is possible, and that where such medical examination is not practicable the person employing such workers shall be held responsible for ensuring that they are physically fit and not suffering from any infectious or contagious disease, (c) the maximum load which these workers may carry, (d) the maximum distance from their homes to which they may be taken, (e) the maximum number of days per month or other period for which they may be taken, including the days spent in returning to their homes, and (f) the persons entitled to demand this form of forced or compulsory labour and the extent to which they are entitled to demand it.

18. (2) In fixing the maxima referred to under (c), (d) and (e) in the foregoing paragraph, the competent authority shall have regard to all relevant factors, including the physical development of the population from which the workers are recruited, the nature of the country through which they must travel and the climatic conditions.

18. (3) The competent authority shall further provide that the normal daily journey of such workers shall not exceed a distance corresponding to an average working day of eight hours, it being understood that account shall be taken not only of the weight to be carried and the distance to be covered, but also of the nature of the road, the season and all other relevant factors, and that, where hours of journey in excess of the normal daily journey are exacted, they shall be remunerated at rates higher than the normal rates.

#### *Article 19*

19. (1) The competent authority shall only authorise recourse to compulsory cultivation as a method of precaution against famine or a deficiency

of food supplies and always under the condition that the food or produce shall remain the property of the individuals or the community producing it.

19. (2) Nothing in this Article shall be construed as abrogating the obligation on members of a community, where production is organised on a communal basis by virtue of law or custom and where the produce or any profit accruing from the sale thereof remain the property of the community, to perform the work demanded by the community by virtue of law or custom.

*Article 20*

20. Collective punishment laws under which a community may be punished for crimes committed by any of its members shall not contain provisions for forced or compulsory labour by the community as one of the methods of punishment.

*Article 21*

21. Forced or compulsory labour shall not be used for work underground in mines.

*Article 22*

22. The annual reports that Members which ratify this Convention agree to make to the International Labour Office, pursuant to the provisions of Article 22 of the Constitution of the International Labour Organisation, on the measures they have taken to give effect to the provisions of this Convention, shall contain as full information as possible, in respect of each territory concerned, regarding the extent to which recourse has been had to forced or compulsory labour in that territory, the purposes for which it has been employed, the sickness and death rates, hours of work, methods of payment of wages and rates of wages, and any other relevant information.

*Article 23*

23. (1) To give effect to the provisions of this Convention the competent authority shall issue complete and precise regulations governing the use of forced or compulsory labour.

23.(2) These regulations shall contain, inter alia, rules permitting any person from whom forced or compulsory labour is exacted to forward all complaints relative to the conditions of labour to the authorities and ensuring that such complaints will be examined and taken into consideration.

*Article 24*

24. Adequate measures shall in all cases be taken to ensure that the regulations governing the employment of forced or compulsory labour are strictly applied, either by extending the duties of any existing labour inspectorate which has been established for the inspection of voluntary labour to cover the inspection of forced or compulsory labour or in some other appropriate manner.

Measures shall also be taken to ensure that the regulations are brought to the knowledge of persons from whom such labour is exacted.

*Article 25*

25. The illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced.

*Article 26*

26. (1) Each Member of the International Labour Organisation which ratifies this Convention undertakes to apply it to the territories placed under its sovereignty, jurisdiction, protection, suzerainty, tutelage or authority, so far as it has the right to accept obligations affecting matters of internal jurisdiction; provided that, if such Member may desire to take advantage of the provisions of article 35 of the Constitution of the International Labour Organisation, it shall append to its ratification a declaration stating--

(1) the territories to which it intends to apply the provisions of this Convention without modification;

(2) the territories to which it intends to apply the provisions of this Convention with modifications, together with details of the said modifications;

(3) the territories in respect of which it reserves its decision.

26. (2) The aforesaid declaration shall be deemed to be an integral part of the ratification and shall have the force of ratification. It shall be open to any Member, by a subsequent declaration, to cancel in whole or in part the reservations made, in pursuance of the provisions of subparagraphs (2) and (3) of this Article, in the original declaration.

*Article 27*

27. The formal ratifications of this Convention under the conditions set forth in the Constitution of the International Labour Organisation shall be communicated to the Director-General of the International Labour Office for registration.

*Article 28*

29. (1) This Convention shall be binding only upon those Members whose ratifications have been registered with the International Labour Office.

29. (2) It shall come into force twelve months after the date on which the ratifications of two Members of the International Labour Organisation have been registered with the Director-General.

29. (3) Thereafter, this Convention shall come into force for any Member twelve months after the date on which the ratification has been registered.

*Article 29*

29, As soon as the ratifications of two Members of the International Labour Organisation have been registered with the International Labour Office, the Director-General of the International Labour Office shall so notify all the Members of the International Labour Organisation. He shall likewise notify them of the registration of ratifications which may be communicated subsequently by other Members of the Organisation.

*Article 30*

30. (1) A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered with the International Labour Office.

30. (2) Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of five years and, thereafter, may denounce this Convention at the expiration of each period of five years under the terms provided for in this Article.

*Article 31*

31. At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

*Article 32*

32. (1) Should the Conference adopt a new Convention revising this Convention in whole or in part, the ratification by a Member of the new revising Convention shall *ipso jure* involve denunciation of this Convention without any requirement of delay, notwithstanding the provisions of Article 30 above, if and when the new revising Convention shall have come into force.

32. (2) As from the date of the coming into force of the new revising Convention, the present Convention shall cease to be open to ratification by the Members.

32. (3) Nevertheless, this Convention shall remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising convention.

*Article 33*

33. The French and English texts of this Convention shall both be authentic.

**ILO Convention 87**  
**Freedom of Association and Protection of the Right to Organise**  
**Convention, 1948**

The General Conference of the International Labour Organisation,

Having been convened at San Francisco by the Governing Body of the International Labour Office, and having met in its Thirty-first Session on 17 June 1948;

Having decided to adopt, in the form of a Convention, certain proposals concerning freedom of association and protection of the right to organise, which is the seventh item on the agenda of the session;

Considering that the Preamble to the Constitution of the International Labour Organisation declares "recognition of the principle of freedom of association" to be a means of improving conditions of labour and of establishing peace;

Considering that the Declaration of Philadelphia reaffirms that "freedom of expression and of association are essential to sustained progress";

Considering that the International Labour Conference, at its Thirtieth Session, unanimously adopted the principles which should form the basis for international regulation;

Considering that the General Assembly of the United Nations, at its Second Session, endorsed these principles and requested the International Labour Organisation to continue every effort in order that it may be possible to adopt one or several international Conventions;

adopts this ninth day of July of the year one thousand nine hundred and forty-eight the following Convention, which may be cited as the Freedom of Association and Protection of the Right to Organise Convention, 1948:

**PART I.**  
**FREEDOM OF ASSOCIATION**

*Article 1*

1. Each Member of the International Labour Organisation for which this Convention is in force undertakes to give effect to the following provisions.

*Article 2*

Workers and employers, without distinction whatsoever, shall have the right to 2. establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

*Article 3*

3. (1) Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.

3. (2) The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

*Article 4*

4. Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority.

*Article 5*

5. Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.

*Article 6*

6. The provisions of Articles 2, 3 and 4 hereof apply to federations and confederations of workers' and employers' organisations.

*Article 7*

7. The acquisition of legal personality by workers' and employers' organisations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of Articles 2, 3 and 4 hereof.

*Article 8*

8. (1) In exercising the rights provided for in this Convention workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land.

8. (2) The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.

*Article 9*

9. (1) The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

9. (2) In accordance with the principle set forth in paragraph 8 of Article 19 of the Constitution of the International Labour Organisation the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

*Article 10*

10. In this Convention the term *organisation* means any organisation of workers or of employers for furthering and defending the interests of workers or of employers.

## **PART II. PROTECTION OF THE RIGHT TO ORGANISE**

### *Article 11*

11. Each Member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise.

## **PART III. MISCELLANEOUS PROVISIONS**

### *Article 12*

12. (1) In respect of the territories referred to in Article 35 of the Constitution of the International Labour Organisation as amended by the Constitution of the International Labour Organisation Instrument of Amendment 1946, other than the territories referred to in paragraphs 4 and 5 of the said article as so amended, each Member of the Organisation which ratifies this Convention shall communicate to the Director-General of the International Labour Office with or as soon as possible after its ratification a declaration stating:

- a) the territories in respect of which it undertakes that the provisions of the Convention shall be applied without modification;
- b) the territories in respect of which it undertakes that the provisions of the Convention shall be applied subject to modifications, together with details of the said modifications;
- c) the territories in respect of which the Convention is inapplicable and in such cases the grounds on which it is inapplicable;
- d) the territories in respect of which it reserves its decision.

12. (2) The undertakings referred to in subparagraphs (a) and (b) of paragraph 1 of this Article shall be deemed to be an integral part of the ratification and shall have the force of ratification.

12. (3) Any Member may at any time by a subsequent declaration cancel in whole or in part any reservations made in its original declaration in virtue of subparagraphs (b), (c) or (d) of paragraph 1 of this Article.

12. (4) Any Member may, at any time at which the Convention is subject to denunciation in accordance with the provisions of Article 16, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of such territories as it may specify.

#### *Article 13*

13. (1) Where the subject-matter of this Convention is within the self-governing powers of any non-metropolitan territory, the Member responsible for the international relations of that territory may, in agreement with the government of the territory, communicate to the Director-General of the International Labour Office a declaration accepting on behalf of the territory the obligations of this Convention.

13. (2) A declaration accepting the obligations of this Convention may be communicated to the Director-General of the International Labour Office:

- a) by two or more Members of the Organisation in respect of any territory which is under their joint authority; or
- b) by any international authority responsible for the administration of any territory, in virtue of the Charter of the United Nations or otherwise, in respect of any such territory.

13. (3) Declarations communicated to the Director-General of the International Labour Office in accordance with the preceding paragraphs of this Article shall indicate whether the provisions of the Convention will be applied in the territory concerned without modification or subject to modifications; when the declaration indicates that the provisions of the Convention will be applied subject to modifications it shall give details of the said modifications.

13. (4) The Member, Members or international authority concerned may at any time by a subsequent declaration renounce in whole or in part the right to have recourse to any modification indicated in any former declaration.

13. (5) The Member, Members or international authority concerned may, at any time at which this Convention is subject to denunciation in accordance with the provisions of Article 16, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of the application of the Convention.

### **PART IV. FINAL PROVISIONS**

#### *Article 14*

14. The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

*Article 15*

15. (1) This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

15. (2) It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

15. (3) Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratifications has been registered.

*Article 16*

16. (1) A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

16. (2) Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

*Article 17*

17. (1) The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications, declarations and denunciations communicated to him by the Members of the Organisation.

17. (2) When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

*Article 18*

18. The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications, declarations and acts of denunciation registered by him in accordance with the provisions of the preceding articles.

*Article 19*

19. At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

*Article 20*

20. (1) Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:

a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 16 above, if and when the new revising Convention shall have come into force;

b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

20. (2) This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

*Article 21*

21. The English and French versions of the text of this Convention are equally authoritative.

**ILO Convention 98**  
**Right to Organise and Collective Bargaining Convention, 1949**

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-second Session on 8 June 1949, and

Having decided upon the adoption of certain proposals concerning the application of the principles of the right to organise and to bargain collectively, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this first day of July of the year one thousand nine hundred and forty-nine the following Convention, which may be cited as the Right to Organise and Collective Bargaining Convention, 1949:

*Article 1*

1. (1) Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.

1. (2) Such protection shall apply more particularly in respect of acts calculated to-

(a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;

(b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

*Article 2*

2. (1) Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.

2. (2) In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference within the meaning of this Article.

*Article 3*

3. Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined in the preceding Articles.

*Article 4*

4. Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

*Article 5*

5. (1) The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

5. (2) In accordance with the principle set forth in paragraph 8 of Article 19 of the Constitution of the International Labour Organisation the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

*Article 6*

6. This Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way.

*Article 7*

7. The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

*Article 8*

8. (1) This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

8. (2) It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

8. (3) Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

*Article 9*

9. (1) Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 2 of Article 35 of the Constitution of the International Labour Organisation shall indicate --

(a) the territories in respect of which the Member concerned undertakes that the provisions of the Convention shall be applied without modification;  
(b) the territories in respect of which it undertakes that the provisions of the Convention shall be applied subject to modifications, together with details of the said modifications;

(c) the territories in respect of which the Convention is inapplicable and in such cases the grounds on which it is inapplicable;

(d) the territories in respect of which it reserves its decision pending further consideration of the position.

9. (2) The undertakings referred to in subparagraphs (a) and (b) of paragraph 1 of this Article shall be deemed to be an integral part of the ratification and shall have the force of ratification.

9. (3) Any Member may at any time by a subsequent declaration cancel in whole or in part any reservation made in its original declaration in virtue of subparagraph (b), (c) or (d) of paragraph 1 of this Article.

9. (4) Any Member may, at any time at which the Convention is subject to denunciation in accordance with the provisions of Article 11, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of such territories as it may specify.

#### *Article 10*

10. (1) Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 4 or 5 of Article 35 of the Constitution of the International Labour Organisation shall indicate whether the provisions of the Convention will be applied in the territory concerned without modification or subject to modifications; when the declaration indicates that the provisions of the Convention will be applied subject to modifications, it shall give details of the said modifications.

10. (2) The Member, Members or international authority concerned may at any time by a subsequent declaration renounce in whole or in part the right to have recourse to any modification indicated in any former declaration.

10. (3) The Member, Members or international authority concerned may, at any time at which this Convention is subject to denunciation in accordance with the provisions of Article 11, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of the application of the Convention.

#### *Article 11*

11. (1) A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into

force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

11. (2) Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

#### *Article 12*

12. (1) The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications, declarations and denunciations communicated to him by the Members of the Organisation.

12. (2) When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

#### *Article 13*

13. The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications, declarations and acts of denunciation registered by him in accordance with the provisions of the preceding articles.

#### *Article 14*

14. At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

#### *Article 15*

15. (1) Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides,

(a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 11 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

15. (2) This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

*Article 16*

16. The English and French versions of the text of this Convention are equally authoritative.

## **ILO Convention No. 100 Equal Remuneration Convention, 1951**

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-fourth Session on 6 June 1951, and

Having decided upon the adoption of certain proposals with regard to the principle of equal remuneration for men and women workers for work of equal value, which is the seventh item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this twenty-ninth day of June of the year one thousand nine hundred and fifty-one the following Convention, which may be cited as the Equal Remuneration Convention, 1951:

### *Article 1*

1. For the purpose of this Convention--

(a) the term *remuneration* includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment;

(b) the term *equal remuneration for men and women workers for work of equal value* refers to rates of remuneration established without discrimination based on sex.

### *Article 2*

2. (1) Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.

2. (2) This principle may be applied by means of--

(a) national laws or regulations;

(b) legally established or recognised machinery for wage determination;

(c) collective agreements between employers and workers; or

(d) a combination of these various means.

*Article 3*

3. (1) Where such action will assist in giving effect to the provisions of this Convention measures shall be taken to promote objective appraisal of jobs on the basis of the work to be performed.

3. (2) The methods to be followed in this appraisal may be decided upon by the authorities responsible for the determination of rates of remuneration, or, where such rates are determined by collective agreements, by the parties thereto.

3. (3) Differential rates between workers which correspond, without regard to sex, to differences, as determined by such objective appraisal, in the work to be performed shall not be considered as being contrary to the principle of equal remuneration for men and women workers for work of equal value.

*Article 4*

4. Each Member shall co-operate as appropriate with the employers' and workers' organisations concerned for the purpose of giving effect to the provisions of this Convention.

*Article 5*

5. The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

*Article 6*

6. (1) This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

6. (2) It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

*Article 7*

7. (1) Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 2 of Article 35 of the Constitution of the International Labour Organisation shall indicate -

(a) the territories in respect of which the Member concerned undertakes that the provisions of the Convention shall be applied without modification;

(b) the territories in respect of which it undertakes that the provisions of the Convention shall be applied subject to modifications, together with details of the said modifications;

(c) the territories in respect of which the Convention is inapplicable and in such cases the grounds on which it is inapplicable;

(d) the territories in respect of which it reserves its decision pending further consideration of the position.

7. (2) The undertakings referred to in subparagraphs (a) and (b) of paragraph 1 of this Article shall be deemed to be an integral part of the ratification and shall have the force of ratification.

7. (3) Any Member may at any time by a subsequent declaration cancel in whole or in part any reservation made in its original declaration in virtue of subparagraph (b), (c) or (d) of paragraph 1 of this Article.

7. (4) Any Member may, at any time at which the Convention is subject to denunciation in accordance with the provisions of Article 9, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of such territories as it may specify.

#### Article 8

8. (1) Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 4 or 5 of Article 35 of the Constitution of the International Labour Organisation shall indicate whether the provisions of the Convention will be applied in the territory concerned without modification or subject to modifications; when the declaration indicates that the provisions of the Convention will be applied subject to modifications, it shall give details of the said modifications.

8. (2) The Member, Members or international authority concerned may at any time by a subsequent declaration renounce in whole or in part the right to have recourse to any modification indicated in any former declaration.

8. (3) The Member, Members or international authority concerned may, at any time at which this Convention is subject to denunciation in accordance with the provisions of Article 9, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of the application of the Convention.

#### Article 9

9. (1) A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into

force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

9. (2) Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

*Article 10*

10. (1) The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications, declarations and denunciations communicated to him by the Members of the Organisation.

10. (2) When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

*Article 11*

11. The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications, declarations and acts of denunciation registered by him in accordance with the provisions of the preceding articles.

*Article 12*

12. At such times as may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

*Article 13*

13. (1) Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides-

(a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 9 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

13. (2) This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

*Article 14*

14. The English and French versions of the text of this Convention are equally authoritative.

**ILO Convention No. 105**  
**Abolition of Forced Labour Convention, 1957**

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Fortieth Session on 5 June 1957, and

Having considered the question of forced labour, which is the fourth item on the agenda of the session, and

Having noted the provisions of the Forced Labour Convention, 1930, and

Having noted that the Slavery Convention, 1926, provides that all necessary measures shall be taken to prevent compulsory or forced labour from developing into conditions analogous to slavery and that the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, 1956, provides for the complete abolition of debt bondage and serfdom, and

Having noted that the Protection of Wages Convention, 1949, provides that wages shall be paid regularly and prohibits methods of payment which deprive the worker of a genuine possibility of terminating his employment, and

Having decided upon the adoption of further proposals with regard to the abolition of certain forms of forced or compulsory labour constituting a violation of the rights of man referred to in the Charter of the United Nations and enunciated by the Universal Declaration of Human Rights, and

Having determined that these proposals shall take the form of an international Convention,

adopts this twenty-fifth day of June of the year one thousand nine hundred and fifty-seven the following Convention, which may be cited as the Abolition of Forced Labour Convention, 1957:

*Article 1*

1. Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour--

(a) as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system;

- (b) as a method of mobilising and using labour for purposes of economic development;
- (c) as a means of labour discipline;
- (d) as a punishment for having participated in strikes;
- (e) as a means of racial, social, national or religious discrimination.

*Article 2*

2. Each Member of the International Labour Organisation which ratifies this Convention undertakes to take effective measures to secure the immediate and complete abolition of forced or compulsory labour as specified in Article 1 of this Convention.

*Article 3*

3. The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

*Article 4*

4. (1) This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

4. (2) It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

4. (3) Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

*Article 5*

5. (1) A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

5. (2) Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

*Article 6*

6. (1) The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

6. (2) When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

*Article 7*

7. The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

*Article 8*

8. At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

*Article 9*

9. (1) Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:

a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 5 above, if and when the new revising Convention shall have come into force;

b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

9. (2) This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

*Article 10*

10. The English and French versions of the text of this Convention are equally authoritative.

**ILO Convention No. 111**  
**Discrimination (Employment and Occupation) Convention, 1958**

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Forty-second Session on 4 June 1958, and

Having decided upon the adoption of certain proposals with regard to discrimination in the field of employment and occupation, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention, and

Considering that the Declaration of Philadelphia affirms that all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity, and

Considering further that discrimination constitutes a violation of rights enunciated by the Universal Declaration of Human Rights,

adopts this twenty-fifth day of June of the year one thousand nine hundred and fifty-eight the following Convention, which may be cited as the Discrimination (Employment and Occupation) Convention, 1958:

*Article 1*

1. (1) For the purpose of this Convention the term *discrimination* includes-

-

(a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;

(b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.

1. (2) Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.

1. (3) For the purpose of this Convention the terms **employment** and **occupation** include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

*Article 2*

2. Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.

*Article 3*

3. Each Member for which this Convention is in force undertakes, by methods appropriate to national conditions and practice--

(a) to seek the co-operation of employers' and workers' organisations and other appropriate bodies in promoting the acceptance and observance of this policy;

(b) to enact such legislation and to promote such educational programmes as may be calculated to secure the acceptance and observance of the policy;

(c) to repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy;

(d) to pursue the policy in respect of employment under the direct control of a national authority;

(e) to ensure observance of the policy in the activities of vocational guidance, vocational training and placement services under the direction of a national authority;

(f) to indicate in its annual reports on the application of the Convention the action taken in pursuance of the policy and the results secured by such action.

*Article 4*

4. Any measures affecting an individual who is justifiably suspected of, or engaged in, activities prejudicial to the security of the State shall not be deemed to be discrimination, provided that the individual concerned shall have the right to appeal to a competent body established in accordance with national practice.

*Article 5*

5. (1) Special measures of protection or assistance provided for in other Conventions or Recommendations adopted by the International Labour Conference shall not be deemed to be discrimination.

5. (2) Any Member may, after consultation with representative employers' and workers' organisations, where such exist, determine that other special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status, are generally recognised to require special protection or assistance, shall not be deemed to be discrimination.

*Article 6*

6. Each Member which ratifies this Convention undertakes to apply it to non-metropolitan territories in accordance with the provisions of the Constitution of the International Labour Organisation.

*Article 7*

7. The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

*Article 8*

8. (1) This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

8. (2) It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

8. (3) Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

*Article 9*

9. (1) A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

9. (2) Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

*Article 10*

10. (1) The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

10. (2) When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

*Article 11*

11. The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

*Article 12*

12. At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

*Article 13*

13. (1) Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:

(a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 9 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

13. (2) This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

*Article 14*

14. The English and French versions of the text of this Convention are equally authoritative.

**ILO Convention No. 138**  
**Minimum Age Convention, 1973**

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Fifty-eighth Session on 6 June 1973, and

Having decided upon the adoption of certain proposals with regard to minimum age for admission to employment, which is the fourth item on the agenda of the session, and

Noting the terms of the Minimum Age (Industry) Convention, 1919, the Minimum Age (Sea) Convention, 1920, the Minimum Age (Agriculture) Convention, 1921, the Minimum Age (Trimmers and Stokers) Convention, 1921, the Minimum Age (Non-Industrial Employment) Convention, 1932, the Minimum Age (Sea) Convention (Revised), 1936, the Minimum Age (Industry) Convention (Revised), 1937, the Minimum Age (Non-Industrial Employment) Convention (Revised), 1937, the Minimum Age (Fishermen) Convention, 1959, and the Minimum Age (Underground Work) Convention, 1965, and

Considering that the time has come to establish a general instrument on the subject, which would gradually replace the existing ones applicable to limited economic sectors, with a view to achieving the total abolition of child labour, and

Having determined that these proposals shall take the form of an international Convention, adopts the twenty-sixth day of June of the year one thousand nine hundred and seventy-three, the following Convention, which may be cited as the Minimum Age Convention, 1973:

*Article 1*

1. Each Member for which this Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.

*Article 2*

2. (1) Each Member which ratifies this Convention shall specify, in a declaration appended to its ratification, a minimum age for admission to employment or work within its territory and on means of transport registered in its territory; subject to Articles 4 to 8 of this Convention, no one under that age shall be admitted to employment or work in any occupation.

2. (2) Each Member which has ratified this Convention may subsequently notify the Director-

General of the International Labour Office, by further declarations, that it specifies a minimum age higher than that previously specified.

2. (3) The minimum age specified in pursuance of paragraph 1 of this Article shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years.

2. (4) Notwithstanding the provisions of paragraph 3 of this Article, a Member whose economy and educational facilities are insufficiently developed may, after consultation with the organizations of employers and workers concerned, where such exist, initially specify a minimum age of 14 years.

2. (5) Each Member which has specified a minimum age of 14 years in pursuance of the provisions of the preceding paragraph shall include in its reports on the application of this Convention submitted under article 22 of the constitution of the International Labour Organisation, a statement--

(a) that its reason for doing so subsists; or

(b) that it renounces its right to avail itself of the provisions in question as from a stated date.

#### *Article 3*

3. (1) The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years.

3. (2) The types of employment or work to which paragraph 1 of this Article applies shall be determined by national laws or regulations or by the competent authority, after consultation with the organisations of employers and workers concerned, where such exist.

3. (3) Notwithstanding the provisions of paragraph 1 of this Article, national laws or regulations or the competent authority may, after consultation with the organisations of employers and workers concerned, where such exist, authorise employment or work as from the age of 16 years on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity.

#### *Article 4*

4. (1) In so far as necessary, the competent authority, after consultation with the organisations of employers and workers concerned, where such exist, may exclude from the application of this Convention limited categories of

employment or work in respect of which special and substantial problems of application arise.

4. (2) Each Member which ratifies this Convention shall list in its first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation any categories which may have been excluded in pursuance of paragraph 1 of this Article, giving the reasons for such exclusion, and shall state in subsequent reports the position of its law and practice in respect of the categories excluded and the extent to which effect has been given or is proposed to be given to the Convention in respect of such categories.

4. (3) Employment or work covered by Article 3 of this Convention shall not be excluded from the application of the Convention in pursuance of this Article.

#### *Article 5*

5. (1) A Member whose economy and administrative facilities are insufficiently developed may, after consultation with the organisations of employers and workers concerned, where such exist, initially limit the scope of application of this Convention.

5. (2) Each Member which avails itself of the provisions of paragraph 1 of this Article shall specify, in a declaration appended to its ratification, the branches of economic activity or types of undertakings to which it will apply the provisions of the Convention.

5. (3) The provisions of the Convention shall be applicable as a minimum to the following: mining and quarrying; manufacturing; construction; electricity, gas and water; sanitary services; transport, storage and communication; and plantations and other agricultural undertakings mainly producing for commercial purposes, but excluding family and small-scale holdings producing for local consumption and not regularly employing hired workers.

5. (4) Any Member which has limited the scope of application of this Convention in pursuance of this Article:

(a) shall indicate in its reports under article 22 of the Constitution of the International Labour Organisation the general position as regards the employment or work of young persons and children in the branches of activity which are excluded from the scope of application of this Convention and any progress which may have been made towards wider application of the provisions of the Convention;

(b) may at any time formally extend the scope of application by a declaration addressed to the Director-General of the International Labour Office.

*Article 6*

6. This Convention does not apply to work done by children and young persons in schools for general, vocational or technical education or in other training institutions, or to work done by persons at least 14 years of age in undertakings, where such work is carried out in accordance with conditions prescribed by the competent authority, after consultation with the organizations of employers and workers concerned, where such exist, and is an integral part of:

- (a) a course of education or training for which a school or training institution is primarily responsible;
- (b) a programme of training mainly or entirely in an undertaking, which programme has been approved by the competent authority; or
- (c) a programme of guidance or orientation designed to facilitate the choice of an occupation or of a line of training.

*Article 7*

7. (1) National laws or regulations may permit the employment or work of persons 13 to 15 years of age on light work which is:

- (a) not likely to be harmful to their health or development; and
- (b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received.

7. (2) National laws or regulations may also permit the employment or work of persons who are at least 15 years of age but have not yet completed their compulsory schooling on work which meets the requirements set forth in sub-paragraphs (a) and (b) of paragraph 1 of this Article.

7. (3) The competent authority shall determine the activities in which employment or work may be permitted under paragraphs 1 and 2 of this Article and shall prescribe the number of hours during which and the conditions in which such employment or work may be undertaken.

7. (4) Notwithstanding the provisions of paragraphs 1 and 2 of this Article, a Member which has availed itself of the provisions of paragraph 4 of Article 2 may, for as long as it continues to do so, substitute the ages 12 and 14 for the

ages 13 and 15 in paragraph 1 and the age 14 for the age 15 in paragraph 2 of this Article.

*Article 8*

8. (1) After consultation with the organisations of employers and workers concerned, where such exist, the competent authority may, by permits granted in individual cases, allow exceptions to the prohibition of employment or work provided for in Article 2 of this Convention, for such purposes as participation in artistic performances.

8. (2) Permits so granted shall limit the number of hours during which and prescribe the conditions in which employment or work is allowed.

*Article 9*

9. (1) All necessary measures, including the provision of appropriate penalties, shall be taken by the competent authority to ensure the effective enforcement of the provisions of this Convention.

9. (2) National laws or regulations or the competent authority shall define the persons responsible for compliance with the provisions giving effect to the Convention.

9. (3) National laws or regulations or the competent authority shall prescribe the registers or other documents which shall be kept and made available by the employer; such registers or documents shall contain the names and ages or dates of birth, duly certified wherever possible, of persons whom he employs or who work for him and who are less than 18 years of age.

**ILO Convention No. 182**  
**Worst Forms of Child Labour Convention, 1999**

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 87th Session on 1 June 1999, and

Considering the need to adopt new instruments for the prohibition and elimination of the worst forms of child labour, as the main priority for national and international action, including international cooperation and assistance, to complement the Convention and the Recommendation concerning Minimum Age for Admission to Employment, 1973, which remain fundamental instruments on child labour, and

Considering that the effective elimination of the worst forms of child labour requires immediate and comprehensive action, taking into account the importance of free basic education and the need to remove the children concerned from all such work and to provide for their rehabilitation and social integration while addressing the needs of their families, and

Recalling the resolution concerning the elimination of child labour adopted by the International Labour Conference at its 83rd Session in 1996, and

Recognizing that child labour is to a great extent caused by poverty and that the long-term solution lies in sustained economic growth leading to social progress, in particular poverty alleviation and universal education, and

Recalling the Convention on the Rights of the Child adopted by the United Nations General Assembly on 20 November 1989, and

Recalling the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference at its 86th Session in 1998, and

Recalling that some of the worst forms of child labour are covered by other international instruments, in particular the Forced Labour Convention, 1930, and the United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956, and

Having decided upon the adoption of certain proposals with regard to child labour, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention; adopts this seventeenth day of June of the year one thousand nine

hundred and ninety-nine the following Convention, which may be cited as the Worst Forms of Child Labour Convention, 1999.

*Article 1*

1. Each Member which ratifies this Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.

*ARTICLE 2*

2. For the purposes of this Convention, the term child shall apply to all persons under the age of 18.

*ARTICLE 3*

3. For the purposes of this Convention, the term the worst forms of child labour comprises:

(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;

(b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

*ARTICLE 4*

4. (1) The types of work referred to under Article 3(d) shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned, taking into consideration relevant international standards, in particular Paragraphs 3 and 4 of the Worst Forms of Child Labour Recommendation, 1999.

4. (2) The competent authority, after consultation with the organizations of employers and workers concerned, shall identify where the types of work so determined exist.

4. (3) The list of the types of work determined under paragraph 1 of this Article shall be periodically examined and revised as necessary, in consultation with the organizations of employers and workers concerned.

#### *ARTICLE 5*

5. Each Member shall, after consultation with employers' and workers' organizations, establish or designate appropriate mechanisms to monitor the implementation of the provisions giving effect to this Convention.

#### *ARTICLE 6*

6. (1) Each Member shall design and implement programmes of action to eliminate as a priority the worst forms of child labour.

6. (2) Such programmes of action shall be designed and implemented in consultation with relevant government institutions and employers' and workers' organizations, taking into consideration the views of other concerned groups as appropriate.

#### *ARTICLE 7*

7. (1) Each Member shall take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to this Convention including the provision and application of penal sanctions or, as appropriate, other sanctions.

7. (2) Each Member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to:

- (a) prevent the engagement of children in the worst forms of child labour;
- (b) provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration;
- (c) ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour;
- (d) identify and reach out to children at special risk; and
- (e) take account of the special situation of girls.

7. (3) Each Member shall designate the competent authority responsible for the implementation of the provisions giving effect to this Convention.

#### *ARTICLE 8*

8. Members shall take appropriate steps to assist one another in giving effect to the provisions of this Convention through enhanced international cooperation and/or assistance including support for social and economic development, poverty eradication programmes and universal education.

1 **ISO/TMB WG SR**

2 Date: **21 May 2010**

3  
4 **ISO/DIS 26000 (Unedited Draft) IDTF\_N115**

5 ISO/TMB WG SR

6 Secretariat: SIS/ABNT

7 **Guidance on social responsibility**

8 *Lignes directrices relatives à la responsabilité sociétale*

9  
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17 *This document is an unedited preliminary consolidation of the agreed texts resulting from the*  
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106

## 107 Foreword

108 ISO (the International Organization for Standardization) is a worldwide federation of national standards bodies  
109 (ISO member bodies). The work of preparing International Standards is normally carried out through ISO  
110 technical committees. Each member body interested in a subject for which a technical committee has been  
111 established has the right to be represented on that committee. International organizations, governmental and  
112 non-governmental, in liaison with ISO, also take part in the work. ISO collaborates closely with the  
113 International Electrotechnical Commission (IEC) on all matters of electrotechnical standardization.

114 International Standards are drafted in accordance with the rules given in the ISO/IEC Directives, Part 2.

115 The main task of technical committees is to prepare International Standards. Draft International Standards  
116 adopted by the technical committees are circulated to the member bodies for voting. Publication as an  
117 International Standard requires approval by at least 75 % of the member bodies casting a vote.

118 Attention is drawn to the possibility that some of the elements of this document may be the subject of patent  
119 rights. ISO shall not be held responsible for identifying any or all such patent rights.

120 ISO 26000 was prepared by ISO/TMB WG *Social Responsibility*.

121 This International Standard was developed using a multi-stakeholder approach involving experts from more  
122 than 90 countries and 40 international or broadly-based regional organizations involved in different aspects of  
123 social responsibility. These experts were from six different stakeholder groups: consumers; government;  
124 industry; labour; non-governmental organizations (NGOs); and service, support, research, academics and  
125 others. In addition, specific provision was made to achieve a balance between developing and developed  
126 countries as well as a gender balance in drafting groups. Although efforts were made to ensure balanced  
127 participation of all the stakeholder groups, a full and equitable balance of stakeholders was constrained by  
128 various factors, including the availability of resources and the need for English language skills.

## 129 Introduction

130 Organizations around the world, and their stakeholders, are becoming increasingly aware of the need for and  
131 benefits of socially responsible behaviour. The objective of social responsibility is to contribute to sustainable  
132 development.

133 An organization's performance in relation to the society in which it operates and to its impact on the  
134 environment has become a critical part of measuring its overall performance and its ability to continue  
135 operating effectively. This is, in part, a reflection of the growing recognition of the need for ensuring healthy  
136 ecosystems, social equity and good organizational governance. In the long run, all organizations' activities  
137 depend on the health of the world's ecosystems. Organizations are subject to greater scrutiny by their various  
138 stakeholders. The perception and reality of an organization's social responsibility performance can influence,  
139 among other things:

- 140 — competitive advantage;
- 141 — its reputation;
- 142 — its ability to attract and retain workers or members, customers, clients or users;
- 143 — the maintenance of employees' morale, commitment and productivity;
- 144 — the view of investors, owners, donors, sponsors and the financial community; and
- 145 — its relationship with companies, governments, the media, suppliers, peers, customers and the community  
146 in which it operates.

147 This International Standard provides guidance on the underlying principles of social responsibility, recognizing  
148 social responsibility and engaging stakeholders, the core subjects and issues pertaining to social responsibility  
149 (see Table 2) and on ways to integrate socially responsible behaviour into the organization (see Figure 1).  
150 This International Standard emphasizes the importance of results and improvements in social responsibility  
151 performance.

152 This International Standard is intended to be useful to all types of organizations in the private, public and non  
153 profit sectors, whether large or small, and whether operating in developed or developing countries. While not  
154 all parts of this International Standard will be of equal use to all types of organizations, all core subjects are  
155 relevant to every organization. It is an individual organization's responsibility to identify which issues within the  
156 core subjects are relevant and significant for the organization to address, through its own considerations and  
157 through dialogue with stakeholders.

158 Governmental organizations, like any other organization, may wish to use this International Standard.  
159 However, it is not intended to replace, alter or in any way change the obligations of the state.

160 Every organization is encouraged to become more socially responsible by using this International Standard.

161 Recognizing that organizations are at various stages of understanding and integrating social responsibility,  
162 this International Standard is intended for use by those beginning to address social responsibility, as well as  
163 those more experienced with its implementation. The beginner may find it useful to read and apply this  
164 International Standard as a primer on social responsibility, while the experienced user may wish to use it to  
165 improve existing practices and to further integrate social responsibility into the organization. Although this  
166 International Standard is meant to be read and used as a whole, readers looking for specific types of  
167 information on social responsibility may find the outline in Table 1 useful. Box 1 provides summary information  
168 to assist users of this International Standard.

169 This International Standard provides guidance to users and is neither intended nor appropriate for certification  
170 purposes. Any offer to certify, or claim to be certified to ISO 26000 would be a misrepresentation of the intent  
171 and purpose of this International Standard.

172 Reference to any voluntary initiative or tool in the annex of this International Standard does not imply that ISO  
173 endorses or gives special status to that initiative or tool.

174

**Table 1 — ISO 26000 outline**

<b>Clause title</b>	<b>Clause number</b>	<b>Description of clause contents</b>
Scope	Clause 1	Defines the content and scope of this International Standard and identifies certain limitations and exclusions.
Terms and definitions	Clause 2	Identifies and provides the definition of key terms that are of fundamental importance for understanding social responsibility and for using this International Standard.
Understanding social responsibility	Clause 3	Describes the important factors and conditions that have influenced the development of social responsibility and that continue to affect its nature and practice. It also describes the concept of social responsibility itself – what it means and how it applies to organizations. The clause includes guidance for small and medium-sized organizations on the use of this International Standard.
Principles of social responsibility	Clause 4	Introduces and explains the principles of social responsibility.
Recognizing social responsibility and engaging with stakeholders	Clause 5	Addresses two practices of social responsibility: an organization's recognition of its social responsibility, and its identification of and engagement with its stakeholders. It provides guidance on the relationship between an organization, its stakeholders and society, recognizing the core subjects and issues of social responsibility and an organization's sphere of influence.
Guidance on social responsibility core subjects	Clause 6	Explains the core subjects and associated issues relating to social responsibility (see Table 2). For each core subject, information has been provided on its scope, its relationship to social responsibility, related principles and considerations, and related actions and expectations.
Guidance on integrating social responsibility throughout an organization	Clause 7	Provides guidance on putting social responsibility into practice in an organization. This includes guidance related to: understanding the social responsibility of an organization, integrating social responsibility throughout an organization, communication related to social responsibility, improving the credibility of an organization regarding social responsibility, reviewing progress and improving performance and evaluating voluntary initiatives for social responsibility.
Annex on voluntary initiatives and tools related to social responsibility	Annex A	Presents a non-exhaustive list of voluntary initiatives and tools related to social responsibility that address aspects of one or more core subjects or the integration of social responsibility throughout an organization.
Abbreviated terms	Annex B	Contains abbreviated terms used in this International Standard
Bibliography		Includes references to authoritative international instruments and ISO Standards that are referenced in the body of this International Standard as source material.

175

Table 2 — Core subjects and issues of social responsibility

Core subjects and issues	Addressed in sub-clause
Core subject: Organizational governance	6.2
Decision-making processes and structures	6.2.3
Core subject: Human rights	6.3
Issue 1: Due diligence	6.3.3
Issue 2: Human rights risk situations	6.3.4
Issue 3: Avoidance of complicity	6.3.5
Issue 4: Resolving grievances	6.3.6
Issue 5: Discrimination and vulnerable groups	6.3.7
Issue 6: Civil and political rights	6.3.8
Issue 7: Economic, social and cultural rights	6.3.9
Issue 8: Fundamental rights at work	6.3.10
Core subject: Labour Practices	6.4
Issue 1: Employment and employment relationships	6.4.3
Issue 2: Conditions of work and social protection	6.4.4
Issue 3: Social dialogue	6.4.5
Issue 4: Health and safety at work	6.4.6
Issue 5: Human development and training in the workplace	6.4.7
Core subject: The environment	6.5
Issue 1: Prevention of pollution	6.5.3
Issue 2: Sustainable resource use	6.5.4
Issue 3: Climate change mitigation and adaptation	6.5.5
Issue 4: Protection and restoration of the natural environment	6.5.6
Core subject: Fair operating practices	6.6
Issue 1: Anti-corruption	6.6.3
Issue 2: Responsible political involvement	6.6.4
Issue 3: Fair competition	6.6.5
Issue 4: Promoting social responsibility in the sphere of influence	6.6.6
Issue 5: Respect for property rights	6.6.7
Core subject: Consumer issues	6.7
Issue 1: Fair marketing, information and contractual practices	6.7.3
Issue 2: Protecting consumers' health and safety	6.7.4
Issue 3: Sustainable consumption	6.7.5
Issue 4: Consumer service, support, and dispute resolution	6.7.6
Issue 5: Consumer data protection and privacy	6.7.7
Issue 6: Access to essential services	6.7.8
Issue 7: Education and awareness	6.7.9

178

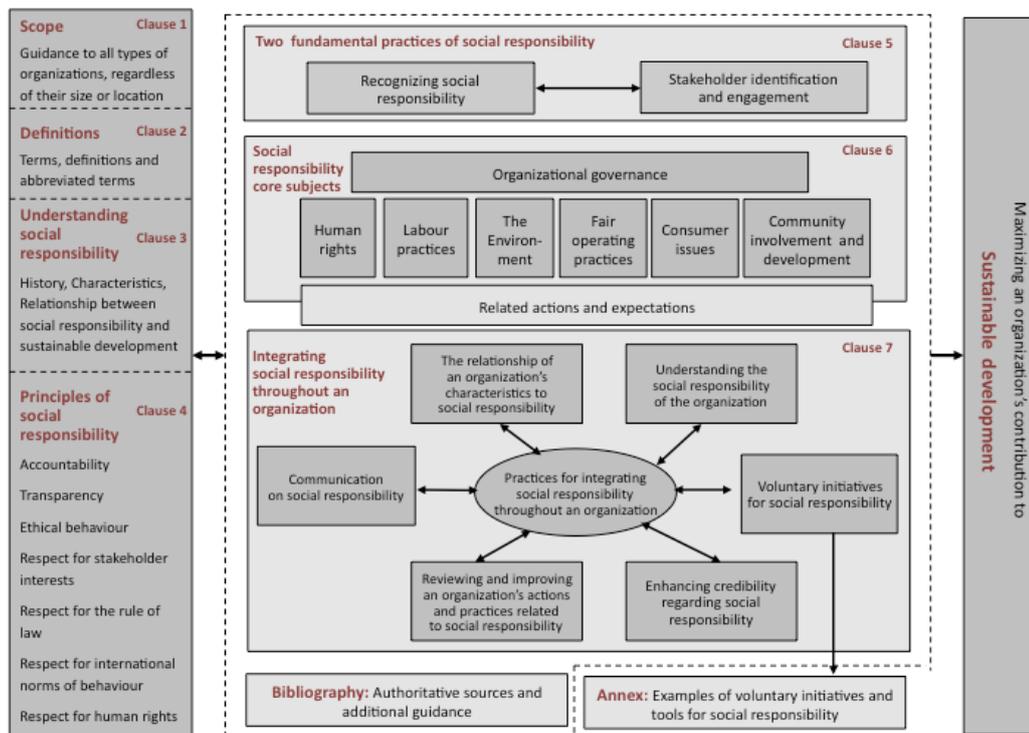
Table 2 (continued)

Core subjects and issues	Addressed in sub-clause
Core subject: Community involvement and development	6.8
Issue 1: Community involvement	6.8.3
Issue 2: Education and culture	6.8.4
Issue 3: Employment creation and skills development	6.8.5
Issue 4: Technology development	6.8.6
Issue 5: Wealth and income creation	6.8.7
Issue 6: Health	6.8.8
Issue 7: Social investment	6.8.9

179

180

Figure 1 — Schematic overview of ISO 26000



181

182 Figure 1 provides an overview of ISO 26000, and is intended to assist organizations in understanding how to  
 183 use this standard.

184 — After considering the characteristics of social responsibility and its relationship with sustainable  
 185 development (clause 3), it is suggested that an organization should review the principles of social  
 186 responsibility described in clause 4. In practicing social responsibility, organizations should respect and  
 187 address these principles, along with the principles specific to each core subject (clause 6).

188 — Before analysing the core subjects and issues of social responsibility, as well as each of the related  
 189 actions and expectations (clause 6), an organization should consider two fundamental practices of social  
 190 responsibility: recognizing its social responsibility within its sphere of influence, and identifying and  
 191 engaging with its stakeholders (clause 5).

192 — Once the principles have been understood, and the core subjects and relevant and significant issues of  
193 social responsibility have been identified, an organization should seek to integrate social responsibility  
194 throughout its decisions and activities, using the guidance provided in clause 7. This involves practices  
195 such as: making social responsibility integral to its policies, organizational culture, strategies and  
196 operations; building internal competency for social responsibility; undertaking internal and external  
197 communication on social responsibility; and regularly reviewing these social responsibility actions and  
198 practices.

199 — Further guidance on the core subjects and integration practices of social responsibility is available from  
200 authoritative sources (bibliography) and from various voluntary initiatives and tools (some global  
201 examples of which are presented in the annex).

202 When approaching and practising social responsibility, the overarching objective for an organization is to  
203 maximize its contribution to sustainable development.

204 **Box 1 – Summary information to assist users of this International Standard**

205 ISO defines a standard as a document, established by consensus and approved by a recognized body that  
206 provides, for common and repeated use, rules, guidelines or characteristics for activities or their results, aimed  
207 at the achievement of the optimum degree of order in a given context. (ISO/IEC Guide 2:2004, definition 3.2)

208 **ISO terminology** (based on ISO/IEC Directives Part 2, Annex H)

209 This International Standard contains no requirements and therefore the word “shall”, which indicates a  
210 requirement in ISO language, is not used. Recommendations use the word “should”. In some countries,  
211 certain recommendations of ISO 26000 are incorporated into law, and are therefore legally required.

212 The word “may” is used to indicate that something is permitted. The word “can” is used to indicate that  
213 something is possible, for example, that an organization or individual is able to do something.

214 Terms that are not defined in Clause 2 are used in the common sense of the word, assuming their dictionary  
215 meanings.

216 An International Standard providing guidance does not contain requirements but may contain  
217 recommendations.

218 In terms of ISO/IEC Directives Part 2 a recommendation is defined as an: “expression in the content of a  
219 document conveying that among several possibilities one is recommended as particularly suitable, without  
220 mentioning or excluding others, or that a certain course of action is preferred but not necessarily required, or  
221 that (in the negative form) a certain possibility or course of action is deprecated but not prohibited.”

222 **Purpose of informative annex** (based on ISO/IEC Directives Part 2, 6.4.1)

223 The informative Annex A to this International Standard gives additional information intended to assist  
224 understanding and use of the document; it does not itself constitute part of its guidance nor is it referenced in  
225 the text of this International Standard. Annex A provides a non-exhaustive list of existing voluntary initiatives  
226 and tools related to social responsibility. It provides examples of these and draws attention to additional  
227 guidance that may be available, helping users to compare practices with others. The fact that an initiative or  
228 tool is listed in the Annex does not mean that this initiative or tool is endorsed by ISO.

229 **Bibliography**

230 The Bibliography, which is an integral part of this International Standard, provides information to identify and  
231 locate the documents referenced in the text. It consists of references to international instruments that are  
232 considered authoritative sources for the recommendations in this International Standard. These instruments  
233 may contain additional useful guidance and information; ISO 26000 users are encouraged to consult them to  
234 better understand and implement social responsibility. References are shown in the text by superscript  
235 numbers in square brackets. NB: Reference numbers are not assigned in the order of the documents’  
236 appearance in the text. ISO documents are listed first; then the remaining documents are listed in alphabetical  
237 order of the issuing organization.

238 **Text boxes**

239 Text boxes for supplementary guidance are provided to assist users or give illustrative examples. Text in  
240 boxes should not be considered less important than other text.

## 241 **Guidance on social responsibility**

### 242 **1 Scope**

243 This International Standard provides guidance to all types of organizations, regardless of their size or location,  
244 on:

- 245 a) concepts, terms and definitions related to social responsibility;
- 246 b) the background, trends and characteristics of social responsibility;
- 247 c) principles and practices relating to social responsibility;
- 248 d) the core subject and issues of social responsibility
- 249 e) integrating, implementing and promoting socially responsible behaviour throughout the organization  
250 and through its policies and practices within its sphere of influence;
- 251 f) identifying and engaging with stakeholders; and
- 252 g) communicating commitments and performance and other information related to social responsibility.

253 This International Standard is intended to assist organizations in contributing to sustainable development. It is  
254 also intended to encourage them to go beyond legal compliance, recognizing that compliance with law is a  
255 fundamental duty of any organization and an essential part of their social responsibility. It is intended to  
256 promote common understanding in the field of social responsibility, and to complement other instruments and  
257 initiatives for social responsibility and not to replace them.

258 In applying this International Standard it is advisable that an organization take into consideration societal,  
259 environmental, legal, cultural, political and organizational diversity, as well as differences in economic  
260 conditions, while being consistent with international norms of behaviour.

261 This International Standard is not a management system standard. It is not intended or appropriate for  
262 certification purposes or regulatory or contractual use. Any offer to certify, or claims to be certified, to ISO  
263 26000 would be a misrepresentation of the intent and purpose and a misuse of this International Standard. As  
264 this International Standard does not contain requirements, any such certification would not be a demonstration  
265 of conformity with this International Standard.

266 This International Standard is intended to provide organizations with guidance concerning social responsibility  
267 and can be used as part of public policy activities. However, for purposes of the Marrakech Agreement  
268 Establishing the World Trade Organization (WTO) it is not intended to be interpreted as an "international  
269 standard", "guideline" or "recommendation", nor is it intended to provide a basis for any presumption or finding  
270 that a measure is consistent with WTO obligations. Further, it is not intended to provide a basis for legal  
271 actions, complaints, defences or other claims in any international, domestic or other proceeding, nor is it  
272 intended to be cited as evidence of the evolution of customary international law.

273 This International Standard is not intended to prevent the development of national standards that are more  
274 specific, more demanding, or of a different type.

275

276 **2 Terms and definitions**

277 For the purposes of this document, the following terms and definitions apply.

278 **2.1**

279 **accountability**

280 state of being answerable for decisions and activities to the organization's governing bodies, legal authorities  
281 and, more broadly, its other stakeholders

282 **2.2**

283 **consumer**

284 individual member of the general public purchasing or using property, products or services for private  
285 purposes

286 **2.3**

287 **customer**

288 organization or individual member of the general public purchasing property, products or services for  
289 commercial, private or public purposes

290 **2.4**

291 **due diligence**

292 comprehensive, proactive process to identify the actual and potential negative social, environmental and  
293 economic impacts of an organization's decisions and activities over the entire life cycle of a project or  
294 organizational activity, with the aim of avoiding and mitigating negative impacts

295 **2.5**

296 **employee**

297 an individual in a relationship recognized as an "employment relationship" in national law or practice

298 NOTE Employee is a narrower term than "worker", defined in 2.27 below.

299 **2.6**

300 **environment**

301 natural surroundings in which an organization operates, including air, water, land, natural resources, flora,  
302 fauna and people, outer space and their interrelationships

303 NOTE Surroundings in this context extend from within an organization to the global system.

304 **2.7**

305 **ethical behaviour**

306 behaviour that is in accordance with accepted principles of right or good conduct in the context of a particular  
307 situation, and consistent with **international norms of behaviour** (2.11)

308 **2.8**

309 **gender equality**

310 equitable treatment for women and men

311 NOTE This includes equal treatment or, in some instances, treatment that is different but considered equivalent in  
312 terms of rights, benefits, obligations and opportunities.

313 **2.9**

314 **impact of an organization**

315 **impact**

316 positive or negative change to society, economy or the **environment** (2.6), wholly or partially resulting from an  
317 organization's past and present decisions and activities

318 **2.10**

319 **initiative for social responsibility**

320 **initiative**

321 programme or activity expressly devoted to meeting a particular aim related to **social responsibility** (2.1.18)

322 NOTE Initiatives for social responsibility can be developed, sponsored or administered by any type of organization.

### 323 2.11

#### 324 **international norms of behaviour**

325 expectations of socially responsible organizational behaviour derived from customary international law,  
326 generally accepted principles of international law, or intergovernmental agreements that are universally or  
327 nearly universally recognized

328 NOTE 1 Intergovernmental agreements include treaties and conventions

329 NOTE 2 Although customary international law, generally accepted principles of international law and intergovernmental  
330 agreements are directed primarily at states, they express goals and principles to which all organizations can aspire.

331 NOTE 3 International norms of behaviour evolve over time.

### 332 2.12

#### 333 **organization**

334 entity or group of people and facilities with an arrangement of responsibilities, authorities and relationships and identifiable  
335 objectives

336 NOTE 1 For the purpose of this International Standard organization does not include government acting in its  
337 sovereign role to create and enforce law, exercise judicial authority, carry out its duty to establish policy in the public  
338 interest or honour the international obligations of the state.

339 NOTE 2 Clarity on the meaning of small and medium-sized organizations (SMOs) is provided in Clause 3.3.

### 340 2.13

#### 341 **organizational governance**

342 system by which an **organization** (2.12) makes and implements decisions in pursuit of its objectives

### 343 2.14

#### 344 **principle**

345 fundamental basis for decision making or behaviour

### 346 2.15

#### 347 **product**

348 article or substance that is offered for sale or is part of a service delivered by an **organization** (2.12)

### 349 2.16

#### 350 **service**

351 action of an **organization** (2.12) to meet a demand or need

### 352 2.17

#### 353 **social dialogue**

354 negotiation, consultation or simply exchange of information between or among representatives of  
355 governments, employers and workers, on matters of common interest relating to economic and social policy

356 NOTE In this International Standard, the term social dialogue is used only in the meaning applied by the International  
357 Labour Organization (ILO).

### 358 2.18

#### 359 **social responsibility**

360 responsibility of an **organization** (2.12) for the impacts of its decisions and activities on society and the  
361 **environment** (2.6), through transparent and **ethical behaviour** (2.7) that

362 — contributes to **sustainable development** (2.23), including health and the welfare of society;

363 — takes into account the expectations of **stakeholders** (2.20);

364 — is in compliance with applicable law and consistent with **international norms of behaviour** (2.11); and

365 — is integrated throughout the **organization** (2.12) and practised in its relationships

366 NOTE 1 Activities include products, services and processes.

367 NOTE 2 Relationships refer to an organization's activities within its **sphere of influence** (2.19).

368 **2.19**

369 **sphere of influence**

370 range/extent of political, contractual, economic or other relationships through which an organization (2.12) has  
371 the ability to affect the decisions or activities of individuals or organizations

372 NOTE 1 The ability to influence does not, in itself, mean there is a responsibility to exercise that influence

373 NOTE 2 Where this term appears in the standard, it should always be understood in the context of the guidance in  
374 5.2.3 and 7.3.2

375 **2.20**

376 **stakeholder**

377 individual or group that has an interest in any decision or activity of an **organization** (2.12)

378 **2.21**

379 **stakeholder engagement**

380 activity undertaken to create opportunities for dialogue between an organization and one or more of its  
381 **stakeholders** (2.20), with the aim of providing an informed basis for the organization's decisions

382 **2.22**

383 **supply chain**

384 sequence of activities or parties that provides products (2.15) or services to the **organization** (2.12)

385 NOTE In some instances, the term supply chain is understood to be the same as **value chain** (2.25). However, for  
386 the purpose of this International Standard supply chain is used as defined above.

387 **2.23**

388 **sustainable development**

389 development that meets the needs of the present without compromising the ability of future generations to  
390 meet their own needs.

391 NOTE Sustainable development is about integrating the goals of a high quality of life, health and prosperity with  
392 social justice and maintaining the earth's capacity to support life in all its diversity. These social, economic and  
393 environmental goals are interdependent and mutually reinforcing. Sustainable development can be treated as a way of  
394 expressing the broader expectations of society as a whole.

395 **2.24**

396 **transparency**

397 openness about decisions and activities that affect society, the economy and the **environment** (2.6), and  
398 willingness to communicate these in a clear, accurate, timely, honest and complete manner

399 **2.25**

400 **value chain**

401 entire sequence of activities or parties that provide or receive value in the form of **products** (2.15) or **services**  
402 (2.16)

403 NOTE 1 Parties that provide value include suppliers, outsourced workers, contractors and others.

404 NOTE 2 Parties that receive value include **customers** (2.3), **consumers** (2.2), clients, members and other users.

405 **2.26**406 **vulnerable group**

407 group of individuals who share one or several characteristics that are the basis of discrimination or adverse  
 408 social, economic, cultural, political or health circumstances, and that cause them to lack the means to achieve  
 409 their rights or otherwise enjoy equal opportunities

410 **2.27**411 **worker**

412 anyone who performs work, whether an employee or someone who is self-employed

413 **3 Understanding social responsibility**414 **3.1 The social responsibility of organizations: Historical background**

415 The term social responsibility came into widespread use in the early 1970s, although various aspects of social  
 416 responsibility were the subject of action by organizations and governments as far back as the late 19th  
 417 century, and in some instances even earlier.

418 Attention to social responsibility has in the past focused primarily on business. The term "corporate social  
 419 responsibility" (CSR) is more familiar to most people than "social responsibility".

420 The view that social responsibility is applicable to all organizations emerged as different types of  
 421 organizations, not just those in the business world, recognized that they too had responsibilities for  
 422 contributing to sustainable development.

423 The elements of social responsibility reflect the expectations of society at a particular time, and are therefore  
 424 liable to change. As society's concerns change, its expectations of organizations also change to reflect those  
 425 concerns.

426 An early notion of social responsibility centred on philanthropic activities such as giving to charity. Subjects  
 427 such as labour practices and fair operating practices emerged a century or more ago. Other subjects, such as  
 428 human rights, the environment, consumer protection and countering fraud and corruption, were added over  
 429 time, as they received greater attention.

430 The core subjects and issues identified in this International Standard reflect a current view of good practice.  
 431 Views of good practice too will undoubtedly change in the future, and additional issues may come to be seen  
 432 as important elements of social responsibility.

433 **3.2 Recent trends in social responsibility**

434 For a number of reasons, awareness about the social responsibility of organizations is increasing.

435 Globalization, greater ease of mobility and accessibility, and the growing availability of instant communications  
 436 mean that individuals and organizations around the world are finding it easier to know about the decisions and  
 437 activities of organizations in both nearby and distant locations. These factors provide the opportunity for  
 438 organizations to benefit from learning new ways of doing things and solving problems. This also means that  
 439 organizations' decisions and activities are subject to increased scrutiny by a wide variety of groups and  
 440 individuals. Policies or practices applied by organizations in different locations can be readily compared.

441 The global nature of some environmental and health issues, recognition of worldwide responsibility for  
 442 combating poverty, growing financial and economic interdependence and more geographically dispersed  
 443 value chains mean that the matters relevant to an organization may extend well beyond those existing in the  
 444 immediate area in which the organization is located. It is important that organizations address social  
 445 responsibility irrespective of social or economic circumstances. Instruments such as the Rio Declaration on  
 446 Environment and Development <sup>[119]</sup>, the Johannesburg Declaration on Sustainable Development <sup>[112]</sup>, the  
 447 Millennium Development Goals <sup>[114]</sup> and the ILO Declaration of Fundamental Principles and Rights at Work  
 448 emphasize this worldwide interdependence.

449 Over the past several decades, globalization has resulted in an increase in the impact of different types of  
450 organizations – including those in the private sector, NGOs and government – on communities and the  
451 environment.

452 NGOs and companies have become providers of many services usually offered by government, particularly in  
453 countries where governments have faced serious challenges and constraints, and have been unable to  
454 provide services in areas such as health, education and welfare. As the capability of country governments  
455 expands, the roles of government and private sector organizations are undergoing change.

456 In times of economic and financial crisis, organizations should seek to sustain their activities related to social  
457 responsibility. Such crises have a significant impact on more vulnerable groups, and thus suggest a greater  
458 need for increased social responsibility. They also present particular opportunities for integrating social,  
459 economic and environmental considerations more effectively into policy reform and organizational decisions  
460 and activities. Government has a crucial role to play in realizing these opportunities.

461 Consumers, customers, donors, investors and owners are, in various ways, exerting financial influence on  
462 organizations in relation to social responsibility. The expectations of society regarding the performance of  
463 organizations continue to grow. Community right-to-know legislation in many locations gives people access to  
464 detailed information about the decisions and activities of some organizations. A growing number of  
465 organizations are communicating with their stakeholders, including by producing social responsibility reports,  
466 to meet their needs for information about the organization's performance.

467 These and other factors form the context for social responsibility and contribute to the call for organizations to  
468 demonstrate their social responsibility.

### 469 **3.3 Characteristics of social responsibility**

#### 470 **3.3.1 General**

471 The essential characteristic of social responsibility (2.1.18) is the willingness of an organization to incorporate  
472 social and environmental considerations in its decision-making and be accountable for the impacts of its  
473 decisions and activities on society and the environment. This implies both transparent and ethical behaviour  
474 that contributes to sustainable development, is in compliance with applicable law and consistent with  
475 international norms of behaviour, is integrated throughout the organisation and practiced in its relationships  
476 and takes into account the interests of stakeholders.

477 A stakeholder has one or more interests that can be affected by the decisions and activities of an  
478 organization. This interest gives the party a "stake" in the organization that creates a relationship to the  
479 organization. This relationship need not be formal or even acknowledged by the stakeholder or the  
480 organization. Stakeholders can be referred to as "interested parties". In determining which stakeholder  
481 interests to recognize, an organization should consider the lawfulness of those interests and their consistency  
482 with international norms of behaviour.

#### 483 **3.3.2 The expectations of society**

484 Social responsibility involves an understanding of the broader expectations of society. A fundamental principle  
485 of social responsibility is respect for the rule of law and compliance with legally binding obligations. Social  
486 responsibility, however, also entails actions beyond legal compliance and the recognition of obligations to  
487 others that are not legally binding. These obligations arise out of widely shared ethical and other values.

488 Although expectations of socially responsible behaviour will vary between countries and cultures,  
489 organizations should nevertheless respect international norms of behaviour such as those reflected in the  
490 Universal Declaration of Human Rights<sup>[117]</sup>, the Johannesburg Declaration<sup>[ref]</sup> and other instruments.

491 Clause 6 considers the core subjects of social responsibility. Each of these core subjects includes various  
492 issues that will enable an organization to identify its main impacts on society. The discussion of each issue  
493 also describes actions to address these impacts.

### 494 3.3.3 The role of stakeholders in social responsibility

495 Identification of and engagement with stakeholders are fundamental to social responsibility. An organization  
 496 should determine who has an interest in its decisions and activities, so that it can understand its impacts and  
 497 identify how to address them. Although stakeholders can help an organization identify the relevance of  
 498 particular matters to its decisions and activities, stakeholders do not replace broader society in determining  
 499 norms and expectations of behaviour. A matter may be relevant to the social responsibility of an organization  
 500 even if not specifically identified by the stakeholders it consults. Further guidance on this is provided in  
 501 Clauses 4.5 and 5.

### 502 3.3.4 Integrating social responsibility

503 Because social responsibility concerns the potential and actual impacts of an organization's decisions and  
 504 activities, the ongoing, regular daily activities of the organization constitute the most important behaviour to be  
 505 addressed. Social responsibility should be an integral part of core organizational strategy with assigned  
 506 responsibilities and accountability at all appropriate levels of the organization. It should be reflected in decision  
 507 making and considered in implementing activities.

508 Philanthropy (in this context understood as giving to charitable causes) can have a positive impact on society.  
 509 However, it should not be used by an organization as a substitute for engaging stakeholders, integrating social  
 510 responsibility into the organization or addressing any adverse impacts of its decisions or activities.

511 The impacts of an organization's decisions or activities can be greatly affected by its relationships with other  
 512 organizations. An organization may need to work with others to address its responsibilities. These can include  
 513 peer organizations, competitors (while taking care to avoid anti-competitive behaviour), other parts of the  
 514 value chain or any other relevant party within the organization's sphere of influence.

515 Box 2 describes the importance of gender equality and how it relates to social responsibility. Box 3 describes  
 516 how ISO 26000 covers the activities of small and medium-sized organizations (SMOs).

517	<b>Box 2 – Gender equality and social responsibility</b>
518 519 520 521	All societies assign gender roles to men and women. Gender roles are learned behaviours that condition which activities and responsibilities are perceived as male and female. These gender roles can discriminate against women, but also against men. In all cases, gender discrimination limits the potential of individuals, families, communities and societies.
522 523 524	There is a demonstrated positive link between gender equality and economic and social development, which is why gender equality is one of the Millennium Development Goals. Promotion of gender equality in an organization's activities and advocacy is an important component of social responsibility.
525 526	Organizations should review their decisions and activities to eliminate gender bias and promote gender equality. Areas include:
527 528	— the mix of men and women in the organization's governing structure and management, with the aim of progressively achieving parity and eliminating gender barriers;
529 530	— equal treatment of men and women workers in recruitment, job assignment, training, opportunities for advancement, compensation and termination of employment;
531 532	— equal remuneration for men and women workers for work of equal value ( <i>Add reference to ILO Equal Remuneration Convention</i> )
533	— possible differential impacts on men and women concerning workplace and community safety and health;
534 535 536 537	— decisions and activities of the organization that give equal consideration to the needs of men and women (for example, checking for any differential impact on men and women arising from the development of specific products or services, or reviewing the images of women and men presented in any communications or advertising by the organization); and

538 — benefits for both women and men from the organization’s advocacy and contributions to community  
 539 development, with possible special attention to redressing areas where either gender is disadvantaged.

540 Gender equality in stakeholder engagement is also an important means for achieving gender equality in an  
 541 organization’s activities. In addition to including a balance between men and women, organizations may find it  
 542 useful to seek expertise in addressing gender issues.

543 Organizations are encouraged to use indicators, targets and best practice references to systematically monitor  
 544 processes and track progress in achieving gender equality.  
 545

546 *(Add reference to Beijing Declaration and Platform for Action and CEDAW (Committee on the Elimination of*  
 547 *Discrimination Against Women International Bill of Rights for Women)*

548

**Box 3 – ISO 26000 and small and medium-sized organizations (SMOs)**

550 Small and medium-sized organizations are organizations whose number of employees, or size of financial  
 551 activities fall below certain limits. The size thresholds vary from country to country. For the purpose of this  
 552 International Standard, SMOs include those very small organizations referred to as “micro” organizations.

553 Integrating social responsibility throughout an SMO can be undertaken through practical, simple and cost  
 554 efficient actions, and does not need to be complex or expensive. Owing to their small size, and their potential  
 555 for being more flexible and innovative, SMOs may in fact provide particularly good opportunities for social  
 556 responsibility. They are generally more flexible in terms of organizational management, often have close  
 557 contact with local communities, and their top management usually has a more immediate influence on the  
 558 organization’s activities.

559 Social responsibility involves the adoption of an integrated approach to managing an organization’s activities  
 560 and impacts. An organization should address and monitor the impacts of its decisions and activities on society  
 561 and the environment in a way that takes account of both the size of the organization and its impacts. It may  
 562 not be possible for an organization to remedy immediately all negative consequences of its decisions and  
 563 activities. It might be necessary to make choices and to set priorities.

564 The following considerations may be of assistance. SMOs should:

565 — take into account that internal management procedures, reporting to stakeholders and other processes  
 566 may be more flexible and informal for SMOs than for their larger counterparts, provided that appropriate  
 567 levels of transparency are preserved;

568 — be aware that when reviewing all seven core subjects and identifying the relevant issues, the  
 569 organization’s own context, conditions, resources and stakeholder interests should be taken into account,  
 570 recognizing that all core subjects, but not all issues will be relevant for every organization;

571 — focus at the outset on the issues and impacts that are of greatest significance to sustainable  
 572 development. An SMO should also have a plan to address remaining issues and impacts in a timely  
 573 manner;

574 — seek assistance from appropriate government agencies, collective organizations (such as sector  
 575 associations and umbrella or peer organizations) and national standards bodies in developing practical  
 576 guides and programmes for using this International Standard. Such guides and programmes should be  
 577 tailored to the specific nature and needs of SMOs and their stakeholders; and

578 — where appropriate, act collectively with peer and sector organizations rather than individually, to save  
 579 resources and enhance capacity for action. For instance, for organizations operating in the same context  
 580 and sector, identification of and engagement with stakeholders can sometimes be more effective if done  
 581 collectively.

582 Being socially responsible is likely to benefit SMOs for the reasons mentioned elsewhere in this International  
 583 Standard. SMOs may find that other organizations with which they have relationships consider that providing  
 584 support for SMO endeavours is part of their own social responsibility.

585 Organizations with greater capacity and experience in social responsibility might consider providing support to  
 586 SMOs, including assisting them in raising awareness on issues of social responsibility and good practice.  
 587  
 588

### 589 3.3.5 Relationship between social responsibility and sustainable development

590 Although many people use the terms social responsibility and sustainable development interchangeably, and  
 591 there is a close relationship between the two, they are different concepts.

592 **Sustainable development** is a widely accepted concept and guiding objective that gained international  
 593 recognition following the publication in 1987 of the Report of the World Commission on Environment and  
 594 Development: Our Common Future <sup>[133]</sup>. Sustainable development is about meeting the needs of society while  
 595 living within the planet's ecological limits and without jeopardizing the ability of future generations to meet their  
 596 needs. Sustainable development has three dimensions – economic, social and environmental – which are  
 597 interdependent; for instance, the elimination of poverty requires the promotion of social justice and economic  
 598 development, and the protection of the environment.

599 The importance of these objectives have been reiterated over the years since 1987 in numerous international  
 600 forums, such as the United Nations Conference on Environment and Development in 1992 and the World  
 601 Summit on Sustainable Development in 2002.

602 **Social responsibility** has the organization as its focus and concerns the responsibilities of an organization to  
 603 society and the environment. Social responsibility is closely linked to sustainable development. Because  
 604 sustainable development is about the economic, social and environmental goals common to all people, it can  
 605 be used as a way of summing up the broader expectations of society that need to be taken into account by  
 606 organizations seeking to act responsibly. Therefore, an overarching objective of an organization's social  
 607 responsibility should be to contribute to sustainable development

608 The principles, practices and core subjects described in the following clauses of this International Standard  
 609 form the basis for an organization's practical implementation of social responsibility and its contribution to  
 610 sustainable development. The decisions and activities of a socially responsible organization can make a  
 611 meaningful contribution to sustainable development.

612 The objective of sustainable development is to achieve sustainability for society as a whole and the planet. It  
 613 does not concern the sustainability or ongoing viability of any specific organization. The sustainability of an  
 614 individual organization may, or may not, be compatible with the sustainability of society as a whole, which is  
 615 attained by addressing social, economic and environmental aspects in an integrated manner. Sustainable  
 616 consumption, sustainable resource use and sustainable livelihoods are activities relevant to all organizations  
 617 and relate to the sustainability of society as a whole.

### 618 3.4 The state and social responsibility

619 This International Standard cannot replace, alter or in any way change the duty of the state to act in the public  
 620 interest. This International Standard does not provide guidance on what should be subject to legally binding  
 621 obligations; neither is it intended to address questions that can only properly be resolved through political  
 622 institutions. Because the state has the unique power to create and enforce the law, it is different from  
 623 organizations. For instance, the duty of the state to protect human rights is different from those responsibilities  
 624 of **organizations** (2.12) with regard to human rights that are addressed in this International Standard.

625 The proper functioning of the state is indispensable for sustainable development. The role of the state is  
 626 essential in ensuring the effective application of laws and regulations so as to foster a culture of compliance  
 627 with the law. Governmental organizations, like any other organization, may wish to use this International  
 628 Standard to inform their policies, decisions and activities related to aspects of social responsibility.  
 629 Governments can assist organizations in their efforts to operate in a socially responsible manner in many

630 ways such as in the recognition and promotion of social responsibility. However, promoting the social  
631 responsibility of organizations is not and cannot be a substitute for the effective exercise of state duties and  
632 responsibilities.

## 633 **4 Principles of social responsibility**

### 634 **4.1 General**

635 This clause provides guidance on seven principles of social responsibility.

636 When approaching and practising social responsibility, the overarching objective for an organization is to  
637 maximize its contribution to sustainable development. Within this objective, although there is no definitive list  
638 of principles for social responsibility, organizations should respect the seven principles outlined below, as well  
639 as the principles specific to each core subject outlined in Clause 6.

640 Organizations should base their behaviour on standards, guidelines or rules of conduct that are in accordance  
641 with accepted principles of right or good conduct in the context of specific situations, even when these  
642 situations are challenging.

643 In applying this International Standard it is advisable that an organization take into consideration societal,  
644 environmental, legal, cultural, political and organizational diversity, as well as differences in economic  
645 conditions, while being consistent with international norms of behaviour.

### 646 **4.2 Accountability**

647 The principle is: an organization should be accountable for its impacts on society, the economy and the  
648 environment.

649 This principle suggests that an organization should accept appropriate scrutiny and also accept a duty to  
650 respond to this scrutiny.

651 Accountability involves an obligation on management to be answerable to the controlling interests of the  
652 organization and on the organization to be answerable to legal authorities with regard to laws and regulations.  
653 Accountability also implies that the organization is answerable in varying degrees or ways, depending upon  
654 the nature of the impact and circumstances, to those affected by its decisions and activities, as well as to  
655 society in general, for the overall impact on society and the environment of its decisions and activities.

656 Being accountable will have a positive impact on both the organization and society. The degree of  
657 accountability may vary, but should always correspond to the amount or extent of authority. Those  
658 organizations with ultimate authority are likely to take greater care for the quality of their decisions and  
659 oversight. Accountability also encompasses accepting responsibility where wrongdoing has occurred, taking  
660 the appropriate measures to remedy the wrongdoing and taking action to prevent it from being repeated.

661 An organization should account for:

662 — the impacts of its decisions and activities on society, the environment and the economy, especially  
663 significant negative consequences; and

664 — the actions taken to prevent repetition of unintended and unforeseen negative impacts.

### 665 **4.3 Transparency**

666 The principle is: an organization should be transparent in its decisions and activities that impact on society  
667 and the environment.

668 An organization should disclose in a clear, accurate and complete manner and to a reasonable and sufficient  
669 degree, the policies, decisions and activities for which it is responsible, including their known and likely  
670 impacts on society and the environment. This information should be readily available, directly accessible and  
671 understandable to those who have been, or may be affected in significant ways by the organization. It should

672 be timely and factual and be presented in a clear and objective manner so as to enable stakeholders to  
673 accurately assess the impact that the organization's decisions and activities have on their respective interests.

674 The principle of transparency does not require that proprietary information be made public, nor does it involve  
675 providing information that is legally protected or that would breach legal, commercial, security or personal  
676 privacy obligations.

677 An organization should be transparent regarding:

678 — the purpose, nature and location of its activities;

679 — the identity of any controlling interest in the activity of the organization;

680 — the manner in which its decisions are made, implemented and reviewed, including the definition of the  
681 roles, responsibilities, accountabilities and authorities across the different functions in the organization;

682 — standards and criteria against which the organization evaluates its own performance relating to social  
683 responsibility;

684 — its performance on relevant and significant issues of social responsibility;

685 — the sources, amounts and application of its funds;

686 — the known and likely impacts of its decisions and activities on its stakeholders, society, the economy and  
687 the environment; and

688 — its stakeholders and the criteria and procedures used to identify, select and engage them.

#### 689 **4.4 Ethical behaviour**

690 The principle is: an organization should behave ethically.

691 An organization's behaviour should be based on the values of honesty, equity and integrity. These values  
692 imply a concern for people, animals and the environment and a commitment to address the impact of its  
693 activities and decisions on stakeholders' interests.

694 An organization should actively promote ethical behaviour by:

695 — identifying and stating their core values and principles;

696 — developing and using governance structures that help to promote ethical behaviour within the  
697 organization, its decision making and in its interactions with others;

698 — identifying, adopting and applying standards of ethical behaviour appropriate to its purpose and activities  
699 and consistent with the principles outlined in this International Standard;

700 — encouraging and promoting the observance of its standards of ethical behaviour;

701 — defining and communicating the standards of ethical behaviour expected from its governance structure,  
702 personnel, suppliers, contractors and, when appropriate, owners, managers, and particularly from those  
703 that have the opportunity to significantly influence the values, culture, integrity, strategy and operation of  
704 the organization and people acting on its behalf, while preserving local cultural identity;

705 — preventing or resolving conflicts of interest throughout the organization that could otherwise lead to  
706 unethical behaviour;

707 — establishing and maintaining oversight mechanisms and controls to monitor, support and enforce ethical  
708 behaviour;

- 709 — establishing and maintaining mechanisms to facilitate the reporting of unethical behaviour without fear of  
710 reprisal;
- 711 — recognizing and addressing situations where local laws and regulations either do not exist or conflict with  
712 ethical behaviour;
- 713 — adopting and applying internationally recognized standards of ethical behaviour when conducting  
714 research with human subjects; and *(Add reference to UNESCO Declaration)*
- 715 — respecting the welfare of animals, when affecting their lives and existence, including by providing decent  
716 conditions for keeping, breeding, producing, transporting and using animals. *(Subject to confirmation on  
717 legal status add reference to World Organisation for Animal Health (OIE): Terrestrial Animal Health Code,  
718 Section 7 Animal Welfare. 2009)*

#### 719 **4.5 Respect for stakeholder interests**

720 The principle is: an organization should respect, consider and respond to the interests of its stakeholders.

721 Although an organization's objectives may be limited to the interests of its owners, members, customers or  
722 constituents, other individuals or groups may also have rights, claims or specific interests that should be taken  
723 into account. Collectively, these individuals or groups comprise the organization's stakeholders.

724 An organization should:

- 725 — identify its stakeholders;
- 726 — recognize and have due regard for the interests and legal rights of its stakeholders and respond to their  
727 expressed concerns;
- 728 — recognize that some stakeholders can significantly affect the activities of the organization;
- 729 — assess and take into account the relative ability of stakeholders to contact, engage with and influence the  
730 organization;
- 731 — take into account the relation of its stakeholders' interests to the broader expectations of society and to  
732 sustainable development, as well as the nature of the stakeholders' relationship with the organization  
733 (see also 3.3.1); and
- 734 — consider the views of stakeholders whose interests are likely to be affected by a decision or activity even  
735 if they have no formal role in the governance of the organization or are unaware of these interests.

#### 736 **4.6 Respect for the rule of law**

737 The principle is: an organization should accept that respect for the rule of law is mandatory.

738 The rule of law refers to the supremacy of law and, in particular, to the idea that no individual or organization  
739 stands above the law and that government is also subject to the law. The rule of law contrasts with the  
740 arbitrary exercise of power. It is generally implicit in the rule of law that laws and regulations are written,  
741 publicly disclosed and fairly enforced according to established procedures. In the context of social  
742 responsibility, respect for the rule of law means that an organization complies with all applicable laws and  
743 regulations. This implies that it should take steps to be aware of applicable laws and regulations, to inform  
744 those within the organization of their obligation to observe and to implement measures so that they are  
745 observed.

746 An organization should:

- 747 — comply with legal requirements in all jurisdictions in which the organization operates, even if those laws  
748 and regulations are not adequately enforced;

- 749 — ensure that its relationships and activities fall within the intended and applicable legal framework;
- 750 — remain informed of all legal obligations; and
- 751 — periodically review its compliance.

#### 752 **4.7 Respect for international norms of behaviour**

753 The principle is: an organization should respect international norms of behaviour, while adhering to the  
754 principle of respect for the rule of law.

- 755 — In situations where the law or its implementation does not provide for adequate environmental or social  
756 safeguards, an organization should strive to respect, as a minimum, international norms of behaviour.
- 757 — In countries where the law or its implementation conflicts with international norms of behaviour, an  
758 organization should strive to respect such norms to the greatest extent possible.
- 759 — In situations where the law or its implementation is in conflict with international norms of behaviour, and  
760 where not following these norms would have significant consequences, an organization should, as  
761 feasible and appropriate, review the nature of its relationships and activities within that jurisdiction.
- 762 — An organization should consider legitimate opportunities and channels to seek to influence relevant  
763 organizations and authorities to remedy any such conflict.
- 764 — An organization should avoid being complicit in the activities of another organization that are not  
765 consistent with international norms of behaviour.

766

767

#### **Box 4 – Understanding complicity**

768 Complicity has both legal and non-legal meanings.

769 In the legal context complicity has been defined in some jurisdictions as an act or omission having a  
770 substantial effect on the commission of an illegal act such as a crime, while having knowledge of, or intent to  
771 contribute to, that illegal act.

772 Complicity is associated with the concept of aiding and abetting an illegal act or omission.

773 In the non-legal context, complicity derives from broad societal expectations of behaviour. In this context, an  
774 organization may be considered complicit when it assists in the commission of wrongful acts of others that are  
775 inconsistent with, or disrespectful of, international norms of behaviour that the organization, through exercising  
776 due diligence, knew or should have known, would lead to substantial negative impacts on society, the  
777 economy or environment. An organization may also be considered complicit where it stays silent about or  
778 benefits from such wrongful acts.

779

#### 780 **4.8 Respect for human rights**

781 The principle is: an organization should respect human rights and recognize both their importance and their  
782 universality (see also the core subject of human rights in 6.3).

783 An organization should:

- 784 — respect and, where possible, promote the rights set out in the International Bill of Human Rights;
- 785 — respect the universality of these rights, that is, that they are indivisibly applicable in all countries, cultures  
786 and situations;

787 — in situations where human rights are not protected, take steps to respect human rights and avoid taking  
788 advantage of these situations; and

789 — in situations where the law or its implementation does not provide for adequate protection of human  
790 rights, adhere to the principle of respect for international norms of behaviour.

## 791 **5 Recognizing social responsibility and engaging stakeholders**

### 792 **5.1 General**

793 This clause addresses two fundamental practices of social responsibility. These are an organization's  
794 recognition of its social responsibility and identification of, and engagement with, its stakeholders. As with the  
795 principles described in Clause 4, these practices should be kept in mind when addressing the core subjects of  
796 social responsibility described in Clause 6.

797 The recognition of social responsibility involves identifying the issues raised by the impacts of an  
798 organization's decisions and activities, as well as the way these issues should be addressed so as to  
799 contribute to sustainable development.

800 The recognition of social responsibility also involves the recognition of an organization's stakeholders. As  
801 described in 4.5, a basic principle of social responsibility is that an organization should respect and consider  
802 the interests of its stakeholders that will be affected by its decisions and activities.

### 803 **5.2 Recognizing social responsibility**

#### 804 **5.2.1 Impacts, interests and expectations**

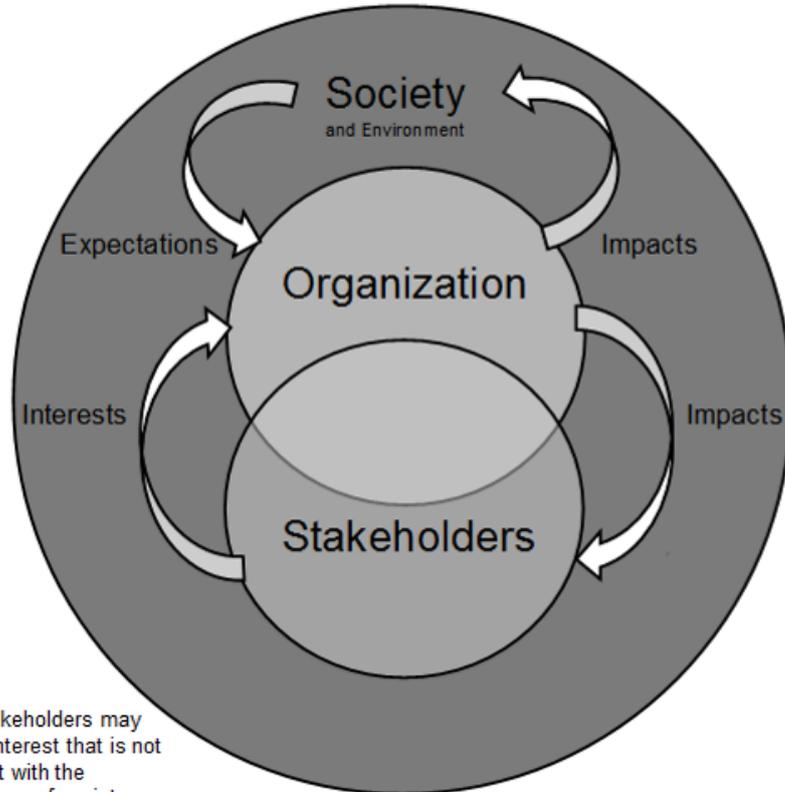
805 In addressing its social responsibility an organization should understand three relationships (see Figure 2 to  
806 be added later):

807 — **Between the organization and society** An organization should understand and recognize how its  
808 decisions and activities impact on society and the environment. An organization should also understand  
809 society's expectations of responsible behaviour concerning these impacts. This should be done by  
810 considering the core subjects and issues of social responsibility (see 5.2.2);

811 — **Between the organization and its stakeholders** An organization should be aware of its various  
812 stakeholders. These are the individuals or groups whose interests could be affected by the decisions and  
813 activities of the organization. (see 3.3.1); and

814 — **Between the stakeholders and society** An organization should understand the relationship between  
815 the stakeholders' interests that are affected by the organization, on the one hand, and the expectations of  
816 society on the other. Although stakeholders are part of society, they may have an interest that is not  
817 consistent with the expectations of society. Stakeholders have unique interests with regard to the  
818 organization that can be distinguished from societal expectations of socially responsible behaviour  
819 regarding any issue. For example, the interest of a supplier in being paid and the interest of society in  
820 contracts being honoured can be different perspectives on the same issue.

821



822

823

**Figure 2 — Relationship between an organization, its stakeholders and society**

824

825 In recognizing its social responsibility an organization will need to take all three relationships into account. An  
 826 organization, its stakeholders and society are likely to have different perspectives, because their objectives  
 827 may not be the same. It should be recognized that individuals and organizations may have many and various  
 828 interests that can be affected by the decisions and activities of an organization.

## 829 5.2.2 Recognizing the core subjects and relevant issues of social responsibility

830 An effective way for an organization to identify its social responsibility is to become familiar with the issues  
 831 concerning social responsibility in the following seven core subjects: organizational governance; human rights;  
 832 labour practices; the environment; fair operating practices; consumer issues; and community involvement and  
 833 development.

834 These core subjects cover the most likely economic, environmental and social impacts that should be  
 835 addressed by organizations. Each of these core subjects is considered in Clause 6. The discussion of each  
 836 core subject covers specific issues that an organization should take into account when identifying its social  
 837 responsibility. Every core subject, but not necessarily each issue, has some relevance for every organization.

838 The guidance on each issue includes a number of actions that an organization should take and expectations  
 839 of the way in which an organization should behave. In considering its social responsibility, an organization  
 840 should identify each issue relevant to its decisions and activities, together with the related actions and  
 841 expectations. Additional guidance on identifying issues can be found in 7.2 and 7.3.

842 The impacts of an organization's decisions and activities should be considered with a view to these issues.  
 843 Not all issues may be relevant to a specific organization. Moreover, the core subjects and their respective  
 844 issues can be described or categorized in various ways. Some important considerations, including health and  
 845 safety, economics and the value chain, are dealt with under more than one core subject in Clause 6.

846 An organization should review all the core subjects to identify which issues are relevant. The identification of  
 847 relevant issues should be followed by an assessment of the significance of the organization's impacts. The

848 significance of an impact should be considered with reference both to the stakeholders concerned and to the  
849 way in which the impact affects sustainable development.

850 When recognizing the core subjects and issues of its social responsibility, an organization is helped by  
851 considering interactions with other organizations. An organization should consider the impact of its decisions  
852 and activities on stakeholders.

853 An organization seeking to recognize its social responsibility should consider both legally binding and any  
854 other obligations that exist. Legally binding obligations include applicable laws and regulations, as well as  
855 obligations concerning social, economic or environmental issues that may exist in enforceable contracts. An  
856 organization should consider the commitments that it has made regarding social responsibility. Such  
857 commitments could be in ethical codes of conduct or guidelines or in the membership obligations of  
858 associations to which it belongs.

859 Recognizing social responsibility is a continuous process. The potential impacts of decisions and activities  
860 should be determined and taken into account during the planning stage of new activities. Ongoing activities  
861 should be reviewed as necessary so that the organization can be confident that its social responsibility is still  
862 being addressed and can determine whether additional issues need to be taken into account.

### 863 **5.2.3 Social responsibility and an organization's sphere of influence**

864 An organization is responsible for the impacts of decisions and activities over which it has formal and/or de  
865 facto control<sup>1</sup>. Such impacts of decisions and activities can be extensive. In addition to being responsible for  
866 its own decisions and activities, an organization may, in some situations, have the ability to affect the  
867 behaviour of organizations/parties with which it has relationships. Such situations are considered to fall within  
868 an organization's sphere of influence.

869 This sphere of influence will include relationships within and beyond an organization's value chain. However,  
870 not all of an organization's value chain will fall within its sphere of influence. It may include the formal and  
871 informal associations in which it participates, as well as peer organizations or competitors.

872 An organization does not always have a responsibility to exercise influence purely because it has the ability to  
873 do so. For instance, it cannot be held responsible for the impacts of other organizations over which it may  
874 have some influence if the impact is not a result of its decisions and activities. However, there will be  
875 situations where an organization will have a responsibility to exercise influence. These situations will be  
876 determined by the extent to which an organization's relationship is contributing to negative impacts.

877 And there will be situations where, though an organization does not have a responsibility to exercise influence,  
878 it may nevertheless wish, or be asked, to do so voluntarily.

879 An organization may decide whether to have a relationship with another organization and the nature and  
880 extent of this relationship. There will be situations where an organization has the responsibility to be alert to  
881 the impacts created by the decisions and activities of other organizations and to take steps to avoid or to  
882 mitigate the negative impacts connected to its relationship with such organizations.

883 When assessing its sphere of influence and determining its responsibilities, an organization should exercise  
884 due diligence in order to avoid contributing to negative impacts through its relationships. Further guidance  
885 can be found in 7.3.1.

886 <sup>1</sup> "de facto control" refers to situations where one organization has the ability to dictate the decisions and  
887 activities of another organization, even where it does not have the legal or formal authority to do so.)

## 888 **5.3 Stakeholder identification and engagement**

### 889 **5.3.1 General**

890 Stakeholder identification and engagement are central to addressing an organization's social responsibility.

### 891 5.3.2 Stakeholder identification

892 Stakeholders are organizations or individuals that have one or more interests in any decision and activity of an  
 893 organization. Because these interests can be affected by an organization, a relationship with the organization  
 894 is created. This relationship need not be formal. The relationship created by this interest exists whether or not  
 895 the parties are aware of it. An organization may not always be aware of all its stakeholders, although it should  
 896 attempt to identify them. Similarly, many stakeholders may not be aware of the potential of an organization to  
 897 affect their interests.

898 In this context, interest refers to the actual or potential basis of a claim; that is to demand something that is  
 899 owed or to demand respect for a right. Such a claim need not involve financial demands or legal rights.  
 900 Sometimes it can simply be the right to be heard. The relevance or significance of an interest is best  
 901 determined by its relationship to sustainable development.

902 Understanding how individuals or groups are or can be affected by an organization's decisions and activities  
 903 will make it possible to identify the interests that establish a relationship with the organization. Therefore, the  
 904 organization's determination of the impacts of its decisions and activities will facilitate identification of its most  
 905 important stakeholders (see Figure 2).

906  
 907 Organizations may have many stakeholders. Moreover, different stakeholders have various and sometimes  
 908 competing interests. For example, community residents' interests could include the positive impacts of an  
 909 organization, such as employment, as well as the negative impacts of the same organization, such as  
 910 pollution.

911  
 912 Some stakeholders are an integral part of an organization. These include any members, employees or owners  
 913 of the organization. These stakeholders share a common interest in the purpose of the organization and in its  
 914 success. This does not mean, however, that all their interests regarding the organization will be the same.

915 The interest of most stakeholders can be related to the social responsibility of the organization and often are  
 916 very similar to some of the interests of society. An example is the interest of a property owner whose property  
 917 loses value because of a new source of pollution.

918 Not all stakeholders of an organization belong to organized groups that have the purpose of representing their  
 919 interests to specific organizations. Many stakeholders may not be organized at all, and for this reason, may be  
 920 overlooked or ignored. This problem may be especially important with regard to vulnerable groups and future  
 921 generations.

922 Groups advocating social or environmental causes may be stakeholders of an organization whose decisions  
 923 and activities have a relevant and significant impact on these causes.

924 An organization should examine whether groups claiming to speak on behalf of specific stakeholders or  
 925 advocating specific causes are representative and credible. In some cases, it will not be possible for important  
 926 interests to be directly represented. For instance, children rarely own or control organized groups of people;  
 927 wildlife cannot do so. In this situation, an organization should give attention to the views of credible groups  
 928 seeking to protect such interests.

929 To identify stakeholders an organisation should ask itself the following questions:

- 930 — To whom does the organization have legal obligations?
- 931 — Who might be positively or negatively affected by the organization's decisions or activities?
- 932 — Who is likely to express concerns about the decisions and activities of the organization?
- 933 — Who has been involved in the past when similar concerns needed to be addressed?
- 934 — Who can help the organization address specific impacts?
- 935 — Who can affect the organization's ability to meet its responsibilities

936 — Who would be disadvantaged if they were excluded from the engagement?

937 — Who in the value chain is affected?

### 938 5.3.3 Stakeholder engagement

939 Stakeholder engagement involves dialogue between the organization and one or more of its stakeholders. It  
940 assists the organization in addressing its social responsibility by providing an informed basis for its decisions.

941  
942 Stakeholder engagement can take many forms. It can be initiated by an organization or it can begin as a  
943 response by an organization to one or more stakeholders. It can take place in either informal or formal  
944 meetings and can follow a wide variety of formats such as individual meetings, conferences, workshops,  
945 public hearings, round-table discussions, advisory committees, regular and structured information and  
946 consultation procedures, collective bargaining and web-based forums. Stakeholder engagement should be  
947 interactive and is intended to provide opportunities for stakeholders' views to be heard. Its essential feature is  
948 that it involves two-way communication.

949  
950 There are various reasons for an organization to engage with its stakeholders. Stakeholder engagement can  
951 be used to:

952 — increase an organization's understanding of the likely consequences of its decisions and activities on  
953 specific stakeholders;

954 — determine how best to increase the beneficial impacts of the organization's decisions and activities and  
955 how to lessen any adverse impact;

956 — Determine whether its claims about its social responsibility are perceived to be credible.

957 — help an organization review its performance so it can improve it;

958 — reconcile conflicts involving its own interests, those of its stakeholders and the expectations of society as  
959 a whole;

960 — address the link between the stakeholders' interests and the responsibilities of the organization to society  
961 at large;

962 — contribute to continuous learning by the organization;

963 — fulfil legal obligations (for instance to employees) to address conflicting interests, either between the  
964 organization and the stakeholder or between stakeholders;

965 — provide the organization with the benefits associated with obtaining diverse perspectives;

966 — increase transparency of its decisions and activities

967 — form partnerships to achieve mutually beneficial objectives.

968 In most situations an organization will already know, or can easily learn, society's expectations of the way the  
969 organization should address its impacts. In such circumstances, it need not rely on engagement with specific  
970 stakeholders to understand these expectations, although the stakeholder engagement process can provide  
971 other benefits. Society's expectations are also found in laws and regulations, widely accepted social or cultural  
972 expectations and established best practices or standards regarding specific matters. Expectations concerning  
973 stakeholders' interests can be found in the "Related actions and expectations" sections following the  
974 description of various issues in Clause 6. Expectations established through stakeholder engagement should  
975 supplement rather than replace already established expectations concerning its behaviour.

976  
977 A fair and proper process based on engaging the most relevant stakeholders should be developed. The  
978 interest (or interests) of organizations or individuals identified as stakeholders should be genuine. The  
979 identification process should seek to ascertain whether they have been or are likely to be impacted by any

980 decision and activity. Where possible and practical, engagement should be with the most representative  
 981 organizations reflecting these interests. Effective stakeholder engagement is based on good faith and goes  
 982 beyond public relations.

983  
 984 When engaging stakeholders, an organization should not give preference to an organized group because it is  
 985 more “friendly” or supports the organization's objectives than another group. An organization should not  
 986 neglect engaging stakeholders merely because they are silent. An organization should not create or support  
 987 particular groups to give the appearance that it has a dialogue partner when the supposed partner is not in  
 988 fact independent. Genuine stakeholder dialogue involves independent parties and transparent disclosure of  
 989 any financial or similar support.

990  
 991 An organization should be conscious of the effect of its decisions and activities on the interests and needs of  
 992 its stakeholders. It should have due regard for its stakeholders as well as their varying capacities and needs to  
 993 contact and engage with the organization.

994 Stakeholder engagement is more likely to be meaningful when the following elements are present: a clear  
 995 purpose for the engagement is understood the stakeholder's interests have been identified; the relationship  
 996 that these interests establish between the organization and the stakeholder is direct or important; the interests  
 997 of stakeholders are relevant and significant to sustainable development and the stakeholders have the  
 998 necessary information and understanding to make their decisions.

## 999 **6 Guidance on social responsibility core subjects**

### 1000 **6.1 General**

1001 To define the scope of its social responsibility, identify relevant issues and to set its priorities, an organization  
 1002 should address the following core subjects (see also Figure 3):

- 1003 — organizational governance;
- 1004 — human rights;
- 1005 — labour practices;
- 1006 — the environment;
- 1007 — fair operating practices;
- 1008 — consumer issues; and
- 1009 — community involvement and development.

1010 Economic aspects, as well as aspects relating to health and safety and the value chain, are dealt with  
 1011 throughout the seven core subjects, where appropriate. The different ways in which men and women can be  
 1012 affected in each of the seven core subjects are also considered.

1013 Each core subject includes a range of issues of social responsibility. These are described in this clause  
 1014 together with related actions and expectations. Social responsibility is dynamic, reflecting the evolution of  
 1015 social and environmental and economic concerns, so further issues may appear in the future.

1016 Action upon these core subjects and issues should be based on the principles and practices of social  
 1017 responsibility (see Clauses 4 and 5). For each core subject, an organization should identify and address all  
 1018 those issues that are relevant or significant for its decisions and activities (see Clause 5). When assessing the  
 1019 relevance of an issue, short- and long-term objectives should be taken into account. There is, however, no  
 1020 pre-determined order in which an organization should address the core subjects and issues; this will vary with  
 1021 the organization and its particular situation or context.

1022 Although all the core subjects are interrelated and complementary, the nature of organizational governance is  
 1023 somewhat different from the other core subjects (see 6.2.1.2). Effective organizational governance enables an

1024 organization to take action on the other core subjects and issues and to implement the principles outlined in  
 1025 Clause 4.

1026 An organization should look at the core subjects holistically, that is, it should consider all core subjects and  
 1027 issues, and their interdependence, rather than just concentrate on a single issue. Organizations should be  
 1028 aware that efforts to address one issue may involve trade-off with other issues. Particular improvements  
 1029 targeted at a specific issue should not affect other issues adversely or create adverse impacts, on the life  
 1030 cycle of its products or services, on its stakeholders or on the value chain..

1031 Further guidance on integration of social responsibility is provided in Clause 7.



1032

1033

**Figure 3 — The seven core subjects**

1034 By addressing these core subjects and issues, and by integrating social responsibility within its decisions and  
 1035 activities, an organization can achieve some important benefits (see Box 5).

1036

1037

**Box 5 – Benefits of social responsibility for an organization**

1038

Social responsibility may provide numerous potential benefits for an organization. These include:

1039

— encouraging more informed decision-making based on an improved understanding of the expectations of society, the opportunities associated with social responsibility (including better management of legal risks) and the risks of not being socially responsible;

1040

1041

1042

— improving the organization’s risk management practices;

1043

— enhancing the reputation of the organization and fostering greater public trust;

1044

— supporting an organization's social licence to operate;

1045

— generating innovation;

1046

— improving the competitiveness of the organization, including access to finance and preferred partner status;

1047

1048

— improving the organization’s relationship with its stakeholders exposing the organization to new perspectives and contact with a diverse range of stakeholders;

1049

- 1050 — enhancing employee loyalty, involvement, participation and morale, improving the safety and health of  
 1051 both female and male workers, and impacting positively on an organization's ability to recruit, motivate  
 1052 and retain its employees;
- 1053 — achieving savings associated with increased productivity and resource efficiency, lower energy and water  
 1054 consumption, decreased waste, and the recovery of valuable by-products improving the reliability and  
 1055 fairness of transactions through responsible political involvement, fair competition, and the absence of  
 1056 corruption;
- 1057 — preventing or reducing potential conflicts with consumers about products or services.

## 1058 6.2 Organizational governance

### 1059 6.2.1 Overview of organizational governance

#### 1060 6.2.1.1 Organizations and organizational governance

1061 Organizational governance is the system by which an organization makes and implements decisions in pursuit  
 1062 of its objectives.

1063 Organizational governance can comprise both formal governance mechanisms based on defined structures  
 1064 and processes and informal mechanisms which emerge in connection with the organization's culture and  
 1065 values, often influenced by the persons who are leading the organization. Organizational governance is a core  
 1066 function of every kind of organization as it is the framework for decision-making within the organization.

1067 Governance systems vary, depending on the size and type of organization and the environmental, economic,  
 1068 political, cultural and social context in which it operates. These systems are directed by a person or group of  
 1069 persons (owners, members, constituents or others) having the authority and responsibility for pursuing the  
 1070 organization's objectives.

#### 1071 6.2.1.2 Organizational governance and social responsibility

1072 Organizational governance is the most crucial factor to enable an organization to take responsibility for the  
 1073 impacts of its decisions and activities and to integrate social responsibility throughout the organization and its  
 1074 relationships.

1075 Organizational governance in the context of social responsibility has the special characteristic of being both a  
 1076 core subject on which organizations should act and a means of increasing the organization's ability to behave  
 1077 in a socially responsible manner with regard to the other core subjects.

1078 This special characteristic arises from the fact that an organization aiming to be socially responsible should  
 1079 have a organizational governance system [enabling the organization to provide oversight and] to put into  
 1080 practice the principles of social responsibility mentioned in Clause 4.

### 1081 6.2.2 Principles and considerations

1082 Effective governance should be based on incorporating the principles of accountability, transparency, ethical  
 1083 behaviour, respect for stakeholder interests, respect for human rights, respect for the rule of law, respect for  
 1084 international norms of behaviour and respect for human rights and practices of clause 5 into decision-making  
 1085 and implementation. In addition to these seven principles an organization should consider, the practices, the  
 1086 core subjects and issues of social responsibility when it establishes and reviews its governance system.  
 1087 Further guidance on integrating social responsibility in the organization is provided in clause 7.

1088 Leadership is also critical to effective organizational governance, this is true not only for decision-making but  
 1089 also to motivate employees to practice social responsibility and to integrate social responsibility into  
 1090 organizational culture.

1091 Due diligence can also be a useful approach for an organization in addressing the issues of social  
 1092 responsibility. (cross reference to due diligence in clause 7)

1093 **6.2.3 Decision-making processes and structures**

1094 **6.2.3.1 Description of the issue**

1095 Decision-making processes and structures conducive to social responsibility are those that promote the  
1096 practical use of the principles and practices described in Clauses 4 and 5.

1097 Every organization has decision-making processes and structures. In some cases, these are formal,  
1098 sophisticated and even subject to laws and regulations; in other cases they are informal, rooted in its  
1099 organizational culture and values. All organizations should put in place processes, systems, structures, or  
1100 other mechanisms that make it possible to apply the principles and practices of social responsibility <sup>[90][120]</sup>.

1101 **6.2.3.2 Related actions and expectations**

1102 An organization's decision-making processes and structures should enable it to:

- 1103 — develop strategies, objectives, and targets that reflect its commitment toward social responsibility;
- 1104 — demonstrate leadership commitment and accountability;
- 1105 — create and nurture an environment and culture in which the principles of social responsibility (see  
1106 Clause 4) are practised;
- 1107 — create a system of economic and non-economic incentives related to performance on social  
1108 responsibility;
- 1109 — use financial, natural and human resources efficiently;
- 1110 — promote fair opportunity of underrepresented groups (including women and racial and ethnic groups)  
1111 to occupy senior positions in the organization;
- 1112 — balance the needs of the organization and its stakeholders, including immediate needs and those of  
1113 future generations;
- 1114 — establish two-way communication processes with its stakeholders that and assist in identifying areas  
1115 of agreement and disagreement and in negotiation to resolve possible conflicts;
- 1116 — encourage effective participation of all levels of employees in the organization's social responsibility  
1117 activities
- 1118 — balance the level of authority, responsibility and capacity of people who make decisions on behalf of  
1119 the organization;
- 1120 — keep track of the implementation of decisions to ensure that these decisions are followed in a socially  
1121 responsible way and to determine accountability for the results of the organization's decisions and  
1122 activities, either positive or negative; and
- 1123 — periodically review and evaluate the governance processes of the organization. Adjust processes  
1124 according to the outcome of the reviews and communicate changes throughout the organization.

1125 **6.3 Human rights**

1126 **6.3.1 Overview of human rights**

1127 **6.3.1.1 Organizations and human rights**

1128 Human rights are the basic rights to which all human beings are entitled. There are two broad categories of  
1129 human rights. The first category concerns civil and political rights and includes such rights as the right to life

1130 and liberty, equality before the law and freedom of expression. The second category concerns economic,  
1131 social and cultural rights and includes such rights as the right to work, the right to food, the right to the highest  
1132 attainable standard of health, the right to education and the right to social security.

1133 Various moral, legal and intellectual norms are based on the premise that human rights transcend laws or  
1134 cultural traditions. The primacy of human rights has been emphasized by the international community in the  
1135 International Bill of Human Rights and core human rights instruments (as discussed in Box 6). More broadly,  
1136 organizations will benefit from a social and international order in which the rights and freedoms can be fully  
1137 realized.

1138 While most human rights law relates to relationships between the state and individuals, it is widely  
1139 acknowledged that non-state organizations can affect individuals' human rights, and hence have a  
1140 responsibility to respect them.

1141

1142 **Box 6 – The International Bill of Human Rights and the core human rights instruments**

1143 The Universal Declaration of Human Rights (Universal Declaration) <sup>[117]</sup> was adopted by the UN General  
1144 Assembly in 1948, and is the most widely recognized human rights instrument. It provides the basis for human  
1145 rights law, and elements of it represent international customary law binding on all states, individuals and  
1146 organizations. The Universal Declaration calls on every individual and every organ of society” to contribute to  
1147 securing human rights. The International Covenant on Civil and Political Rights and the International Covenant  
1148 on Economic, Social and Cultural Rights are treaties adopted by the UN General Assembly in 1966 for  
1149 ratification by states, and they came into force in 1976. The International Bill of Human Rights consists of the  
1150 Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights <sup>[107]</sup> and the  
1151 International Covenant on Economic, Social and Cultural Rights <sup>[108]</sup>, and their optional Protocols to the  
1152 Covenants, one of which aims to abolish the death penalty <sup>[113]</sup>.

1153 In addition, seven core international human rights instruments form part of international human rights law,  
1154 dealing with: the elimination of all forms of racial discrimination <sup>[105]</sup>, elimination of all forms of discrimination  
1155 against women <sup>[97]</sup>, measures to prevent and eliminate torture and other cruel, inhuman or degrading  
1156 treatment or punishment <sup>[96]</sup>, rights of the child <sup>[99]</sup>, involvement of children in armed conflict <sup>[110]</sup>, sale of  
1157 children, child prostitution and child pornography <sup>[111]</sup>, protection of migrant workers and their families  
1158 <sup>[43][44][45][106]</sup>, protection of all persons from enforced disappearances <sup>[104]</sup> and rights of persons with disabilities  
1159 <sup>[98]</sup>. Taken together, these instruments form the basis for international standards for universal human rights.  
1160 The instruments are binding on states that ratify them. Some instruments allow for individual complaints to be  
1161 lodged, subject to procedural rules outlined in optional protocols.

1162

1164 **6.3.1.2 Human rights and social responsibility**

1165 Recognition and respect for human rights are widely regarded as essential to the rule of law and to concepts  
1166 of social justice and fairness and as the basic underpinning of the most essential institutions of society such  
1167 as the judicial system.

1168 States have a duty and responsibility to respect, protect and fulfil human rights. An organization has the  
1169 responsibility to respect human rights, including in its sphere of influence.

1170 **6.3.2 Principles and considerations**

1171 **6.3.2.1 Principles**

1172 Human rights are inherent, inalienable, universal, indivisible and interdependent:

1173 — they are inherent, in that they belong to every person by virtue of being human;

1174 — they are inalienable, in that people cannot consent to giving them up or be deprived of them by  
1175 governments or any other institution;

- 1176 — they are universal, in that they apply to everyone regardless of any status;
- 1177 — they are indivisible, in that no human rights may be selectively ignored; and
- 1178 — they are interdependent, in that realization of one right contributes to the realization of other rights.

### 1179 **6.3.2.2 Considerations**

1180 States have a duty to protect individuals and groups against abuse of human rights, as well as to respect and  
1181 fulfil human rights within their jurisdiction. States are increasingly taking steps to encourage organizations  
1182 based in their jurisdiction to respect human rights even where they operate outside that jurisdiction. It is widely  
1183 recognized that organizations and individuals have the potential to and do affect human rights, directly and  
1184 indirectly. Organizations have a responsibility to respect all human rights, regardless of whether the state is  
1185 unable or unwilling to fulfil its duty to protect. To respect human rights means, in the first place, to not infringe  
1186 the rights of others. This responsibility entails taking positive steps to ensure that the organization avoids  
1187 passively accepting or actively participating in the infringement of rights. To discharge the responsibility to  
1188 respect human rights requires due diligence. Where the state fails in its duty to protect, an organization must  
1189 be especially vigilant to ensure that it meets its responsibility to respect human rights; human rights due  
1190 diligence may point to the need for action beyond what is necessary in the normal course of business.

1191 Some fundamental norms of international criminal law impose legal accountability and liability on individuals  
1192 and organizations as well as states for serious abuse of international human rights. These include the  
1193 prohibition of torture, crimes against humanity, slavery and genocide. In some countries, organizations are  
1194 subject to prosecution under national legislation on the basis of internationally recognized crimes. Other  
1195 human rights instruments determine the scope of legal obligations of organizations with regard to human  
1196 rights and the manner of their implementation and enforcement.

1197 The baseline responsibility of non-state organizations is to respect human rights. However, an organization  
1198 may face stakeholder expectations that it go beyond respect, or it may want to contribute to the fulfilment of  
1199 human rights. The concept of sphere of influence helps an organization to comprehend the extent of its  
1200 opportunities to support human rights among different rights holders. Thus it may help an organization to  
1201 analyze its ability to influence or encourage other parties, the human rights issues on which it can have the  
1202 greatest impact, and the rights holders that would be concerned.

1203 An organization's opportunities to support human rights will often be greatest among its own operations and  
1204 employees. Additionally, an organization will have opportunities to work with its suppliers, peers or other  
1205 organizations, and the broader society. In some cases, organizations may wish to increase their influence  
1206 through collaboration with other organizations and individuals. Assessment of the opportunities for action and  
1207 for greater influence will depend on the particular circumstances, some specific to the organization and some  
1208 specific to the context in which it is operating. However, organizations should always consider the potential for  
1209 negative or unintended consequences when seeking to influence other organizations.

1210 Organizations should consider facilitating human rights education to promote awareness of human rights  
1211 among rights holders and those with the potential to have an impact on them.

### 1212 **6.3.3 Human rights issue 1: Due diligence**

#### 1213 **6.3.3.1 Description of the issues**

1214 To respect human rights, organizations have a responsibility to exercise due diligence to identify, prevent and  
1215 address actual or potential human rights impacts resulting from their activities or the activities of those with  
1216 which they have relationships. Due diligence may also alert an organization to a responsibility to influence the  
1217 behaviour of others, where they may be the cause of human rights violations in which the organization may be  
1218 implicated.

### 1219 6.3.3.2 Related actions and expectations

1220 Because due diligence applies to all core subjects, including human rights, further guidance on due diligence  
1221 may be found in 7.4.3. Specific to human rights, a due diligence process should, in a manner that is  
1222 appropriate to the organization's size and circumstances, include the following components:

- 1223 — a human rights policy for the organization that gives meaningful guidance to those within the organization  
1224 and those closely linked to the organization;
- 1225 — means of assessing how existing and proposed activities may affect human rights;
- 1226 — means of integrating the human rights policy throughout the organization;
- 1227 — means of tracking performance over time, to be able to make necessary adjustments in priorities and  
1228 approach; and
- 1229 — appropriate actions to address the negative impacts of its decisions and activities.

### 1230 6.3.4 Human rights issue 2: Human rights risk situations

#### 1231 6.3.4.1 Description of the issues

1232 There are certain circumstances and environments where organizations are more likely to face challenges  
1233 and dilemmas relating to human rights and in which the risk of human rights abuse may be exacerbated.  
1234 These include:

- 1235 — conflict <sup>[93]</sup> or extreme political instability, failures of the democratic or judicial system, absence of political  
1236 and other civil rights;
- 1237 — poverty, drought, extreme health challenges or natural disasters;
- 1238 — involvement in extractive activities or other activities that might significantly affect natural resources such  
1239 as water, forests or the atmosphere or disrupt communities;
- 1240 — proximity of operations to communities of indigenous peoples <sup>[40][115]</sup> ;
- 1241 — activities that can affect or involve children <sup>[99][110][111]</sup> ;
- 1242 — a culture of corruption;
- 1243 — complex value chains that involve work performed on an informal basis without legal protection; and
- 1244 — a need for extensive measures to ensure security of premises or other assets.

#### 1245 6.3.4.2 Related actions and expectations

1246 Organizations should take particular care when dealing with situations characterized above. These situations  
1247 may require an enhanced process of due diligence to ensure respect for human rights. This could for example  
1248 be done through an independent human rights impact assessment.

1249 When operating in environments in which one or more of these circumstances apply, organizations are likely  
1250 to be faced with difficult and complex judgements as to how to conduct themselves. While there may be no  
1251 simple formula or solution, an organization should base its decisions on the primary responsibility to respect  
1252 human rights, while also contributing to promoting and defending the overall fulfilment of human rights.

1253 In responding, an organization should consider the potential consequences of its actions so that the desired  
1254 objective of respecting human rights is actually achieved. In particular, it is important not to compound or  
1255 create other abuses. A situation's complexity should not be used as an excuse for inaction.

1256 **6.3.5 Human rights issue 3: Avoidance of complicity**

1257 **6.3.5.1 Description of the issues**

1258 Complicity has both legal and non-legal meanings.

1259 In the legal context complicity has been defined in some jurisdictions as an act or omission having a  
1260 substantial effect on the commission of an illegal act such as a crime, while having knowledge of, or intent to  
1261 contribute to, that illegal act.

1262 Complicity is associated with the concept of aiding and abetting an illegal act or omission.

1263 In the non-legal context, complicity derives from broad societal expectations of behaviour. In this context, an  
1264 organization may be considered complicit when it assists in the commission of wrongful acts of others  
1265 that are inconsistent with, or disrespectful of, international norms of behaviour that the organization, through  
1266 exercising due diligence, knew or should have known, would lead to substantial negative impacts on society,  
1267 the economy or environment. An organization may also be considered complicit where it stays silent about or  
1268 benefits from such wrongful acts.

1269 While their boundaries are imprecise and evolving, three forms of complicity can be described:

1271 — **Direct complicity** This occurs when an organization knowingly assists in a violation of human rights;

1272 — **Beneficial complicity** This involves an organization or subsidiaries benefiting directly from human rights  
1273 abuses committed by someone else. Examples include an organization tolerating action by security  
1274 forces to suppress a peaceful protest against its decisions and activities or use of repressive measures  
1275 while guarding its facilities, or an organization benefiting economically from suppliers' abuse of  
1276 fundamental rights at work; and

1277 — **Silent complicity** This can involve the failure by an organization to raise with the appropriate authorities  
1278 the question of systematic or continuous human rights violations, such as not speaking out against  
1279 systematic discrimination in employment law against particular groups.

1280 **6.3.5.2 Related actions and expectations**

1281 One prominent area with the potential to create complicity in human rights abuses relates to security  
1282 arrangements. In this regard, among other things, an organization should: verify that its security arrangements  
1283 respect human rights and are consistent with international norms and standards for law enforcement; security  
1284 personnel (employed, contracted or sub-contracted) should be adequately trained, including in adherence to  
1285 standards of human rights; and complaints about security procedures or personnel should be addressed and  
1286 investigated promptly and, where appropriate, independently. Moreover, an organization should exercise due  
1287 diligence to ensure that it is not participating in, facilitating or benefiting from human rights violations  
1288 committed by public security forces.

1289 In addition, an organization should:

1290 — not provide goods or services to an entity that uses them to carry out human rights abuses;

1291 — not enter into a formal or informal partnership or contractual relationship with a partner that commits  
1292 human rights abuses in the context of the partnership or in the execution of the contracted work;

1293 — inform itself about the social and environmental conditions in which purchased goods and services  
1294 are produced;

1295 — ensure it is not complicit in any displacement of people from their land unless it is done in conformity  
1296 with national law and international norms, which includes exploring all alternative solutions and  
1297 ensuring affected parties are provided with adequate compensation

1298 — consider making public, or taking other action indicating that it does not condone human rights  
1299 abuse, such as acts of discrimination] occurring in employment in the country concerned; and

1300 — Avoid relationships with entities engaged in anti-social activities.

1301 An organization can become aware of, prevent and address risks of complicity by integrating the common  
1302 features of legal and societal benchmarks into its due diligence processes.

### 1303 **6.3.6 Human rights issue 4: Resolving grievances**

#### 1304 **6.3.6.1 Description of the issues**

1305 Even where institutions operate optimally, disputes over the human rights impact of an organization's  
1306 decisions and activities may occur. Effective grievance mechanisms play an important role in the state's duty  
1307 to protect human rights. Equally, to discharge its responsibility to respect human rights an organization should  
1308 establish a mechanism for those who believe their human rights have been abused to bring this to the  
1309 attention of the organization and seek redress. This mechanism should not prejudice access to available legal  
1310 channels. Non-state mechanisms should not undermine the strengthening of state institutions, particularly  
1311 judicial mechanisms, but can offer additional opportunities for recourse and redress.

#### 1312 **6.3.6.2 Related actions and expectations**

1313 An organization should establish, or otherwise ensure the availability, of remedy mechanisms for its own use  
1314 and that of its stakeholders. For these mechanisms to be effective they should be:

1315 — **legitimate** This includes clear, transparent and sufficiently independent governance structures to ensure  
1316 that no party to a particular grievance process can interfere with the fair management of that process.

1317 — **accessible** Their existence should be publicized and adequate assistance provided for aggrieved parties  
1318 who may face barriers to access, such as language, illiteracy, lack of awareness or finance, distance,  
1319 disability or fear of reprisal;

1320 — **predictable** There should be clear and known procedures, a clear time frame for each stage and clarity  
1321 as to the types of process and outcome they can and cannot offer, and a means of monitoring the  
1322 implementation of any outcome;

1323 — **equitable** Aggrieved parties should have access to sources of information, advice and expertise  
1324 necessary to engage in a fair grievance process;

1325 — **rights-compatible** The outcomes and remedies should accord with internationally recognized human  
1326 rights standards;

1327 — **clear and transparent** Although confidentiality might sometimes be appropriate, the process and  
1328 outcome should be sufficiently open to public scrutiny and should give due weight to the public interest;  
1329 and

1330 — **based on dialogue and mediation** The process should look for mutually agreed solutions to grievances  
1331 through engagement between the parties. Where adjudication is desired, parties should retain the right to  
1332 seek this through separate, independent mechanisms.

### 1333 **6.3.7 Human rights issue 5: Discrimination and vulnerable groups**

#### 1334 **6.3.7.1 Description of the issues**

1335 Discrimination involves any distinction, exclusion or preference that has the effect of nullifying equality of  
1336 treatment or opportunity, where that consideration is based on prejudice rather than a legitimate ground.  
1337 Illegitimate grounds for discrimination include but are not limited to: race, color, gender, age, language,  
1338 property, nationality or national origin, religion, ethnic or social origin, caste, economic grounds, disability,  
1339 pregnancy, belonging to an indigenous people, trade union affiliation, political affiliation or political or other

1340 opinion. <sup>[36][43][100][101][102][103][117]</sup> Emerging prohibited grounds also include marital or family status, personal  
 1341 relationships, and health status such as HIV/AIDS status. The prohibition of discrimination is one of the most  
 1342 fundamental principles of international human rights law.

1343 The full and effective participation and inclusion in society of all groups, including those who are vulnerable,  
 1344 provides and increases opportunities for all organizations as well as the people concerned. An organization  
 1345 has much to gain from taking an active approach to ensuring equal opportunity and respect for all individuals.

1346 Groups that have suffered persistent discrimination, leading to entrenched disadvantages, are vulnerable to  
 1347 further discrimination, and their human rights should be the focus of additional attention in terms of protection  
 1348 and respect by organizations. While vulnerable groups typically include those mentioned in 6.3.7.2, there may  
 1349 be other vulnerable groups in the particular community in which an organization operates.

1350 Discrimination can also be indirect. This occurs when an apparently neutral provision, criterion or practice  
 1351 would put persons with a particular attribute at a disadvantage compared with other persons, unless that  
 1352 provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim  
 1353 are appropriate and necessary.

1354 **6.3.7.2 Related actions and expectations**

1355 An organization should take care to ensure that it does not discriminate against employees, partners,  
 1356 customers, stakeholders, members and anyone else with whom it has any contact or on whom it can have an  
 1357 impact.

1358 An organization should examine its own operations and the operations of other parties within its sphere of  
 1359 influence to determine whether direct or indirect discrimination is present. It should also ensure that it is not  
 1360 contributing to discriminatory practices through the relationships connected to its activities. If this is the case  
 1361 an organization should encourage and assist other parties in their responsibility to prevent discrimination. If  
 1362 this it not successful it should reconsider its relation with this organization. It may, for example, undertake an  
 1363 analysis of typical ways in which it interacts with women, as compared with men, and consider whether  
 1364 policies and decisions in this regard are objective or reflect stereotyped preconceptions. It may wish to seek  
 1365 advice from local or international organizations, with expertise in human rights. An organization may be guided  
 1366 by the findings and recommendations of international or national monitoring or investigative procedures.

1367 An organization should consider facilitating the raising of awareness of their rights among members of  
 1368 vulnerable groups.

1369 An organization also should contribute to redressing discrimination or the legacy of past discrimination,  
 1370 wherever practicable. For example, it should strive to employ or do business with organizations operated by  
 1371 people from groups historically discriminated against; where feasible, it should support efforts to increase  
 1372 access to education, infrastructure or social services for groups denied full access.

1373 An organization can take a positive and constructive view of diversity among the people with whom it  
 1374 interacts. It could consider not only the human rights aspects but also the gains for its own operations in terms  
 1375 of the value added by the full development of multifaceted human resources and relations.

1376 The following examples of vulnerable groups are described together with specific related actions and  
 1377 expectations:

1378 — **Women and girls** comprise half of the world population, but they are frequently denied access to  
 1379 resources and opportunities on equal terms with men and boys. Women have the right to enjoy all human  
 1380 rights without discrimination, including in education, employment and economic and social activities as  
 1381 well as the right to decide on marriage and family matters and the right to make decisions over their own  
 1382 reproductive health. An organization's policies and activities should have due regard for women's rights  
 1383 and promote the equal treatment of women and men in the economic, social and political spheres <sup>[97]</sup>.

1384 — **People with disabilities** are often vulnerable, in part because of misperceptions about their skills and  
 1385 abilities. An organization should contribute to ensuring that men and women with disabilities are accorded  
 1386 dignity, autonomy and full participation in society. The principle of non-discrimination should be respected  
 1387 and organizations should consider making reasonable provisions for access to facilities.

- 1388 — **Children** are particularly vulnerable in part because of their dependent status. In taking action that may  
 1389 affect children, primary consideration should be given to the best interests of the child. The principles of  
 1390 the Convention on the Rights of the Child, which include non-discrimination, a child's right to life, survival,  
 1391 development and free expression, should always be respected and taken into account <sup>[99][110][111]</sup>.  
 1392 Organizations should have policies to prevent their employees engaging in sexual and other forms of  
 1393 exploitation of children.
- 1394 — **Indigenous peoples** can be considered a vulnerable group because they have experienced systemic  
 1395 discrimination that has included colonization, dispossession from their lands, separate status from other  
 1396 citizens, and violations of their human rights. Indigenous peoples enjoy collective rights, and individuals  
 1397 belonging to indigenous peoples share universal human rights, in particular the right to equal treatment  
 1398 and opportunity. The collective rights include: self determination (which means the right to determine their  
 1399 identity, their political status and the way they want to develop); access to and management of traditional  
 1400 land, water and resources; maintaining and enjoying their customs, culture, language and traditional  
 1401 knowledge free from discrimination; and managing their cultural and intellectual property <sup>[40][115]</sup>. An  
 1402 organization should recognize and respect the rights of indigenous peoples when carrying out its  
 1403 decisions and activities. An organization should recognize and respect the principle of non-discrimination  
 1404 and the rights of individuals belonging to an indigenous people when carrying out decisions and activities.
- 1405 — **Migrants, migrant workers** and their families may also be vulnerable owing to their foreign or regional  
 1406 origin, particularly if they are irregular or undocumented migrants. An organization should respect their  
 1407 rights and contribute to promoting a climate of respect for the human rights of migrants, migrant workers  
 1408 and their families <sup>[43][44][45][106]</sup>.
- 1409 — **People discriminated against on the basis of descent, including caste.** Hundreds of millions of  
 1410 people are discriminated against because of their hereditary status or descent. This form of discrimination  
 1411 is based on a history of rights abuse justified by the wrongful notion that some people are considered  
 1412 unclean because of the group into which they are born. An organization should avoid such practices and,  
 1413 where feasible, seek to contribute to eliminating these prejudices.
- 1414 — **People discriminated against on the basis of race.** People are discriminated against because of their  
 1415 race, cultural identity and ethnic origin. There is a history of rights abuse justified by the wrongful notion  
 1416 that some people are inferior because of their skin colour or culture. Racism is often present in regions  
 1417 with a history of slavery or oppression of one racial group by another. *[Include reference to Durban*  
 1418 *Declaration]*
- 1419 — **Other vulnerable groups** include, for example, the elderly, the displaced, the poor, illiterate people,  
 1420 people living with HIV/AIDS and minority and religious groups.

## 1421 6.3.8 Human rights issue 6: Civil and political rights

### 1422 6.3.8.1 Description of the issues

1423 Civil and political rights include absolute rights such as the right to life, the right to a life with dignity, the right  
 1424 to freedom from torture, the right to security of person, the right to own property, liberty and integrity of the  
 1425 person, and the right to due process of law and a fair hearing when facing criminal charges. They further  
 1426 include freedom of opinion and expression, freedom of peaceful assembly and association, freedom to adopt  
 1427 and practise a religion, freedom to hold beliefs, freedom from arbitrary interference with privacy, family, home  
 1428 or correspondence, freedom from attacks on honour or reputation, the right to access to public services and  
 1429 the right to take part in elections <sup>[107][113]</sup>.

### 1430 6.3.8.2 Related actions and expectations

1431 An organization should respect all individual civil and political rights. Examples include, but are not limited to,  
 1432 the following:

- 1433 — life of individuals;

- 1434 — freedom of opinion and expression. An organization should not aim to suppress anyone's views or  
1435 opinions, even when the person expresses criticism of the organization internally or externally;
- 1436 — freedom of peaceful assembly and of association;
- 1437 — freedom to seek, receive and impart information and ideas through any means, regardless of national  
1438 borders;
- 1439 — the right to own property, alone as well as in association with others, and freedom from being arbitrarily  
1440 deprived of property; and.
- 1441 — access to due process and the right to a fair hearing before any internal disciplinary measure is taken.  
1442 Any disciplinary measure should be proportionate and not involve physical punishment or inhuman or  
1443 degrading treatment.

### 1444 **6.3.9 Human rights issue 7: Economic, social and cultural rights**

#### 1445 **6.3.9.1 Description of the issue**

1446 Every person, as a member of society, has economic, social and cultural rights necessary for his or her dignity  
1447 and personal development. These include the right to: education; work in just and favourable conditions;  
1448 freedom of association; an adequate standard of health; a standard of living adequate for the physical and  
1449 mental health and well-being of himself or herself and his or her family; food, clothing, housing, medical care  
1450 and necessary social protection, such as security in the event of unemployment, sickness, disability, death of  
1451 spouse, old age or other lack of livelihood in circumstances beyond his or her control; practise a religion and  
1452 culture; and genuine opportunities to participate without discrimination in decision making that supports  
1453 positive practices and discourages negative practices in relation to these rights<sup>[108]</sup>.

#### 1454 **6.3.9.2 Related actions and expectations**

1455 An organization has a responsibility to respect economic, social and cultural rights by exercising due diligence  
1456 to ensure that it does not engage in activities that infringe, obstruct or impede the enjoyment of such rights.  
1457 The following are examples of what an organization should do to respect these rights. An organization should  
1458 assess the possible impacts of its decisions, activities, products and services, as well as new projects, on  
1459 these rights, including the rights of the local population. Further, it should neither directly, nor indirectly limit or  
1460 deny access to an essential product or resource, such as water. For example, production processes should  
1461 not compromise the supply of scarce drinking water resources. Organizations should, where appropriate,  
1462 consider adopting or maintaining specific policies to ensure the efficient distribution of essential goods and  
1463 services where this distribution is endangered.

1464 A socially responsible organization could also contribute to the fulfilment of such rights when appropriate while  
1465 keeping in mind the different roles and capacities of governments and other organizations related to the  
1466 provision of these rights.

1467 An organization could consider, for example:

- 1468 — facilitating access to, and where possible providing support and facilities for, education and life-long  
1469 learning for community members;
- 1470 — joining efforts with other organizations and governmental institutions supporting respect for and  
1471 realization of economic, social and cultural rights;
- 1472 — exploring ways related to their core activities to contribute to the fulfilment of these rights; and
- 1473 — adapting goods or services to the purchasing ability of poor people.

1474 Economic, social and cultural rights, as with any other right, should also be considered in the local context.  
1475 Further guidance on related actions and expectations is provided in 6.8 on community involvement and  
1476 development.

1477 **6.3.10 Human rights issue 8: Fundamental principles and rights at work**

1478 Fundamental principles and rights at work are focused on labour issues. They have been adopted by the  
1479 international community as basic human rights and as such are covered in the human rights section.

1480 **6.3.10.1 Description of the issue**

1481 The International Labour Organization (ILO) has identified fundamental rights at work <sup>[21]</sup>. These include:

- 1482 — freedom of association and effective recognition of the right to collective bargaining <sup>[29][68]</sup>;
- 1483 — the elimination of all forms of forced or compulsory labour <sup>[17][27]</sup> ;
- 1484 — the effective abolition of child labour <sup>[46][47][81][82]</sup>; and
- 1485 — the elimination of discrimination regarding employment and occupation <sup>[22][24][25]</sup>.

1486 **6.3.10.2 Related actions and expectations**

1487 Although these rights are legislated for in many jurisdictions, an organization should independently ensure that  
1488 it addresses the following matters:

- 1489 — **freedom of association and collective bargaining** <sup>[29][68]</sup> Workers and employers, without distinction  
1490 whatsoever, have the right to establish and, subject only to the rules of the organization concerned, to join  
1491 organizations of their own choosing without previous authorization. Representative organizations formed  
1492 or joined by workers should be recognized for purposes of collective bargaining. Terms and conditions of  
1493 employment may be fixed by voluntary collective negotiation where workers so choose. Workers'  
1494 representatives should be given appropriate facilities that will enable them to do their work effectively and  
1495 allow them to perform their role without interference. Collective agreements should include provisions for  
1496 the settlement of disputes. Workers' representatives should be provided with information required for  
1497 meaningful negotiations. (See 6.4 for further information on freedom of association and on how freedom  
1498 of association and collective bargaining relate to social dialogue.)
- 1499 — **forced labour** <sup>[17][27]</sup> An organization should not engage in or benefit from any use of forced or  
1500 compulsory labour. No work or service should be exacted from any person under the threat of any penalty  
1501 or when the work is not conducted voluntarily. An organization should not engage or benefit from prison  
1502 labour, unless the prisoners have been convicted in a court of law and their labour is under the  
1503 supervision and control of a public authority. Further, prison labour should not be used by private  
1504 organizations unless performed on a voluntary basis, as evidenced by, among other things, fair and  
1505 decent conditions of employment.
- 1506 — **equal opportunities and non-discrimination** <sup>[22][24][25]</sup> An organization should confirm that its  
1507 employment policies are free from discrimination based on race, colour, gender, religion, national  
1508 extraction, social origin, political opinion, age, or disability. Emerging prohibited grounds also include  
1509 marital or family status, personal relationships, and health status such as HIV/AIDS status, which are in  
1510 line with the general principle that hiring policies and practices, earnings, employment conditions, access  
1511 to training and promotion, and termination of employment should be based only on the requirements of  
1512 the job.] Hiring policies and practices, earnings, employment conditions, access to training and promotion,  
1513 and termination of employment should be based only on the requirements of the job. Organizations  
1514 should also take steps to prevent harassment in the workplace.
- 1515 — An organization should regularly assess the impact of its policies and activities on promotion of  
1516 equal opportunities and non-discrimination.
- 1517 — An organization should take positive actions to provide for the protection and advancement of  
1518 vulnerable groups This might include establishing workplaces for persons with disabilities to help  
1519 them earn a living under suitable conditions, and establishing or participating in programmes that  
1520 address issues such as promotion of employment for youth and older workers, and equal

1521 employment opportunities for women and more balanced representation of women in senior  
1522 positions.

1523 — **child labour** <sup>[46][47][81][82][99]</sup> The minimum age for employment is determined through international  
1524 instruments (see Box 7 and Table 3). Organizations should not engage in or benefit from any use of child  
1525 labour. If an organization has child labour in its operations or, as far as possible within its sphere of  
1526 influence, it should ensure not only that the children are removed from work, but also that they are  
1527 provided with appropriate alternatives, in particular education. Light work that does not harm a child or  
1528 interfere with school attendance or with other activities necessary to a child's full development (such as  
1529 recreational activities) is not considered child labour.

1530

1531

**Box 7 – Child labour**

1532 ILO Conventions <sup>[46][81]</sup> provide the framework for national law to prescribe a minimum age for admission to  
1533 employment or work that must not be less than the age for completing compulsory schooling, and in any case  
1534 not less than 15 years. In countries where economic and educational facilities are less well developed, the  
1535 minimum age may be as low as 14 years. Exception may also be made from 13 or 12 years for "light work"  
1536 <sup>[46][47]</sup> . The minimum age for hazardous work — work that is likely to harm the health, safety or morals of  
1537 the child as a consequence of its nature or the circumstances under which it is carried out — is 18 years of  
1538 age for all countries <sup>[81][82]</sup> (see Table 3).

1539 The term "child labour" should not be confused with "youth employment" or "student work", which may be both  
1540 legitimate and desirable if performed as part of a genuine apprenticeship or training programme that complies  
1541 with applicable laws and regulations.

1542 Child labour is a form of exploitation that is a violation of a human right. Child labour damages a child's  
1543 physical, social, mental, psychological and spiritual development. Child labour deprives boys and girls of their  
1544 childhood and their dignity. They are deprived of an education and may be separated from their families.  
1545 Children who do not complete their basic education are likely to remain illiterate and never acquire the skills  
1546 needed to get a job that enables them to contribute to the development of a modern economy. Consequently  
1547 child labour results in under-skilled, unqualified workers and jeopardizes future improvements of skills in the  
1548 workforce and future economic and social development. Child labour may also deprive youth and adult  
1549 workers of work, and depress wages.

1550 An organization should make efforts to eliminate all forms of child labour. Efforts to eliminate the worst forms  
1551 of child labour should not be used to justify other forms of child labour. An organization should analyze the  
1552 different circumstances of girls and boys and the different ways in which children from ethnic populations or  
1553 populations that are discriminated against are affected, so that preventive and corrective measures can be  
1554 targeted and effective. When children below the legal working age are found in the workplace, measures  
1555 should be taken to remove them from work. To the extent possible, an organization should help the child who  
1556 has been removed from the workplace and his or her family to access adequate services and viable  
1557 alternatives to ensure that he or she does not end up in the same or a worse situation, either working  
1558 elsewhere or being exploited.

1559 Effectively eliminating child labour requires broad collaboration in society. An organization should co-operate  
1560 with other organizations and government agencies to release children from work and into free, full-time and  
1561 quality education.

1562

1563

**ILO Standards on minimum age for admission to employment or work**

	<b>Developed countries</b>	<b>Developing countries</b>
Regular work	15 years	14 years
Hazardous work	18 years	18 years
Light work	13 years	12 years

1564

1565 **6.4 Labour practices**

1566 **6.4.1 Overview of labour practices**

1567 **6.4.1.1 Organizations and labour practices**

1568 The labour practices of an organization encompass all policies and practices relating to work performed  
1569 within, by, or on behalf of the organization, including subcontracted work.

1570 Labour practices extend beyond the relationship of an organization with its direct employees or the  
1571 responsibilities that an organization has at a workplace that it owns or directly controls.

1572 Labour practices include the recruitment and promotion of workers; disciplinary and grievance procedures; the  
1573 transfer and relocation of workers; termination of employment; training and skills development; health, safety  
1574 and industrial hygiene; and any policy or practice affecting conditions of work, in particular working time and  
1575 remuneration. Labour practices also include the recognition of worker organizations and representation and  
1576 participation of both worker and employer organizations in collective bargaining, social dialogue and tripartite  
1577 consultation (see Box 8) to address social issues related to employment.

1578 **6.4.1.2 Labour practices and social responsibility**

1579 The creation of jobs, as well as wages and other compensation paid for work performed are among an  
1580 organization's most important economic and social contributions. Meaningful and productive work is an  
1581 essential element in human development; standards of living are improved through full and secure  
1582 employment. Its absence is a primary cause of social problems. Labour practices have a major impact on  
1583 respect for the rule of law and on the sense of fairness present in society: socially responsible labour practices  
1584 are essential to social justice, stability and peace <sup>[33]</sup>.

1585 **6.4.2 Principles and considerations**

1586 **6.4.2.1 Principles**

1587 A fundamental principle in the ILO's 1944 Declaration of Philadelphia <sup>[37]</sup> is that labour is not a commodity.  
1588 This means that workers should not be treated as a factor of production and subjected to the same market  
1589 forces that apply to commodities. The inherent vulnerability of workers and the need to protect their basic  
1590 rights is reflected in the Universal Declaration of Human Rights and the International Covenant on Economic,  
1591 Social and Cultural Rights <sup>[5] [108]</sup>. The principles involved include the right of everyone to earn a living by freely  
1592 chosen work, and the right to just and favourable conditions of work.

1593 **6.4.2.2 Considerations**

1594 The human rights recognized by the ILO as constituting fundamental rights at work are addressed in 6.3.10.  
1595 Many other ILO conventions and recommendations complement and reinforce various provisions in the  
1596 Universal Declaration of Human Rights and its two covenants mentioned in Box 6 and can be used as a  
1597 source of practical guidance on the meaning of various human rights.

1598 The primary responsibility for ensuring fair and equitable treatment for workers lies with governments. This is  
1599 achieved through

1600 — adopting legislation consistent with the Universal Declaration of Human Rights and applicable ILO labour  
1601 standards and

1602 — enforcing that legislation including through the development and funding of national labour inspection  
1603 systems, and

1604 — ensuring that workers and organizations have the necessary access to justice.

1605 Labour laws and practices will vary from country to country.

1606 Where governments have failed to legislate, an organization should abide by the principles underlying these  
 1607 international instruments. Where the law is adequate but government enforcement is inadequate, an  
 1608 organization should abide by the law. It is important to distinguish between the government's role as organ of  
 1609 state and its role as an employer. Government bodies or state-owned organizations have the same  
 1610 responsibilities for their labour practices as other organizations.

1611

1612

**Box 8 – The International Labour Organization**

1613 The International Labour Organization is a United Nations agency with a tripartite structure (governments,  
 1614 workers and employers) that was established for the purpose of setting international labour standards. These  
 1615 minimum standards are legal instruments setting out universal basic principles and rights at work. They  
 1616 pertain to workers everywhere, working in any type of organization; and are intended to prevent unfair  
 1617 competition based on exploitation and abuse. ILO standards are developed by tripartite negotiation at the  
 1618 international level among governments, workers and employers, and are adopted by a vote of the three  
 1619 constituents. ILO instruments are kept up to date through a review process and through the jurisprudence of a  
 1620 formal supervisory mechanism that interprets the meaning and proper application of ILO standards. ILO  
 1621 Conventions and Recommendations, together with the ILO Declaration on Fundamental Principles and Rights  
 1622 at Work 1998 <sup>[21]</sup> and the ILO's Tripartite Declaration of Principles Concerning Multinational Enterprises and  
 1623 Social Policy 1977 (last revised 2006) <sup>[39]</sup>, constitute the most authoritative guidance regarding labour  
 1624 practices and some other important social issues. The ILO seeks to promote opportunities for women and  
 1625 men to obtain decent and productive work, which it defines as work performed in conditions of freedom,  
 1626 equity, security and human dignity.

1627

1628

1629 **6.4.3 Labour practices issue 1: Employment and employment relationships**

1630 **6.4.3.1 Description of the issue**

1631 The significance of employment for human development is universally accepted. As an employer, an  
 1632 organization contributes to one of the most widely accepted objectives of society, namely the improvement of  
 1633 standards of living through full and secure employment and decent work.

1634 Every country provides a legal framework that regulates the relationship between employers and employees.  
 1635 Although the precise tests and criteria to determine whether an employment relationship exists vary from one  
 1636 country to another, the fact that the power of the contracting parties is not equal and that employees therefore  
 1637 require additional protection is universally accepted, and forms the basis for labour law.

1638 The employment relationship confers rights and imposes obligations on both employers and employees in the  
 1639 interest of both the organization and society.

1640 Not all work is performed within an employment relationship. Work and services are also performed by men  
 1641 and women who are self-employed; in these situations the parties are considered independent of each other  
 1642 and have a more equal and commercial relationship. The distinction between employment and commercial  
 1643 relationships is not always clear and is sometimes wrongly labelled, with the consequence that workers do not  
 1644 always receive the protections and rights that they are entitled to receive. It is important for both society and  
 1645 the individual performing work that the appropriate legal and institutional framework be recognized and  
 1646 applied. Whether work is performed under an employment contract or a commercial contract, all parties to a  
 1647 contract are entitled to understand their rights and responsibilities and to have appropriate recourse in the  
 1648 event that the terms of the contract are not respected <sup>[23]</sup>.

1649 In this context, labour is understood to be work performed for compensation and does not include activities  
 1650 undertaken by genuine volunteers. However, organizations should adopt policies and measures to address  
 1651 their legal liability and duty of care concerning volunteers.

1652 **6.4.3.2 Related actions and expectations**

1653 An organization should:

- 1654 — be confident that all work is performed by women and men who are legally recognized as employees or  
1655 who are legally recognized as being self-employed;
- 1656 — not seek to avoid the obligation that the law places on the employer by disguising relationships that would  
1657 otherwise be recognized as an employment relationship under the law;
- 1658 — recognize the importance of secure employment to both the individual worker and to society. Use active  
1659 workforce planning to avoid the use of work performed on a casual basis or the excessive use of work  
1660 performed on a temporary basis, except where the nature of the work is genuinely short term or seasonal;
- 1661 — provide reasonable notice, timely information and, jointly with worker representatives where they exist,  
1662 consider how to mitigate adverse impacts to the greatest possible extent when considering changes in its  
1663 operations, such as closures that affect employment<sup>[72][73]</sup>;
- 1664 — ensure equal opportunities for all workers and not discriminate either directly or indirectly in any labour  
1665 practice;
- 1666 — eliminate arbitrary or discriminatory dismissal practices, if any<sup>[72][73]</sup>;
- 1667 — protect personal data and privacy of workers; note to editors: insert reference to “ILO Code of Practice  
1668 on Protection of Workers' Personal Data, 1997”
- 1669 — take steps to ensure that work is contracted or sub-contracted out only to organizations that are legally  
1670 recognized or are otherwise able and willing to assume the responsibilities of an employer and to provide  
1671 decent working conditions. An organization should use only those labour intermediaries who are legally  
1672 recognized and where other arrangements for the performance of work confer legal rights on those  
1673 performing the work.<sup>[60][61]</sup> Home workers should not be treated worse than other wage earners; (*Add*  
1674 *reference to “ILO Home Work Convention, 1996 ( No. 177)”*)
- 1675 — not benefit from unfair, exploitative or abusive labour practices of its partners, suppliers or sub-  
1676 contractors, including home workers. An organization should make reasonable efforts to encourage  
1677 organizations in its sphere of influence to follow responsible labour practices, recognizing that a high level  
1678 of influence is likely to correspond to a high level of responsibility to exercise that influence. Depending  
1679 upon the situation and influence, reasonable efforts could include: establishing contractual obligations on  
1680 suppliers and sub contractors; making unannounced visits and inspections; and exercising due diligence  
1681 in supervising contractors and intermediaries. Where suppliers and sub-contractors are expected to  
1682 comply with a code of labour practice, the code should be consistent with the Universal Declaration of  
1683 Human Rights and the principles underlying applicable ILO labour standards (see 5.2.3 for additional  
1684 information about responsibilities in the sphere of influence); and
- 1685 — where operating internationally, endeavour to increase the employment, occupational development,  
1686 promotion and advancement of nationals of the host country. This includes sourcing and distributing  
1687 through local enterprises where practicable.<sup>[39]</sup>

#### 1688 **6.4.4 Labour practices issue 2: Conditions of work and social protection**

##### 1689 **6.4.4.1 Description of the issue**

1690 Conditions of work include wages and other forms of compensation, working time, rest periods, holidays,  
1691 disciplinary and dismissal practices, maternity protection and welfare matters such as safe drinking water,  
1692 sanitation, canteens and access to medical services. Many of the conditions of work are set by national laws  
1693 and regulations or by legally binding agreements between those for whom work is performed and those who  
1694 perform work. The employer determines many of the conditions of work.

1695 Conditions of work greatly affect the quality of the life of workers and their families, and also economic and  
1696 social development. Fair and appropriate consideration should be given to the quality of conditions of work.

1697 Social protection refers to all legal guarantees and organizational policies and practices to mitigate the  
1698 reduction or loss of income in case of employment injury, illness, maternity, parenthood, old age,

1699 unemployment, disability or any other financial hardship; and to provide medical care and family benefit.  
 1700 Social protection plays an important role in preserving human dignity and establishing a sense of fairness and  
 1701 social justice. Generally, the primary responsibility for social protection lies with the state.

1702 **6.4.4.2 Related actions and expectations**

1703 An organization should:

1704 — ensure that the conditions of work comply with national laws and regulations and are consistent with  
 1705 applicable international labour standards;

1706 — respect higher levels of provision established through other applicable legally binding instruments such as  
 1707 collective agreements;

1708 — observe at least those minimum provisions defined in international labour standards as established by the  
 1709 ILO, especially where national legislation has not yet been adopted;

1710 — provide decent conditions of work with regard to wages <sup>[48][49][62][63][65]</sup>, hours of work <sup>[28][32][50][51][67]</sup>, weekly  
 1711 rest, holidays <sup>[30][31][74][75][76]</sup>, health and safety <sup>[18][19][36][38][52][53][54][55][65][66][69][70][77]</sup>, maternity protection  
 1712 <sup>[41][42][71]</sup> and ability to combine work with family responsibilities <sup>[79]</sup>;

1713 — wherever possible, allow observance of national or religious traditions and customs

1714 — provide conditions of work, for all workers that permit, to the greatest extent possible, work-life balance  
 1715 and are comparable with those offered by similar employers in the locality concerned ; <sup>[60][61]</sup>

1716 — provide conditions of work that are comparable with those offered by similar employers in the community  
 1717 concerned and that permit, to the greatest extent possible, work-life balance <sup>[60][61]</sup>;

1718 — provide wages and other forms of remuneration in accordance with national laws, regulations or collective  
 1719 agreements. An organization should pay wages at least adequate for the needs of workers and their  
 1720 families. In doing so, it should take into account the general level of wages in the country, the cost of  
 1721 living, social security benefits and the relative living standards of other social groups. It should also  
 1722 consider economic factors, including requirements of economic development, levels of productivity and  
 1723 the desirability of attaining and maintaining a high level of employment. In determining wages and  
 1724 working conditions that reflect these considerations, an organization should bargain collectively with its  
 1725 workers or their representatives, in particular trade unions, where they so wish, in accordance with  
 1726 national systems for collective bargaining <sup>[60][61]</sup>;

1727 — provide equal pay for work of equal value <sup>[24][25]</sup>;

1728 — pay wages directly to the workers concerned, subject only to any restriction or deduction permitted by  
 1729 laws, regulations or collective agreements <sup>[48][49][62][63][64]</sup>;

1730 — comply with any obligation concerning the provision of social protection for workers in the country of  
 1731 operation <sup>[39]</sup>;

1732 — respect the right of workers to adhere to normal or agreed working hours established in laws, regulations  
 1733 or collective agreements <sup>[48][49][62][63][64]</sup>. It should also provide workers with weekly rest and paid annual  
 1734 leave <sup>[28][32][50][51][67]</sup>;

1735 — respect the family responsibilities of workers by providing reasonable working hours, parental leave and,  
 1736 when possible, childcare and other facilities that can help workers achieve a proper work-life balance; and

1737 — compensate workers for overtime in accordance with laws, regulations or collective agreements. When  
 1738 requesting workers to work overtime, an organization should take into account the interests, safety and  
 1739 well-being of the workers concerned and any hazard inherent in the work. An organization should comply

1740 with laws and regulations prohibiting mandatory and non-compensated overtime <sup>[48][49][62][63][64]</sup>, and  
 1741 always respect the basic human rights of workers concerning forced labour <sup>[27]</sup>.

## 1742 6.4.5 Labour practices issue 3: Social dialogue

### 1743 6.4.5.1 Description of the issue

1744 Social dialogue includes all types of negotiation, consultation or exchange of information between or among  
 1745 representatives of governments, employers and workers, on matters of common interest relating to economic  
 1746 and social concerns. It could take place between employer and worker representatives, on matters affecting  
 1747 their interests, and could also include governments, where broader factors, such as legislation and social  
 1748 policy, are at stake.

1749 Independent parties are required for social dialogue.. Worker representatives should be freely elected, in  
 1750 accordance with national laws, regulations or collective agreements, by either the members of their trade  
 1751 union or by the workers concerned. They should not be designated by the government or the employer. At the  
 1752 level of the organization, social dialogue takes various forms, including information and consultation  
 1753 mechanisms such as works councils and collective bargaining. Trade unions and employers' organizations, as  
 1754 the chosen representatives of the respective parties, have a particularly important role to play in social  
 1755 dialogue.

1756 Social dialogue is based on the recognition that employers and workers have both competing and mutual  
 1757 interests, and plays a significant role in industrial relations, policy formulation and governance in many  
 1758 countries.

1759 Effective social dialogue provides a mechanism for developing policy and finding solutions that take into  
 1760 account the priorities and needs of both employers and workers, and thus results in outcomes that are  
 1761 meaningful and long-lasting for both the organization and society. Social dialogue can contribute to  
 1762 establishing participation and democratic principles in the workplace, to better understanding between the  
 1763 organization and those who perform its work and to healthy labour-management relations, thus minimizing  
 1764 resort to costly industrial disputes. Social dialogue is a powerful means for managing change. It can be used  
 1765 to design skills development programmes contributing to human development and enhancing productivity, or  
 1766 to minimize the adverse social impacts of change in the operations of organizations. Social dialogue could  
 1767 also include transparency on social conditions of sub-contractors.

1768 Social dialogue can take many forms and can occur at various levels. Workers may wish to form groups with a  
 1769 broader occupational, inter-occupational or geographical coverage. Employers and workers are in the best  
 1770 position to decide jointly the most appropriate level. One way to do this is by adopting framework agreements  
 1771 supplemented by local organization-level agreements in accordance with national law or practice.

1772 At times, social dialogue may address contentious matters, in which case the parties can establish a dispute  
 1773 resolution process. Social dialogue can also concern grievances for which a complaints mechanism is  
 1774 important, particularly in countries where the fundamental principles and rights at work are not adequately  
 1775 protected. Such grievance mechanism may also apply to a subcontracted workforce.

1776 International social dialogue is a growing trend, and includes regional and global dialogue and agreements  
 1777 between organizations operating internationally and international trade union organizations.

### 1778 6.4.5.2 Related actions and expectations

1779 An organization should <sup>[20][26][78]</sup>:

1780 — recognize the importance for organizations of social dialogue institutions, including at the international  
 1781 level, and applicable collective bargaining structures;

1782 — respect at all times the right of workers to form or join their own organizations to advance their interests or  
 1783 to bargain collectively;

1784 — not obstruct workers who seek to form or join their own organizations and to bargain collectively, for  
1785 instance by dismissing or discriminating against them, through reprisals or by making any direct or  
1786 indirect threat so as to create an atmosphere of intimidation or fear;

1787 — where changes in operations would have major employment impacts, provide reasonable notice to the  
1788 appropriate government authorities and representatives of the workers so that the implications may be  
1789 examined jointly to mitigate any adverse impact to the greatest possible extent;

1790 — as far as possible, and to an extent that is reasonable and non-disruptive, provide duly designated worker  
1791 representatives with access to authorized decision makers, provide duly designated worker  
1792 representatives with access to authorized decision makers, to workplaces, to the workers they represent,  
1793 to facilities necessary to perform their role and to information that will allow them to have a true and fair  
1794 picture of the organization's finances and activities; and

1795 — refrain from encouraging governments to restrict the exercise of the internationally recognized rights of  
1796 freedom of association and collective bargaining for example by avoiding locating a subsidiary or sourcing  
1797 from companies located in specialised industrial areas where freedom of association is restricted or  
1798 prohibited, although national regulation recognises that right and refrain from participating in incentive  
1799 schemes based on such restrictions,.

1800 Organizations may also wish to consider participating, as appropriate, in employers' organizations as a means  
1801 of creating opportunities for social dialogue and extending their expression of social responsibility through  
1802 such channels.

#### 1803 **6.4.6 Labour practices issue 4: Health and safety at work**

##### 1804 **6.4.6.1 Description of the issue**

1805 Health and safety at work concerns the promotion and maintenance of the highest degree of physical, mental  
1806 and social well-being of workers and prevention of harm to health caused by working conditions. It also relates  
1807 to the protection of workers from risks to health and the adaptation of the occupational environment to the  
1808 physiological and psychological needs of workers.

1809 The financial and social burden on society of work-related illness, injuries and death is heavy. Accidental and  
1810 chronic pollution and other workplace hazards that are harmful for workers may also have impacts on  
1811 communities and the environment. (For more information on environmental hazards see 6.5.) Health and  
1812 safety concerns arise over dangerous equipment, processes, practices and substances (chemical, physical  
1813 and biological).

##### 1814 **6.4.6.2 Related actions and expectations**

1815 An organization should:

1816 — develop, implement and maintain an occupational safety and health policy based on the principle that  
1817 strong safety and health standards and organizational performance are mutually supportive and  
1818 reinforcing;

1819 — understand and apply principles of health and safety management, including the hierarchy of controls:  
1820 elimination, substitution, engineering controls, administrative controls, work procedures and personal  
1821 protective equipment;

1822 — analyze and control the health and safety risks involved in its activities;

1823 — communicate the requirement that workers should follow all safe practices at all times and ensure that  
1824 workers follow the proper procedures;

1825 — provide the safety equipment needed, including personal protective equipment, for the prevention of  
1826 occupational injuries, diseases and accidents, as well as for dealing with emergencies; record and  
1827 investigate all health and safety incidents and problems in order to minimize or eliminate them;

- 1828 — address the specific and sometimes different ways in which women and men are affected by occupational  
1829 safety and health (OSH) risks, and workers under particular circumstances such as people with  
1830 disabilities, inexperienced or younger workers, pregnant workers and workers who have recently given  
1831 birth or are breastfeeding];
- 1832 — provide equal health and safety protection for part-time and temporary workers, as well as subcontracted  
1833 workers;
- 1834 — strive to eliminate psychosocial hazards in the workplace, which contribute or lead to stress and illness;
- 1835 — provide adequate training to all personnel on all relevant matters and
- 1836 — respect the principle that workplace health and safety measures should not involve monetary  
1837 expenditures by workers; and
- 1838 — base its health, safety and environment systems on the participation of the workers concerned (see Box  
1839 9) and recognize and respect the rights of workers to:
- 1840 — obtain timely full and accurate information concerning the health and safety risks and the best  
1841 practices used to address these risks;
- 1842 — freely inquire into and to be consulted on all aspects of their health and safety related to their work;
- 1843 — refuse work that is reasonably considered to pose an imminent or serious danger to their life or  
1844 health or to the lives and health of others;
- 1845 — seek outside advice from workers' and employers' organizations and others who have expertise;
- 1846 — report health and safety matters to the appropriate authorities;
- 1847 — participate in health and safety decisions and activities, including investigation of incidents and  
1848 accidents; and
- 1849 — be free of the threat of reprisals for doing any of these things <sup>[18][19][36][38][52][53][54][55][65][66][69][70][77]</sup>.

1850

1851

### Box 9 – Joint labour-management health and safety committees

1852 An effective occupational health and safety programme depends on the involvement of workers. Joint labour-  
1853 management health and safety committees can be the most important part of an organization's health and  
1854 safety programme. Joint committees can:

- 1855 — gather information;
- 1856 — develop and disseminate safety manuals and training programmes;
- 1857 — report, record and investigate accidents; and
- 1858 — inspect and respond to problems raised by workers or management.

1859 Worker representatives on these committees should not be appointed by management but elected by the  
1860 workers themselves. Membership in these committees should be equally divided among management and  
1861 worker representatives and should include both men and women whenever possible. The committees should  
1862 be of sufficient size for all shifts, sections and locations of the organization to be represented. They should not  
1863 be considered a substitute for works councils or workers' organizations.

1864

1865

1866 **6.4.7 Labour practices issue 5: Human development and training in the workplace**

1867 **6.4.7.1 Description of the issue**

1868 Human development includes the process of enlarging people's choices by expanding human capabilities and  
 1869 functioning, thus enabling women and men to lead long and healthy lives, to be knowledgeable and to have a  
 1870 decent standard of living. Human development also includes access to political, economic and social  
 1871 opportunities for being creative and productive and for enjoying self-respect and a sense of belonging to a  
 1872 community and contributing to society.

1873 Organizations can use workplace policy and initiatives to further human development by addressing important  
 1874 social concerns, such as fighting discrimination, balancing family responsibilities and promoting health and  
 1875 well-being improving the diversity of their workforces. They can also use workplace policy and initiatives to  
 1876 increase the capacity and employability of individuals. Employability refers to the experiences, competencies  
 1877 and qualifications that increase an individual's capacity to secure and retain decent work.

1878 **6.4.7.2 Related actions and expectations**

1879 An organization should <sup>[33][34][35][42][56][57][58][59][79][80]</sup>.

1880 — provide all workers at all stages of their work experience with access to skills development, training and  
 1881 apprenticeships, and opportunities for career advancement, on an equal and non-discriminatory basis;

1882 — ensure that, when necessary, workers being made redundant are helped to access assistance for new  
 1883 employment, training and counselling;

1884 — establish joint labour-management programmes that promote health and well-being.

1885 **6.5 The environment**

1886 **6.5.1 Overview of the environment**

1887 **6.5.1.1 Organizations and the environment**

1888 The decisions and activities of organizations invariably have an impact on the environment no matter where  
 1889 they are located. These impacts may be associated with the organization's use of resources, the location of  
 1890 the activities of the organization, the generation of pollution and wastes, and the impacts of the organization's  
 1891 activities on natural habitats. To reduce their environmental impacts, organizations should adopt an integrated  
 1892 approach that takes into consideration the direct and indirect economic, social, health, and environmental  
 1893 implications of their decisions and activities.

1894 **6.5.1.2 The environment and social responsibility**

1895 Society is facing many environmental challenges including the depletion of natural resources, pollution,  
 1896 climate change, destruction of habitats, loss of species and the collapse of whole ecosystems and the  
 1897 degradation of urban and rural human settlements. As the world population grows and consumption  
 1898 increases, these changes are becoming increasing threats to human security and the health and well-being of  
 1899 society. There is a need to identify options to reduce and eliminate unsustainable volumes and patterns of  
 1900 production and consumption and to make sure that the resource consumption per person becomes  
 1901 sustainable. Environmental matters at the local, regional and global level are interconnected. Addressing them  
 1902 requires a comprehensive, systematic and collective approach.

1903 Environmental responsibility is a precondition for the survival and prosperity of human beings. It is therefore  
 1904 an important aspect of social responsibility. Environmental matters are closely linked to other social  
 1905 responsibility core subjects and issues. Environmental education and capacity building is fundamental in  
 1906 promoting the development of sustainable societies and lifestyles

1907 Relevant technical tools standards from the ISO 14000-series of standards can be used as an overall  
 1908 framework to assist an organization in addressing environmental issues in a systematic manner *(see note 1 below)*

1909 and should be considered when evaluating environmental performance evaluation, quantifying and reporting  
 1910 greenhouse gas emissions, life cycle assessment, design for the environment, environmental labelling and  
 1911 environmental communication.

1912 *(Note Add reference to the following in the bibliography: ISO 14001:2004 - Environmental Management*  
 1913 *Systems - Requirements with guidance for use, 14004:2004-Environmental management systems - General*  
 1914 *guidelines on principles, systems and support techniques, 14005 - Environmental management systems -*  
 1915 *Guidelines for a staged implementation of an environmental management system, including the use of*  
 1916 *environmental performance evaluation, 14015:2001 - Environmental assessment of sites and organizations,*  
 1917 *14020 series - Environmental labels and declarations, 14031 - Environmental performance evaluation -*  
 1918 *Guidelines, 14040 series - Life cycle assessments, 14062 - Integrating environmental aspects into product*  
 1919 *design and development, 14063 - Environmental communication - Guidelines and examples, and 14064*  
 1920 *series - Greenhouse gases)*

## 1921 **6.5.2 Principles and considerations**

### 1922 **6.5.2.1 Principles**

1923 An organization should respect and promote the following environmental principles:

1924 — **environmental responsibility** In addition to complying with law and regulations, an organization should  
 1925 assume responsibility for the environmental impacts caused by its activities in rural or urban areas and  
 1926 the broader environment. In recognition of ecological limits it should act to improve its own performance,  
 1927 as well as the performance of others within its sphere of influence.

1928 — **the precautionary approach** This is drawn from the Rio Declaration on Environment and Development  
 1929 [119] and subsequent declarations and agreements [109] [131] [94], which advance the concept that  
 1930 where there are threats of serious or irreversible damage to the environment or human health, lack of full  
 1931 scientific certainty should not be used as a reason for postponing cost-effective measures to prevent  
 1932 environmental degradation or damage to human health. When considering the cost effectiveness of a  
 1933 measure an organization should consider the long-term costs and benefits of that measure, not only the  
 1934 short term costs to that organization.

1935 — **environmental risk management** An organization should implement programmes using a risk-based  
 1936 and sustainability perspective to assess, avoid and reduce and mitigate environmental risks and impacts  
 1937 from its activities. An organization should develop and implement awareness-raising activities and  
 1938 emergency response procedures to reduce and mitigate environmental, health and safety impacts caused  
 1939 by accidents and to communicate information about environmental incidents to appropriate authorities  
 1940 and local communities.

1941 — **polluter pays** An organization should bear the cost of pollution caused by its activities, products and  
 1942 services according to either the extent of the environmental impact on society and the remedial action  
 1943 required, or the degree to which the pollution exceeds an acceptable level (see Principle 16 of the Rio  
 1944 Declaration [119]). An organization should endeavour to internalize the cost of pollution and quantify the  
 1945 economic and environmental benefits of preventing pollution in preference to mitigating its impacts based  
 1946 on the “polluter pays” principle. An organisation may choose to cooperate with others to develop  
 1947 economic instruments e.g. contingency funds to cope with costs of major environmental incidents.

### 1948 **6.5.2.2 Considerations**

1949 In its environmental management activities, an organization should assess the relevance of, and employ as  
 1950 appropriate, the following approaches and strategies:

1951 — **life cycle approach** The main objectives of life cycle approach are to reduce the environmental impacts  
 1952 of products and services as well as to improve their socio-economic performance throughout their life  
 1953 cycle, that is, from extraction of raw materials and energy generation, through production and use, to end-  
 1954 of life disposal or recovery. An organization should focus on innovations, not only on compliance, and  
 1955 should commit to continuous improvements in its environmental performance.

- 1956 — **environmental impact assessment** An organization should assess environmental impacts before  
1957 starting a new activity or project and use the results of the assessment as part of the decision-making  
1958 process.
  
- 1959 — **cleaner production and eco-efficiency** These are strategies for satisfying human needs by using  
1960 resources more efficiently and by generating less pollution and waste. An important focus is on making  
1961 improvements at the source rather than at the end of a process or activity. Cleaner and safer production  
1962 and eco-efficiency approaches include: improving maintenance practices; upgrading or introducing new  
1963 technologies or processes; reducing materials and energy use; using renewable energy; rationalizing the  
1964 use of water; eliminating or safely managing toxic and hazardous materials and wastes; and improving  
1965 product and service design.
  
- 1966 — **a product-service system approach** This can be used to shift the focus of market interactions from  
1967 selling or providing products (that is, transfer of ownership through one-time sale or lease/rental) to selling  
1968 or providing a system of products and services that jointly fulfil customer needs (by a variety of service  
1969 and delivery mechanisms). Product-service systems include product lease, product renting or sharing,  
1970 product pooling and pay-for-service. Such systems can reduce material use, decouple revenues from  
1971 material flows, and involve stakeholders in promoting extended producer responsibility through the life  
1972 cycle of the product and accompanying service.
  
- 1973 — **use of environmentally sound technologies and practices** An organization should seek to adopt and,  
1974 where appropriate, promote the development and diffusion of environmentally sound technologies and  
1975 services (see Principle 9 of the Rio Declaration <sup>[119]</sup>).
  
- 1976 — **sustainable procurement** In its purchasing decisions, an organization should take into account the  
1977 environmental, social and ethical performance of the products or services being procured, over their  
1978 entire life cycles. Where possible, it should give preference to products or services with minimized  
1979 impacts, making use of reliable and effective, independently verified labelling schemes or other  
1980 verification schemes, such as eco-labelling; or auditing activities.
  
- 1981 — **learning and awareness raising** An organization should create awareness and promote appropriate  
1982 learning to support the environmental efforts within the organisation and its sphere of influence.

1983 **6.5.3 Environmental issue 1: Prevention of pollution**

1984 **6.5.3.1 Description of the issue**

1985 An organization can improve its environmental performance by preventing pollution, including:

- 1986 — **emissions to air** An organization's emissions to air of pollutants such as lead, mercury, volatile organic  
1987 compounds (VOCs), sulphur dioxide (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), dioxins, particulates and ozone-  
1988 depleting substances can cause environmental and health impacts that affect individuals differently.  
1989 These emissions may come directly from an organization's facilities and activities, or be caused indirectly  
1990 by the use or end-of-life handling of its products and services or the generation of the energy it  
1991 consumes.
  
- 1992 — **discharges to water** An organization may cause water to become polluted through direct, intentional or  
1993 accidental discharges into surface water bodies[, including the marine environment, unintentional runoff  
1994 to surface water or infiltration to ground water. These discharges may come directly from an  
1995 organization's facilities, or be caused indirectly by the use of its products and services.
  
- 1996 — **waste management** An organization's activities, products and services may lead to the generation of  
1997 liquid or solid waste that, if improperly managed, can cause contamination of air, water land, soils and  
1998 outer space. Responsible waste management seeks avoidance of waste. It follows the waste reduction  
1999 hierarchy, that is: source reduction, reuse, recycle and reprocess, waste treatment and waste disposal.  
2000 The waste reduction hierarchy should be used in a flexible manner based on the life cycle approach.  
2001 Hazardous waste including radioactive waste should be managed in an appropriate and transparent  
2002 manner.

- 2003 — **use and disposal of toxic and hazardous chemicals** An organization utilizing or producing toxic and  
 2004 hazardous chemicals (both naturally occurring and anthropogenic) can adversely affect ecosystems and  
 2005 human health through acute (immediate) or chronic (long-term) impacts resulting from emissions or  
 2006 releases. These can affect individuals of different genders and ages differently.
- 2007 — **other identifiable forms of pollution** An organization's activities, products and services may cause  
 2008 other forms of pollution that negatively affect the health and well-being of communities and that can affect  
 2009 individuals differently. These include noise, odour, visual impressions, light pollution, vibration,  
 2010 electromagnetic emissions, radiation, infectious agents (for example, viral or bacterial), emissions from  
 2011 diffused or dispersed sources and biological hazards (for example, invasive species).
- 2012 **6.5.3.2 Related actions and expectations**
- 2013 To improve the prevention of pollution from its activities, an organization should:
- 2014 — identify the aspects and impacts of its decisions and activities on the surrounding environment;
- 2015 — identify the sources of pollution and waste related to its activities, products and services;
- 2016 — measure, record and report on its significant sources of pollution; and reduction of pollution, water  
 2017 consumption, waste generation and energy consumption;
- 2018 — implement measures aimed at preventing pollution and waste, using the waste management hierarchy,  
 2019 and ensuring proper management of unavoidable pollution and waste<sup>[83]</sup>;
- 2020 — engage with local communities regarding actual and potential polluting emissions and waste, related  
 2021 health risks, and actual and proposed mitigation measures;
- 2022 — implement measures to progressively reduce and minimize direct and indirect pollution within its control of  
 2023 influence, in particular through development and promotion of fast uptake of more environmentally  
 2024 friendly products and services;
- 2025 — publicly disclose the amounts and types of relevant and significant toxic and hazardous materials used  
 2026 and released, including the known human health and environmental risks of these materials for normal  
 2027 operations as well as accidental releases;
- 2028 — systematically identify and avoid the use of
- 2029 — banned chemicals defined ~~both~~ by national law or un-wanted chemicals listed in international  
 2030 conventions, and
- 2031 — where possible, chemicals identified by scientific bodies or any other stakeholder, with reasonable  
 2032 and verifiable grounds as being of concern. An organization should also seek to prevent use of such  
 2033 chemicals by organizations within its sphere of influence. Chemicals to avoid include, but are not  
 2034 limited to: ozone-depleting substances<sup>[125]</sup>, persistent organic pollutants (POPs)<sup>[131]</sup> and chemicals  
 2035 covered under the Rotterdam Convention<sup>[132]</sup>, hazardous chemicals and pesticides (as defined by the  
 2036 World Health Organization). chemicals defined as carcinogenic (including exposure to smoke from  
 2037 tobacco products) or mutagenic, and chemicals that affect reproduction, are endocrine disrupting, or  
 2038 persistent, bio-accumulative and toxic (PBTs) or very persistent and very bio-accumulative (vPvBs);  
 2039 and
- 2040 — implement an environmental accident prevention and preparedness programme and an emergency plan  
 2041 covering accidents and incidents both on- and off-site and involving workers, partners, authorities and  
 2042 local communities and other relevant stakeholders. Such a programme should include, among other  
 2043 matters, hazard identification and risk evaluation, notification procedures and recall procedures, and  
 2044 communication systems, as well as public education and information.

2045 **6.5.4 Environmental issue 2: Sustainable resource use**2046 **6.5.4.1 Description of the issue**

2047 To ensure the availability of resources in the future, current patterns and volumes of consumption and  
 2048 production need to change so that they operate within the Earth's carrying capacity. The sustainable use of  
 2049 renewable resources means that they are used at a rate that is less than, or equal to, their rate of natural  
 2050 replenishment. For non-renewable resources (such as fossil fuel, metals and minerals), long-term  
 2051 sustainability requires that its rate of use be less than the rate at which a renewable resource can be  
 2052 substituted for it. An organization can progress towards sustainable resource use by using electricity, fuels,  
 2053 raw and processed materials, land and water more responsibly, and by combining or replacing non-renewable  
 2054 with sustainable, renewable resources, for example by using innovative technologies. Three key areas for  
 2055 efficiency improvements are:

2056 — **energy efficiency** An organization should implement energy efficiency programmes to reduce the energy  
 2057 demand for buildings, transportation, production processes, appliances and electronic equipment, the  
 2058 provision of services or other purposes. Efficiency improvements in energy use should also complement  
 2059 efforts to advance sustainable use of renewable resources such as solar energy, geothermal energy,  
 2060 hydroelectricity, tidal and wave energy, wind power and biomass.

2061 — **water conservation, use and access to water** Water, including the access to safe, reliable supplies of  
 2062 drinking water and sanitation services, is a fundamental human need and a basic human right. The  
 2063 Millennium Development Goals (Box 13) include the provision of sustainable access to safe drinking  
 2064 water. An organization should conserve, reduce use of and reuse water in its own operations and  
 2065 stimulate water conservation within its sphere of influence.

2066 — **efficiency in the use of materials** An organization should implement materials efficiency programmes to  
 2067 reduce the environmental impact caused by the use of raw materials for production processes or for  
 2068 finished products used in its activities or in the delivery of its services. Materials efficiency programmes  
 2069 are based on identification of ways to increase the efficiency of raw material use in the sphere of  
 2070 influence of the organization. Materials use causes numerous direct and indirect environmental impacts,  
 2071 associated, for example, with the impact on ecosystems of mining and forestry, and the emissions  
 2072 resulting from the use, transport and processing of materials.

2073 — **minimized resource requirements of a product** Consideration should be given to the resource  
 2074 requirements of the finished product during use.

2075 **6.5.4.2 Related actions and expectations**

2076 In relation to all its activities an organization should:

- 2077 — identify the sources of energy, water and other resources used;
- 2078 — measure, record and report on its significant uses of energy, water and other resources;
- 2079 — implement resource efficiency measures to reduce its use of energy, water and other resources,  
 2080 considering best practice indicators and other benchmarks;
- 2081 — complement or replace non-renewable resources where possible with alternative sustainable, renewable  
 2082 and low impact sources;
- 2083 — use recycled materials and reuse water as much as possible;
- 2084 — manage water resources to ensure fair access for all users within a watershed;
- 2085 — promote sustainable procurement;
- 2086 — consider adopting extended producer responsibility; and

2087 — promote sustainable consumption.

## 2088 **6.5.5 Environmental issue 3: Climate change mitigation and adaptation**

### 2089 **6.5.5.1 Description of the issue**

2090 It is recognized that greenhouse gas (GHG) emissions from human activities, such as carbon dioxide (CO<sub>2</sub>),  
2091 methane (CH<sub>4</sub>) and nitrous oxide (N<sub>2</sub>O), are very likely one of the causes of global climate change, which is  
2092 having significant impacts on the natural and human environment <sup>[16]</sup>. Among the trends observed and  
2093 anticipated are: rising temperatures, changes in rainfall patterns, more frequent occurrences of extreme  
2094 weather events, rising sea levels, worsening water scarcity, and changes to ecosystems, agriculture and  
2095 fisheries. It is anticipated that climate change may pass a point beyond which changes would become far  
2096 more drastic and difficult to address.

2097 Every organization is responsible for some GHG emissions (either directly or indirectly) and will be affected in  
2098 some way by climate change. There are implications for organizations in terms of both minimizing their own  
2099 GHG emissions (mitigation) and planning for a changing climate (adaptation). Adapting to climate change has  
2100 social implications in the form of impacts on health, prosperity and human rights.

### 2101 **6.5.5.2 Related actions and expectations**

#### 2102 **6.5.5.2.1 Climate change mitigation**

2103 To mitigate climate change impacts related to its activities an organization should:

2104 — identify the sources of direct and indirect accumulated GHG emissions and define the boundaries  
2105 (scope)] of its responsibility for its activities;

2106 — measure, record and report on its significant GHG emissions, preferably using methods well defined in  
2107 internationally agreed standards <sup>[ref]</sup> (see also Annex A for examples of initiatives and tools addressing  
2108 GHG emissions) (*Note: Insert reference to 2006 version of IPCC Guidelines for National Greenhouse  
2109 Gas Inventories in the Bibliography*)

2110 — implement optimized measures to progressively reduce and minimize the direct and indirect GHG  
2111 emissions within its control and encourage these within its sphere of influence;

2112 — review quantity and type of significant fuels usage within the organisation and implement programmes to  
2113 improve efficiency and effectiveness. Life cycle approach should be undertaken to ensure net reduction  
2114 in GHG emissions, even when low-emissions technologies and renewable energies are considered;

2115 — prevent or reduce the release of GHG emissions (particularly those also causing ozone depletion) from  
2116 land use and land use change, processes or equipment including but not limited to heating, ventilation  
2117 and air conditioning units;

2118 — realize energy savings wherever possible in the organization, including purchasing of energy efficient  
2119 goods and development of energy efficient products and services; and

2120 (*Note: Add to bibliography: [110] United Nations (UN): Kyoto Protocol to the United National Framework  
2121 Convention and Climate Change. 1997*)

2122 — consider aiming for carbon neutrality by implementing measures to offset remaining GHG emissions, for  
2123 example through supporting reliable emissions reduction programmes that operate in a transparent way,  
2124 carbon capture and storage or carbon sequestration.

#### 2125 **6.5.5.2.1 Climate change adaptation**

2126 To reduce vulnerability to climate change, an organization should:

- 2127 — consider future global and local climate projections to identify risks and integrate climate change
- 2128 adaptation into its decision making;
- 2129 — identify opportunities to avoid or minimize damage associated with climate change and take advantage of
- 2130 opportunities, where possible, to adjust to changing conditions (see Box 12); and
- 2131 — implement responsive measures to existing or anticipated impacts and to contribute to capacity building
- 2132 of stakeholders within its sphere of influence to adapt.

2133

2134

#### Box 10 – Examples of climate change adaptation actions

2135

Examples of actions to adapt to changing climate conditions include:

- 2136 — planning for land use, zoning and infrastructure design and maintenance taking account of the
- 2137 implications of a changing climate and greater climatic uncertainty and the possibility of increasingly
- 2138 severe weather, including floods, high winds, drought and water scarcity or intense heat;
- 2139 — developing agricultural, industrial, medical and a range of other technologies and techniques and making
- 2140 them accessible to those in need, ensuring the security of drinking water, sanitation, food and other
- 2141 resources critical to human health;
- 2142 — supporting regional steps to reduce vulnerability to flooding. This includes restoring wetlands that can
- 2143 help manage flood water, and reducing the use of non-porous surfaces in urban areas; and
- 2144 — providing wide opportunities to increase awareness through education and other means of the importance
- 2145 of adaptation and preventive measures for the resilience of society.

2146

### 2147 **6.5.6 Environmental issue 4: Protection of the environment, biodiversity and restoration of natural**

#### 2148 **habitats**

#### 2149 **6.5.6.1 Description of the issue**

2150 Since the 1960'ies human activity has changed ecosystems more rapidly and extensively than in any

2151 comparable period in history. Rapidly growing demand for natural resources has resulted in a substantial and

2152 often irreversible loss of habitat and diversity of life on earth<sup>[84]</sup>. Vast areas – both urban and rural – have

2153 been transformed by human action.

2154 An organization can become more socially responsible by acting to protect the environment and restore

2155 natural habitats and the various functions and services that ecosystems provide (such as food and water,

2156 climate regulation, soil formation and recreational opportunities)<sup>[84]</sup>. Key aspects of this issue include:

- 2157 — **valuing and protecting biodiversity** Biodiversity is the variety of life in all its forms, levels and
- 2158 combinations; it includes ecosystem diversity, species diversity and genetic diversity<sup>[126]</sup>. Protecting
- 2159 biodiversity aims to ensure the survival of terrestrial and aquatic species, genetic variability and natural
- 2160 ecosystems.<sup>[127][128]</sup>
- 2161 — **valuing, protecting and restoring ecosystem services** Ecosystems contribute to the well-being of
- 2162 society by providing services such as food, water, fuel, flood control, soil, pollinators, natural fibres,
- 2163 recreation and the absorption of pollution and waste. As ecosystems are degraded or destroyed, they
- 2164 lose the ability to provide these services.
- 2165 — **using land and natural resource sustainably** An organization's land use projects may protect or
- 2166 degrade habitat, water, soils and ecosystems.<sup>[129][130]</sup>
- 2167 — **advancing environmentally sound urban and rural development** Decisions and activities of
- 2168 organizations can have significant impacts on the urban or rural environment and their related

2169 ecosystems. These impacts can be associated with, for example, urban planning, building and  
2170 construction, transport systems, waste and sewage management, and agricultural techniques.

### 2171 6.5.6.2 Related actions and expectations

2172 In relation to all its activities an organization should:

2173 — identify potential adverse impacts on biodiversity and ecosystem services and take measures to eliminate  
2174 or minimize these impacts;

2175 — where feasible and appropriate, participate in market mechanisms to internalize the cost of its  
2176 environmental impacts caused and create economic value in protecting ecosystem services;

2177 — give highest priority to avoiding the loss of natural ecosystems, next to restoring ecosystems, and finally,  
2178 if the former two actions are not possible or fully effective, to compensating for losses through actions that  
2179 will lead to a net gain in ecosystem services over time;

2180 — establish and implement an integrated strategy for the administration of land, water and ecosystems that  
2181 promotes conservation and sustainable use in a socially equitable way;

2182 — take measures to preserve any endemic, threatened **or** endangered species or habitat that may be  
2183 adversely affected;

2184 — implement planning, design and operating practices as a way to minimize the possible environmental  
2185 impacts resulting from its land use decisions, including decisions related to agricultural and urban  
2186 development;

2187 — incorporate the protection of natural habitat, wetlands, forest, wildlife corridors, protected areas and  
2188 agricultural lands into the development of buildings and construction works<sup>[92][128]</sup>;

2189 — adopt sustainable agricultural, fishing, and forestry practices including aspects related to animal welfare,  
2190 e.g. as defined in leading standards and certification schemes<sup>[14][134]</sup> (*Note: add to bibliography: [134]*  
2191 *World Organisation for Animal Health (OIE): Terrestrial Animal Health Code, Section 7 Animal Welfare.*  
2192 *2009*)

2193 — progressively use a greater proportion of products from suppliers using more sustainable technologies  
2194 and processes;

2195 — consider that wild animals and their habitats are part of our natural ecosystems and should therefore be  
2196 valued and protected and their welfare needs to be taken into account; and

2197 avoid approaches that threaten the survival or lead to the global, regional or local extinction of species or that  
2198 allow the distribution or proliferation of invasive species.

## 2199 6.6 Fair operating practices

### 2200 6.6.1 Overview of fair operating practices

#### 2201 6.6.1.1 Organizations and fair operating practices

2202 Fair operating practices concern ethical conduct in an organization's dealings with other organizations. These  
2203 include relationships between organizations and government agencies, as well as between organizations and  
2204 their partners, suppliers, contractors, customers, competitors, and the associations of which they are  
2205 members.

2206 Fair operating practice issues arise in the areas of anti-corruption, responsible involvement in the public  
2207 sphere, fair competition, socially responsible behaviour, in relations with other organizations and respect for  
2208 property rights.

2209 **6.6.1.2 Fair operating practices and social responsibility**

2210 In the area of social responsibility, fair operating practices concern the way an organization uses its  
 2211 relationships with other organizations to promote positive outcomes. Positive outcomes can be achieved by  
 2212 providing leadership and promoting the adoption of social responsibility more broadly throughout the  
 2213 organization's sphere of influence.

2214 **6.6.2 Principles and considerations**

2215 Behaving ethically is fundamental to establishing and sustaining legitimate and productive relationships  
 2216 between organizations. Therefore, observance, promotion and encouragement of standards of ethical  
 2217 behaviour underlie all fair operating practices. Preventing corruption and practising responsible political  
 2218 involvement depend on respect for the rule of law, adherence to ethical standards, accountability and  
 2219 transparency. Fair competition and respect for property rights cannot be achieved if organizations do not deal  
 2220 with each other honestly, equitably and with integrity.

2221 **6.6.3 Fair operating practices issue 1: Anti-corruption**

2222 **6.6.3.1 Description of the issue**

2223 Corruption is the abuse of entrusted power for private gain. Corruption can take many forms. Examples of  
 2224 corruption include bribery (soliciting, offering or accepting a bribe in money or in kind of or by public officials,  
 2225 bribery in the private sector, conflict of interest, fraud, money laundering, embezzlement, concealment and  
 2226 obstruction of justice and trading in influence.

2227 Corruption undermines an organization's effectiveness and ethical reputation, and can make it liable to  
 2228 criminal prosecution, as well as civil and administrative sanctions. Corruption can result in the violation of  
 2229 human rights, the erosion of political processes, impoverishment of societies and damage to the environment.  
 2230 It can also distort competition, distribution of wealth and economic growth <sup>[85] [95]</sup>.

2231 **6.6.3.2 Related actions and expectations**

2232 To prevent corruption an organization should:

- 2233 — identify the risks of corruption and implement and maintain policies and practices that counter corruption,  
 2234 and extortion;
- 2235 — ensure the leadership sets an example for anti-corruption and provide commitment, encouragement and  
 2236 oversight for implementation of the anti-corruption policies;
- 2237 — support and train employees and representatives in their efforts to eradicate bribery and corruption, and  
 2238 provide incentives for progress;
- 2239 — raise the awareness of its employees, representatives, contractors and suppliers about corruption and  
 2240 how to counter it;
- 2241 — ensure that the remuneration of its employees and representatives is appropriate and for legitimate  
 2242 services only;
- 2243 — establish and maintain an effective system to counter corruption;
- 2244 — encourage its employees, partners, representatives and suppliers to report violations of the organization's  
 2245 policies, unethical and unfair treatment by adopting mechanisms that enable reporting and follow up  
 2246 action without fear of reprisal;
- 2247 — bring violations of the criminal law to the attention of appropriate law enforcement authorities; and
- 2248 — work to oppose corruption by encouraging others with which the organization has operating relationships  
 2249 to adopt similar anti-corruption practices.

2250 **6.6.4 Fair operating practices issue 2: Responsible political involvement**

2251 **6.6.4.1 Description of the issue**

2252 Organizations can support public political processes and encourage the development of public policy that  
2253 benefits society at large. Organizations should prohibit use of undue influence and avoid behaviour, such as  
2254 manipulation, intimidation and coercion that can undermine the public political process.

2255 **6.6.4.2 Related actions and expectations**

2256 An organization should:

2257 — train and raise the awareness of its employees and representatives about responsible political  
2258 involvement and contributions and how to deal with conflicts of interest;

2259 — be transparent regarding its policies and activities related to lobbying, political contributions and political  
2260 involvement;

2261 — establish and implement policies, and guidelines to manage the activities of people retained to advocate  
2262 on the organization's behalf;

2263 — avoid political contributions that amount to an attempt to control or could be perceived as exerting undue  
2264 influence on politicians or policymakers in favour of specific causes;

2265 — prohibit activities that involve misinformation, misrepresentation, threat or compulsion.

2266 **6.6.5 Fair operating practices issue 3: Fair competition**

2267 **6.6.5.1 Description of the issue**

2268 Fair and widespread competition stimulates innovation and efficiency, reduces the costs of products and  
2269 services, ensures all organizations have equal opportunities, encourages the development of new or improved  
2270 products or processes and, in the long run, enhances economic growth and living standards. Anti-competitive  
2271 behaviour risks harming the reputation of an organization with its stakeholders and may create legal problems.  
2272 When organizations refuse to engage in anti-competitive behaviour they help to build a climate in which such  
2273 behaviour is not tolerated, and this benefits everyone.

2274 There are many forms of anti-competitive behaviour. Some examples are: price fixing, where parties collude  
2275 to sell the same product or service at the same price; bid rigging, where parties collude to manipulate a  
2276 competitive bid; and predatory pricing, which is selling a product or service at very low price with the intent of  
2277 driving competitors out of the market and imposing unfair sanctions on competitors.

2278 **6.6.5.2 Related actions and expectations**

2279 To promote fair competition, an organization should:

2280 — conduct its activities in a manner consistent with competition laws and regulations and co-operate;

2281 — establish procedures, and other safeguards to prevent engaging in or being complicit in anti-competitive  
2282 behaviour;

2283 — promote employee awareness of the importance of compliance with competition legislation and fair  
2284 competition;

2285 — support anti-trust and anti-dumping practices, as well as public policies that encourage competition; and

2286 — be mindful of the social context in which it operates and not take advantage of social conditions, such as  
2287 poverty to achieve unfair competitive advantages.

2288 **6.6.6 Fair operating practices issue 4: Promoting social responsibility in the value chain**

2289 **6.6.6.1 Description of the issue**

2290 An organization can influence other organizations through the exercise of its procurement and purchasing  
2291 decisions. Through leadership and mentorship along the value chain, it can promote adoption and support of  
2292 the principles and practices of social responsibility.

2293 An organization should consider the potential impacts or unintended consequences of its procurement and  
2294 purchasing decisions on other organizations, and take due care to avoid or minimize any negative impacts. It  
2295 can also stimulate demand for socially responsible products and services. These actions should not be viewed  
2296 as replacing the role of authorities to implement and enforce laws and regulations.

2297 Every organization in the value chain is responsible for complying with applicable laws and regulations and for  
2298 its own impacts on society and the environment.

2299 **6.6.6.2 Related actions and expectations**

2300 To promote social responsibility in its value chain, an organization should:

2301 — integrate ethical, social, environmental and gender equality criteria, including health and safety, in its  
2302 purchasing, distribution and contracting policies and practices in order to improve consistency with social  
2303 responsibility objectives;

2304 — encourage other organizations to adopt similar policies, without indulging in anti-competitive behaviour in  
2305 so doing;

2306 — carry out appropriate due diligence and monitoring of the organizations with which it has relationships,  
2307 with a view to preventing compromise of the organization's commitments to social responsibility;

2308 — consider providing support to SMOs, including by providing them with awareness raising on issues of  
2309 social responsibility and best practice and with additional assistance (for example, technical, capacity  
2310 building or other resources) to meet socially responsible objectives;

2311 — actively participate in raising the awareness of organizations with which it has relationships about  
2312 principles and issues of social responsibility; and

2313 — promote fair and practical treatment of the costs and benefits of implementing socially responsible  
2314 practices throughout the value chain, including, where possible, enhancing the capacity of organizations  
2315 in the value chain to meet socially responsible objectives. This includes adequate purchasing practices,  
2316 such as ensuring that fair prices are paid and that there are adequate delivery times and stable contracts.

2317 **6.6.7 Fair operating practices issue 5: Respect for property rights**

2318 **6.6.7.1 Description of the issue**

2319 The right to own property is a human right recognized in the Universal Declaration on Human Rights. Property  
2320 rights cover both physical property and intellectual property and include interest in land, and other physical  
2321 assets, copyrights, patents, geographical indicator rights, funds, moral rights and other rights. They may also  
2322 encompass a consideration of broader property claims, such as traditional knowledge of specific groups, such  
2323 as indigenous peoples, or the intellectual property of employees or others.

2324 Recognition of property rights promotes investment and economic and physical security, as well as  
2325 encouraging creativity and innovation.

2326 **6.6.7.2 Related actions and expectations**

2327 An organization should:

- 2328 — implement policies and practices that promote respect for property rights and traditional knowledge;
- 2329 — conduct proper investigations to be confident it has lawful title permitting use or disposal of property;
- 2330 — not engage in activities that violate property rights, including misuse of a dominant position, counterfeiting
- 2331 and piracy;
- 2332 — pay fair compensation for property that it acquires or uses; and
- 2333 — consider the expectations of society, human rights and basic needs of the individual when exercising and
- 2334 protecting its intellectual and physical property rights.

## 2335 **6.7 Consumer issues**

### 2336 **6.7.1 Overview of consumer issues**

#### 2337 **6.7.1.1 Organizations and consumer issues**

2338 Organizations that provide products and services to consumers, as well as other customers, have  
 2339 responsibilities to those consumers and customers. The issues that are mainly applicable for customers  
 2340 purchasing for commercial purposes are dealt with in 6.6. Issues that are mainly appropriate for people who  
 2341 purchase for private purposes (consumers) are dealt with in the present clause. Particular parts of both 6.6  
 2342 and the present clause could, however, be applicable to either customers or consumers.

2343 Responsibilities include providing education and accurate information, using fair, transparent and helpful  
 2344 marketing information and contractual processes, promoting sustainable consumption and designing products  
 2345 and services that provide access to all and cater, where appropriate, for the vulnerable and disadvantaged.  
 2346 The term consumer refers to those individuals or groups that make use of the output of the organizations'  
 2347 decisions and activities and does not necessarily mean that they have to pay money for products and  
 2348 services. They also involve minimizing risks from the use of products and services, through design,  
 2349 manufacture, distribution, information provision, support services and withdrawal and recall procedures. Many  
 2350 organizations collect or handle personal information and have a responsibility to protect the security of such  
 2351 information and the privacy of consumers.

2352 The principles of this clause apply to all organizations in their role of serving consumers; however, the issues  
 2353 may have very different relevance, according to the kind of organization (such as private organizations, public  
 2354 service local welfare organizations, or other types) and the circumstances. Organizations have significant  
 2355 opportunities to contribute to sustainable consumption and sustainable development through the products and  
 2356 services they offer and the information they provide, including information on use, repair and disposal.

#### 2357 **6.7.1.2 Consumer issues and social responsibility**

2358 Consumer issues regarding social responsibility are related to fair marketing practices, protection of health  
 2359 and safety, sustainable consumption, dispute resolution and redress, data and privacy protection, access to  
 2360 essential products and services, addressing the needs of vulnerable and disadvantaged consumers, and  
 2361 education among other matters. The UN Guidelines for Consumer Protection provide fundamental information  
 2362 on consumer issues and sustainable consumption.

2363

2364

#### **Box 11 – UN Guidelines for Consumer Protection**

2365 The **UN Guidelines for Consumer Protection** is the most important international document in the realm of  
 2366 consumer protection. The UN General Assembly adopted these Guidelines in 1985 by consensus. In 1999  
 2367 they were expanded to include provisions on sustainable consumption. They call upon states to protect  
 2368 consumers from hazards to their health and safety, promote and protect the economic interests of consumers,  
 2369 enable consumers to make informed choices, provide consumer education, make available effective  
 2370 consumer redress, promote sustainable consumption patterns and guarantee freedom to form consumer  
 2371 groups <sup>[116]</sup>.

2372

2373 These principles of consumer protection are elaborated and detailed throughout the text of the UN Guidelines  
 2374 and are commonly referred to as the “consumer rights”.  
 2375  
 2376

## 2377 6.7.2 Principles and considerations

### 2378 6.7.2.1 Principles

2379 The UN Guidelines for Consumer Protection and the International Covenant on Economic, Social and Cultural  
 2380 Rights express principles that should guide socially responsible practices regarding the legitimate needs of  
 2381 consumers, including satisfaction of basic needs and the right of everyone to an adequate standard of living,  
 2382 including adequate food, clothing and housing, and to the continuous improvement of living conditions and  
 2383 availability of essential products and services including financial. This also includes the right to promote just,  
 2384 equitable and sustainable economic and social development and environmental protection

2385 — **safety** The right of access to non-hazardous products and protection of consumers from hazards to  
 2386 their health and safety stemming from production processes, products and services;

2387 — **being informed** Access of consumers to adequate information to enable them to make informed  
 2388 choices according to individual wishes and needs and to be protected against dishonest or  
 2389 misleading advertising or labelling;

2390 — **making choices** The promotion and protection of the economic interests of consumers, including,  
 2391 the ability to select from a range of products and services, offered at competitive prices with an  
 2392 assurance of satisfactory quality;

2393 — **being heard** Freedom to form consumer and other relevant groups or organizations and the  
 2394 opportunity of such organizations to present their views in decision-making processes affecting  
 2395 them, especially in the making and execution of government policy, and in the development of  
 2396 products and services;

2397 — **redress** Availability of effective consumer redress, in particular in the form of fair settlement of just  
 2398 claims, including compensation for misrepresentation, badly made products or unsatisfactory  
 2399 services;

2400 — **education** Consumer education ,including education on the environmental, social and economic  
 2401 impacts of consumer choice and enable consumers to make informed, independent choices about  
 2402 products and services while being aware of their rights and responsibilities and how to act on them;  
 2403 and

2404 — **healthy environment** This is the right to live and work in an environment that is non-threatening to  
 2405 the well-being of present and future generations. The promotion of sustainable consumption patterns  
 2406 which includes meeting the needs of present and future generations for products and services in  
 2407 ways that are economically, socially and environmentally sustainable.

2408 — additional principles:

2409 — **respect for the right to privacy** This is drawn from the Universal Declaration of Human Rights,  
 2410 Article 12 <sup>[117]</sup>, which provides that no one be subjected to arbitrary interference with their privacy,  
 2411 family, home or correspondence, or to attacks upon their honour and reputation, and that everyone  
 2412 has the right to the protection of the law against such interference or attacks;

2413 — **the precautionary approach** This is drawn from the Rio Declaration on Environment and  
 2414 Development <sup>[119]</sup> and subsequent declarations and agreements <sup>[109][131][94]</sup>, which advance the  
 2415 concept that where there are threats of serious or irreversible damage to the environment or human  
 2416 health, lack of full scientific certainty should not be used as a reason for postponing cost effective  
 2417 measures to prevent environmental degradation or damage to human health. When considering

2418 cost-effectiveness of a measure, an organization should consider the long-term costs and benefits of  
2419 that measure, not only the short-term economic costs to the organization.

2420 — **promotion of gender equality and empowerment of women** This is drawn from the Universal  
2421 Declaration of Human Rights (see Boxes 2 and 6) and the Millennium Development Goals. It  
2422 provides an additional basis on which to analyse consumer issues and prevent perpetuation of  
2423 gender stereotypes (see also Box 12); and

2424 — **promotion of universal design** This is the design of products and environments to be usable by all  
2425 people, to the greatest extent possible, without the need for adaptation or specialized design. There  
2426 are seven principles to universal design: equitable use, flexibility in use, simple and intuitive use,  
2427 perceptible information, tolerance for error, low physical effort and size and space for approach and  
2428 use.<sup>[15]</sup>

2429 *Note: add reference to UN Convention on the Rights of Persons with Disabilities and its Optional*  
2430 *Protocol – adopted 13 Dec 2006.*

### 2431 **6.7.2.2 Considerations**

2432 Although the state has the primary responsibility for ensuring that the right to satisfaction of basic needs is  
2433 respected, an organization can contribute to the fulfilment of this right. Particularly in areas where the state  
2434 does not adequately satisfy people's basic needs, an organization should be sensitive to the impact of its  
2435 activities on people's ability to satisfy those needs. It should also avoid actions that would jeopardize this  
2436 ability.

2437 Vulnerable groups (see 6.3.7.2), have different abilities, and in their role as consumers, their particular needs  
2438 need to be addressed and may, in some cases, require specially tailored products and services. They have  
2439 special needs because they may not know their rights and responsibilities or may be unable to act on their  
2440 knowledge. They may also be unaware of or unable to assess potential risks associated with products or  
2441 services or to make balanced judgements when subjected to marketing. Such consumers also include  
2442 pregnant women.

### 2443 **6.7.3 Consumer issue 1: Fair marketing, factual and unbiased information and fair contractual** 2444 **practices**

#### 2445 **6.7.3.1 Description of the issue**

2446 Fair marketing, factual and unbiased information and fair contractual practices provide information about  
2447 products and services in a manner that can be understood by consumers. This allows consumers to make  
2448 informed decisions about consumption and purchases and to compare the characteristics of different products  
2449 and services. Fair contractual processes aim to protect the legitimate interests of both suppliers and  
2450 consumers by mitigating imbalances in negotiating power between the parties. Responsible marketing may  
2451 involve provision of information on the social, economic and environmental impacts across the whole life cycle  
2452 and value chain. Details of products and services provided by suppliers play an important role in purchasing  
2453 decisions because this information may provide the only data readily available to consumers. Unfair,  
2454 incomplete, misleading or deceptive marketing and information can result in purchase of products and  
2455 services that do not meet consumer needs resulting in a waste of money, resources and time<sup>[86][88]</sup> and that  
2456 may even be hazardous to the consumer or the environment. It can also lead to a decline in consumer  
2457 confidence, with consumers not knowing who or what to believe. This can adversely affect the growth of  
2458 markets for more sustainable products and services.

#### 2459 **6.7.3.2 Related actions and expectations**

2460 When communicating with consumers, an organization should:

2461 not engage in any practice that is deceptive, misleading, fraudulent or unfair, unclear or ambiguous,  
2462 including omission of critical information;

- 2463 — consent to sharing relevant information in a transparent manner which allows for easy access and  
2464 comparisons as the basis for an informed choice by the consumer;
- 2465 — clearly identify advertising and marketing;
- 2466 — openly disclose total prices and taxes, terms and conditions of the products and services as well as any  
2467 accessory required for use and delivery costs. When offering consumer credit, provide details of the  
2468 actual annual interest rate as well as the average percentage rate charged (APR), which includes all the  
2469 costs involved, amount to be paid, number of payments and the due dates of instalment payments;
- 2470 — substantiate claims or assertions by providing underlying facts and information upon request;
- 2471 — not use text, audio or images that perpetuate stereotyping in regard to, for example, gender, religion,  
2472 race, disability and personal relationships;
- 2473 — give primary consideration in advertising and marketing to the best interests of vulnerable groups,  
2474 including children, and not engage in activities that are detrimental to their interests;
- 2475 — provide complete, accurate, and understandable information that can be compared in official or  
2476 commonly used languages at the point of sale and according to applicable regulations on:
  - 2477 — all important aspects of products and services, including financial and investment products, ideally  
2478 taking into account the full life cycle;
  - 2479 — the key quality aspects of products and services as determined using standardized test procedures,  
2480 and compared, when possible, to average performance or best practice. Provision of such  
2481 information should be limited to circumstances where it is appropriate and practical and would assist  
2482 consumers;
  - 2483 — health and safety aspects of products and services, such as potentially hazardous use, hazardous  
2484 materials and hazardous chemicals contained in or released by products during their life-cycle.
  - 2485 — information regarding accessibility of products and services; and
  - 2486 — the organization's physical address, telephone number and e-mail address, when using domestic or  
2487 cross-border distance selling, including by means of the Internet, e-commerce, or mail order.
- 2488 — use contracts that:
  - 2489 — are written in clear, legible and understandable language;
  - 2490 — do not include unfair contract terms, such as the unfair exclusion of liability, the right to unilaterally  
2491 change prices and conditions, the transfer of risk of insolvency to consumers or unduly long contract  
2492 periods and avoid predatory lending practices including unreasonable credit rates; and
  - 2493 — provide clear and sufficient information about prices, features, terms, conditions, costs, the duration  
2494 of the contract and cancellation periods.

## 2495 **6.7.4 Consumer issue 2: Protecting consumers' health and safety**

### 2496 **6.7.4.1 Description of the issue**

2497 Protection of consumers' health and safety involves the provision of products and services that are safe and  
2498 that do not carry unacceptable risk of harm when used or consumed. The protection should cover both the  
2499 intended use and foreseeable misuse. <sup>[88][116]</sup>. Clear instructions for safe use, including assembly and  
2500 maintenance are also an important part of the protection of health and safety.

2501 An organization's reputation may be directly affected by the impact on consumers' health and safety of its  
2502 products and services.

2503 Products and services should be safe, regardless of whether or not legal safety requirements are in place.  
2504 Safety includes anticipation of potential risks to avoid harm or danger. As all risks cannot be foreseen or  
2505 eliminated, measures to protect safety should include mechanisms for product withdrawal and recall.

#### 2506 **6.7.4.2 Related actions and expectations**

2507 In protecting the health and safety of consumers, an organization should take the following actions and pay  
2508 special attention to vulnerable groups (with special attention to children) that might not have the capacity to  
2509 recognize or assess potential dangers. It should:

2510 — provide products and services that, under normal and reasonably foreseeable conditions of use, are safe  
2511 for users and other persons, their property, and the environment;

2512 — assess the adequacy of health and safety laws, regulations, standards and other specifications to  
2513 address all health and safety aspects <sup>[1][2][3][11][12]</sup>. An organization should go beyond these minimum  
2514 safety requirements where there is evidence that these higher requirements would achieve significantly  
2515 better protection, as indicated by the occurrence of accidents involving products or services that conform  
2516 to the minimum requirements, or the availability of products or product designs that can reduce the  
2517 number or severity of accidents;

2518 — when a product, after having been placed on the market, presents an unforeseen hazard, has a serious  
2519 defect or contains misleading or false information, stop the services or withdraw all products that are still  
2520 in the distribution chain. An organization should recall products using appropriate measures and media to  
2521 reach people who purchased the product or made use of the services and compensate consumers for  
2522 losses suffered. Measures for traceability in its value chain may be pertinent and useful.

2523 — minimize risks in the design of products by:

2524 — identifying the likely user group(s), the intended use and the reasonably foreseeable misuse of the  
2525 process, product or service and hazards arising in all the stages and conditions of use of the product  
2526 or service and, in some cases, require specially tailored products and services for vulnerable  
2527 groups;

2528 — estimating and evaluating the risk to each identified user or contact group, including pregnant  
2529 women, arising from the hazards identified; and

2530 — reduce the risk by using the following order of priority: inherently safe design, protective devices and  
2531 information for users.

2532 — assure the appropriate design of information on products and services by taking into account different  
2533 consumer needs, and respecting differing or limited capacities of consumers, especially in terms of time  
2534 allocated to the information process;

2535 — in product development, an organization should avoid the use of harmful chemicals, including but not  
2536 limited to those that are carcinogenic, mutagenic, toxic for reproduction, or that are persistent and bio-  
2537 accumulative. If products containing such chemicals are offered for sale, they should be clearly labelled;

2538 — as appropriate, perform a human health risk assessment of products and services before the introduction  
2539 of new materials, new technologies or production methods and, when appropriate, make documentation  
2540 available;

2541 — convey vital safety information to consumers using symbols wherever possible, preferably internationally  
2542 agreed ones, in addition to the textual information;

2543 — instruct consumers in the proper use of products and warn them of the risks involved in intended or  
2544 normally foreseeable use;

2545 — adopt measures that prevent products from becoming unsafe through improper handling or storage while  
2546 in the care of consumers; and

### 2547 6.7.5 Consumer issue 3: Sustainable consumption

#### 2548 6.7.5.1 Description of the issue

2549 Sustainable consumption is consumption of products and resources at rates consistent with sustainable  
2550 development. The concept was promoted by Principle 8 of the Rio Declaration on Environment and  
2551 Development <sup>[119]</sup>, which states that to achieve sustainable development and a higher quality of life for all  
2552 people, states should reduce and eliminate unsustainable patterns of production and consumption. The  
2553 concept of sustainable consumption also encompasses a concern for animal welfare, respecting the physical  
2554 integrity of animals and avoiding cruelty.

2555 An organization's role in sustainable consumption arises from the products and services it offers, their life  
2556 cycle, value chain and the nature of the information it provides to consumers.

2557 Current rates of consumption are clearly unsustainable, contributing to environmental damage and resource  
2558 depletion. Consumers play an important role in sustainable development by taking ethical, social, economic  
2559 and environmental factors into account based on accurate information in making their choices and purchasing  
2560 decisions.

#### 2561 6.7.5.2 Related actions and expectations

2562 To contribute to sustainable consumption, an organization, where appropriate should:

2563 --- promote effective education empowering consumers to understand the impacts of their choices of  
2564 products and services on their well-being and on the environment. Practical advice can be provided on  
2565 how to modify consumption patterns and to make necessary changes.

2566 — offer consumers socially and environmentally beneficial products and services considering the full life  
2567 cycle and reduce adverse impacts on society and the environment by:

2568 — eliminating, where possible, or minimizing any negative health and environmental impact of products  
2569 and services, and where less harmful and more efficient alternatives exist, provide the choice of  
2570 products or services that have less adverse effects on the society and the environment;

2571 — designing products and packaging so that they can be easily used, reused, repaired or recycled and,  
2572 if possible, offering or suggesting recycling and disposal services;

2573 — preferring supplies that can contribute to sustainable development;

2574 — offering high quality products with longer product life; at affordable prices;

2575 — providing consumers with scientifically reliable, consistent, truthful, accurate, comparable and  
2576 verifiable information about the environmental and social factors related to production and delivery of  
2577 their products or services, including information on resource efficiency where appropriate, taking the  
2578 value chain into account <sup>[7][8][9][10]</sup>;

2579 — providing consumers with information, about products and services, including on performance,  
2580 impacts on health, country of origin, energy efficiency (where applicable), contents or ingredients  
2581 (including, where appropriate, use of genetically modified organisms and nanoparticles), aspects  
2582 related to animal welfare, including, where appropriate, use of animal testing, safe use, maintenance,  
2583 storage and disposal of the products and their packaging; and

2584 — making use of reliable and effective, independently verified labelling schemes or other verification  
2585 schemes, such as eco-labelling; or auditing activities, to communicate positive environmental  
2586 aspects, energy efficiencies, and other socially and environmentally beneficial characteristics of  
2587 products and services. <sup>[8][9][10]</sup>;

2588 **6.7.6 Consumer issue 4: Consumer service, support, and complaint and dispute resolution**2589 **6.7.6.1 Description of the issue**

2590 Consumer service, support, and complaint and dispute resolution are the mechanisms an organization uses to  
 2591 address the needs of consumers after products and services are bought or provided. Such mechanisms  
 2592 include proper installation, warranties and guarantees, technical support regarding use, as well as provisions  
 2593 for return, repair and maintenance.

2594 Products and services that do not provide satisfactory performance, either because of flaws or breakdowns or  
 2595 as a result of misuse, may result in a violation of consumer rights as well as a waste of money, resources and  
 2596 time.

2597 Providers of products and services can increase consumer satisfaction and reduce levels of complaints by  
 2598 offering high quality products and services. They should provide clear advice to consumers on appropriate use  
 2599 and on recourse or remedies for faulty performance. They can also monitor the effectiveness of their after-  
 2600 sales service, support and dispute resolution procedures by surveys of their users <sup>[88][91]</sup>.

2601 **6.7.6.2 Related actions and expectations**

2602 An organization should:

2603 — take measures to prevent complaints <sup>[4]</sup> by offering consumers, including those who obtain products  
 2604 through distance selling, the option to return products within a specified period or obtain other appropriate  
 2605 remedies;

2606 — review complaints and improve practices in response to complaints;

2607 — if appropriate, offer warranties that exceed periods guaranteed by law and are suitable for the expected  
 2608 length of product life;

2609 — clearly inform consumers how they can access after-supply services and support as well as dispute  
 2610 resolution and redress mechanisms <sup>[5][6]</sup>;

2611 — offer adequate and efficient support and advice systems;

2612 — offer maintenance and repair at a reasonable price and at accessible locations and make information  
 2613 readily accessible on the expected availability of spare parts for products; and

2614 — make use of alternative dispute resolution, conflict resolution and redress procedures that are based on  
 2615 national or international standards, are free of charge or are at minimal cost to consumers <sup>[5][6]</sup>, and that  
 2616 do not require consumers to waive their rights to seek legal recourse.

2617

2618

**Box 12 – Consumer Dispute resolution**

2619 The ISO family of quality management standards contains a set of three guidance standards pertaining to:  
 2620 customer satisfaction codes (designed to decrease the likelihood of complaints arising); complaints handling;  
 2621 and external dispute resolution (in those situations where the complaints cannot be resolved within the  
 2622 organization). Taken together, the three standards provide a systematic approach to customer complaints  
 2623 prevention and handling and dispute resolution. Organizations can also use one or more of these standards,  
 2624 depending on their needs and circumstances. The guidance in these standards assists organizations in  
 2625 meeting their obligations to provide consumers with redress and to give them an opportunity to be heard. The  
 2626 standards are:

2627 — ISO 10001, *Quality management - Customer satisfaction - Guidelines for codes of conduct for*  
 2628 *organizations* <sup>[4]</sup>. This International Standard assists organizations in developing and implementing  
 2629 effective, fair and accurate codes of conduct.

2630 — ISO 10002, *Quality management - Customer satisfaction - Guidelines for complaints handling in*  
 2631 *organizations*<sup>[5]</sup>. This International Standard provides guidance on how organizations can fairly and  
 2632 effectively address complaints about their products and services.

2633 — ISO 10003, *Quality management - Customer satisfaction - Guidelines for dispute resolution external to*  
 2634 *organizations*<sup>[6]</sup>. This International Standard addresses situations where organizations have been unable  
 2635 to resolve complaints through their internal complaints handling mechanisms."  
 2636

2637 **6.7.7 Consumer issue 5: Consumer data protection and privacy**

2638 **6.7.7.1 Description of the issue**

2639 Consumer data protection and privacy are intended to safeguard consumers' rights of privacy by limiting the  
 2640 types of information gathered and the ways in which such information is obtained, used and secured.  
 2641 Increasing use of electronic communication (including for financial transactions) and genetic testing, as well as  
 2642 growth in large-scale databases, raise concerns about how consumer privacy can be protected, particularly  
 2643 with regard to personally identifiable information<sup>[13][87][88][89]</sup>.

2644 Organizations can help to maintain their credibility and the confidence of consumers through the use of  
 2645 rigorous systems for obtaining, using and protecting consumer data.

2646 **6.7.7.2 Related actions and expectations**

2647 To prevent personal data collection and processing from infringing privacy, an organization should:

2648 — limit the collection of personal data to information that is either essential for the provision of products and  
 2649 services or provided with the informed and voluntary consent of the consumer;

2650 — refrain from making the use of services or the claim to special offers contingent on agreement by the  
 2651 consumer to the unwanted use of data for marketing purposes.

2652 — only obtain data by lawful and fair means;

2653 — specify the purpose for which personal data are collected, either before or at the time of data collection;

2654 — not disclose, make available or otherwise use personal data for purposes other than those specified,  
 2655 including marketing, except with the informed and voluntary consent of the consumer or when required by  
 2656 the law;

2657 — provide consumers with the right to verify whether the organization has data relating to them and to  
 2658 challenge these data, as defined by law. If the challenge is successful, the data should be erased,  
 2659 rectified, completed or amended, as appropriate;

2660 — protect personal data by adequate security safeguards;

2661 — be open about developments, practices and policies regarding personal data, and provide readily  
 2662 available ways of establishing the existence, nature and main uses of personal data; and

2663 — disclose the identity and usual location of the person accountable for data protection in the organization  
 2664 (sometimes called the data controller), and hold this person accountable for complying with the above  
 2665 measures and applicable law.

2666 **6.7.8 Consumer issue 6: Access to essential services**

2667 **6.7.8.1 Description of the issue**

2668 Although the state is responsible for ensuring that the right to satisfaction of basic needs is respected, there  
 2669 are many locations or conditions in which the state does not ensure that this right is protected. Even where  
 2670 satisfaction of some basic needs, such as health care, are protected, the right to essential utility services,  
 2671 such as electricity, gas, water, waste water services, drainage, sewage and communication may not be fully  
 2672 achieved. An organization can contribute to the fulfilment of this right <sup>[116]</sup>.

2673 **6.7.8.2 Related actions and expectations**

2674 An organization that supplies essential services should:

- 2675 — not disconnect essential services for non-payment without providing the consumer or group of  
 2676 consumers with the opportunity to seek reasonable time to make the payment. It should not resort to  
 2677 collective disconnection of services that penalize all consumers regardless of payment;
- 2678 — in setting prices and charges, offer, wherever permitted, a tariff that will provide a subsidy to those who  
 2679 are in need;
- 2680 — operate in a transparent manner, providing information related to the setting of prices and charges;
- 2681 — expand their coverage and provide the same quality and level of service without discrimination to all  
 2682 groups of consumers;
- 2683 — manage any curtailment or interruption of supply in an equitable manner, avoiding discrimination against  
 2684 any group of consumers; and
- 2685 — maintain and upgrade its systems to help prevent disruption of service.

2686 **6.7.9 Consumer issue 7: Education and awareness**

2687 **6.7.9.1 Description of the issue**

2688 Education and awareness initiatives enable consumers to be well informed, conscious of their rights and  
 2689 responsibilities, more likely to assume an active role and to be able to make knowledgeable purchasing  
 2690 decisions and consume responsibly. Disadvantaged consumers in both rural and urban areas, including low-  
 2691 income consumers and those with low or non-existent literacy levels, have special needs for education and  
 2692 increased awareness. Whenever there is a formal contract between an organization and a consumer, the  
 2693 organization should verify that the consumer is properly informed of all applicable rights and obligations.

2694 The aim of consumer education is not only to transfer knowledge, but also to empower consumers to act on  
 2695 this knowledge. This includes developing skills for assessing products and services and for making  
 2696 comparisons. It is also intended to raise awareness about the impact of consumption choices on others and  
 2697 on sustainable development <sup>[116]</sup>. Education does not exempt an organization from being responsible if a  
 2698 consumer is harmed when using products and services.

2699 **6.7.9.2 Related actions and expectations**

2700 In educating consumers, an organization, when appropriate, should address:

- 2701 — health and safety, including product hazards;
- 2702 — information on appropriate laws and regulations, ways of obtaining redress and agencies and  
 2703 organizations for consumer protection;
- 2704 — product and service labelling and information provided in manuals and instructions;

2705 — information on weights and measures, prices, quality, credit conditions and availability of essential  
2706 services;

2707 — information about risks related to use and any necessary precautions;

2708 — financial and investment products and services;

2709 — environmental protection;

2710 — efficient use of materials, energy and water;

2711 — sustainable consumption; and

2712 — proper disposal of wrapping, waste, and products.

## 2713 **6.8 Community involvement and development**

### 2714 **6.8.1 Overview of community involvement and development**

2715 It is widely accepted today that organizations have a relationship with the communities in which they operate.  
2716 This relationship should be based on community involvement so as to contribute to community development.  
2717 Community involvement – either individually or through associations seeking to enhance the public good –  
2718 helps to strengthen civil society. Organizations that engage in a respectful manner with the community and its  
2719 institutions reflect and reinforce democratic and civic values.

2720 Community in this clause refers to residential or other social settlements located in a geographic area that is in  
2721 physical proximity to an organization's sites or within an organization's areas of impact. The area and the  
2722 community members affected by an organization's impacts will depend upon the context and especially upon  
2723 the size and nature of those impacts. In general, however, the term community can also be understood to  
2724 mean a group of people having particular characteristic in common, for instance a 'virtual' community  
2725 concerned with a particular issue.]

2726 Community involvement and development are both integral parts of sustainable development.

2727 Community involvement goes beyond identifying and engaging stakeholders in regard to the impacts of an  
2728 organization's activities; it also encompasses support for and building a relationship with the community.  
2729 Above all, it entails acknowledging the value of the community. An organization's community involvement  
2730 should arise out of recognition that the organization is a stakeholder in the community, sharing common  
2731 interests with the community.

2732 An organization's contribution to community development can help to promote higher levels of well-being in  
2733 the community. Such development, generally understood, is the improvement in the quality of life of a  
2734 population. Community development is not a linear process; moreover, it is a long-term process in which  
2735 different and conflicting interests will be present. Historical and cultural characteristics make each community  
2736 unique and influence the possibilities of its future. Community development is therefore the result of social,  
2737 political, economic, and cultural features and depends on the characteristics of the social forces involved.  
2738 Stakeholders in the community may have different – even conflicting – interests. Shared responsibility is  
2739 needed to promote well-being of the community as a common objective.

2740 Issues of community development to which an organization can contribute include creating employment  
2741 through expanding and diversifying economic activities and technological development. It can also contribute  
2742 through social investments in wealth and income creation through local economic development initiatives;  
2743 expanding education and skills development programmes; cultural and arts preservation; and providing and/or  
2744 promoting community health services. Community development may include institutional strengthening of the  
2745 community, its groups and collective forums; cultural, social and environmental programmes and local  
2746 networks involving multiple institutions.

2747 Community development is usually advanced when the social forces in a community strive to promote public  
2748 participation, and pursue equal rights and dignified standards of living for all citizens, without discrimination. It

2749 is a process internal to the community that takes account of existing relations and overcomes barriers to the  
2750 enjoyment of rights. Community development is enhanced by socially responsible behaviour.

2751 Social investments that contribute to community development can sustain and enhance an organization's  
2752 relationships with its communities, and may or may not be associated with an organization's core operational  
2753 activities (see 6.8.9).

2754 While some aspects of the actions discussed in this section can be understood as philanthropy, philanthropic  
2755 activities alone do not achieve the objective of integrating social responsibility into the organization (as  
2756 discussed in 3.3.4).

## 2757 **6.8.2 Principles and considerations**

### 2758 **6.8.2.1 Principles**

2759 In addition to the principles of social responsibility outlined in Clause 4, the following specific principles are  
2760 applicable to community involvement and development. An organization should:

2761 — consider itself as part of, and not separate from, the community in approaching community involvement  
2762 and development;

2763 — recognize and have due regard for the rights of community members to make decisions in relation to their  
2764 community and thereby pursue, in the manner they choose, ways of maximizing their resources and  
2765 opportunities;

2766 — recognize and have due regard for the characteristics, e.g. cultures, religions, traditions, and history of the  
2767 community while interacting with it; and

2768 — recognize the value of working in partnership, supporting the exchange of experiences, resources and  
2769 efforts.

### 2770 **6.8.2.2 Considerations**

2771 The Copenhagen Declaration<sup>[118]</sup> recognizes the “urgent need to address profound social challenges,  
2772 especially poverty, unemployment and social exclusion”. The Copenhagen Declaration and Programme of  
2773 Action pledged the international community to make the conquest of poverty, the goal of full productive,  
2774 appropriately remunerated and freely chosen employment, and the fostering of social integration overriding  
2775 objectives of development.

2776 The UN Millennium Declaration sets out goals that, if met, would help solve the world's main development  
2777 challenges (see Box 12). The UN Millennium Declaration<sup>[114]</sup> emphasizes that although development should  
2778 be guided and driven primarily by public policies, the development process depends on the contributions of all  
2779 organizations. Community involvement helps to contribute, at a local level, to the achievement of these goals.

2780 The Rio Declaration on Environment and Development [119] introduced Agenda 21, which is a process to  
2781 develop a comprehensive action plan that can be implemented locally by organizations in every area in which  
2782 human activities impact on society and the environment.

<b>Box 13 – Millennium Development Goals</b>	
2783	
2784	The Millennium Development Goals (MDGs) [114] are eight goals to be achieved by the year 2015 that
2785	respond to the world's main development challenges. The MDGs are drawn from the actions and targets
2786	contained in the Millennium Declaration.
2787	The eight MDGs are:
2788	1. Eradicate extreme poverty and hunger
2789	2. Achieve universal primary education

- 2790 3. Promote gender equality and empower women
- 2791 4. Reduce child mortality
- 2792 5. Improve maternal health
- 2793 6. Combat HIV/AIDS, malaria and other diseases
- 2794 7. Ensure environmental sustainability
- 2795 8. Develop a global partnership for development
- 2796 The MDGs break down into 18 quantifiable targets that are measured by 48 indicators.

2797 An organization should consider supporting related public policies when engaging with the community. This  
 2798 may present opportunities to maximize desired outcomes that promote sustainable development through a  
 2799 shared vision and common understanding of development priorities and partnerships.

2800 Organizations often join partnerships and associate with others to defend and advance their own interests.  
 2801 However, these associations should represent their members' interests on the basis of respecting the rights of  
 2802 other groups and individuals to do the same, and they should always operate in a way that increases respect  
 2803 for the rule of law and democratic processes.

2804 Before deciding upon an approach to community involvement and development, an organization should  
 2805 research its potential impacts on the community and plan ways of mitigating negative impacts and optimizing  
 2806 positive impacts.

2807 When developing plans for community involvement and development, an organization should seek  
 2808 opportunities to engage with a broad range of stakeholders (see 4.5, 5.3 and Clause 7). In addition, it is  
 2809 important to identify and consult with and where possible support vulnerable, marginalized, discriminated or  
 2810 under-represented groups.

2811 The most important areas for community involvement and development will depend on the particular  
 2812 community and the unique knowledge, resources and capacity each organization brings to the community.

2813 Some activities of an organization may be explicitly intended to contribute to community development; others  
 2814 may aim at private purposes but indirectly promote general development.

2815 By integrating the concept of community involvement into the organization's decisions and activities, an  
 2816 organization can minimize or avoid negative impacts and maximize the benefits of those activities and  
 2817 sustainable development within the community. An organization can use its inherent skills base for community  
 2818 involvement (see Box 13).

**Box 14 – Contributing to community development through an organization's core activities**

2820 Some examples of ways in which an organization's core activities can contribute to community development  
 2821 include:

- 2822 — an enterprise selling farm equipment could provide training in farming techniques
- 2823 — a company planning to build an access road could engage the community at the planning stage to identify  
 2824 how the road could be built to also meet the needs of the community (for example, by providing access  
 2825 for local farmers);
- 2826 — trade unions could use their membership networks to disseminate information about good health  
 2827 practices to the community;
- 2828 — a water intensive industry building a water purification plant for its own needs could also provide clean  
 2829 water to the community;

- 2830 — an environmental protection association operating in a remote area could buy the supplies needed for its  
2831 activities from local commerce and producers; and
- 2832 — a recreational club could allow use of its facilities for educational activities for illiterate adults in the  
2833 community.

2834 An organization might be confronted with humanitarian crises or other circumstances that threaten to disrupt  
2835 community life, aggravate social and economic community problems and may also increase risks of human  
2836 rights abuse (see 6.3.4). Examples of such situations include food security emergencies, natural disasters  
2837 such as flooding, droughts, tsunamis and earthquakes, displacement of populations and armed conflicts.

2838 Organizations with activities, partners or other stakeholders in an affected area should consider contributing to  
2839 the alleviation of these situations, or might wish to do so out of simple humanity. Organizations can contribute  
2840 in many ways, from disaster relief to re-building efforts. In every case, human suffering should be addressed,  
2841 paying particular attention to the most vulnerable in a given situation and in the population at large, such as  
2842 women and children. The dignity and rights of all victims should be respected and supported.

2843 In crisis situations it is important to have a co-ordinated response, therefore it is important to work with public  
2844 authorities and, where applicable, international humanitarian organizations and other appropriate entities.

### 2845 **6.8.3 Community involvement and development issue 1: Community involvement**

#### 2846 **6.8.3.1 Description of the issue**

2847 Community involvement is an organization's proactive outreach to the community. It is aimed at preventing  
2848 and solving problems, fostering partnerships with local organizations and stakeholders and aspiring to be a  
2849 good organizational citizen of the community. It does not replace the need for taking responsibility for impacts  
2850 on society and environment. Organizations contribute to their communities through their participation in and  
2851 support for civil institutions and through involvement in networks of groups and individuals that constitute civil  
2852 society.

2853 Community involvement also helps organizations to familiarize themselves with community needs and  
2854 priorities, so that the organization's developmental and other efforts are compatible with those of the  
2855 community and society. An organization might become involved through, for example, participation in forums  
2856 established by local authorities and residents' associations or by creating such forums.

2857 Some traditional or indigenous communities, neighbourhood associations or internet networks express  
2858 themselves without constituting a formal "organization". An organization should be aware that there are many  
2859 types of groups, formal and informal, that can contribute to development. An organization should respect the  
2860 cultural, social and political rights of such groups.

2861 It is important that actions for community involvement uphold respect for the rule of law and for participatory  
2862 processes that respect the rights and have due regard for the views of others to express and defend their own  
2863 interests.

#### 2864 **6.8.3.2 Related actions and expectations**

2865 An organization should:

- 2866 — consult representative community groups in determining priorities for social investment and community  
2867 development activities. Special attention should be given to vulnerable, discriminated, marginalized,  
2868 unrepresented and under-represented groups, to involve them in a way that helps to expand their options  
2869 and respect their rights;
- 2870 — consult and accommodate indigenous and communities on the terms and conditions of development that  
2871 affect them. Consultation should occur prior to development and should be based on complete, accurate  
2872 and accessible information <sup>[115]</sup>;

- 2873 — participate in local associations as possible and appropriate, with the objective of contributing to the
- 2874 public good and the development goals of communities;
- 2875 — maintain transparent relationships with local government officials and political representatives, free from
- 2876 bribery or improper influence;
- 2877 — encourage and support people to be volunteers for community service; and
- 2878 — contribute to policy formulation and the establishment, implementation, monitoring and evaluation of
- 2879 development programmes. When doing so, an organization should respect the rights and have due
- 2880 regard for the views of others to express and defend their own interests.

## 2881 **6.8.4 Community involvement and development issue 2: Education and culture**

### 2882 **6.8.4.1 Description of the issue**

2883 Education and culture are foundations for social and economic development and part of community identity.

2884 Preservation and promotion of culture and promotion of education compatible with respect for human rights

2885 have positive impacts on social cohesion and development<sup>[112]</sup>.

### 2886 **6.8.4.2 Related actions and expectations**

2887 An organization should:

- 2888 — promote and support education at all levels, and engage in actions to improve the quality of and access to
- 2889 education, promote local knowledge and eradicate illiteracy;
- 2890 — in particular, promote learning opportunities for vulnerable or discriminated groups;
- 2891 — encourage the enrolment of children in formal education, and contribute to the elimination of barriers to
- 2892 children obtaining an education (such as child labour)<sup>[99]</sup>;
- 2893 — promote cultural activities where appropriate, recognize and value the local cultures and cultural
- 2894 traditions, consistent with the principle of respect for human rights. Actions to support cultural activities
- 2895 that empower historically disadvantaged groups are especially important as a means of combating
- 2896 discrimination;
- 2897 — consider facilitating human rights education and awareness raising;
- 2898 — help conserve and protect cultural heritage, especially where the organization's activities have an impact
- 2899 on it<sup>[121][123][124]</sup>;
- 2900 — where appropriate promote the use of traditional knowledge and technologies of indigenous communities
- 2901<sup>[40]</sup>.

## 2902 **6.8.5 Community involvement and development issue 3: Employment creation and skills**

### 2903 **development**

### 2904 **6.8.5.1 Description of the issue**

2905 Employment is an internationally recognized objective related to economic and social development. By

2906 creating employment, all organizations, large and small, can make a contribution to reducing poverty and

2907 promoting economic and social development. In creating employment, employers should observe the relevant

2908 guidance offered in 6.3 and 6.4.

2909 Skills development is an essential component of employment promotion and of assisting people to secure

2910 decent and productive jobs, and is vital to economic and social development.

2911 **6.8.5.2 Related actions and expectations**

2912 An organization should:

2913 — analyze the impact of its investment decisions on employment creation and, where economically viable,  
2914 may make direct investments that alleviate poverty through employment creation;

2915 — consider the impact of technology choice on employment and, where economically viable in the longer  
2916 term, select technologies that maximize employment opportunities;

2917 — consider the impact of outsourcing decisions on employment creation, both within the organization  
2918 making the decision and within external organizations affected by such decisions;

2919 — consider the benefit of creating direct employment rather than using temporary work arrangements;

2920 — consider participating in local and national skills development programmes, including apprenticeship  
2921 programmes, programmes focused on particular disadvantaged groups, life-long learning programmes  
2922 and skills recognition and certification schemes;

2923 — consider helping to develop or improve skills development programmes in the community where these  
2924 are inadequate, possibly in partnership with others in the community;

2925 — give special attention to vulnerable groups with regard to employment and capacity building; and

2926 — consider helping to promote the framework conditions necessary to create employment.

2927 **6.8.6 Community involvement and development issue 4: Technology development and access**2928 **6.8.6.1 Description of the issue**

2929 To help advance economic and social development, communities need, among other things, safe and  
2930 inclusive access to modern technology. Organizations can contribute to the development of the communities  
2931 in which they operate by applying specialized knowledge, skills and technology in such a way as to promote  
2932 human resource development and technology diffusion.

2933 Information and communication technologies characterize much of contemporary life and are a valuable basis  
2934 for many economic activities. Access to information is key to overcoming of the disparities that exist between  
2935 countries, regions, generations, genders, etc. An organization can contribute to improved access to these  
2936 technologies through training, partnerships and other actions.

2937 **6.8.6.2 Related actions and expectations**

2938 An organization should:

2939 — consider contributing to the development of innovative technologies that can help solve social and  
2940 environmental issues in local communities;

2941 — consider contributing to the development of low cost technologies that are easily replicable and have a  
2942 high positive impact on poverty and hunger eradication;

2943 — consider, where economically feasible, developing potential local and traditional knowledge and  
2944 technologies while protecting the community's right to that knowledge and technology;

2945 — consider engaging in partnerships with organizations, such as universities or research laboratories, to  
2946 enhance scientific and technological development with partners from the community, and employ local  
2947 people in this work <sup>[88]</sup>; and

2948 — adopt practices that allow technology transfer and diffusion, where economically feasible. Where  
2949 applicable, an organization should set reasonable terms and conditions for licenses or technology transfer  
2950 so as to contribute to local development. The capacity of the community to manage the technology should  
2951 be considered and enhanced.

## 2952 **6.8.7 Community involvement and development issue 5: Wealth and income creation**

### 2953 **6.8.7.1 Description of the issue**

2954 Competitive and diverse enterprises and co-operatives are crucial in creating wealth in any community.  
2955 Organizations can help to create an environment in which entrepreneurship can thrive, bringing lasting  
2956 benefits to communities. Organizations can contribute positively to wealth and income creation through  
2957 entrepreneurship programmes, development of local suppliers, and employment of community members, as  
2958 well as through wider efforts to strengthen economic resources and social relations that facilitate economic  
2959 and social welfare or generate community benefits. Furthermore, by helping to create wealth and income at  
2960 local level and promoting a balanced distribution of the economic benefits among community members,  
2961 organizations can play a significant role in reducing poverty. Entrepreneurship programmes and co-operatives  
2962 targeting women are particularly important as it is widely recognized that the empowerment of women  
2963 contributes greatly to the well-being of society.

2964 Wealth and income creation also depend on a fair distribution of the benefits of economic activity.  
2965 Governments rely upon organizations meeting their tax obligations to obtain revenues for addressing critical  
2966 development issues.

2967 In many situations the physical, social and economic isolation of communities can be an obstacle to their  
2968 development. Organizations can play a positive role in the development of communities by integrating the  
2969 local people, groups, organizations in their activities or value chain. In this way, community development  
2970 considerations can become an integral part of organizations' core activities.

2971 An organization contributes to development through compliance with laws and regulations. In some  
2972 circumstances community groups' failure to operate within the intended legal framework is a consequence of  
2973 poverty or development conditions. In these circumstances, an organization that is involved with groups  
2974 operating outside the legal framework should aim to alleviate poverty and promote development. An  
2975 organization should also seek to create opportunities that will enable these groups to achieve greater, and  
2976 ultimately full, compliance with the law, especially concerning economic relationships.

### 2977 **6.8.7.2 Related actions and expectations**

2978 An organization should:

2979 — consider the economic and social impact of entering or leaving a community, including impacts on basic  
2980 resources needed for the sustainable development of the community;

2981 — consider supporting appropriate initiatives to stimulate diversification of existing economic activity in the  
2982 community;

2983 — consider giving preference to local suppliers of products and services and contributing to local supplier  
2984 development where possible;

2985 — consider undertaking initiatives to strengthen the ability of and opportunities for locally based suppliers to  
2986 contribute to value chains, giving special attention to disadvantaged groups within the community;

2987 — consider assisting organizations to operate within the appropriate legal framework;

2988 — engage in economic activities with organizations that, owing to low levels of development, have difficulty  
2989 meeting the legal requirements, only where:

2990 — the purpose is to address poverty;

- 2991 — the activities of these organizations respect human rights and there is a reasonable expectation that  
2992 these organizations will consistently move towards conducting their activities within the appropriate  
2993 legal framework;
- 2994 — consider contributing to durable programmes and partnerships that assist community members,  
2995 especially women and other socially disadvantaged and vulnerable groups to establish businesses and  
2996 co-operatives, in improving productivity and promoting entrepreneurship. Such programmes could, for  
2997 example, provide training in business planning, marketing, quality standards required to become  
2998 suppliers, management and technical assistance, access to finance and facilitation of joint ventures.
- 2999 — encourage the efficient use of available resources including the good care of domesticated animals
- 3000 — consider appropriate ways to make procurement opportunities more easily accessible to community  
3001 organizations, including, for example, through capacity-building on meeting technical specifications, and  
3002 making available information about procurement opportunities;
- 3003 — consider supporting organizations and persons that bring needed products and services to the  
3004 community, which can also generate local employment as well as linkages with local, regional and urban  
3005 markets where this is beneficial for the welfare of the community;
- 3006 — consider appropriate ways to help in the development of community-based associations of entrepreneurs;  
3007 and
- 3008 — fulfil its tax responsibilities and provide authorities with the necessary information to correctly determine  
3009 taxes due.
- 3010 — consider contributing to superannuation and pensions for employees.
- 3011 **6.8.8 Community involvement and development issue 6: Health**
- 3012 **6.8.8.1 Description of the issue**
- 3013 Health is an essential element of life in society and is a recognized human right. Threats to public health can  
3014 have severe impacts on communities and can hamper their development. Thus, all organizations, both large  
3015 and small, should respect the right to health and should contribute, within their means and as appropriate, to  
3016 the promotion of health, to the prevention of health threats and diseases and to mitigate any damage to the  
3017 community (see also [6.4.6,] 6.5 and 6.7.4). This may include participation in public health campaigns. They  
3018 should also contribute where possible and appropriate to improve access to health services especially by  
3019 reinforcing and supporting public services. Even in countries where it is a role of the state to provide a public  
3020 health system, all organizations can consider contributing to health in communities. A high level of health in  
3021 the community reduces the burden on the public sector and contributes to a good economic and social  
3022 environment for all organizations.
- 3023 **6.8.8.2 Related actions and expectations**
- 3024 An organization should:
- 3025 — seek to eliminate negative health impacts of any production process, product or service provided by the  
3026 organization;
- 3027 — consider promoting good health by, for example, contributing to access to medicines and vaccination and  
3028 encouraging healthy lifestyles, including exercise and good nutrition, early detection of diseases, raising  
3029 awareness on the contraceptive methods and discouraging the consumption of unhealthy products and  
3030 substances. Special attention should be given to child nutrition;
- 3031 — consider raising awareness about health threats and major diseases and their prevention, such as,  
3032 HIV/AIDS, cancer, heart disease, malaria, tuberculosis and obesity; and

3033 — consider supporting long lasting and universal access to essential health care services and to clean water  
3034 and appropriate sanitation as a means of preventing illness.

## 3035 **6.8.9 Community involvement and development issue 7: Social investment**

### 3036 **6.8.9.1 Description of the issue**

3037 Social investment takes place when organizations invest their resources in initiatives and programs aimed at  
3038 improving social aspects of community life. Types of social investments may include projects related to  
3039 education, training, culture, healthcare, income generation, infrastructure development, improving access to  
3040 information or any other activity likely to promote economic or social development.

3041 In identifying opportunities for social investment, an organization should align its contribution with the needs  
3042 and priorities of the communities in which it operates, taking into account priorities set by local and national  
3043 policymakers. Information sharing, consultation and negotiation are useful tools for a participative approach to  
3044 identifying and implementing social investments.

3045 Social investments do not exclude philanthropy (for example, grants, volunteering and donations).

3046 Organizations should also encourage community involvement in the design and implementation of projects as  
3047 this can help projects to survive and prosper when the organization is no longer involved. Social investments  
3048 should prioritize projects that are viable in the long-term and contribute to sustainable development

### 3049 **6.8.9.2 Related actions and expectations**

3050 An organization should:

3051 — take into account the promotion of community development in planning social investment projects. All  
3052 actions should broaden opportunities for citizens, for example by increasing local procurement and any  
3053 outsourcing so as to support local development;

3054 — avoid actions that perpetuate a community's dependence on the organization's philanthropic activities,  
3055 on-going presence or support;

3056 — assess its own existing community-related initiatives and report to the community and to people within the  
3057 organization and identify where improvements might be made;

3058 — consider partnering with other organisations, including government, business or NGOs in order to  
3059 maximise synergies and make use of complementary resources, knowledge and skills; and

3060 — consider contributing to programmes that provide access to food and other essential products for  
3061 vulnerable or discriminated groups and persons with low income, taking into account the importance of  
3062 contributing to their increased capabilities, resources and opportunities.

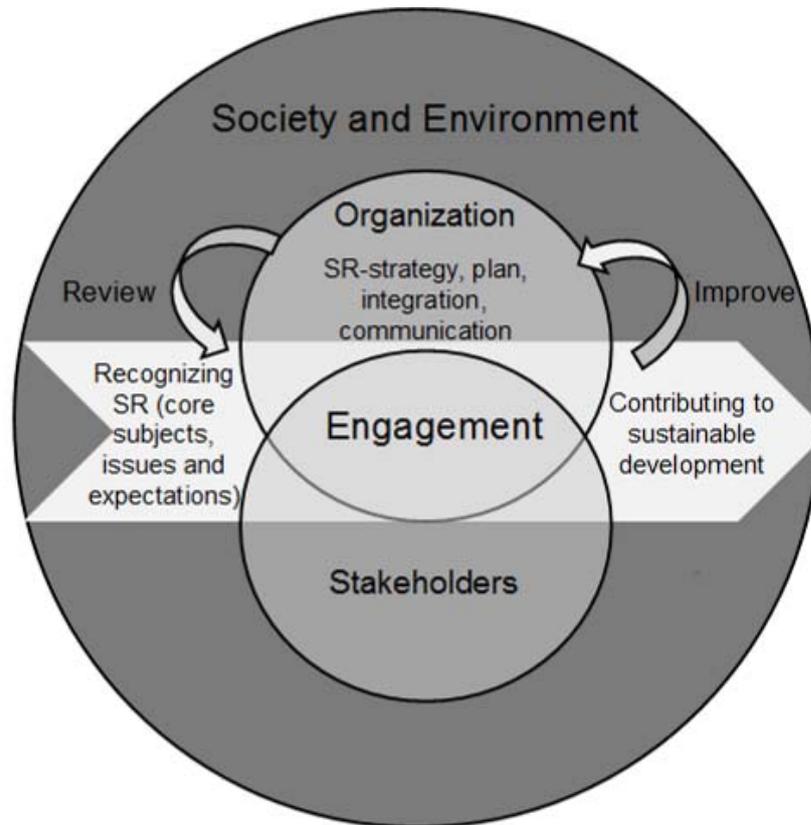
## 3063 **7 Guidance on integrating social responsibility throughout an organization**

### 3064 **7.1 General**

3065 Previous clauses of this International Standard have identified the principles, core subjects and issues of  
3066 social responsibility. This clause provides guidance on putting social responsibility into practice in an  
3067 organization. In most cases, organizations can build on existing systems, policies, structures and networks of  
3068 the organization to put social responsibility into practice, although some activities are likely to be conducted in  
3069 new ways, or with consideration for a broader range of factors.

3070  
3071 Some organizations may already have established techniques for introducing new approaches into their  
3072 decision-making and activities, as well as effective systems for communication and internal review. Others  
3073 may have less well-developed systems for organizational governance or other aspects of social responsibility.  
3074 The following guidance is intended to help all organizations, whatever their starting point, integrate social  
3075 responsibility into the way they operate.

3076



3077

3078 **Figure 4 — Integrating social responsibility throughout the organization**

## 3079 7.2 The relationship of an organization's characteristics to social responsibility

3080 To provide an informed basis for integrating social responsibility throughout the organization, it is useful for the  
 3081 organization to determine how its key characteristics relate to social responsibility (see Clause 5). This review  
 3082 will also help in determining the relevant issues of social responsibility within each core subject and in  
 3083 identifying the organization's stakeholders. The review should include, where appropriate, factors such as:

- 3084 — the organization's type, purpose, nature of operations and size;
- 3085 — locations in which the organization operates, (including):
  - 3086 — whether there is a strong legal framework that regulates many of the decisions and activities related  
 3087 to social responsibilities and
  - 3088 — social, environmental and economic characteristics of the areas of operation;
- 3089 — any information about the historical performance of the organization on social responsibility.
- 3090 — characteristics of the organization's workforce or employees, including contracted labour;
- 3091 — sector organizations in which the organization participates, including:
  - 3092 — the activities related to social responsibility undertaken by these organizations; and
  - 3093 — the codes, or other requirements related to social responsibility promoted by these organizations;
- 3094 — the organization's own mission, vision, values, principles, and code of conduct;

3095 — concerns of internal and external stakeholders relevant to social responsibility;

3096 — structures for and the nature of decision making in the organization; and

3097 — the organization's value chain.

3098 It is also important for an organization to be aware of the current attitudes, level of commitment to and  
3099 understanding of social responsibility by its leadership. A thorough understanding of the principles, core  
3100 subjects and benefits of social responsibility will greatly assist the integration of social responsibility  
3101 throughout the organization and its sphere of influence.

## 3102 **7.3 Understanding the social responsibility of an organization**

### 3103 **7.3.1 Due diligence**

3104 Due diligence in the context of social responsibility is a comprehensive, proactive process to identify the actual  
3105 and potential negative social, environmental and economic impacts of an organization's decisions and  
3106 activities, with the aim of avoiding and mitigating those impacts.

3107 Due diligence may also entail influencing the behaviour of others, where they be the cause of human rights or  
3108 other violations in which the organization may be implicated.

3109 In any due diligence process, an organization should consider the country context in which it operates or in  
3110 which its activities take place; the potential and actual impacts of its own activities; and the potential for  
3111 negative consequences resulting from the actions of other entities or persons whose activities are significantly  
3112 linked to those of the organization.

3113 It should include in a due diligence process, in a manner appropriate to the organization's size and  
3114 circumstances, the following components:

3115 — organizational policies related to the relevant core subject that give meaningful guidance to those within  
3116 the organization and those closely linked to the organization;

3117 — means of assessing how existing and proposed activities may affect those policy goals;

3118 — means of integrating social responsibility core subjects throughout the organization;

3119 — means of tracking performance over time, to be able to make necessary adjustments in priorities and  
3120 approach; and

3121 — appropriate actions to address the negative impacts of its decisions and activities.

3122 In identifying potential areas for action, an organization should strive to better understand challenges and  
3123 dilemmas from the perspective of the individuals and groups potentially harmed.

3124 In addition to this self-evaluation, an organization may find that in some cases it is both possible and  
3125 appropriate to seek to influence the behaviour of other entities towards enhancing their social responsibility  
3126 performance, particularly those with which it has close ties or where the organization considers the issues to  
3127 be particularly compelling or relevant to its situation. As an organization gains experience in the area of  
3128 enhancing social responsibility performance, it may grow in its capacity and willingness to intervene with other  
3129 entities to advocate this objective.

### 3130 **7.3.2 Determining relevance and significance of core subjects and issues to an organization**

#### 3131 **7.3.2.1 Determining relevance**

3132 All the core subjects, but not all issues, have relevance for every organization. An organization should review  
3133 all core subjects to identify which issues are relevant.

- 3134 To start the identification process, an organization should, where appropriate:
- 3135 — list the full range of its activities;
  - 3136 — identify stakeholders (see 5.3);
  - 3137 — identify the activities of the organization itself and of the organizations within its sphere of influence. The  
3138 decisions and activities of suppliers and contractors can have an impact on the social responsibility of the  
3139 organization;
  - 3140 — determine which core subjects and issues might arise when the organization and others within the sphere  
3141 of influence, e.g. the value chain, carry out these activities, taking into account all applicable legislation;
  - 3142 — examine the range of ways in which the organization's decisions and activities can cause impacts on  
3143 stakeholders and on sustainable development
  - 3144 — examine the ways in which stakeholders and social responsibility issues can impact the decisions,  
3145 activities and plans of the organization;
  - 3146 — identify all issues of social responsibility that relate to day-to-day activities as well as those that arise only  
3147 occasionally under very specific circumstances.
- 3148 Although an organization itself may believe it understands its social responsibility (see 5.2.3), it should  
3149 nevertheless consider involving stakeholders in the identification process to broaden the perspective on the  
3150 core subjects and issues. It is important to recognize, though, that issues may be relevant even if stakeholders  
3151 fail to identify them.
- 3152 In some instances an organization might assume that because it operates in an area with laws that address  
3153 core subjects of social responsibility, then compliance with the law will be sufficient to ensure that all the  
3154 relevant issues of such core subjects are addressed. A careful review of the core subjects and issues in  
3155 Clause 6 may reveal, however, that some relevant issues are not regulated or are covered by regulations that  
3156 are not adequately enforced or are not explicit or sufficiently detailed.
- 3157 Even for core subjects or issues covered by the law, responding to the spirit of the law may in some cases  
3158 involve action beyond simple compliance. As an example, although some environmental laws and regulations  
3159 limit emissions of air or water pollutants to specific amounts or levels an organization should use best practice  
3160 to further reduce its emissions of those pollutants or to change the processes it uses so as to completely  
3161 eliminate such emissions. Other examples are a school that voluntarily decides to reuse rain water for sanitary  
3162 use, and a hospital that could decide not only to comply with laws regarding its labour practices, but to also  
3163 launch a special programme for supporting the work-life balance of its personnel.
- 3164 **7.3.2.2 Determining significance**
- 3165 Once an organization has identified the broad range of issues relevant to its decisions and activities, it should  
3166 look carefully at the issues identified and develop a set of criteria for deciding which issues have the greatest  
3167 significance and are most important to the organization. Possible criteria include the:
- 3168 — extent of the impact of the issue on stakeholders and sustainable development
  - 3169 — potential effect of taking action or failing to take action on the issue;
  - 3170 — level of stakeholder concern about the issue;
  - 3171 — identification of the societal expectations of responsible behaviour concerning these impacts;
- 3172 Issues that are generally considered to be significant are the non-compliance with the law; the inconsistency  
3173 with international norms of behaviour; potential violations of human rights; practices that could endanger life or  
3174 health and practices that could seriously affect the environment.

3175 **7.3.3 An organization's sphere of influence**

3176 **7.3.3.1 Assessing an organization's sphere of influence**

3177 An organization derives influence from sources such as:

3178 — **ownership and governance** This includes the nature and extent of ownership or representation, if any,  
3179 on the governing body of the associated organization;

3180 — **economic relationship:** This includes the extent of the economic relationship and the relative  
3181 importance of that relationship for either organization: greater importance for one organization can create  
3182 greater influence for the other organization

3183 — **legal/political authority** This is based, for example, on provisions in legally binding contracts or the  
3184 existence of a legal mandate granting the organization the ability to enforce certain behaviours on others;  
3185 and

3186 — **public opinion** This includes the ability of the organization to influence public opinion, and the impact of  
3187 public opinion on those it is trying to influence.

3188 An organization's influence may depend on a number of factors, including physical proximity, scope, length  
3189 and strength of the relationship.

3190 **7.3.3.2 Exercising influence**

3191 An organization can exercise its influence with others either to enhance positive impacts on sustainable  
3192 development, or to minimize negative impacts, or both. When assessing its sphere of influence and  
3193 determining its responsibilities, an organization should exercise due diligence.

3194 Methods of exercising influence include:

3195 — setting contractual provisions or incentives

3196 — public statements by the organization

3197 — engaging with the community, political leaders and other stakeholders

3198 — making investment decisions

3199 — sharing knowledge and information

3200 — conducting joint projects

3201 — undertaking responsible lobbying and using media relations;

3202 — promoting good practices; and

3203 — forming partnerships with sector associations, organizations and others.

3204  
3205 An organization should consider the environmental, social and organizational governance aspects and the  
3206 social responsibility of the organizations with which it has or seeks to have a relationship

3207 An organization can influence its stakeholders through its decisions and activities, and through the information  
3208 that it provides to stakeholders about the basis for these decisions and activities.

3209 — The exercise of an organization's influence should always be guided by ethical behaviour and other principles  
3210 and practices of social responsibility (see Clauses 4 and 5). When exerting its influence, an organization

3211 should first consider engaging in dialogue aimed at improving awareness of social responsibility and  
 3212 encouraging socially responsible behaviour. If dialogue is not effective, alternative actions should be  
 3213 considered, including changing the nature of the relationship.

3214— Where an organization has de facto control<sup>1</sup> over others, its responsibility to act can be similar to the  
 3215 responsibility that exists where the organization has formal control.

3216 <sup>1</sup> “de facto control” refers to situations where one organization has the ability to dictate the decisions and  
 3217 activities of another organization, even where it does not have the legal or formal authority to do so.

### 3218 **7.3.4 Establishing priorities for addressing issues**

3219 An organization should determine and commit to its priorities for integrating social responsibility throughout  
 3220 the organization and its daily practices. Priorities should be established from among the issues considered  
 3221 significant and relevant. Stakeholders should be involved in the identification of priorities (see 5.3). Priorities  
 3222 are likely to vary over time.

3223 Organizations should consider the following to determine whether an action to address an issue is a high  
 3224 priority or not:

3225 — current performance of the organization with regard to legal compliance, international standards,  
 3226 international norms of behaviour, the state-of-the-art and best practice;

3227 — significantly affect the ability of the organization to meet important objectives;

3228 — potential effect of the related action compared to the resources required for implementation; and

3229 — length of time to achieve the desired results;

3230 — significant cost implications if not addressed quickly; and

3231 — the ease and speed of implementation, which may have a bearing on increasing awareness of and  
 3232 motivation for action on social responsibility within the organization.

3233 The order of priorities will vary among organizations.

3234 In addition to setting priorities for immediate action, an organization can establish priorities for consideration of  
 3235 issues that are relevant to decisions and activities that an organization expects to carry out in the future, such  
 3236 as building construction, employing new staff, hiring contractors or conducting fund-raising activities. The  
 3237 priority considerations will then form part of the planning for these future activities.

3238 The priorities should be reviewed and updated at intervals appropriate for the organization.

## 3239 **7.4 Practices for integrating social responsibility throughout an organization**

### 3240 **7.4.1 Raising awareness and building competency for social responsibility**

3241 Building social responsibility into every aspect of an organization involves commitment and understanding at  
 3242 all levels of the organization. In the early stages of an organization's efforts related to social responsibility, the  
 3243 focus of awareness building should be on increasing understanding of the aspects of social responsibility,  
 3244 including principles, core subjects and issues.

3245 Commitment and understanding should start at the top of the organization. Understanding the benefits of  
 3246 social responsibility for the organization can play a major role in building the commitment of the organization's  
 3247 leadership. Efforts should therefore be made to provide the organization's leadership with a thorough  
 3248 understanding of the implications and benefits of social responsibility.

3249 Some employees and some parts of an organization will be more interested and receptive to taking action on  
3250 social responsibility than others. An organization may find it useful to focus initial efforts on such receptive  
3251 areas to demonstrate what social responsibility means in practice.

3252 Creating a culture of social responsibility within an organization may take a substantial period of time, but  
3253 proceeding systematically and working from existing values and cultures have been effective in many  
3254 organizations.

3255 Building the competency for implementing practices of social responsibility may involve strengthening or  
3256 developing skills in some areas of activity such as stakeholder engagement, and in improving knowledge and  
3257 understanding of the application of the core subjects. Efforts should take advantage of the existing knowledge  
3258 and skills of people within the organization. Where appropriate, these efforts should also include building  
3259 competency and training of managers and workers in the supply chain. Specific training may be useful for  
3260 some issues.

3261 To integrate social responsibility effectively, an organization may identify a need for changes in decision-  
3262 making processes and governance that would promote greater freedom, authority and motivation to suggest  
3263 new approaches and ideas. An organization may also find that it needs to improve its tools for monitoring and  
3264 measuring some aspects of its performance.

3265 Education and lifelong learning are central to raising awareness and building competency for social  
3266 responsibility. In this regard, education for sustainable development is setting a new direction to empower  
3267 people to address social responsibility issues by encouraging them to have due regard for values that foster  
3268 vigorous and proactive action.[122]

#### 3269 **7.4.2 Setting the direction of an organization for social responsibility**

3270 The statements and actions of an organization's leadership and the organization's purpose, aspirations,  
3271 values, ethics and strategy set the direction for the organization. To make social responsibility an important  
3272 and effective part of the functioning of the organization, it should be reflected in these aspects of the  
3273 organization.

3274 An organization should set its direction by making social responsibility an integral part of its policies,  
3275 organizational culture, strategies, structures and operations. Some of the ways it can do this include:

3276 — including in the organization's aspirations or vision statement reference to the way in which it intends  
3277 social responsibility to influence its activities;

3278 — incorporating in its purpose or in a mission statement specific, clear and concise references to important  
3279 aspects of social responsibility, including the principles and issues of social responsibility that help  
3280 determine the way the organization operates;

3281 — adopting written codes of conduct or ethics that specify the organization's commitment to social  
3282 responsibility by translating the principles and values into statements on appropriate behaviour. Such  
3283 codes should be based on the principles of social responsibility in Clause 4 and on guidance in Clause 6.

3284 — including social responsibility as a key element of the organization's strategy, through its integration into  
3285 systems, policies, processes and decision-making behaviour and

3286 — translating the priorities for action on core subjects and issues into manageable organizational objectives  
3287 with strategies, processes and timelines. Objectives should be specific and measurable or verifiable.  
3288 Stakeholder input can be valuable in assisting this process. Detailed plans for achieving the objectives,  
3289 including responsibilities, timelines, budgets and the effect on other activities of the organization, should  
3290 be an important element in establishing the objectives and the strategies for their achievement.

### 3291 **7.4.3 Building social responsibility into an organization's governance, systems and procedures**

3292 An important and effective means of integrating social responsibility throughout an organization is through the  
3293 organization's governance, the system by which its decisions are made and implemented in pursuit of its  
3294 objectives.

3295 An organization should conscientiously and methodically manage its own impacts associated with each core  
3296 subject and monitor the impacts of the organizations within its sphere of influence, so as to minimize the risk  
3297 of social and environmental harm, as well as maximize opportunities and positive impacts. When making  
3298 decisions, including with regard to new activities, an organization should consider the likely impacts of these  
3299 decisions on stakeholders. In doing so, an organization should consider the best ways of minimizing the  
3300 harmful impacts of its activities and of increasing the beneficial impacts of its behaviour on society and the  
3301 environment. The resources and planning required for this purpose should be taken into account when  
3302 decisions are made.

3303 An organization should confirm that the principles of social responsibility (see Clause 4) are applied in its  
3304 governance and reflected in its structure and culture. It should review procedures and processes at  
3305 appropriate intervals to make sure that they take into account the social responsibility of the organization.

3306 Some useful procedures may include:

- 3307 — ensuring established management practices reflect and address the organization's social responsibility
- 3308 — identifying the ways in which the principles of social responsibility and the core subjects and issues apply  
3309 to the various parts of the organization
- 3310 — if appropriate to the size and nature of the organization, establishing departments or groups within the  
3311 organization to review and revise operating procedures so that they are consistent with the principles and  
3312 core subjects of social responsibility;
- 3313 — taking account of social responsibility when conducting operations for the organization;
- 3314 — incorporating social responsibility into purchasing and investment practices, human resources  
3315 management and other organizational functions.

3316 The existing values and culture of an organization can have a significant effect on the ease and pace with  
3317 which social responsibility can be fully integrated throughout the organization. For some organizations, where  
3318 the values and culture are already closely aligned to those of social responsibility, the process of integration  
3319 may be quite straightforward. In others, some parts of the organization may not recognize the benefits of  
3320 social responsibility and may be resistant to change. Systematic efforts over an extended period may be  
3321 involved in integrating a socially responsible approach in these areas.

3322 It is also important to recognize that the process of integrating social responsibility throughout an organization  
3323 does not occur all at once or at the same pace for all core subjects and issues. It may be helpful to develop a  
3324 plan for addressing some social responsibility issues in the short term and some over a longer period of time.  
3325 Such a plan should be realistic and should take into account the capabilities of the organization, the resources  
3326 available and the priority of the issues and related actions (see 7.3.4).

## 3327 **7.5 Communication on social responsibility**

### 3328 **7.5.1 The role of communication in social responsibility**

3329 Many practices related to social responsibility will involve some form of internal and external communication.  
3330 Communication is critical to many different functions in social responsibility including:

- 3331 — raising awareness both within and outside the organization on its strategies and objectives, plans,  
3332 performance and challenges for social responsibility;
- 3333 — demonstrating respect for the social responsibility principles in Clause 4;

- 3334 — helping to engage and create dialogue with stakeholders;
- 3335 — addressing legal and other requirements for the disclosure of information related to social responsibility;
- 3336 — showing how the organization is meeting its commitments on social responsibility and responding to the  
3337 interests of stakeholders and expectations of society in general;
- 3338 — providing information about the impacts of the organization's activities, products and services, including  
3339 details of how the impacts change over time;
- 3340 — helping to engage and motivate employees and others to support the organization's activities in social  
3341 responsibility;
- 3342 — facilitating comparison with peer organizations, which can stimulate improvements in performance on  
3343 social responsibility; and
- 3344 — enhancing an organization's reputation for socially responsible action, openness, integrity and  
3345 accountability, to strengthen stakeholder trust in the organization.

#### 3346 **7.5.2 Characteristics of information relating to social responsibility**

3347 Information relating to social responsibility should be:

- 3348 — **complete** Information should address all significant activities and impacts related to social responsibility.
- 3349 — **understandable** Information should be provided with regard for the knowledge and the cultural, social,  
3350 educational and economic background of those who will be involved in the communication. Both the  
3351 language used, and the manner in which the material is presented, including how it is organized, should  
3352 be accessible for the stakeholders intended to receive the information.
- 3353 — **responsive** Information should be responsive to stakeholder interests.
- 3354 — **accurate** Information should be factually correct and should provide sufficient detail to be useful and  
3355 appropriate for its purpose.
- 3356 — **balanced** Information should be balanced and fair and should not omit relevant negative information  
3357 concerning the impacts of an organization's activities
- 3358 — **timely** Out of date information can be misleading. Where information describes activities during a specific  
3359 period of time, identification of the period of time covered will allow stakeholders to compare the  
3360 performance of the organization with its earlier performance and with the performance of other  
3361 organizations.
- 3362 — **accessible** Information on specific issues should be available to the stakeholders concerned.

#### 3363 **7.5.3 Types of communication on social responsibility**

3364 There are many different types of communication related to social responsibility. Some examples include:

- 3365 — meetings or conversations with stakeholders;
- 3366 — communication with stakeholders on specific issues or projects of social responsibility. Where possible  
3367 and appropriate, this communication should involve dialogue with stakeholders;
- 3368 — communication between the organization's management and employees or members to raise general  
3369 awareness about and support for social responsibility and related activities. Such communication is  
3370 generally most effective when it involves dialogue;

- 3371 — team activities focused on integration of social responsibility throughout the organization;
- 3372 — communication with stakeholders concerning claims about the social responsibility related to the  
3373 organization's activities. These claims can be verified through internal review and assurance. For  
3374 enhanced credibility, these claims may be verified by external assurance. Where appropriate,  
3375 communications should provide opportunities for stakeholder feedback;
- 3376 — communication with suppliers about procurement requirements related to social responsibility;
- 3377 — communication to the public about emergencies that have consequences for social responsibility. Prior to  
3378 emergencies, communication should aim to increase awareness and preparedness. During emergencies,  
3379 it should keep stakeholders informed and provide information on appropriate actions;
- 3380 — product-related communication, such as product labelling, product information and other consumer  
3381 information. Opportunities for feedback can improve this form of communication;
- 3382 — articles on aspects of social responsibility in magazines or newsletters aimed at peer organizations;
- 3383 — advertisements or other public statements to promote some aspect of social responsibility;
- 3384 — submissions to government bodies or public inquiries; and
- 3385 — periodic public reporting with opportunities for stakeholder feedback (see Box 15).
- 3386 There are many different methods and media that may be used for communication. These include meetings,  
3387 public events, forums, reports, newsletters, magazines, posters, advertising, letters, voicemail, live  
3388 performance, video, websites, podcasts (website audio broadcast), blogs (website discussion forums), product  
3389 inserts and labels. It is also possible to communicate through the media using press releases, interviews,  
3390 editorials and articles.

- 3391
- 3392 **Box 15 – Reporting on social responsibility**
- 3393 An organization should, at appropriate intervals, report about its performance on social responsibility to the  
3394 stakeholders affected. A growing number of organizations report to their stakeholders on a periodic basis  
3395 about their performance on social responsibility. Reporting to stakeholders can be done in many different  
3396 ways, including meetings with stakeholders, letters describing the organization's activities related to social  
3397 responsibility for a defined period, website information and periodic social responsibility reports.
- 3398 In reporting to its stakeholders, an organization should include information about its objectives and  
3399 performance on the core subjects and relevant issues of social responsibility. It should describe how and  
3400 when stakeholders have been involved in the organization's reporting on social responsibility.
- 3401 An organization should provide a fair and complete picture of its social responsibility performance, including  
3402 achievements and shortfalls and the ways in which the shortfalls will be addressed.
- 3403 An organization may choose to cover its activities as a whole at one time, or report separately on activities at  
3404 a particular location or site. Community groups often consider smaller, location-specific reporting more useful  
3405 than organization-wide reporting.
- 3406 Publication of a social responsibility report can be a valuable aspect of an organization's activities on social  
3407 responsibility. In preparing a social responsibility report, an organization should take account of the following  
3408 considerations:
- 3409 — the scope and scale of an organization's report should be appropriate for the size and nature of the  
3410 organization;

- 3411 — the level of detail may reflect the extent of the organization's experience with such reporting. In some  
 3412 cases, organizations initiate their efforts with limited reports covering only a few aspects, and in  
 3413 subsequent years, expand coverage as they gain experience and have sufficient data on which to base a  
 3414 broader report;
- 3415 — the report should describe how the organization decided upon the issues to be covered and the way  
 3416 those issues would be addressed;
- 3417 — the report should present the organization's goals, operational performance, products and services in the  
 3418 context of sustainable development; and
- 3419 — a report can be produced in a variety of forms, depending on the nature of the organization and on the  
 3420 needs of its stakeholders. These may include electronic posting of a report, web-based interactive  
 3421 versions or hard copies. It may also be a stand-alone document or part of an organization's annual report.
- 3422 Additional information on reporting on social responsibility can be obtained from the initiatives and tools on  
 3423 reporting – at global, national or sector-specific level – found in Annex A (see also 7.8 for guidance on  
 3424 assessing initiatives for social responsibility).  
 3425

3426 **7.5.4 Stakeholder dialogue on communication about social responsibility**

3427 Through dialogue with its stakeholders, an organization can benefit from receiving and exchanging direct  
 3428 information about stakeholders' views. An organization should seek dialogue with its stakeholders to:

- 3429 — assess the adequacy and effectiveness of the content, media, frequency and scope of communication, so  
 3430 that they can be improved as needed;
- 3431 — set priorities for the content of future communication;
- 3432 — secure verification of reported information by stakeholders, if this approach to verification is used; and
- 3433 — identify best practice.

3434 **7.6 Enhancing credibility regarding social responsibility**

3435 **7.6.1 Methods of enhancing credibility**

3436 There are various ways in which an organization establishes its credibility. One is stakeholder engagement,  
 3437 which involves dialogue with stakeholders and is an important means of increasing confidence that the  
 3438 interests and intentions of all participants are understood. This dialogue can build trust and enhance  
 3439 credibility. Stakeholder engagement can be a basis for involving stakeholders in the verification of an  
 3440 organization's claims concerning its performance. The organization and stakeholders can make arrangements  
 3441 for stakeholders to periodically review or otherwise monitor aspects of an organization's performance.

3442 Credibility with regard to certain issues can sometimes be enhanced through participation in specific  
 3443 certification schemes. Initiatives have been developed to certify product safety or to certify processes or  
 3444 products regarding their environmental impact, labour practices and other aspects of social responsibility.  
 3445 Such schemes should be independent and credible in themselves. In some situations, organizations involve  
 3446 independent parties in their activities to provide credibility. An example of this is the creation of advisory  
 3447 committees or review committees consisting of persons who are selected because they are credible.

3448 Organizations sometimes join associations of peer organizations to establish or promote socially responsible  
 3449 behaviour within their area of activity or within their respective communities.

3450 Organizations may enhance their credibility by making relevant commitments regarding their impacts, taking  
 3451 appropriate action and assessing performance and reporting on progress and shortcomings.

3452 **7.6.2 Enhancing the credibility of reports and claims about social responsibility**

3453 There are many ways to enhance the credibility of reports and claims about social responsibility. These  
3454 include:

3455 — making reports about performance on social responsibility comparable both over time and with reports  
3456 produced by peer organizations, recognizing that the nature of the report will depend on the type, size  
3457 and capacity of the organization;

3458 — providing a brief explanation of why topics omitted from reports are not covered, to show that the  
3459 organization has made an effort to cover all significant matters;

3460 — using a rigorous and responsible process of verification, in which the data and information are traced  
3461 back to a reliable source to verify accuracy of that data and information;

3462 — using the help of an individual or individuals independent of the process of report preparation, either  
3463 within the organization or external to it, to undertake the verification process;

3464 — publishing a statement attesting to the verification as part of the report;

3465 — making use of stakeholder groups to provide a determination that the report reflects the relevant and  
3466 significant issues for the organization, that it is responsive to the needs of stakeholders, and that it  
3467 provides complete coverage of the issues addressed;

3468 — taking extra steps to be transparent by providing information of a kind and in a form that can be easily  
3469 verified by others. For instance, instead of just reporting statistics concerning performance, an  
3470 organization can also make available details on the sources of the information and the processes used to  
3471 develop the statistics. In some cases, an organization can increase the credibility of claims it makes about  
3472 the supply chain by listing the places where activities take place; and

3473 — reporting conformance to the reporting guidelines of an external organization;

3474 **7.6.3 Resolving conflicts or disagreements between an organization and its stakeholders**

3475 In the course of its activities on social responsibility, an organization may encounter conflicts or disagreements  
3476 with individual stakeholders or with groups of stakeholders. Specific examples of types of conflicts and  
3477 mechanisms for addressing them are covered in the context of human rights (see 6.3.7) and consumer issues  
3478 (see 6.7.6). Formal methods for resolving conflicts or disagreements also often form part of labour  
3479 agreements.

3480 An organization should develop mechanisms for resolving conflicts or disagreements with stakeholders that  
3481 are appropriate to the type of conflict or disagreement and useful for the affected stakeholders. Such  
3482 mechanisms may include:

3483 — direct discussions with affected stakeholders;

3484 — provision of written information to address misunderstandings;

3485 — forums in which stakeholders and the organization can present their points of view and look for solutions;

3486 — formal complaints handling procedures;

3487 — mediation or arbitration procedures;

3488 — systems that enable reporting of wrongdoing without fear of reprisal; and

3489 — other types of procedures for resolving grievances.

3490 An organization should make accessible to its stakeholders detailed information on the procedures available  
3491 for resolving conflicts and disagreements. These procedures should be equitable and transparent. More  
3492 specific information on procedures related to human rights and consumer issues are described under those  
3493 core subjects in Clause 6.

## 3494 **7.7 Reviewing and improving an organization's actions and practices related to social** 3495 **responsibility**

### 3496 **7.7.1 General**

3497 Effective performance on social responsibility depends in part on commitment, careful oversight, evaluation  
3498 and review of the activities undertaken, progress made, achievement of identified objectives, resources used  
3499 and other aspects of the organization's efforts.

3500 Ongoing monitoring or observation of activities related to social responsibility is primarily aimed at making  
3501 sure that activities are proceeding as intended, identifying any crisis or out-of-the-ordinary occurrence, and  
3502 making modifications to the way things are done.

3503 Reviews of performance, at appropriate intervals, may be used to determine progress on social responsibility  
3504 help keep programmes well focused, identify areas in need of change and contribute to improved  
3505 performance. Stakeholders can play an important role in reviewing an organization's performance on social  
3506 responsibility.

3507 In addition to reviewing existing activities, an organization should also keep abreast of changing conditions or  
3508 expectations, legal or regulatory developments affecting social responsibility and new opportunities for  
3509 enhancing its efforts on social responsibility. This sub-clause identifies some techniques organizations can  
3510 use for monitoring, reviewing and improving their performance on social responsibility.

### 3511 **7.7.2 Monitoring activities on social responsibility**

3512 To have confidence in the effectiveness and efficiency with which social responsibility is being put into  
3513 practice by all parts of an organization, it is important to monitor ongoing performance on the activities related  
3514 to core subjects and relevant issues. The extent of this effort will obviously vary with the scope of the core  
3515 subjects covered, the size and nature of the organization and other factors.

3516 When deciding on the activities to be monitored, an organization should focus on those that are significant and  
3517 seek to make the results of the monitoring easy to understand, reliable and timely and responsive to  
3518 stakeholders' concerns.

3519 There are many different methods that can be used to monitor performance on social responsibility, including  
3520 reviews at appropriate intervals, benchmarking and obtaining feedback from stakeholders. Organizations can  
3521 often obtain insights into their programs by comparing their characteristics and performance with the activities  
3522 of other organizations. Such comparisons may be focused on actions related to specific core subjects or on  
3523 broader approaches to integrating social responsibility throughout the organization.

3524 One of the more common methods is measurement against indicators. An indicator is qualitative or  
3525 quantitative information about results or outcomes associated with the organization that is comparable and  
3526 demonstrates change over time. They can, for example, be used to monitor or evaluate the achievement of  
3527 project objectives over time. Indicators should be clear, informative, practical, comparable, accurate, credible  
3528 and reliable. Extensive additional detail on selecting and using indicators is available in many references on  
3529 social responsibility and sustainability.

3530 Although indicators that yield quantitative results are relatively straightforward to use, they may not be  
3531 sufficient for all aspects of social responsibility. In the area of human rights, for example, women's and men's  
3532 views about whether they are being fairly treated can be more meaningful than some quantitative indicators  
3533 on discrimination. Quantitative indicators related to the results of surveys or focus-group discussions may be  
3534 coupled with qualitative indicators describing views, trends, conditions or status. It is also important to  
3535 recognize that social responsibility is about more than specific achievements in measurable activities, such as  
3536 reducing pollution and responding to complaints. As social responsibility is based on values, application of

3537 principles of social responsibility and attitudes, monitoring may involve more subjective approaches such as  
3538 interviewing, observing and other techniques for evaluating behaviour and commitments.

### 3539 **7.7.3 Reviewing an organization's progress and performance on social responsibility**

3540 In addition to its day-to-day oversight and monitoring of the activities related to social responsibility, an  
3541 organization should carry out reviews at appropriate intervals to determine how it is performing against its  
3542 targets and objectives for social responsibility and to identify needed changes in the programmes and  
3543 procedures.

3544 These reviews typically involve the comparison of performance across social responsibility core subjects with  
3545 results from earlier reviews, to determine progress and measure achievement against its targets and  
3546 objectives. They should also include examination of less easily measured aspects of performance, such as  
3547 attitudes to social responsibility, integration of social responsibility throughout the organization and adherence  
3548 to principles, value statements and practices. The participation of stakeholders can be valuable in such  
3549 reviews.

3550 Types of questions that could be asked during reviews include:

- 3551 — were objectives achieved as envisioned?
- 3552 — did the strategies and processes suit the objectives?
- 3553 — what worked and why? What did not work and why?
- 3554 — were the objectives appropriate?
- 3555 — what could have been done better?
- 3556 — are all relevant persons involved?

3557 Based on the results of its reviews, an organization should identify changes to its programmes that would  
3558 remedy any deficiency and bring about improved performance on social responsibility.

### 3559 **7.7.4 Enhancing the reliability of data and information collection and management**

3560 Organizations that are required to provide performance data to government, non-governmental organizations,  
3561 other organizations or the public, or for maintaining databases containing sensitive information can increase  
3562 their confidence in their data collection and management systems by detailed reviews of the systems. The aim  
3563 of such reviews should be to:

- 3564 — increase an organization's confidence that the data it provides to others is accurate;
- 3565 — improve the credibility of data and information; and
- 3566 — confirm the reliability of systems for protecting the security and privacy of data, where appropriate.

3567 Such detailed reviews may be prompted by legal or other requirements for release of data on emissions of  
3568 greenhouse gases or pollutants, requirements for provision of programme data to funding bodies or oversight  
3569 departments, conditions of environmental licences or permits and concerns about protection of private  
3570 information, such as financial, or medical or personal data.

3571 As part of such reviews, independent people or groups, either internal or external to the organization, should  
3572 examine the ways in which data is collected, recorded or stored, handled and used by the organization. The  
3573 reviews can help identify vulnerabilities in data collection and management systems that would allow the data  
3574 to become contaminated by errors or would permit access by unauthorized individuals. The results of the  
3575 reviews can help the organization strengthen and improve its systems. Data accuracy and reliability can also  
3576 be improved through good training of data collectors, clear accountability for data accuracy, direct feedback to

3577 individuals making errors and data quality processes that compare reported data with past data and that from  
3578 comparable situations.

#### 3579 **7.7.5 Improving performance**

3580 On the basis of periodic reviews, or at other appropriate intervals, an organization should consider ways in  
3581 which it could improve its performance on social responsibility. The results of reviews should be used to help  
3582 bring about continuous improvement in an organization's social responsibility. Improvements could involve  
3583 modification of targets and objectives to reflect changing conditions or aspiration for greater achievement. The  
3584 scope of activities and programmes related to social responsibility could be broadened. The provision of  
3585 additional or different resources for activities related to social responsibility might be a matter to consider.  
3586 Improvements could also include programmes or activities to take advantage of newly identified opportunities.

3587 Stakeholder views expressed during reviews may assist an organization in the identification of new  
3588 opportunities and changed expectations. This should help an organization improve performance of its  
3589 activities on social responsibility.

3590 To encourage the realization of organizational goals and objectives, some organizations analyse achievement  
3591 of specific objectives of social responsibility into annual or periodic performance reviews of senior executives  
3592 and managers. Such steps emphasize that the organization's action on social responsibility is intended to be a  
3593 serious commitment.

### 3594 **7.8 Voluntary initiatives for social responsibility**

#### 3595 **7.8.1 General**

3596 Many organizations have developed voluntary initiatives intended to help other organizations seeking to  
3597 become more socially responsible. In some cases, the initiative for social responsibility is in fact an  
3598 organization formed to expressly address various aspects of social responsibility. The result is a wide variety  
3599 of initiatives available to organizations interested in social responsibility (some by joining or supporting other  
3600 organizations).

3601 Some of these initiatives for social responsibility address aspects of one or more core subjects or issues;  
3602 others address various ways that social responsibility can be integrated into an organization's decisions and  
3603 activities. Some initiatives for social responsibility create or promote specific tools or practical guides that can  
3604 be used for integrating social responsibility throughout an organization. Some initiatives develop or promote  
3605 minimum expectations concerning social responsibility. These expectations can take many forms, including  
3606 codes of conduct, recommendations, guidelines, declarations of principles and value statements. Some  
3607 initiatives have been developed by different sectors in an effort to address some of the challenges specific to  
3608 one sector. The existence of an initiative for social responsibility in a particular sector does not mean that the  
3609 sector is necessarily more responsible or potentially more harmful.

#### 3610 **7.8.2 Voluntary nature of participation**

3611 It is not necessary for an organization to participate in any of these initiatives for social responsibility, or to use  
3612 any of these tools, for it to be socially responsible. Furthermore, participation in an initiative or the use of an  
3613 initiative's tools, by itself, is not a reliable indicator of the social responsibility of an organization. In evaluating  
3614 initiatives for social responsibility, an organization should be aware that not every initiative is well regarded or  
3615 credible in the eyes of stakeholders. An organization should also determine objectively whether a particular  
3616 initiative will help it to address its social responsibility, and whether the initiative is mainly a form of public  
3617 relations or a means of protecting the reputation of members or participating organizations. Social  
3618 responsibility should not be treated only as a form of risk management. A particularly important consideration  
3619 when evaluating an initiative for social responsibility is whether it unilaterally reinterprets already established  
3620 and recognized expectations of socially responsible behaviour.

3621 Effective engagement with stakeholders and multi-stakeholder systems of governance and development are  
3622 key characteristics distinguishing some initiatives for social responsibility from others, recognizing that  
3623 initiatives developed for a single sector or type of organization may have single-stakeholder governance

3624 structures. Consideration should be given to whether the initiative was developed with the input and  
3625 involvement of organizations concerned and stakeholders likely to be covered by it.

3626 An organization may find it useful to participate in, or use tools of, one or more initiatives for social  
3627 responsibility. Participation should lead in one way or another to concrete action within the organization, such  
3628 as obtaining support or learning from others. Participation can be especially valuable when an organization  
3629 starts using or drawing upon tools or practical guidance that accompany the initiative.

3630 Organizations may use initiatives for social responsibility to seek some form of recognition. Some initiatives for  
3631 social responsibility are broadly recognized as a credible basis for public recognition of performance or  
3632 compliance regarding specific practices or on specific issues. Practical guidance provided by these initiatives  
3633 for social responsibility can vary from self-assessment tools to third party verification.

### 3634 7.8.3 Considerations

3635 In determining whether to participate in or use an initiative for social responsibility, an organization should  
3636 consider the following factors:

- 3637 — whether the initiative is consistent with the principles described in Clause 4;
- 3638 — whether the initiative provides valuable and practical guidance to assist the organization to address a  
3639 particular core subject or issue and to integrate social responsibility throughout its activities;
- 3640 — whether the initiative is designed for that particular type of organization or its areas of interest.
- 3641 — whether the initiative is locally or regionally applicable, or whether it has global scope and whether it  
3642 applies to all types of organizations;
- 3643 — whether the initiative will assist the organization to reach specific stakeholder groups;
- 3644 — the kind of organization or organizations that developed and govern the initiative, such as government,  
3645 NGO, labour, private sector or academic;
- 3646 — the reputation of the organization or organizations that developed, and govern the initiative, considering  
3647 their credibility and integrity;
- 3648 — the nature of the process for developing and governing the initiative, for example, whether the initiative  
3649 has been developed through or governed by a multi-stakeholder, transparent, open, and accessible  
3650 process, with developed and developing country participants; and
- 3651 — the accessibility of the initiative, for example, whether an organization must sign a contract to participate,  
3652 or whether there are costs to join the initiative.

3653 In considering these and other factors, an organization should be cautious about the way it interprets the  
3654 results. For example, the widespread acceptance of the initiative may be an indication of feasibility, value,  
3655 reputation or relevance, although it might also be an indication that the initiative has less stringent  
3656 requirements. By contrast, a new and less widespread initiative with still unproven value and feasibility may  
3657 be more innovative or challenging. Additionally, an initiative available free of charge may seem attractive;  
3658 however, an initiative that is available at a price might be more likely to be kept up-to-date, and thus more  
3659 valuable in the long-term. The fact that an initiative or tool is available free, or at a charge, should thus not be  
3660 seen as an indication of the merit of that particular initiative or tool.

3661 It is important to periodically review the value, relevance and/or applicability of any initiative selected.

### 3662 7.8.4 Notes on Annex A

3663 Annex A contains a non-exhaustive list of voluntary initiatives and tools for social responsibility. These  
3664 initiatives and tools have been identified by the ISO 26000 working group experts during the development of  
3665 this International Standard, using a specific set of criteria that are described in the annex. These criteria do not

3666 constitute a judgement by ISO on the value or effectiveness of any of the initiatives or tools for social  
3667 responsibility listed in the annex. Furthermore, the fact that an initiative or tool for social responsibility is  
3668 mentioned in this annex does not imply any form of endorsement by ISO of that initiative or tool. Important  
3669 characteristics of the initiative that cannot be objectively measured within the scope of this International  
3670 Standard – such as its effectiveness, credibility, legitimacy and representative nature – are not considered  
3671 here. Such characteristics should be assessed directly by those considering use of an initiative or tool.

3672  
3673

**Box 16 – Certifiable initiatives and initiatives connected to commercial or economic interests**

3674 Some (but not all) of the initiatives for social responsibility listed in Annex A include the possibility of  
3675 certification against the initiative by independent third parties. In some instances, certification is a requirement  
3676 for using the initiative. The fact that an initiative includes the possibility of, or requirement for, certification  
3677 should not be seen as indicative of the value of that initiative. Implementation of any tool or initiative listed  
3678 in Annex A – including those that involve certification – cannot be used to claim conformity to ISO 26000 or to  
3679 show its adoption or implementation.

3680 Irrespective as to whether they have been developed by “for profit” or “not for profit” organizations, some  
3681 initiatives or tools are connected to commercial or economic interests, involving payment for use, a  
3682 membership fee, or the payment for verification or certification services. Using an initiative or tool to promote a  
3683 product or organization is another example of such a commercial connection. The existence of such interests  
3684 is not in itself a negative aspect of an initiative for social responsibility; they might, for example, be necessary  
3685 for the organization administering the initiative or tool to cover its costs and activities, or it may be a legitimate  
3686 means for informing stakeholders about relevant characteristics of a product or organization. However, when  
3687 evaluating an initiative or tool connected to such interests, the user of this International Standard should  
3688 consider those associated commercial interests and the potential for conflicts of interest. For example, an  
3689 organization administering an initiative for social responsibility may give undue priority to obtaining revenues  
3690 from the provision of certifications, to the detriment of the accuracy in verifying the requirements for such  
3691 certification. Assessing the credibility of organizations administering initiatives or tools is thus particularly  
3692 important when these are connected to commercial or economic interests.  
3693

## Annex A (informative)

### Examples of voluntary initiatives and tools for social responsibility

3698 In using this Annex it is important to remember that ISO 26000 is not a management system standard. It is not  
3699 intended or appropriate for certification purposes or regulatory or contractual use. Any offer to certify, or  
3700 claims to be certified to ISO 26000 would be a misrepresentation of the intent and purpose of the International  
3701 Standard. The information provided in this annex is intended purely to provide some examples of additional  
3702 voluntary guidance on social responsibility that is available. While these initiatives may provide useful  
3703 guidance on social responsibility, it is not a precondition that an organization should participate in any of these  
3704 initiatives, or use any of these tools, for it to be socially responsible.

3705 This Annex provides a non-exhaustive list of voluntary initiatives and tools for social responsibility. The aim of  
3706 this annex is to provide examples of existing initiatives and tools that may offer additional guidance on the  
3707 core subjects and integration practices of social responsibility.

3708 The Bibliography, which is an integral part of ISO 26000, provides information to identify and locate the  
3709 documents referenced in the text. It consists of references to international instruments that are considered  
3710 authoritative sources for the recommendations in this International Standard. These instruments  
3711 may contain additional useful guidance and information; ISO 26000 users are encouraged to consult them to  
3712 better understand and implement social responsibility.

3713 For the purposes of this International Standard, an initiative for social responsibility refers to an “organization,  
3714 programme or activity expressly devoted to making progress towards meeting a particular aim related to social  
3715 responsibility” (2.1.9). A tool for social responsibility refers to a system, methodology or similar means that  
3716 relates to a specific initiative for social responsibility and is designed to assist organizations in meeting a  
3717 particular aim related to social responsibility.

3718 The Annex is divided into two tables, distinguishing between those initiatives and tools that apply to more than  
3719 one sector (Table A.1: “cross-sectoral”) and those that apply only to specific public or private sectors (Table  
3720 A.2: “sectoral”).

3721 The **cross-sectoral initiatives** for social responsibility listed in Table A.1 include three types of initiatives:  
3722 “intergovernmental initiatives” (developed and administered by intergovernmental organizations); “multi-  
3723 stakeholder initiatives” (developed or administered through multi-stakeholder processes); and “single-  
3724 stakeholder initiatives” (developed or administered through single-stakeholder processes).

3725 The **sectoral initiatives** for social responsibility listed in Table A.2 refer to initiatives that have been  
3726 developed by specific sectors (such as agriculture, information technology, public services, tourism and so on)  
3727 in an effort to address some of the challenges specific to that sector. Not all sectors that have developed  
3728 initiatives are listed in the annex, nor are all the initiatives in any of the listed sectors necessarily included in  
3729 this table. The existence of an initiative in a particular sector does not mean that the sector is more  
3730 responsible or more harmful.

3731 For each initiative or tool listed, the organization or organizations that launched the initiative or tool are  
3732 identified, and information is provided on the ISO 26000 core subjects or practices for integrating social  
3733 responsibility to which it relates. An Internet address is provided, with a brief description of the intended  
3734 purposes and potential users of the initiative or tool, and details on whether membership is a requirement for  
3735 using the initiative or tool. Information regarding intergovernmental and stakeholder involvement in the  
3736 initiative or tool development or administration is also provided, as well as whether the initiative or tool is for  
3737 certification.

3738 The information in this annex was provided by experts who participated in the drafting of this International  
3739 Standard. This information reflects the situation at the time of completion of this International Standard, and  
3740 will be reviewed by ISO if and when the International Standard is revised. Recognizing that the information in  
3741 the annex is not exhaustive, and that social responsibility is a continuously developing field, organizations

3742 considering the possible use of initiatives or tools are advised to also seek updated information from other  
3743 sources on initiatives applicable to their country, region or sector.

3744 A voluntary initiative or tool for social responsibility has been included in this annex only if it meets all of the  
3745 following criteria:

3746 — it addresses aspects of one or more core subjects or integration aspects of social responsibility (as  
3747 described in Clauses 5, 6 and 7 of this International Standard);

3748 — it was not designed specifically to be used in one country or by organizations from one country, even  
3749 operating abroad;

3750 — it is currently being used in more than one country;

3751 — it was not designed for use by a single organization or group of organizations (meaning organizations that  
3752 are linked through common owners or partners);

3753 — it is publicly available at no cost, as a tool or guidance (Note: the fact that the organization responsible for  
3754 the initiative or tool may have other activities that involve a cost for users, such as membership fees or a  
3755 charge for services, does not preclude that initiative or tool from being listed here, irrespective of whether  
3756 the cost may in some way be linked to the initiative or tool);

3757 — it is not administered by a “for profit” private organization primarily for the purposes of financial gain; and

3758 — it is available in at least one of the official ISO languages;

3759 **Box 17 – Non-endorsement of initiatives by ISO**

3760 The criteria shown above do not constitute a judgement by ISO on the value or effectiveness of any of the  
3761 initiatives or tools for social responsibility listed in the annex. The criteria are intended simply to provide an  
3762 objective basis for identifying a sample of initiatives and tools that might apply to many organizations.

3763 In determining whether to use any of these initiatives or tools, an organization should bear in mind the  
3764 considerations given in Clause 7.8. Even though the annex lists some initiatives for social responsibility that  
3765 involve certification, it is not necessary to be certified against any of these initiatives to be considered as  
3766 following the guidance in this International Standard (see Box 18).

3767 The fact that an initiative or tool is mentioned in this annex does not imply any form of endorsement by ISO of  
3768 that initiative or tool. Furthermore, important characteristics relating to the initiative that cannot be objectively  
3769 measured within the scope of this International Standard – such as its effectiveness, credibility, legitimacy and  
3770 representative nature – are not considered here. Such characteristics should be assessed directly by those  
3771 considering use of that initiative or tool.

3772

**Table A.1 — Examples of cross-sectoral initiatives**

(apply to more than one sector of activity - see also clause 7.8 and introductory text of Annex A)

The information in this annex reflects the situation at the time of completion of this International Standard. Recognizing that this information is not exhaustive and that social responsibility is a continuously developing field, it is recommended that updated information should be sought from other sources.

ORGANIZATION INITIATIVE OR TOOL (Listed by organization in alphabetical order under each section)	The "X" mark indicates that the initiative/tool refers to at least one aspect or issue included in the corresponding sub-clause. <i>It is not a sign of compatibility with, or endorsement by, ISO 26000</i>											Additional information (includes brief objective description of the initiative/tool; stakeholder participation in its governance; its target audience and conditions for access; whether it is for certification or not; and a website for further information)				
	CORE SUBJECTS*						PRACTICES FOR INTEGRATING SOCIAL RESPONSIBILITY*									
	6.2 OG	6.3 HR	6.4 Lab	6.5 Env	6.6 FOP	6.7 Con	6.8 CID	5.2	5.3	7.2	7.3		7.4	7.5	7.6	7.7
*ISO 26000 sub-clauses index: 6.2 Organizational governance; 6.3 Human rights; 6.4 Labour practices; 6.5 Environment; 6.6 Fair operating practices; 6.7 Consumer issues; 6.8 Community involvement and development; 5.2 Recognizing social responsibility; 5.3 Stakeholder identification and engagement; 7.2 The relationship of an organization's characteristics to social responsibility; 7.3 Understanding the social responsibility of an organization; 7.4 Practices for integrating social responsibility throughout an organization; 7.5 Communication on social responsibility; 7.6 Enhancing credibility regarding social responsibility; 7.7 Reviewing and improving an organization's actions and practices related to social responsibility.																
<b>Section 1: INTERGOVERNMENTAL INITIATIVES</b> (Initiatives and tools operating under direct responsibility of intergovernmental institutions, such as United Nations agencies)																
<b>OECD</b> Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones	X	X	X		X		X	X	X	X	X	X			X	Provides a checklist for companies to use when examining risks and ethical dilemmas concerning their potential activities in countries where there is weak governance. <a href="http://www.oecd.org">www.oecd.org</a>
<b>UNCTAD</b> Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting (ISAR)	X		X	X	X		X	X						X		Working group devoted to corporate transparency and accounting issues at the corporate level. Issues addressed in corporate accounting and reporting including: International Financial Reporting Standards IFRS implementation, accounting by SMEs, corporate governance disclosure, corporate responsibility reporting, and environmental reporting. Stakeholder groups meet annually to discuss and agree upon approaches to the issues the group deals with. Open to all organizations. No fees required. <a href="http://www.unctad.org/isar">www.unctad.org/isar</a>
<b>UNEP</b> Climate Neutral Network				X								X	X	X	X	Initiative affiliated to UNEP open to all organizations. Facilitates the exchange of information on how organizations can achieve cuts in greenhouse gas emissions. A Board of Directors of appointed stakeholders oversees the program. <a href="http://www.climateneutral.unep.org">www.climateneutral.unep.org</a>
<b>UNEP</b> Life Cycle Initiative			X	X		X	X					X	X		X	Initiative open to experts from organizations active in the field of life cycle management. Annual membership fee required. Task forces composed of UN Secretariats and stakeholder participants seek to develop capability and training in life cycle approaches. An affiliate of the United Nations Environment Programme. <a href="http://lcinitiative.unep.fr/">http://lcinitiative.unep.fr/</a>
<b>United Nations Global Compact</b>		X	X	X	X							X				Initiative of the United Nations directed at business organizations. Open to any organization, participants commit to align their strategies and operations with ten principles in the areas of human rights, labour, environment and anti-corruption, and to take action in support of broader UN goals. A voluntary platform, organizations are required to report annually on efforts to implement the principles through policies and practices. The United Nations Global Compact has developed tools and guidance materials across all principle areas in order to assist participating organizations. No fees required. <a href="http://www.unglobalcompact.org/">www.unglobalcompact.org/</a>
<b>UNGC, UNDP, UNITAR</b> UN Partnership Assessment Tool							X		X			X				Self-assessment planning tool to enhance the development impact and contribution to sustainable development of public-private partnerships. Available free of charge to all organizations. UNIDO trains consultants to disseminate the CSR management approaches and techniques to organizations across the world. <a href="http://www.unglobalcompact.org/Issues/partnerships/pat.html">www.unglobalcompact.org/Issues/partnerships/pat.html</a>
<b>UNIDO</b> Responsible Entrepreneurs Achievement Programme		X	X	X	X			X	X		X	X	X		X	Initiative supported by UNIDO aimed at small and medium-sized enterprises. Membership and fees are not required. Provides a structured framework and analytical software to assist SMEs with CSR. <a href="http://www.unido.org/realp">www.unido.org/realp</a>

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3774 Table A.1 (continued)

ORGANIZATION INITIATIVE OR TOOL (Listed by organization in alphabetical order under each section)	The "X" mark indicates that the initiative/tool refers to at least one aspect or issue included in the corresponding sub-clause. <i>It is not a sign of compatibility with, or endorsement by, ISO 26000</i>													Additional information (includes brief objective description of the initiative/tool; stakeholder participation in its governance; its target audience and conditions for access; whether if it is for certification or not; and a website for further information)		
	CORE SUBJECTS*							PRACTICES FOR INTEGRATING SOCIAL RESPONSIBILITY*								
	6.2 OG	6.3 HR	6.4 Lab	6.5 Env	6.6 FOP	6.7 Con	6.8 CID	5.2	5.3	7.2	7.3	7.4	7.5		7.6	7.7
<p><b>*ISO 26000 sub-clauses index:</b> 6.2 Organizational governance; 6.3 Human rights; 6.4 Labour practices; 6.5 Environment; 6.6 Fair operating practices; 6.7 Consumer issues; 6.8 Community involvement and development; 5.2 Recognizing social responsibility; 5.3 Stakeholder identification and engagement; 7.2 The relationship of an organization's characteristics to social responsibility; 7.3 Understanding the social responsibility of an organization; 7.4 Practices for integrating social responsibility throughout an organization; 7.5 Communication on social responsibility; 7.6 Enhancing credibility regarding social responsibility; 7.7 Reviewing and improving an organization's actions and practices related to social responsibility.</p>																
<p><b>Section 2: MULTI-STAKEHOLDER INITIATIVES</b> (Initiatives or tools developed or are administered through multi-stakeholder processes)</p>																
AccountAbility The AA1000 Series	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	<p>Membership-based organization open to all organizations and individuals. Membership fees. Focus is on assurance of sustainability and social responsibility reports and on stakeholder engagement. Has developed three standards intended for use by any organization:</p> <ul style="list-style-type: none"> <li>AA1000APS - provides general principles of accountability</li> <li>AA1000AS - provides requirements for conducting sustainability assurance</li> <li>AA1000SES - provides a framework for stakeholder engagement</li> </ul> <p><a href="http://www.accountability21.net">www.accountability21.net</a></p>
Amnesty International Human Rights Principles for Companies		X										X		X		<p>Membership organization open to individuals that seek to promote respect for human rights. A source for information on respect for human rights in specific countries. Publication "Human Rights Principles for Companies" includes a checklist.</p> <p><a href="http://www.amnesty.org">www.amnesty.org</a></p>
Business Social Compliance Initiative (BSCI)		X	X	X	X		X	X	X		X					<p>Industry initiative that focuses on labour practices in the supply chains of mainly large retail companies. Most members are retailers and marketing companies who pay membership fees and agree to audit suppliers against a code of conduct. The initiative certifies the auditors.</p> <p><a href="http://www.bsai-eu.org">www.bsai-eu.org</a></p>
Centre for Business Ethics (ZfW) Values Management System	X	X	X	X	X	X	X				X	X	X	X	X	<p>Organization that seeks to promote business ethics in Germany and Europe. It provides training and management tools, including a "governance framework" on legal, economic, ecological and social issues.</p> <p><a href="http://www.dnwe.de/wertemanagement.php">www.dnwe.de/wertemanagement.php</a> (German)</p>
Ceres Ceres Principles				X								X	X			<p>Membership-based organization of mainly environmental organizations together with investors who seek to use capital markets in order to engage companies on environmental and governance issues. Companies are invited to endorse the Ceres principles. Implementation of these principles involves audits and public reporting. Fee charged for membership. Member companies have access to technical assistance on environmental issues and their management.</p> <p><a href="http://www.ceres.org">www.ceres.org</a></p>
CSR360 Global Partner Network	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	<p>Promotes the international exchange of information on CSR. A contribution and approval is required to become a "partner organization". Network is convened by UK-Based Business in the Community (BITC).</p> <p><a href="http://www.csr360.org">www.csr360.org</a></p>
EFQM Framework for CSR and Excellence Model	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	<p>A "self-assessment" tool designed to be used in the management of CSR. Formerly the European Foundation for Quality Management EFQM is a membership organization open to business, government and non profit organizations. Fees required. The organization facilitates the exchange of information and provides services to members.</p> <p><a href="http://www.efqm.org">www.efqm.org</a></p>
Ethical Trading Initiative		X	X					X		X	X	X	X	X	X	<p>Membership organization open to companies, NGOs and specific trade union organizations. The purpose is for sourcing companies to work with NGOs and trade unions to learn about the best ways to implement supply chain codes of labour practice. Companies pay membership fees, agree to apply code of labour practices to their suppliers, report on activities and observe other requirements.</p> <p><a href="http://www.ethicaltrade.org/">www.ethicaltrade.org/</a></p>

3775 Table A.1 (continued)

ORGANIZATION INITIATIVE OR TOOL (Listed by organization in alphabetical order under each section)	The "X" mark indicates that the initiative/tool refers to at least one aspect or issue included in the corresponding sub-clause. It is <i>not</i> a sign of compatibility with, or endorsement by, ISO 26000											Additional information (includes brief objective description of the initiative/tool; stakeholder participation in its governance; its target audience and conditions for access; whether if it is for certification or not; and a website for further information)					
	CORE SUBJECTS*						PRACTICES FOR INTEGRATING SOCIAL RESPONSIBILITY*										
	6.2 OG	6.3 HR	6.4 Lab	6.5 Env	6.6 FOP	6.7 Con	6.8 CID	5.2	5.3	7.2	7.3		7.4	7.5	7.6	7.7	
<p><b>*ISO 26000 sub-clauses index:</b> 6.2 Organizational governance; 6.3 Human rights; 6.4 Labour practices; 6.5 Environment; 6.6 Fair operating practices; 6.7 Consumer issues; 6.8 Community involvement and development; 5.2 Recognizing social responsibility; 5.3 Stakeholder identification and engagement; 7.2 The relationship of an organization's characteristics to social responsibility; 7.3 Understanding the social responsibility of an organization; 7.4 Practices for integrating social responsibility throughout an organization; 7.5 Communication on social responsibility; 7.6 Enhancing credibility regarding social responsibility; 7.7 Reviewing and improving an organization's actions and practices related to social responsibility.</p>																	
<p><b>Section 2: MULTI-STAKEHOLDER INITIATIVES</b> (Initiatives or tools developed or are administered through multi-stakeholder processes)</p>																	
European Business Ethics Network (EBEN)	X	X	X	X	X	X	X	X				X					Membership-based organization with an annual fee, dedicated to the promotion of business ethics. Organizes conferences and issues publication. Also organizes national networks and networks on specific topics for corporate ethics officers and other practitioners. <a href="http://www.eben-net.org">www.eben-net.org</a>
Fair Labour Association (FLA)	X	X	X					X	X			X	X	X	X		Multi-stakeholder initiative established to address supply chain labour practices. Participants include sourcing companies, colleges and universities and NGOs. Participating companies must support the monitoring and verification of working conditions of their suppliers. The FLA issues public reports. <a href="http://www.fairlabor.org/">www.fairlabor.org/</a>
FORÉTICA SGE 21 Ethical and CSR Management System	X		X	X	X	X	X										<i>Comment #2283 from Ecuador requires this description to be revisited. Mentions that the initiative is certifiable and asks for more accurate information, but don't provide alternative text.</i> Initiative that sets criteria about establishment, implementation and evaluation of management system on ethics and social responsibility. <a href="http://www.foretica.es">www.foretica.es</a> (Spanish)
Global Reporting Initiative (GRI) Sustainability Reporting Guidelines	X	X	X	X	X	X	X	X	X		X		X	X	X		Initiative developed by UNEP and CERES (also included in this Annex) that provides model indicators, guidelines and supporting tools on sustainability reporting. Global organizational stakeholders provide guidance and governance. Its guidelines, supplements and annexes are offered free on its website. A nominal charge is made for associated training materials. Its tools include: <ul style="list-style-type: none"> <li>The Sustainability Reporting Guidelines (indicators and principles)</li> <li>Various sector-specific supplements (construction, telecommunications, public agencies, etc.)</li> <li>Boundary Protocol (sphere of influence and impacts analysis)</li> </ul> <a href="http://www.globalreporting.org">www.globalreporting.org</a>
Danish Institute for Human Rights Human Rights Compliance Assessment		X	X		X		X	X			X	X	X	X	X		This national human rights organization has a Human Rights and Business project that provides information on the human rights situation in various countries. It also offers management tools and guides, sometimes for a charge. The Human Rights Compliance Assessment is an elaborate tool available through a web interface for a charge. A less elaborate "HRCA Quick Check" is available for free. <a href="http://www.humanrightsbusiness.org">www.humanrightsbusiness.org</a>
International Social and Environmental Accreditation and Labelling Alliance (ISEAL)	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		Membership organization for international social and environmental standard-setting organizations. It promotes voluntary standards and conformity assessment related to social and environmental issues. Provides tools for standard setting and evaluation. Fee required for membership <a href="http://www.isealliance.org">www.isealliance.org</a>
Joint Article Management Promotion Consortium (JAMP)			X	X	X	X		X		X	X	X	X	X	X		Fee-based membership Information exchange program to help organizations comply with legal requirements on chemical substances in products. Provides datasheet formats to describe and transfer information on chemical substances contained in products as well as an IT infrastructure to exchange datasheets. It conducts education and training sessions to disseminate its schemes.



3776 Table A.1 (continued)

ORGANIZATION INITIATIVE OR TOOL (Listed by organization in alphabetical order under each section)	The "X" mark indicates that the initiative/tool refers to at least one aspect or issue included in the corresponding sub-clause. <i>It is not a sign of compatibility with, or endorsement by, ISO 26000</i>													Additional information (includes brief objective description of the initiative/tool; stakeholder participation in its governance; its target audience and conditions for access; whether it is for certification or not; and a website for further information)		
	CORE SUBJECTS*						PRACTICES FOR INTEGRATING SOCIAL RESPONSIBILITY*									
	6.2 OG	6.3 HR	6.4 Lab	6.5 Env	6.6 FOP	6.7 Con	6.8 CID	5.2	5.3	7.2	7.3	7.4	7.5		7.6	7.7
<p><b>*ISO 26000 sub-clauses index:</b> 6.2 Organizational governance; 6.3 Human rights; 6.4 Labour practices; 6.5 Environment; 6.6 Fair operating practices; 6.7 Consumer issues; 6.8 Community involvement and development; 5.2 Recognizing social responsibility; 5.3 Stakeholder identification and engagement; 7.2 The relationship of an organization's characteristics to social responsibility; 7.3 Understanding the social responsibility of an organization; 7.4 Practices for integrating social responsibility throughout an organization; 7.5 Communication on social responsibility; 7.6 Enhancing credibility regarding social responsibility; 7.7 Reviewing and improving an organization's actions and practices related to social responsibility.</p> <p style="text-align: center;"><b>Section 2: MULTI-STAKEHOLDER INITIATIVES</b> (Initiatives or tools developed or are administered through multi-stakeholder processes)</p>																
International Framework Agreement		X	X	X			X	X	X		X	X	X	X	X	Agreements negotiated between transnational enterprises (TNEs) and Global Union Federations (GUFs) designed to provide a means of addressing problems mainly related to the labour practices in the operations of a specific multinational company at the international level. <a href="http://www.global-unions.org/spip.php?rubrique70">http://www.global-unions.org/spip.php?rubrique70</a>
Rainforest Alliance		X	X	X			X					X	X	X	X	Membership-based organization established to set social and environmental standards and issue certification to producers in forestry, agriculture and tourism Provides training and other technical assistance in industries covered by their certification activities <a href="http://www.rainforest-alliance.org">www.rainforest-alliance.org</a>
R-bec Ethical/Legal Compliance Management System Standard												X			X	Free management system standard for any organization that wishes to develop an ethical and legal compliance management system. <a href="http://r-bec.reitaku-u.ac.jp/">http://r-bec.reitaku-u.ac.jp/</a> (Japanese)
Project Sigma Sigma guidelines		X	X	X			X	X	X			X	X	X	X	Guideline document providing advice to organizations on how contribute to sustainable development. Free. <a href="http://www.projectsigma.co.uk/Guidelines/default.asp">http://www.projectsigma.co.uk/Guidelines/default.asp</a>
Responsabilidad Social Empresarial Caja de Herramientas para America Latina		X	X				X	X	X			X				A collection of analysis and training tools that provides support to SMEs in Latin America to help with improving their social responsibility initiatives and practices. <a href="http://www.produccionmaslimpia-la.net/herramientas/index.htm">www.produccionmaslimpia-la.net/herramientas/index.htm</a> (Spanish)
Social Accountability International (SAI)		X	X		X			X	X		X	X	X	X	X	Multi-stakeholder initiative addressing labor practices. Sets auditable SA8000 standard for workplaces. Produces the Handbook for Implementing a Socially Responsible Supply Chain management system and other tools. Partners to provide training and technical assistance to auditors, workers, suppliers and customers. Independent organization, Social Accountability Accreditation Services (SAAS), accredits providers of certification to SA8000. <a href="http://www.sa-intl.org">www.sa-intl.org</a>
The Natural Step International	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	An international not-for-profit organization dedicated to sustainable development. TNS provides a model for planning of complex systems as well as freely available tools to enable individuals and organizations to learn about and contribute to sustainable development. <a href="http://www.thenaturalstep.org">www.thenaturalstep.org</a>
Transparency International (TI) Various tools	X				X			X						X	X	Global membership NGO that seeks to counter corruption. Provides tools and data for organizations, specific economic sectors and government agencies. Examples of tools include: o Business Principles for Countering Bribery, a multi-stakeholder developed voluntary code o Global Corruption Report o Corruption Perceptions Index o Bribe Payers Index o Global Corruption Barometer o The Integrity Pact <a href="http://www.transparency.org">www.transparency.org</a>

3777 Table A.1 (continued)

ORGANIZATION INITIATIVE OR TOOL (Listed by organization in alphabetical order under each section)	The "X" mark indicates that the initiative/tool refers to at least one aspect or issue included in the corresponding sub-clause. <i>It is not a sign of compatibility with, or endorsement by, ISO 26000</i>										Additional information (includes brief objective description of the initiative/tool; stakeholder participation in its governance; its target audience and conditions for access; whether it is for certification or not; and a website for further information)						
	CORE SUBJECTS*							PRACTICES FOR INTEGRATING SOCIAL RESPONSIBILITY*									
	6.2 OG	6.3 HR	6.4 Lab	6.5 Env	6.6 FOP	6.7 Con	6.8 CID	5.2	5.3	7.2	7.3	7.4	7.5	7.6	7.7		
*ISO 26000 sub-clauses index: 6.2 Organizational governance; 6.3 Human rights; 6.4 Labour practices; 6.5 Environment; 6.6 Fair operating practices; 6.7 Consumer issues; 6.8 Community involvement and development; 5.2 Recognizing social responsibility; 5.3 Stakeholder identification and engagement; 7.2 The relationship of an organization's characteristics to social responsibility; 7.3 Understanding the social responsibility of an organization; 7.4 Practices for integrating social responsibility throughout an organization; 7.5 Communication on social responsibility; 7.6 Enhancing credibility regarding social responsibility; 7.7 Reviewing and improving an organization's actions and practices related to social responsibility.																	
<b>Section 3: SINGLE STAKEHOLDER INITIATIVES</b> (Initiatives and tools developed or administered through single-stakeholder processes).																	
<b>Caux Round Table</b> Principles for Business		X	X	X	X	X	X	X								A network of business people, with national chapters, that seeks to promote ethical principles, collaboration and dialogue among managers, public officials and citizens. The Principles for Business provide a statement of principles to follow to conduct business ethically. <a href="http://www.cauxroundtable.org">www.cauxroundtable.org</a>	
<b>Consumers International</b> Charter for Global Business				X	X	X					X	X		X	Global federation of consumer groups. The Charter sets out best business practices and consumer rights in areas of interest to consumers. A fee is involved for membership and voting rights on codes and charters. <a href="http://www.consumersinternational.org">www.consumersinternational.org</a>		
<b>CSR Europe</b> Toolbox	X	X	X	X	X	X		X	X	X	X	X	X	X	Membership, fee-based initiative for European companies and national CSR organizations. Conducts projects, organizes meetings and issues publications. Toolbox is a web-based collection of guides and other material produced through projects with members and their stakeholders that is organized by theme. <a href="http://www.csreurope.org/">www.csreurope.org/</a>		
<b>Ethos Institute</b> Ethos indicators of CSR	X	X	X	X	X	X	X	X		X	X	X		X	Brazilian organization that focuses on promoting social responsibility in the business sector. It provides several CSR tools free of charge, including a set of indicators on CSR. <a href="http://www.ethos.org.br">www.ethos.org.br</a>		
<b>The Global Sullivan Principles of Social Responsibility</b>		X	X		X		X	X			X		X	X	Global voluntary code of conduct on social, economic and environmental performance. Organizations commit to follow the principles in internal policymaking, training and reporting. No fee or membership required to use code. No stakeholder engagement in shaping code. <a href="http://www.thesullivanfoundation.org/gsp/default.asp">www.thesullivanfoundation.org/gsp/default.asp</a>		
<b>International Business Leaders Forum (IBLF)</b> A Guide to Human Rights Impact Assessment		X	X	X	X							X			The IBLF is a non profit foundation supported by large business organizations that promotes the business contribution to sustainable development. It produces various publications and tools such as Human Rights Translated: A Business Reference Guide. In 2007 IBLF together with the World Bank's International Finance Corporation issued a Guide to Human Rights Impact Assessment and Management Road Testing Draft. <a href="http://www.iblf.org/resources/general.jsp?id=123946">www.iblf.org/resources/general.jsp?id=123946</a>		
<b>International Chamber of Commerce (ICC)</b> Various tools and initiatives	X	X	X	X	X	X	X	X	X	X	X	X	X	X	Membership and fee-based global business organization established to represent business interests. It has produced numerous initiatives and tools relating to different aspects of social responsibility, including: <ul style="list-style-type: none"> <li>The Consolidated ICC Code of Advertising and Marketing Communication Practice</li> <li>The ICC Nine Steps to Responsible Business Conduct</li> <li>The ICC Guidance on Supply Chain Responsibility</li> <li>The ICC Guide to Responsible Sourcing</li> <li>The ICC Business Charter for Sustainable Development</li> </ul> <a href="http://www.iccwbo.org">www.iccwbo.org</a>		
<b>Partnering Against Corruption Initiative (PACI)</b> Business Principles for Countering Bribery					X										A voluntary code of conduct for anti-bribery practice that requires a commitment to zero toleration of bribery by companies that are signatories. Membership based, with no fees charged. Governed by stakeholders via three working groups and a board of governors. <a href="http://www.weforum.org/en/initiatives/paci/index.htm">http://www.weforum.org/en/initiatives/paci/index.htm</a>		
<b>World Business Council for Sustainable Development (WBCSD)</b> Various initiatives and tools	X	X	X	X	X	X	X	X	X	X	X	X	X	X	Membership-based organization oriented mainly to large companies. Annual membership fee. It has developed numerous initiatives and tools that are publicly available, including: <ul style="list-style-type: none"> <li>The Global Water Tool</li> <li>Improving Stakeholder Engagement: Measuring Impact</li> <li>Organizational Governance: Issue Management Tool</li> <li>Sustainable Development: A Learning Tool</li> <li>Numerous other guidance documents, initiatives and tools on specific social and environmental issues.</li> </ul> <a href="http://www.wbcscd.org">www.wbcscd.org</a>		



<p><b>World Cocoa Foundation</b></p>		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	<p>Fee-based membership organization of chocolate companies, cocoa processors and traders and industry associations. Supports programs promoting sustainable and environmentally sound farming, community development, labor standards and improved and equitable returns.  <a href="http://www.worldcocoafoundation.org">www.worldcocoafoundation.org</a></p>
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3779 Table A.2 (continued)

ORGANIZATION INITIATIVE OR TOOL (Listed by organization in alphabetical order under each section)	The "X" mark indicates that the initiative/tool refers to at least one aspect or issue included in the corresponding sub-clause. <i>It is not a sign of compatibility with, or endorsement by, ISO 26000</i>											Additional information (includes brief objective description of the initiative/tool; stakeholder participation in its governance; its target audience and conditions for access; whether it is for certification or not; and a website for further information)					
	CORE SUBJECTS*						PRACTICES FOR INTEGRATING SOCIAL RESPONSIBILITY*										
	6.2 OG	6.3 HR	6.4 Lab	6.5 Env	6.6 FOP	6.7 Con	6.8 CID	5.2	5.3	7.2	7.3		7.4	7.5	7.6	7.7	
<b>*ISO 26000 sub-clauses index:</b> 6.2 Organizational governance; 6.3 Human rights; 6.4 Labour practices; 6.5 Environment; 6.6 Fair operating practices; 6.7 Consumer issues; 6.8 Community involvement and development; 5.2 Recognizing social responsibility; 5.3 Stakeholder identification and engagement; 7.2 The relationship of an organization's characteristics to social responsibility; 7.3 Understanding the social responsibility of an organization; 7.4 Practices for integrating social responsibility throughout an organization; 7.5 Communication on social responsibility; 7.6 Enhancing credibility regarding social responsibility; 7.7 Reviewing and improving an organization's actions and practices related to social responsibility.																	
<b>Sector: APPAREL</b>																	
Clean Clothes Campaign (CCC)		X	X		X	X						X	X				International association of national organizations in 12 European countries dedicated to improving working conditions in the garment industry and to defending workers in the industry seeking change. CCC campaigns on specific cases and engages with companies and authorities to resolve them. The CCC also provides information about the working conditions and labour practices in the industry and has a benchmark code. <a href="http://www.cleanclothes.org">www.cleanclothes.org</a>
Fair Wear Foundation (FWF)		X	X					X		X	X	X	X	X	X	X	A multi-stakeholder organization established to address supply chain labour practices in the clothing and footwear sector. Sourcing companies become members of FWF by making an annual contribution, adopting a Code of Labour Practices and observing other requirements. Companies are evaluated annually for compliance with code. <a href="http://www.fairwear.nl">www.fairwear.nl</a> (Dutch)
Fur Free Retailer Program				X		X								X			Initiative that aims to provide consumers with information about a retailer's fur policy. The initiative aims to end the sale of fur products throughout retail establishments by offering support to those retailers that have committed in writing to a no-fur policy. <a href="http://www.information.com/ffr.php">www.information.com/ffr.php</a>
<b>Sector: BIOFUELS</b>																	
Roundtable on Sustainable Biofuels		X	X	X		X	X	X	X	X	X	X					Fee and membership based organization. Facilitates discussions involving stakeholders to develop principles and criteria for biofuels production. <a href="http://cgse.epfl.ch/page65660.html">http://cgse.epfl.ch/page65660.html</a>
<b>Sector: CONSTRUCTION</b>																	
UNEP Sustainable Buildings and Construction Initiative				X								X		X	X		Open to any organization in the building and construction industry. Annual membership fee. Involves a common work programme to promote sustainable building and construction with a life cycle perspective. Members participate in work programme to develop tools and initiatives to support work programme. In partnership with the United Nations Environment Program. <a href="http://www.unepsbci.org">www.unepsbci.org</a>
<b>Sector: CHEMICAL</b>																	
International Council of Chemical Associations Responsible Care	X	X	X	X	X	X	X			X	X	X	X	X	X	X	Fee-based membership organization for chemical companies. The focus is on health, safety and environmental impact of products and processes. Product stewardship program covers production and use of chemicals and the supply chain. <a href="http://www.responsiblecare.org">www.responsiblecare.org</a>
<b>Sector: CONSUMER GOODS / RETAIL</b>																	
Business Social Compliance Initiative (BSCI)	X	X	X	X								X	X	X	X		An industry organization established to address supply chain labour practices. Membership consists of retailers and other companies that import or market goods. Member companies are expected to audit their suppliers against the BSCI code of conduct. The BSCI certifies the auditors. <a href="http://www.bsci-eu.org">www.bsci-eu.org</a>
<b>Sector: ELECTRONICS</b>																	
Electronic Industry Citizenship Coalition The Electronic Industry Code of Conduct		X	X	X	X	X	X		X					X	X		Membership-based organization with annual fees based on company revenue and membership status. Full members required to implement a code of conduct. A board of governance comprised of industry stakeholders provides guidance and oversight of the organization. <a href="http://www.eicc.info/index.html">www.eicc.info/index.html</a>

3780 Table A.2 (continued)

ORGANIZATION INITIATIVE OR TOOL (Listed by organization in alphabetical order under each section)	The "X" mark indicates that the initiative/tool refers to at least one aspect or issue included in the corresponding sub-clause. <i>It is not a sign of compatibility with, or endorsement by, ISO 26000</i>											Additional information (includes brief objective description of the initiative/tool; stakeholder participation in its governance; its target audience and conditions for access; whether if it is for certification or not; and a website for further information)				
	CORE SUBJECTS*						PRACTICES FOR INTEGRATING SOCIAL RESPONSIBILITY*									
	6.2 OG	6.3 HR	6.4 Lab	6.5 Env	6.6 FOP	6.7 Con	6.8 CID	5.2	5.3	7.2	7.3	7.4	7.5	7.6	7.7	
*ISO 26000 sub-clauses index: 6.2 Organizational governance; 6.3 Human rights; 6.4 Labour practices; 6.5 Environment; 6.6 Fair operating practices; 6.7 Consumer issues; 6.8 Community involvement and development; 5.2 Recognizing social responsibility; 5.3 Stakeholder identification and engagement; 7.2 The relationship of an organization's characteristics to social responsibility; 7.3 Understanding the social responsibility of an organization; 7.4 Practices for integrating social responsibility throughout an organization; 7.5 Communication on social responsibility; 7.6 Enhancing credibility regarding social responsibility; 7.7 Reviewing and improving an organization's actions and practices related to social responsibility.																
Zentralverband der Deutschen Elektro- und Elektronikindustrie Code of Conduct on Corporate Social Responsibility	X	X	X	X	X	X	X	X						X	X	Membership-based organization. Code of conduct provides a guideline to improve social and environmental performance in the electronics industry. <a href="http://www.zvei.de">www.zvei.de</a> (German)
<b>Sector: ENERGY</b>																
IHA IHA Sustainability Guidelines		X		X			X	X	X	X	X	X	X		X	Industry organization for hydropower generation. Produces various tools and publications that are available to the public. The IHA Sustainability Guidelines has recommendations of actions regarding economic, social, and environmental issues. <a href="http://www.hydropower.org">www.hydropower.org</a>
<b>Sector: EXTRACTIVE</b>																
Extractive Industries Transparency Initiative (EITI)					X		X									Multi-stakeholder initiative comprised of governments, companies, civil society organizations and investors that supports disclosure and verification of company payments and government revenues in the oil, gas and mining sectors. Participating companies agree to report payments to governments and implementing governments agree to report payments received from companies. Civil society organizations participate in developing and monitoring specific plans. <a href="http://www.eitransparency.org">www.eitransparency.org</a>
International Petroleum Industry Environmental Conservation Association (IPIECA) Various tools and initiatives		X	X	X	X		X	X		X	X	X	X	X	X	Industry organization for oil and gas producing companies. Produces various publications and tools that are publicly available such as: • Human Rights Training Toolkit for the Oil and Gas Industry • Oil and Gas Industry Guidance on Voluntary Sustainability Reporting • Petroleum Industry Guidelines for Reporting Greenhouse Gas Emissions • Guide to Operating in Areas of Conflict for the Oil & Gas Industry <a href="http://www.ipieca.org">www.ipieca.org</a>
International Council on Mining and Metals (ICMM) Sustainable Development Framework	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	Industry organization for mining and metal companies and related industry associations. Members commit to adopt a Sustainable Development Framework comprised of a set of 10 Principles <a href="http://www.icmm.com/our-work/sustainable-development-framework">http://www.icmm.com/our-work/sustainable-development-framework</a>
The Voluntary Principles on Security and Human Rights		X	X	X								X			X	Initiated by the governments of the UK and USA, the Principles provide guidance for companies and NGOs on identifying human rights and security risks. Further guidance is available on engaging and collaborating with state and private security forces. A contribution is required for using these principles. <a href="http://www.voluntaryprinciples.org">www.voluntaryprinciples.org</a>
<b>Sector: FINANCE / INVESTMENTS</b>																
Equator Principles												X	X	X		Financial industry benchmark for determining, assessing and managing social and environmental risk in project financing. <a href="http://www.equator-principles.com">www.equator-principles.com</a>
Guideline for ESG Reporting and Integration into Financial Analysis	X	X	X	X	X	X			X		X		X	X	X	Reporting guideline for environmental, social and governance (ESG) issues and a benchmark for financial analysts on how to integrate ESG in their analyses. <a href="http://www.dvfa.de/die_dvfa/kommissionen/non_financials/dok/356_83.php">www.dvfa.de/die_dvfa/kommissionen/non_financials/dok/356_83.php</a> (German)
Principles for Responsible Investment (PRI)	X			X			X	X	X		X	X			X	Provides a framework for investors to fulfil their fiduciary (or equivalent) duties giving appropriate consideration to environmental, social and corporate governance issues. Framework is developed by an appointed stakeholder group



3781 Table A.2 (continued)

ORGANIZATION INITIATIVE OR TOOL (Listed by organization in alphabetical order under each section)	The "X" mark indicates that the initiative/tool refers to at least one aspect or issue included in the corresponding sub-clause. <i>It is not a sign of compatibility with, or endorsement by, ISO 26000</i>										Additional information (includes brief objective description of the initiative/tool; stakeholder participation in its governance; its target audience and conditions for access; whether it is for certification or not; and a website for further information)						
	CORE SUBJECTS*						PRACTICES FOR INTEGRATING SOCIAL RESPONSIBILITY*										
	6.2 OG	6.3 HR	6.4 Lab	6.5 Env	6.6 FOP	6.7 Con	6.8 CID	5.2	5.3	7.2	7.3	7.4	7.5	7.6	7.7		
*ISO 26000 sub-clauses index: 6.2 Organizational governance; 6.3 Human rights; 6.4 Labour practices; 6.5 Environment; 6.6 Fair operating practices; 6.7 Consumer issues; 6.8 Community involvement and development; 5.2 Recognizing social responsibility; 5.3 Stakeholder identification and engagement; 7.2 The relationship of an organization's characteristics to social responsibility; 7.3 Understanding the social responsibility of an organization; 7.4 Practices for integrating social responsibility throughout an organization; 7.5 Communication on social responsibility; 7.6 Enhancing credibility regarding social responsibility; 7.7 Reviewing and improving an organization's actions and practices related to social responsibility.																	
The Carbon Disclosure Project				X								X	X		X	Not-for profit membership organization. Provide companies and other organisations with freely available methodology to calculate and disclose the carbon emissions of their operations and assess their exposure to climate risk. Companies can use this methodology and provide information which will be available on CDP website which can be used by financial institutions in determining the carbon output attributed to the financial institution's financing and investments. <a href="http://www.cdproject.net">www.cdproject.net</a>	
UNEP Finance Initiative (UNEP FI)	X			X								X		X	X	Membership and fee-based initiative open to all organizations in the finance sector. Works closely with participant organizations to develop and promote linkages between the environment, sustainability and financial performance. Stakeholders provide project proposals and participation on project development. <a href="http://www.unepfi.org/">www.unepfi.org/</a>	
Wolfsberg Group Wolfsberg Anti-money Laundering Principles	X	X			X	X	X	X				X	X		X	Membership organization of global banks to develop financial services industry standards and principles to combat corruption and money laundering. Stakeholder representatives develop standards and principles, which are made available to the public. <a href="http://www.wolfsberg-principles.com/index.html">http://www.wolfsberg-principles.com/index.html</a>	
<b>Sector: FISHERIES</b>																	
Marine Stewardship Council				X	X	X							X	X	X	Certification and eco-labelling initiative for sustainable fishery practices. It includes: • a Code of Conduct for Responsible Fishing, • a Code of Good Practice for Setting Social and Environmental Standards, and • Guidelines for the Eco-labelling of Fish and Fishery Products from Marine Capture Fisheries. A fee is involved for certification and use of the label. <a href="http://www.msc.org">www.msc.org</a>	
<b>Sector: FORESTRY</b>																	
Forest Stewardship Council (FSC)		X	X	X			X	X	X	X	X	X	X		X	Fee-based membership group open to individuals and organizations. Members assist in governance and policy development. FSC is a certification system that provides international standard-setting, trademark assurance and accreditation services to companies, organizations, and communities interested in responsible forestry. <a href="http://www.fsc.org/">http://www.fsc.org/</a>	
Programme for the Endorsement of Forest Certification schemes (PEFC)																PEFC is an umbrella organization for mutual recognition of certification schemes on sustainable management of forests. National organizations provide governance and recognition of member groups. <a href="http://www.pefc.org">http://www.pefc.org</a>	
<b>Sector: INFORMATION TECHNOLOGIES</b>																	
UNEP and International Telecommunication Union (ITU) Global e-Sustainability Initiative (GeSI)				X			X					X	X	X	X	Fee-based membership organization open to any company and related organization involved in the information and communications technology industry. Provides guidance and an assessment tool to improve the sustainable performance of its members. <a href="http://www.gesi.org">www.gesi.org</a>	
<b>Sector: TRANSPORT</b>																	
International Road Transport Union Charter for Sustainable Development				X		X						X				International representative body for the road transport industry. The Charter is aimed at promoting social responsibility in that sector. <a href="http://www.iru.org/index/en_iru_com_cas">www.iru.org/index/en_iru_com_cas</a>	

3782 Table A.2 (continued)

ORGANIZATION INITIATIVE OR TOOL (Listed by organization in alphabetical order under each section)	The "X" mark indicates that the initiative/tool refers to at least one aspect or issue included in the corresponding sub-clause. <i>It is not a sign of compatibility with, or endorsement by, ISO 26000</i>											Additional information (includes brief objective description of the initiative/tool; stakeholder participation in its governance; its target audience and conditions for access; whether if it is for certification or not; and a website for further information)					
	CORE SUBJECTS*						PRACTICES FOR INTEGRATING SOCIAL RESPONSIBILITY*										
	6.2 OG	6.3 HR	6.4 Lab	6.5 Env	6.6 FOP	6.7 Con	6.8 CID	5.2	5.3	7.2	7.3			7.4	7.5	7.6	7.7
*ISO 26000 sub-clauses index: 6.2 Organizational governance; 6.3 Human rights; 6.4 Labour practices; 6.5 Environment; 6.6 Fair operating practices; 6.7 Consumer issues; 6.8 Community involvement and development; 5.2 Recognizing social responsibility; 5.3 Stakeholder identification and engagement; 7.2 The relationship of an organization's characteristics to social responsibility; 7.3 Understanding the social responsibility of an organization; 7.4 Practices for integrating social responsibility throughout an organization; 7.5 Communication on social responsibility; 7.6 Enhancing credibility regarding social responsibility; 7.7 Reviewing and improving an organization's actions and practices related to social responsibility.																	
<b>Sector: TRAVEL AND TOURISM</b>																	
<b>Coalition of tourism-related organizations</b> Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism		X											X			X	Voluntary code of conduct that commits organizations to implement six criteria aimed at protecting children from sexual exploitation in the travel and tourism sector. Provides a free training kit on implementing these criteria. ECPAT USA provides the Secretariat <a href="http://www.ecpat.net">www.ecpat.net</a> <a href="http://www.thecode.org">www.thecode.org</a>
<b>Rainforest Alliance and other partners</b> Global Sustainable Tourism Criteria Partnership				X			X	X					X			X	An initiative of the Rainforest Alliance, the UN Environmental Programme, UN Foundation and the UN World Tourism Organization, it involves various industry associations and NGOs. The Sustainable Tourism Criteria are intended to be the basis for a common understanding of what sustainable tourism means. <a href="http://www.sustainabletourismcriteria.org">www.sustainabletourismcriteria.org</a>

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## Annex B (informative)

### Abbreviated terms

- 3788 **APR** annual percentage rate
- 3789 **CH<sub>4</sub>** methane
- 3790 **CO<sub>2</sub>** carbon dioxide
- 3791 **GHG** greenhouse gas
- 3792 **HIV/AIDS** Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome
- 3793 **ILO** International Labour Organization
- 3794 **MDG** Millennium Development Goals
- 3795 **NGO** non-governmental organization
- 3796 **NO<sub>x</sub>** nitrogen oxides
- 3797 **PBTs** persistent, bioaccumulative and toxic substances
- 3798 **POPs** persistent organic pollutants
- 3799 **SMO** small and medium-sized organizations
- 3800 **VOCs** volatile organic compounds
- 3801 **UNFCCC** United Nations Framework Convention on Climate Change

- 3802 **Bibliography**
- 3803 *The following ISO standards and/or authoritative instruments will be included in the Bibliography and*  
 3804 *appropriately cross-referenced as part of the post-Copenhagen editing process (see also suggested additions*  
 3805 *in the body of the text):*
- 3806 — *ISO 14001, Environmental management systems - Requirements with guidance for use*
- 3807 — *ISO 14004*
- 3808 — *African Union Convention on Preventing and Combating Corruption, 2003*
- 3809 — *Organization of American States (OAS) Inter-American Convention against Corruption, 1996*
- 3810 — *Council of Europe Criminal Law Convention on Corruption, 1998*
- 3811 — *Council of Europe Civil Law Convention on Corruption, 1999*
- 3812 — *The European Union Convention on the Fight against Corruption Involving Officials of the European*  
 3813 *Communities or Officials of Member States, 1997*
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 3815 *2009*
- 3816 — *Replace reference to outdated ILO Convention and Recommendation (DIS line 1433) with reference to*  
 3817 *updated ILO Holidays with Pay Convention No. 132.*  
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- 3822 [4] *ISO 10001, Quality management: Customer satisfaction--Guidelines for codes of conduct*
- 3823 [5] *ISO 10002, Quality management: Customer satisfaction--Guidelines for complaints handling in*  
 3824 *organizations*
- 3825 [6] *ISO 10003, Quality management – Customer satisfaction – Guidelines for dispute resolution external*  
 3826 *to organizations*
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- 3828 [8] *ISO 14021, Environmental labels and declarations – Self-declared environmental claims*
- 3829 [9] *ISO 14024, Environmental labels and declarations – Type I environmental labelling – Principles and*  
 3830 *procedures*
- 3831 [10] *ISO 14025, Environmental labels and declarations – Type III environmental declarations – Principles*  
 3832 *and procedures*
- 3833 [11] *ISO 19011, Guidelines for quality and/or environmental management systems auditing*
- 3834 [12] *ISO 22000, Food safety management systems – Requirements for any organization in the food chain*
- 3835 [13] *ISO 27001, Information technology – Security techniques – Information security management systems*  
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# Codes of Conduct/Corporate Social Responsibility

## The path to Corporate Social Responsibility is often confusing and always challenging

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- Advised numerous multinationals and defense contractors, among others, on deemed export control and FAC compliance in light of various antidiscrimination and anti-boycotting laws, voluntary global policies and conflicting country requirements.
- Defended numerous publicly traded companies in SOX whistleblower complaints before the US Department of Labor.
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LEXSEE 229 F.3D 332

**ESTADOS UNIDOS MEXICANOS, Plaintiff, Appellant, LUIS RAMIREZ, ET AL.,  
Plaintiffs, v. AUSTIN J. DECOSTER, D/B/A/ DECOSTER EGG FARM, D/B/A/  
AUSTIN J. DECOSTER CO.; QUALITY EGG OF NEW ENGLAND, LLC;  
MAINE AG, LLC, Defendants, Appellees, MAINE CONTRACT FARMING, LLC,  
ET AL., Defendants.**

No. 99-2170

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

*229 F.3d 332; 2000 U.S. App. LEXIS 25275; 83 Fair Empl. Prac. Cas. (BNA) 1793*

October 11, 2000, Decided

**SUBSEQUENT HISTORY:**

Amended October 13, 2000.

[\*\*1] Counsel

Michael E. Malamut on brief for amicus curiae New England Legal Foundation.

**PRIOR HISTORY:** APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MAINE. Hon. D. Brock Hornby, U.S. District Judge.

**JUDGES:** Before Boudin, Circuit Judge, Bownes, Senior Circuit Judge, and Lynch, Circuit Judge.

**DISPOSITION:** Affirmed.

**OPINION BY:** LYNCH**OPINION**

**COUNSEL:** Karen Frink Wolf, with whom Harold J. Friedman, Sally A. Morris, and Friedman Babcock & Gaythwaite were on brief, for appellant Estados Unidos Mexicanos.

Rita H. Logan, with whom Timothy J. O'Brien, William C. Knowles, and Verrill & Dana LLP were on brief, for appellee Austin J. DeCoster, d/b/a/ DeCoster Egg Farm, d/b/a/ Austin J. DeCoster Co.

Thomas H. Somers, with whom Michael E. Cassidy and Hoff, Curtis, Pacht, Cassidy & Frame, P.C. were on brief, for appellees Quality Egg of New England, LLC and Maine Ag, LLC.

Herman Schwartz and Bruce Goldstein on brief for amicus curiae Farmworker Justice Fund, Inc.

[\*334] **LYNCH, Circuit Judge.** Claims of deplorable working and living conditions for migrant workers at DeCoster Egg Farms, a large Maine employer, were made in a civil rights action filed in May of 1998. The thrust of the complaint was that workers [\*\*2] of Mexican descent, be they American or Mexican citizens, were treated harshly because of their Mexican background, and that white, non-Mexican workers fared better. The primary cause of action asserted violations of the workers' civil rights under *42 U.S.C. § 1981*. The complaint also asserted other claims, including claims of unsafe and unsanitary housing under the Migrant and Seasonal Agricultural Worker Protection Act, *29 U.S.C. § 1801 et seq.* The complaint was filed by fourteen individuals, who proposed to represent a class of "all former and [\*335] current migrant farm workers of Mexican race and descent" employed by Austin J. DeCoster and DeCoster Egg Farm. <sup>1</sup>

1 Austin J. DeCoster owned DeCoster Egg Farm individually until 1997. Originally, the complaint named as defendants Mr. DeCoster and two successor companies, Quality Egg of New England, LLC, and Maine AG, LLC. Although plaintiffs later added other successor companies, those companies did not move to dismiss Mexico from the case and are not appellees in this appeal.

[\*\*3] The other plaintiff was the Government of Mexico, the Estados Unidos Mexicanos, which said it was appearing in its *parens patriae* capacity to protect its citizens and its own quasi-sovereign interests. It is unusual for a foreign nation to claim standing under the *parens patriae* doctrine; more common is the appearance of other nations in suits to protect their own distinct interests or as *amicus curiae* in actions that may affect them. *See, e.g., National Foreign Trade Council v. Natsios*, 181 F.3d 38 (1st Cir. 1999), *aff'd sub nom. Crosby v. National Foreign Trade Council*, 530 U.S. 363, 147 L. Ed. 2d 352, 120 S. Ct. 2288 (2000); *United States v. Nippon Paper Indus. Co.*, 109 F.3d 1 (1st Cir. 1997), *cert. denied*, 522 U.S. 1044, 139 L. Ed. 2d 632, 118 S. Ct. 685 (1998). Neither the Supreme Court nor this court has addressed the question of whether the *parens patriae* doctrine may be so employed by a foreign nation. The district court dismissed Mexico as a plaintiff for lack of standing. *See Estados Unidos Mexicanos v. DeCoster*, 59 F. Supp. 2d 120, 123-25 (D. Me. 1999). At Mexico's request, final judgment was [\*\*4] entered as to this issue while the underlying action of the fourteen individual plaintiffs proceeded.<sup>2</sup> We review the determination of lack of standing *de novo*, *see, e.g., Serpa Corp. v. McWane, Inc.*, 199 F.3d 6, 9 (1st Cir. 1999), and affirm the dismissal of Mexico as a party to this action.

2 The district court has since denied class action certification and granted defendants' motion for summary judgment as to some of plaintiffs' claims. *See Ramirez v. DeCoster*, 194 F.R.D. 348 (D. Me. 2000).

#### *The Doctrine of Parens Patriae*

"*Parens patriae* means literally 'parent of the country.'" *Alfred L. Snapp & Son, Inc. v. Puerto Rico*, 458 U.S. 592, 600, 73 L. Ed. 2d 995, 102 S. Ct. 3260 (1982). The doctrine has developed as to States of the United States. It creates an exception to normal rules of standing applied to private citizens in recognition of the special role that a State plays in pursuing its

quasi-sovereign interests in "the well-being of its [\*\*5] populace." *Id.* at 602; *see also Georgia v. Tennessee Copper Co.*, 206 U.S. 230, 237, 51 L. Ed. 1038, 27 S. Ct. 618 (1907) (a State "has an interest independent of and behind the titles of its citizens, in all the earth and air within its domain").<sup>3</sup> It is a judicially created exception that has been narrowly construed. The most complete explanation of the *parens patriae* doctrine in its modern incarnation,<sup>4</sup> as applied to the States of [\*\*336] this country, appears in the Supreme Court's opinion in *Snapp*:

In order to maintain [a *parens patriae*] action, the State must articulate an interest apart from the interests of particular private parties, i.e., the State must be more than a nominal party. The State must express a quasi-sovereign interest. Although the articulation of such interests is a matter for case-by-case development -- neither an exhaustive formal definition nor a definitive list of qualifying interests can be presented in the abstract -- certain characteristics of such interests are so far evident. These characteristics fall into two general categories. First, a State has a quasi-sovereign interest in the health and well-being -- [\*\*6] both physical and economic -- of its residents in general. Second, a State has a quasi-sovereign interest in not being discriminatorily denied its rightful status within the federal system.

458 U.S. at 607. Mexico stakes its claim in our case on this first type of quasi-sovereign interest, i.e., its interest in the general health and well-being of workers of Mexican descent employed by defendants. We do not reach the issue of whether there is a quasi-sovereign interest here, but simply assume that Mexico has interests apart from those of the individual plaintiffs and is more than a nominal party.

3 A State's quasi-sovereign interest is thus distinct from, for example, its sovereign interest in protecting and maintaining its boundaries and its proprietary interest in owning land or conducting a business venture. *See Snapp*, 458 U.S. at 601-02.

4 The *parens patriae* action has its roots in the common-law concept of the "royal prerogative," that is, the power of the king, as "father of the country," to act as the guardian for those under legal disabilities to act for themselves. See *Hawaii v. Standard Oil Co.*, 405 U.S. 251, 257, 31 L. Ed. 2d 184, 92 S. Ct. 885 (1972) (describing king's role as "the general guardian of all infants, idiots, and lunatics" (quoting 3 William Blackstone, *Commentaries* \*47)); see also George B. Curtis, *The Checkered Career of Parens Patriae: The State as Parent or Tyrant?*, 25 DePaul L. Rev. 895, 898 (1976) ("*parens patriae* was [originally] limited to a parental concern for dependent classes"). While American courts adopted this common-law concept, they did so -- consistent with the notion of legislative supremacy -- in the form of a legislative prerogative that was "to be exercised [by States] in the interests of humanity, and for the prevention of injury to those who cannot protect themselves." *Snapp*, 458 U.S. at 600 (quoting *Late Corp. of Church of Jesus Christ, etc. v. United States*, 136 U.S. 1, 57, 34 L. Ed. 478, 10 S. Ct. 792 (1890)). The Supreme Court expanded the doctrine by determining that an individual State could sue under *parens patriae* on behalf of all of its citizens. See *Standard Oil Co.*, 405 U.S. at 257-58 (citing *Louisiana v. Texas*, 176 U.S. 1, 44 L. Ed. 347, 20 S. Ct. 251 (1900), as signaling the beginning of this trend).

[\*\*7] The question here presented is whether a foreign nation which asserts only quasi-sovereign interests and not its own proprietary or sovereign interests should be afforded standing as *parens patriae*. We consider this to be a question of prudential standing, and not an Article III question. See, e.g., *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 471, 70 L. Ed. 2d 700, 102 S. Ct. 752 (1982). Our answer is that *parens patriae* standing should not be recognized in a foreign nation unless there is a clear indication of intent to grant such standing expressed by the Supreme Court or by the two coordinate branches of government. See, e.g., *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 209, 34 L. Ed. 2d 415, 93 S. Ct. 364 (1972) (finding statute clearly granted standing to private plaintiffs asserting housing discrimination claim).

#### *Supreme Court Doctrine*

The Supreme Court has never recognized *parens patriae* standing in a foreign nation where only quasi-sovereign interests are at stake. The justifications offered to support *parens patriae* standing in the individual [\*\*8] States of the Union are not applicable here. Further, several doctrines of judicial restraint counsel against recognition of such standing.

Standing of foreign nations to bring suit in the federal courts has been recognized in cases in which the foreign nation has suffered a direct injury. "There is no question but that foreign States may sue private parties in the federal courts." *Principality of Monaco v. Mississippi*, 292 U.S. 313, 323 n.2, 78 L. Ed. 1282, 54 S. Ct. 745 (1934). That standing has been conditioned on the requirement that the foreign nation satisfy the usual standing requirements imposed on individuals or domestic corporations. The Supreme Court "has long recognized the rule that a foreign nation is generally entitled to prosecute any civil claim in the courts of the United States upon the same basis as a domestic corporation or individual might do." *Pfizer, Inc. v. Government of India*, 434 U.S. 308, 318-19, 54 L. Ed. 2d 563, 98 S. Ct. 584 (1978). For example, foreign nations may bring treble damages antitrust claims under the Clayton Act to [\*337] address their direct injuries. *Id.* at 319.<sup>5</sup>

5 The antitrust field has its own rules. Even a State of the Union may not bring such actions in a *parens patriae* capacity claiming general injury to its economy because it has not, in that capacity, suffered an injury to its business or property within the meaning of § 4 of the Clayton Act, 15 U.S.C. § 15. See *Kansas v. Utilicorp United, Inc.*, 497 U.S. 199, 205-06, 111 L. Ed. 2d 169, 110 S. Ct. 2807 (1990) (State not a proper plaintiff as *parens patriae* for its citizens who paid inflated prices for natural gas when lawsuit already included as plaintiffs the public utilities that were the direct purchasers of the gas); *Illinois Brick Co. v. Illinois*, 431 U.S. 720, 726-29, 52 L. Ed. 2d 707, 97 S. Ct. 2061 (1977) (no injury to Illinois as indirect purchaser of concrete blocks under § 4 of the Clayton Act). Indeed, the Court has noted that even the creation of the new procedural device of *parens patriae* actions by States on behalf of their citizens to enforce existing rights of recovery under § 4 of the Clayton Act, see 15 U.S.C. § 15c(a)(1), "creates no new substantive

liability' . . . [but was] intended only as 'an alternative means . . . for the vindication of existing substantive claims,'" *Illinois Brick*, 431 U.S. at 733-34 n.14 (quoting H.R. Rep. No. 94-499 (1975), 1976 U.S.C.C.A.N. 2572, 2578).

[\*\*9] There is no argument made here that Mexico could meet normal standing requirements applied to individuals or domestic corporations. Indeed, there is some danger that Mexico "advances abstract questions of wide public significance essentially amounting to generalized grievances more appropriately addressed to the representative branches." *Benjamin v. Aroostook Med. Ctr., Inc.*, 57 F.3d 101, 104 (1st Cir. 1995).

Mexico's argument is based on the Supreme Court's recognition of standing in the States of the Union under the *parens patriae* doctrine. By analogy, Mexico says, it should be treated in like manner. Such an analogy is not implausible; indeed, in granting *parens patriae* standing to the States, the Supreme Court has analogized the States to foreign nations. See *Missouri v. Illinois*, 180 U.S. 208, 241, 45 L. Ed. 497, 21 S. Ct. 331 (1901). But the analogy is incomplete, and so the elegant symmetry of Mexico's argument fails.

The primary justification for recognizing *parens patriae* standing in the States, repeated throughout a century's Supreme Court caselaw, derives from important principles underlying our federal system. First, the States have [\*\*10] surrendered certain aspects of their sovereignty to the federal government and, in return, are given recourse to solve their problems with other States. In *Missouri v. Illinois*, *supra*, the Court recognized *parens patriae* standing in the State of Missouri to sue the State of Illinois for sending sewage into the Mississippi River that poisoned its drinking water, endangered the health of its residents, and impaired the commercial value of its towns and cities. See *Missouri*, 180 U.S. at 241. The Court noted:

If Missouri were an independent and sovereign State all must admit that she could seek a remedy by negotiation, and, that failing, by force. Diplomatic powers and the right to make war having been surrendered to the general government, it was to be expected that upon the latter would be devolved the duty of providing a remedy . . . .

*Id.* at 241; see generally Ann Woolhandler & Michael G. Collins, *State Standing*, 81 Va. L. Rev. 387, 446-47 (1995) (around the turn of twentieth century, the Court "began allowing states to vindicate in federal court their general interest in protecting their citizens" [\*\*11] through interstate pollution actions to enjoin public nuisances). Second, States require a sufficiently independent forum to resolve their disputes with one another. Accordingly, under Article III of the Constitution, the Supreme Court has original and exclusive jurisdiction over actions between two or more States. See 28 U.S.C. § 1251(a); see also *Georgia v. Pennsylvania R.R. Co.*, 324 U.S. 439, 450, 89 L. Ed. 1051, 65 S. Ct. 716 (1945) ("The original jurisdiction of this Court is one of the mighty instruments which the framers of the Constitution provided so that adequate machinery [\*\*338] might be available for the peaceful settlement of disputes between States and between a State and citizens of another State."); see generally Erwin Chemerinsky, *Federal Jurisdiction* § 10.3.1, at 580 (2d ed. 1994) ("Without a tribunal to resolve their differences, states might resort to armed conflicts with one another or other forms of coercive behavior.").<sup>6</sup> Indeed, the Court's expansion of *parens patriae* doctrine beyond its traditional common law parameters took place in cases involving the Court's exercise of its original jurisdiction to decide controversies [\*\*12] between States or between a State and a citizen of another State -- an area in which the Court acted as an arbiter between quasi-sovereign interests. See Curtis, *The Checkered Career of Parens Patriae*, 25 DePaul L. Rev. at 908. For obvious reasons, neither of these two federalism justifications applies here.<sup>7</sup>

<sup>6</sup> Of course, for the Court to exercise original jurisdiction, such actions must meet the Article III standing requirements and be "susceptible of judicial solution." *Louisiana v. Texas*, 176 U.S. 1, 18, 44 L. Ed. 347, 20 S. Ct. 251 (1900) (accepting concept of *parens patriae* standing but finding elements of that standing not presented on the facts). Additionally, the Court can exercise its discretion to refuse to hear disputes between States "with an eye to promoting the most effective functioning of this Court within the overall federal system." See *Texas v. New Mexico*, 462 U.S. 554, 570, 77 L. Ed. 2d 1, 103 S. Ct. 2558 (1983).

7 Furthermore, federalism concerns can also limit a State's *parens patriae* standing when the suit seeks to enforce its citizens' rights "in respect of their relations with the federal government," where it is the United States, and not the State, that represents them as *parens patriae*. *Massachusetts v. Mellon*, 262 U.S. 447, 485-86, 67 L. Ed. 1078, 43 S. Ct. 597 (1923) (a State may not interpose itself to protect its citizens from the operation of allegedly unconstitutional federal statutes); *see also* *Woolhandler & Collins*, *State Standing*, 81 Va. L. Rev. at 491.

[\*\*13] Mexico stresses that it has sued private parties, not a State, as defendants, and turns for support to a subcategory of cases in which the Supreme Court has recognized *parens patriae* standing in States to sue private companies, not other States. That aspect of the doctrine originated in *Tennessee Copper Co.*, *supra*. There Georgia was permitted to sue for injunctive relief against defendant copper companies that allegedly discharged noxious gasses over Georgia. Again, the Court rested its extension of the doctrine on federalism grounds:

When the states by their union made the forcible abatement of outside nuisances impossible to each, they did not thereby agree to submit to whatever might be done. They did not renounce the possibility of making reasonable demands on the ground of their still remaining quasi-sovereign interests; and the alternative to force is a suit in this court.

206 U.S. at 237. <sup>8</sup> While Mexico is correct to concede that it would face additional problems if this suit had been brought against a State, this does not alter the fact that the federalism justifications for permitting States to bring suit *parens patriae* against private entities [\*\*14] are simply absent here.

8 Federalism concerns also underlay the subsequent extension of *parens patriae* standing to actions involving direct economic harm. *See Pennsylvania R.R. Co.*, 324 U.S. at 450-51 (stating that actions of railroads in conspiring to fix freight rates in a manner that discriminates against Georgia shippers "relegates [Georgia] to an inferior economic position among her sister

States . . . . These are matters of grave public concern in which Georgia has an interest apart from that of particular individuals who may be affected.").

Nonetheless, Mexico says that under *Snapp*, a more recent case, its standing must be recognized. *Snapp* involved Puerto Rico's participation in the Wagner-Peyser Act, 29 U.S.C. § 49 *et seq.*, which had mandated the establishment of a nationwide employment system and encouraged the States to participate in that system if authorized by the Secretary of Labor. *See Snapp*, 458 U.S. at 594-95. Puerto Rico [\*\*15] was included in the Act's definition of a State. *See id.* [\*\*339] at 594 *n.1*. If unemployed persons capable of performing the labor sought could not be found in this country, then temporary foreign workers could be brought in. *See id.* at 595. Thus, the Act gave a preference to United States workers (including citizens of Puerto Rico) for newly available jobs in this country and prevented such workers from being disadvantaged by foreign workers. *See id.* at 596. Puerto Rico certified more than a thousand of its workers to Virginia apple growers looking for temporary labor during the 1978 harvest season. When Virginia growers refused to hire Puerto Rican workers, including those who had already arrived in Virginia, Puerto Rico sued for declaratory and injunctive relief. *See id.* at 596-97.

The Court recognized *parens patriae* standing in Puerto Rico. *Id.* at 608. Although the Court recognized Puerto Rico's interest in avoiding discrimination against its citizens as a quasi-sovereign interest, it did so in the context of describing Puerto Rico's role in the federal system. *See id.* at 607-08 ("Distinct [\*\*16] from but related to the general well-being of its residents, the State has an interest in securing observance of the terms under which it participates in the federal system."). <sup>9</sup> The *Snapp* Court granted standing to Puerto Rico qua State under the Wagner-Peyser Act on two alternative grounds: 1) a State's interest in protecting citizens from discrimination, *id.* at 609; and 2) a State's interest in equal participation in a federal employment service scheme, *id.* at 609-10. Here, of course, Mexico relies only on the former ground. While *Snapp's* discussion of federalism principles -- e.g., its discussion of a State's right to the observance of the terms of a compact by which it participates in the federal system, *id.* at 607-08 -- seems to refer distinctly to the second of the two grounds of standing, and thus the one not relied on here by Mexico, the two grounds dovetail in

that residents were being excluded from participation in a federal program by virtue of discrimination.

9 Indeed, Puerto Rico had alleged, inter alia, that the discrimination by Virginia growers deprived it of "its right to effectively participate in the benefits of the Federal Employment Service System of which it is a part." *Id.* at 598 (internal quotation marks omitted).

[\*\*17] We do not read *Snapp* as establishing *parens patriae* standing in a State in the absence of federalism concerns where the quasi-sovereign interest at stake is the prevention of discrimination against that State's citizens. Indeed, it remains questionable whether *Snapp* would permit a State to seek *parens patriae* standing on the basis Mexico asserts here because States are not assigned a special role in the enforcement of 42 U.S.C. § 1981, unlike the special role they are assigned under the Wagner-Peyser Act, 29 U.S.C. § 49 *et seq.*, which was at issue in *Snapp*. But even if States could bring suits such as this one, Mexico's claim would still fail. By definition, a foreign nation has no cognizable interests in our system of federalism. And such interests are a critical element of *parens patriae* standing.

Nor is Mexico's position supported by adherence to any principle of customary international law. Such a principle would provide an arguable basis on which to grant standing. Mexico, however, has admitted that it knows of no such principle recognizing *parens patriae* standing in foreign nations and we likewise have found none. [\*\*18] <sup>10</sup> Instead, Mexico points hopefully to the principle of comity. The principle is well recognized but beside the point. Comity permits foreign nations to sue in our courts if they meet the normal standing requirements imposed on individuals. [\*340] See *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 408-09, 11 L. Ed. 2d 804, 84 S. Ct. 923 (1964). But *parens patriae* standing goes beyond normal standing requirements.

10 *Parens patriae* is not mentioned as an established principle of international law in either the *Restatement (Third) of Foreign Relations Law of the United States* (1987) or any major treatise in the field.

Moreover, the granting of *parens patriae* status to foreign nations would raise concerns beyond the lack of support for such status in precedent or prior reasoning. One particularly compelling concern was thoughtfully

articulated by the district court. The conduct of the foreign affairs of this country is committed to the Executive and to the Congress. This division of power should [\*\*19] give courts pause before entering this arena, absent guidance from those other two branches. Care should be taken not to impinge on the Executive's treaty-making prerogatives or to assume that courts have the institutional competence to perform functions assigned elsewhere by the Constitution. See *United States v. Kin-Hong*, 110 F.3d 103, 110-11 (1st Cir.), *stay denied*, 520 U.S. 1206, 137 L. Ed. 2d 816, 117 S. Ct. 1491 (1997). The Executive often requires, before extending rights to foreign nations, that there be agreements providing for reciprocal protection of American interests. The ability of the other branches to secure such reciprocity could be undermined if the Judiciary did not adhere to the principal of non-interference. See *United States v. Boots*, 80 F.3d 580, 587-88 (1st Cir.) (reciting dangers of this country's penal enforcement of other countries' customs and tax laws without reciprocal enforcement of American laws), *cert. denied*, 519 U.S. 905, 136 L. Ed. 2d 188, 117 S. Ct. 263 (1996).

Mexico says that these concerns are alleviated by the act of state doctrine and the political question doctrine. It is difficult to see what the act of state [\*\*20] doctrine, which has traditionally precluded review by United States courts of official acts by foreign states, see *Oetjen v. Central Leather Co.*, 246 U.S. 297, 303-04, 62 L. Ed. 726, 38 S. Ct. 309 (1918), has to do with the situation here. <sup>11</sup> And while there is some parallel to the political question doctrine, it works against Mexico. Again, the very question of whether a foreign nation should be given rights to sue beyond those rights enjoyed by United States citizens raises concerns about the allocation of responsibility among our three branches of government.

11 The Court's more recent justification for the doctrine as an expression of the domestic separation of powers further undermines Mexico's argument here. See *W.S. Kirkpatrick & Co., Inc. v. Environmental Tectonics Corp., Intl.*, 493 U.S. 400, 404, 107 L. Ed. 2d 816, 110 S. Ct. 701 (1990) (act of state doctrine reflects "'the strong sense of the Judicial Branch that its engagement in the task of passing on the validity of foreign acts of state may hinder' the conduct of foreign affairs" (quoting *Sabbatino*, 376 U.S. at 423)).

[\*\*21] In addition, other reasons for caution stem from the rules and procedures within the federal judiciary. As the Eighth Circuit noted in denying *parens patriae* status to foreign governments in a Sherman Act case, class actions are often the preferable vehicle to pursue claims on behalf of a country's citizens. See *Pfizer, Inc. v. Lord*, 522 F.2d 612, 617-18 (8th Cir. 1975) ("the strong preference for class actions over *Parens patriae* has been repeatedly expressed"), *cert. denied*, 424 U.S. 950, 47 L. Ed. 2d 356, 96 S. Ct. 1421, 96 S. Ct. 1422 (1976). Furthermore, the potential exists for conflicts between the individual litigants and the *parens patriae* nation plaintiff over issues of settlement, appropriate relief, and the like. See Lisa Moscati Hawkes, Note, *Parens Patriae and the Union Carbide Case: The Disaster at Bhopal Continues*, 21 Cornell Int'l L.J. 181, 181-83 (1988) (discussing case brought by government of India under the *parens patriae* doctrine in which India blocked settlement offer that individual plaintiffs had wanted to accept). *But see* Comment, *Parens Patriae Representation in Transnational Crises: The Bhopal Tragedy*, 17 Cal. W. Int'l L.J. 175, 184 (1987) [\*\*22] (suggesting [\*341] that unusual circumstances surrounding Bhopal case made it ideal for application of *parens patriae* doctrine). Indeed, relief obtained by the *parens patriae* plaintiff may bar private litigants from later bringing suit. See *City of Tacoma v. Taxpayers of Tacoma*, 357 U.S. 320, 334, 2 L. Ed. 2d 1345, 78 S. Ct. 1209 (1958). Commentators have also suggested that, even as to individual States, *parens patriae* standing should be limited because "expansive state standing has a serious potential to undermine rather than complement individual standing in constitutional cases." Woolhandler & Collins, *State Standing*, 81 Va. L. Rev. at 396.

Mexico says that there is no potential for conflict because it seeks only declaratory and injunctive relief whereas the individual plaintiffs seek primarily monetary compensation. In fact, the individual plaintiffs also sought injunctive relief, particularly on behalf of the putative class. See *Ramirez*, 194 F.R.D. at 352 (plaintiffs' seek to enjoin DeCoster "from maintaining a policy of discrimination against Mexicans regarding the terms and conditions of their employment").<sup>12</sup>

12 While there is the problem of overlap and potential conflict whenever *parens patriae* standing is allowed, *cf. Pfizer*, 522 F.2d at 618 (explaining why *parens patriae* actions lack the various safeguards contained in the class action

rules), we do not suggest, however, that the mere presence of potential conflict might alone prove a sufficient basis on which to deny such standing.

[\*\*23] To summarize, we have looked to Supreme Court precedent and doctrine to see whether there is warrant to extend *parens patriae* standing to a foreign nation in this action. There is no direct precedent allowing for such status and the federalism concerns that animate recognition of *parens patriae* status in the States are simply absent. Moreover, there are reasons for the courts not to recognize such standing, reasons stemming from the assignment of the foreign relations powers to the other branches. There are other reasons having to do with prudential considerations within the courts themselves, concerns about avoiding conflict with the class action rules and about undermining the role of the individual plaintiffs. All of these reasons may be overcome should the Supreme Court or other two branches decide these policy concerns differently. But the Supreme Court has not yet done so, and we thus turn to the other two branches.

#### *The Coordinate Branches*

What is left is the question of whether the Executive or the Congress has given any guidance on the issue before us.

No party contends that Congress took a position on the topic in the definition of the word "persons" within the meaning [\*\*24] of the Civil Rights Act, 42 U.S.C. § 1981. Nor does Mexico point to a treaty or executive agreement affording it special, *parens patriae* standing. Further, Mexico points to no statute recognizing such standing. By contrast, Congress has expressly authorized the United States, by its Attorney General, to enforce federal statutes and some *Fourteenth Amendment* rights. See, e.g., Civil Rights Act of 1964, 42 U.S.C. § 2000a-5 (1994) (authorizing suits for injunctive relief to enforce an individual's right to equal enjoyment of public accommodations); *id.* § 2000e-5 (authorizing suits for injunctive relief from discriminatory employment practices); *cf. Larry W. Yackle, A Worthy Champion for Fourteenth Amendment Rights: The United States in Parens Patriae*, 92 Nw. U. L. Rev. 111, 114 (1997) (advocating *parens patriae* suits by the United States to enforce the *Fourteenth Amendment*).

To the contrary, the defendants say, Congress and the President have indicated that disputes such as these

are not to be heard by the courts but are instead to be governed by the North American Free Trade Agreement ("NAFTA") and, [\*\*25] more specifically, by the so-called labor "side agreement." *See North American Agreement on Labor Cooperation*, Sept. 8, 9, 12, and 14, 1993, 32 I.L.M. 1499 (1993) [\*342] ("NAALC"). Since NAFTA and NAALC govern this conflict, defendants say that these agreements provide Mexico's exclusive remedy and preclude resort to the federal courts. The NAALC establishes four levels for settling labor law disputes, including top-level consultation between national labor law ministers of the respective member States. *See id.* art. 22, 32 I.L.M. at 1508. <sup>13</sup> Such consultation extends to any labor law matter within the scope of the Agreement, *see id.*, including the elimination of employment discrimination, *see id.* Annex 1, P 7, 32 I.L.M. at 1515-16. <sup>14</sup> If the parties are unable to resolve the matter by cooperation, NAALC provides for dispute resolution through binding arbitration. *Id.* arts. 27-41, 32 I.L.M. at 1509-13. Mexico rejoins that while NAFTA covers disputes between governments, such as a claim by Mexico that the United States is not enforcing its own labor laws, this action involves discrimination claims against a private party. [\*\*26] While Mexico's argument is not without force, resolution of this precise issue is not necessary. The important point is that there is no suggestion in NAFTA or NAALC that the other two branches of the United States government intended to grant Mexico special standing as *parens patriae* to pursue these claims. <sup>15</sup>

13 Following ministerial consultations, a single Party may initiate the establishment of an Evaluation Committee of Experts, which in turn performs an independent, non-adversarial analysis and then provides recommendations covering all three Parties' labor law enforcement in the particular area in issue. *See id.* arts. 23-26, 32 I.L.M. at 1508-09.

In addition to providing for these ministerial consultations, the NAALC also allows private parties to file submissions for review by a National Administrative Office (NAO) established within the respective federal department of labor of each member State. *See id.* arts. 15-16, 21, 32 I.L.M. at 1507-08. The NAO investigates the submission (which investigation, in the United States, includes holding a public hearing) and issues a report. *See generally* Clyde

Summers, *NAFTA's Labor Side Agreement and International Labor Standards*, 3 *J. Small & Emerging Bus. L.* 173 (1999).

[\*\*27]

14 Similarly, the scope of NAALC review extends to another Party's "labor law, its administration, or labor market conditions in its territory." *Id.* art. 21, 32 I.L.M. at 1507.

15 To the extent that Mexico believes that the United States has failed to enforce its labor laws against defendants, it appears that Mexico may use the mechanisms set forth in the NAALC. Although NAALC's arbitration mechanism would not seem to encompass the instant allegations of racial discrimination against defendants, *see id.* art. 29, 32 I.L.M. at 1509-10 (limiting the scope of arbitration to "the alleged persistent pattern of failure by the Party complained against to effectively enforce its occupational safety and health, child labor or minimum wage technical labor standards"), Mexico could still pursue these claims through the process of ministerial consultation described above.

Finally, the district court commendably invited comment from the U.S. Department of State. The State Department, however, declined to comment, and thus, again, there is no indication of support by [\*\*28] the Executive Branch for Mexico's position.

Mexico's final arguments, which are based in policy, are not insignificant. More than one thousand workers of Mexican descent worked at DeCoster between 1992 and 1996. Many of these transitory workers are poor, are isolated both geographically and culturally, are economically dependent on their employer, and are in a poor position to obtain legal services or to work with counsel. Amicus Farmworker Justice Fund, Inc. also points to decreased efforts by federal agencies charged with enforcing wage and hour laws in agriculture. <sup>16</sup> Mexico, however, is not left powerless to address these concerns. As the district court suggested, Mexico could financially support the plaintiffs in their efforts or seek to participate as amicus. Moreover, the alleged violations may be entirely appropriate for Mexico to raise with the United States though [\*343] diplomatic channels. But the courts, absent the type of clear direction discussed earlier, are not the appropriate forum for the litigation of Mexico's quasi-sovereign interests.

16 We acknowledge with appreciation the amicus briefs submitted by both the Farmworker Justice Fund, Inc. and the New England Legal Foundation.

[\*\*29] The judgment of dismissal as to Mexico as a party plaintiff is affirmed. No costs to either party.

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149 L.R.R.M. (BNA) 2449, 312 U.S.App.D.C.  
241, 63 USLW 2780,  
130 Lab.Cas. P 11,369

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-  
CIO, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent,  
Canaveral Port Authority, et al., Intervenors.

*No. 93-1812.*

**United States Court of Appeals,  
District of Columbia Circuit.**

*Argued May 11, 1995.*

*Decided June 6, 1995.*

*Rehearing and Suggestions for Rehearing  
In Banc Denied Aug. 3, 1995.*

On Petition for Review and Cross-Application for Enforcement of an Order of the National Labor Relations Board.

Ernest L. Mathews, Jr., New York City, argued the cause for petitioner. With him on the briefs was Maura R. Cahill, New York City.

Robert J. Englehart, Atty., N.L.R.B., Washington, DC, argued the cause for respondent. With him on the briefs were Linda R. Sher, Acting Associate Gen. Counsel, Aileen A. Armstrong, Deputy Associate Gen. Counsel, and Frederick Havard, Supervisory Atty., Washington, DC. Howard E. Perlstein, Deputy Asst. Gen. Counsel, and John H. Fawley, Atty., Washington, DC, entered appearances.

Robert L. Duston, Washington, DC, argued the cause and filed the brief, for intervenor Canaveral Port Authority.

Betty S. Murphy, Washington, DC, argued the cause for intervenor Coastal Stevedoring Co., et al. With her on the joint brief were David A. Grant and Robert L. Duston, Washington, DC.

Before: EDWARDS, Chief Judge, WALD and BUCKLEY, Circuit Judges.

HARRY T. EDWARDS, Chief Judge:

1 This case requires us to decide whether a domestic labor union commits an unfair labor practice under the National Labor Relations Act ("NLRA" or "Act"), 29 U.S.C. Sec. 151 et seq. (1988), by seeking the support of Japanese unions in connection with labor disputes involving nonunion employers in the United States. Petitioner International Longshoremen's Association ("ILA") seeks review of a decision of the

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« UP National Labor Relations Board ("NLRB" or "Board") holding that the ILA violated section 8(b)(4) of the Act, 29 U.S.C. Sec. 158(b)(4), by establishing a secondary boycott through the actions of its putative agents, the Japanese unions. Because we hold that the Board erred in attributing the actions of the Japanese unions to the ILA, we grant the petition for review and remand the case to the Board.

In 1947, Congress amended the NLRA with the enactment of the Labor Management Relations Act, ch. 120, 61 Stat. 136 (1947) ("LMRA"). A principal provision of the LMRA was the section 8(b)(4) proscription of "secondary boycotts"--a practice aptly described as "a combination to influence A by exerting some sort of economic or social pressure against persons who deal with A." *FELIX FRANKFURTER & NATHAN GREENE, THE LABOR INJUNCTION* 43 (1930) (footnote omitted). As this description implies, secondary boycotts embroil neutral parties in disputes between employees and their employers, and it is for this reason that Congress has condemned them. See *International Longshoremen's Ass'n v. Allied Int'l, Inc.*, 456 U.S. 212, 225, 102 S.Ct. 1656, 1664, 72 L.Ed.2d 21 (1982) (stating that Congress drafted section 8(b)(4) "to protect neutral parties, the helpless victims of quarrels that do not concern them at all") (internal quotations omitted). However, in drafting section 8(b)(4), Congress did not create a "sweeping prohibition" on all forms of secondary boycotts. *Local 1976, United Bhd. of Carpenters v. NLRB*, 357 U.S. 93, 98, 78 S.Ct. 1011, 1015, 2 L.Ed.2d 1186 (1958). Rather, the provision "describes and condemns specific union conduct directed to specific objectives." *Id.* Thus, section 8(b)(4)(i) specifically targets union actions to engage in, or induce or encourage others employed in commerce to engage in, a strike or refusal to work on goods, see 29 U.S.C. Sec. 158(b)(4)(i), and section 8(b)(4)(ii) prohibits union actions to threaten or coerce persons engaged in commerce, see *id.* Sec. 158(b)(4)(ii), where in either case the object of such action is to force a person to cease using or otherwise dealing in the products of another, see *id.* Sec. 158(b)(4)(B). In this case, the ILA did neither.

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The undisputed facts reveal that the ILA merely requested assistance from Japanese labor unions in its dispute with two nonunion stevedoring companies engaged in Florida's citrus fruit export trade. In response, the Japanese unions gave notice that their members would refuse to unload any fruit in Japan that had been loaded in Florida by nonunion workers. As a consequence of this threat, all Florida-Japan citrus shipments were redirected to new ports of embarkment during the 1990-1991 export season. The parties adversely affected by these actions--the two stevedoring companies and one neutral party--filed unfair labor practice charges against the ILA.

Upon reviewing the unfair labor practice charges, the Board held that the ILA had violated the prohibition against secondary boycotts. In reaching this conclusion, however, the Board could not rely on section 8(b)(4)(i), for, although the ILA arguably induced or encouraged other employees to refuse to handle goods, the employees to whom the ILA's entreaties were addressed were Japanese longshoremen, who are not employed by a person "engaged in commerce" as the Act requires. 29 U.S.C. Sec. 158(b)(4)(i). Nor could the Board find that the ILA's actions, standing alone, fell within the scope of section 8(b)(4)(ii), because the Japanese unions, not the ILA, issued the alleged threats that created the boycott. Nevertheless, the Board held that the ILA's actions fell within the scope of section 8(b)(4)(ii) pursuant to a theory of agency law. Under this theory, the Board held that the Japanese unions acted as the agents of the ILA merely because the ILA requested the Japanese unions' actions and benefited from the results of those

6 actions.  
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In its petition for review, the ILA claims that the Board's agency theory is untenable. We agree. Not only is the Board's theory completely without support in nearly 50 years of NLRB and judicial precedent interpreting the secondary boycott provision of the NLRA, but it flies in the face of the common law agency principles that Congress sought to incorporate into the Act. Put simply, the ILA and the Japanese unions were completely independent entities; neither exercised any control over the other. If they were bound together at all, it was by a spirit of labor solidarity, but such a spiritual link is too frail to render one union the agent of another. Thus, we reject the Board's theory and remand the case for further consideration.

### I. BACKGROUND

This case arises from a labor dispute in the Florida citrus export industry. Japan is a major importer of Florida citrus fruit, and, prior to the events at issue in this case, Florida exporters had shipped fruit to Japan from Fort Pierce and Port Canaveral for several years pursuant to agreements between American exporters and Japanese importers. In the shipping process, American stevedores load the fruit on ships bound for Japan, where the fruit is unloaded by Japanese stevedores. Coastal Stevedoring Co. ("Coastal"), a nonunion company, is the sole stevedoring company in Fort Pierce. Port Canaveral Stevedoring, Ltd. ("Canaveral"), also a nonunion company, conducts business from Port Canaveral, which is operated by a Florida state entity, the Canaveral Port Authority. The ILA has been engaged in labor disputes with Coastal and Canaveral regarding those companies' failures to hire union-represented employees.

7 Before the 1990-91 citrus export season, ILA representatives visited Japan and met with representatives of several Japanese unions to express concern that Japanese importers were using the services of nonunion stevedores at Port Canaveral and Fort Pierce, and to request assistance in their ongoing dispute with nonunion companies. In response, the Japanese unions asked numerous stevedoring companies, citrus importers, and shipping companies to ensure that all citrus fruit they imported from Florida was loaded by union workers. Further, the Japanese unions warned that they would refuse to unload any fruit loaded by nonunion workers.

8 In a letter to the Japanese dockworkers' unions dated October 4, 1990, ILA President John Bowers stated that the ILA was planning to picket nonunion stevedoring companies at Fort Pierce and Port Canaveral, and asked for the support of the Japanese unions. Bowers closed the letter by stating, "Your further support in denying the unloading and landing of these picketed products in your country will also be most helpful to the members of the [ILA] and organized labor in the United States which supports our effort." Letter from John Bowers to Toshio Kamezaki (Oct. 4, 1990), reprinted in Joint Appendix ("J.A.") 64. The Japanese unions circulated copies of Bowers's letter to various citrus importers, exporters, and shipping companies. As a result, Japanese importers expressed concern to Florida exporters that citrus fruit loaded by nonunion workers would not be unloaded by Japanese longshoremen.

9 By late October 1990, after having failed to obtain assurances that Japanese dockworkers would unload fruit loaded by nonunion workers, one Japanese importer, Sumisho Fruits and Vegetables Co., and its carrier, Cool Carriers, Inc., directed the ship *Bagno El Triunfo* to go to Tampa for loading by union stevedores,

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instead of to Fort Pierce as originally scheduled. By letter dated November 6, 1990, ILA Special Consultant Ernest S. Lee wrote to the Japanese dockworkers' unions to state that the diversion of the ship was "a direct result of your very timely and effective notices to relevant parties in Japan of your support for our efforts.... Thank you." Letter from Ernest S. Lee to Toshio Kamezaki (Nov. 6, 1990), reprinted in J.A. 79. In the letter, Lee also advised that "[y]our continued efforts on our behalf will be most appreciated." *Id.* Following the lead of Sumisho Fruits and Vegetables, several Japanese importers during December 1990 informed United States exporters that their ships would be loaded at Tampa instead of Port Canaveral because of the threat by Japanese unions. Ultimately, the Japanese unions' actions caused all citrus exports from Florida to Japan during the 1990-91 season to be shipped from Tampa, and none to be shipped from Fort Pierce or Port Canaveral.

Meanwhile, in November and December 1990, Coastal, Canaveral, and the Canaveral Port Authority all filed unfair labor practice charges against the ILA. Subsequently, on June 14, 1991, the NLRB sought an injunction to prohibit the ILA from threatening persons neutral to its labor dispute with Coastal and Canaveral, and to require the union to repudiate its written solicitation of aid from the Japanese unions. The United States District Court for the Middle District of Florida granted the injunction and the Eleventh Circuit affirmed. See *Dowd v. ILA*, 781 F.Supp. 1565 (M.D.Fla.1991), *aff'd*, 975 F.2d 779 (11th Cir.1992). In its decision, the Eleventh Circuit held that the Board had demonstrated reasonable cause to believe that the ILA had violated NLRA section 8(b)(4)(ii)(B) by articulating "a substantial and not frivolous legal theory upon which to attribute the actions of the Japanese unions to ILA." 975 F.2d at 784. Specifically, although acknowledging that the ILA had no right of control over the Japanese unions as normally is required to create an agency relationship, the Eleventh Circuit concluded that,

11 [u]nder the liberal application of agency concepts appropriate in the labor context, a contractual right to control and direct the performance of another is not required to impose responsibility under section 8(b) where an employer or union has encouraged or requested another to engage in unfair labor practices on its behalf.

12 *Id.* at 785 (footnote omitted). The court also agreed with the Board that the ILA was responsible for the Japanese unions' actions under theories of ratification and joint venture. *Id.* at 785-86. Finally, in response to the ILA's argument that application of the NLRA to acts taken in Japan constituted an impermissible extraterritorial extension of domestic federal law, the Eleventh Circuit stated that "the NLRA reaches the conduct of an American union which solicits a foreign entity to apply pressure overseas with the intent and effect of gaining an unlawful advantage in a primary labor dispute in the United States by coercing American employers." *Id.* at 788.

13 With the injunction in place, the parties waived a hearing and an administrative law judge's decision and submitted the case directly to the Board based on stipulated facts. On November 24, 1993, the Board held that the ILA had violated NLRA section 8(b)(4)(ii)(B) by threatening, coercing, or restraining neutral persons engaged in commerce in the citrus import and export industry with the object of forcing or requiring them to cease doing business with Coastal, Canaveral, and other nonunion stevedoring companies in Fort Pierce and Port Canaveral. See *ILA*, 313 N.L.R.B. 412, 1993 WL 497343 (1993). In so doing, a majority of the Board concluded that, although the threats in this case actually emanated from the Japanese unions, the ILA was responsible for those threats under an agency law

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theory. In reaching this conclusion, the Board relied upon its earlier decision in *United Pipefitters Local 280 (Aero Plumbing Co.)*, 184 N.L.R.B. 398 (1970). In that case, Local 280 sought an agreement with Aero Plumbing Co. ("Aero"), a plumbing contractor, and, to that end, alerted another local, Local 78, that Aero would be working within its jurisdiction, and asked Local 78 to attempt to persuade the contractor to sign the agreement. When, in response, Local 78 picketed Aero's job site, the Board held Local 280 responsible for the resulting unfair labor practice. In the decision below, the Board reasoned that the conduct of the ILA in this case "is virtually identical to that of the Local 280 in Aero Plumbing with respect to informing the other union of its difficulties with an employer, requesting certain supportive action by the other union, and taking full advantage of the benefits of the other union's action." 313 N.L.R.B. at 416. Accordingly, the Board held that, as in Aero Plumbing, the ILA's conduct here "amounted to authorization and ratification" of the Japanese unions' actions. *Id.* The Board also found policy considerations to support an agency theory in this case, despite the international character of the underlying dispute, because "[p]ermitting U.S. unions to escape responsibility purely on geographical grounds for the economic harm they unleash subverts the purpose of the [NLRA]." *Id.* Finally, the Board agreed with the Eleventh Circuit's conclusion that the Board had jurisdiction over this case under the NLRA, notwithstanding that all illegal conduct occurred in Japan, because the assertion of such jurisdiction did not interfere with Japanese law. See *id.* at 417-18. Thus, the Board ordered the ILA to cease and desist from requesting assistance from the Japanese unions, to repudiate its earlier requests, and to post a notice in its offices of the unfair labor practice it had committed.

## II. ANALYSIS

In its petition for review, the ILA presents a two-pronged attack on the Board's decision. First, the ILA argues that the Board's action constituted an impermissible extraterritorial application of the NLRA, because the threats giving rise to the unfair labor practice charge in this case occurred in Japan. Second, it contends that the Board erred in holding that the Japanese unions were acting as the agents of the ILA when they threatened to boycott products loaded by nonunion labor.

As an initial matter, we note that the Board in its decision below stated explicitly that "[n]o direct conduct by the [ILA] is alleged to be unlawful in this case. All the allegedly unlawful acts were committed solely by the Japanese Unions." ILA, 313 N.L.R.B. at 414, 1993 WL 497343. Therefore, because the Board's decision appears to focus almost entirely on conduct taken outside the United States, a substantial question is raised regarding the extraterritorial reach of the NLRA. However, we need not resolve that issue to dispose of this case. We are required to address the question whether the NLRA reaches acts taken in Japan by Japanese unions only if we first agree with the Board that the Japanese unions served as the agents of the ILA in undertaking the conduct at issue, for only then are actions occurring on foreign soil potentially brought within the purview of the Act. We will indulge an assumption that the Board has applied the NLRA only domestically in this case, for our conclusion with respect to the Board's agency theory fully resolves the dispute between the parties.

The Board itself acknowledges that its agency law theory is the linchpin of its unfair labor practice finding. The Board held,<sup>1</sup> and its counsel conceded at oral argument, that, standing alone, the ILA's request for assistance from Japanese unions in its ongoing dispute with nonunion Florida stevedoring companies was not unlawful under the NLRA. An examination of the plain language of the statute

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« up demonstrates the propriety of the Board's concession. NLRA section 8(b)(4)(B) makes it an unfair labor practice

for a labor organization or its agents ... (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is--

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(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person.

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29 U.S.C. Sec. 158(b)(4)(B). Thus, section 8(b)(4)(i)(B) prohibits a union from inducing or encouraging other employees to refuse to handle goods with an object of forcing a person to cease doing business with another--i.e., it prohibits conduct much like that undertaken by the ILA here. However, subsection (i) prohibits such conduct only where the employees who received the inducements or encouragement were themselves employed by a "person engaged in commerce or in an industry affecting commerce." *Id.* Sec. 158(b)(4)(i). Here, of course, the recipients of the ILA's inducements were employed by Japanese stevedoring companies, and it is well-established that foreign workers in foreign countries are not engaged in commerce within the meaning of the Act.<sup>2</sup> See *Benz v. Compania Naviera Hidalgo*, 353 U.S. 138, 144, 77 S.Ct. 699, 702, 1 L.Ed.2d 709 (1957) (noting NLRA's focus on "the American workingman" and describing the "boundaries of the Act as including only the workingmen of our own country and its possessions") (internal quotations omitted); see also *Ingres S.S. Co. v. International Maritime Workers Union*, 372 U.S. 24, 27, 83 S.Ct. 611, 613, 9 L.Ed.2d 557 (1963) ("The Board's jurisdiction to prevent unfair labor practices ... is based upon circumstances 'affecting commerce,' and we have concluded that maritime operations of foreign-flag ships employing alien seamen are not in 'commerce' within the meaning of [the NLRA]."). Accordingly, the ILA's inducements were not among those targeted by section 8(b)(4)(i)(B).

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The Board's counsel also conceded at oral argument that, had the Japanese unions acted without any request for help from the ILA, their acts would have been beyond the scope of the NLRA. This concession also was well-founded. Although NLRA section 8(b)(4)(ii)(B) by its terms prohibits a labor organization from threatening or coercing a person to boycott the products of a third party, the threats in this case issued from Japanese unions operating in Japan. Accordingly, any unfair labor practice charge against the Japanese unions under section 8(b)(4)(ii)(B) would have required a purely extraterritorial application of the NLRA--an application that we could condone only upon finding "the affirmative intention of the Congress clearly expressed." *EEOC v. Arabian American Oil Co.*, 499 U.S. 244, 248, 111 S.Ct. 1227, 1230, 113 L.Ed.2d 274 (1991) (quoting *Benz*, 353 U.S. at 147, 77 S.Ct. at 704). However, the Supreme Court in a long line of cases has held that Congress never intended the Act to apply to labor disputes involving foreign workers operating under foreign laws on foreign-flag ships, see, e.g., *American Radio Ass'n v. Mobile S.S. Ass'n, Inc.*, 419 U.S. 215, 221-25, 95 S.Ct. 409, 413-15, 42 L.Ed.2d 399 (1974); *Windward Shipping v. American Radio Ass'n*, 415 U.S. 104,

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« up 113-15, 94 S.Ct. 959, 964-65, 39 L.Ed.2d 195 (1974); *Inces S.S. Co.*, 372 U.S. at 26-28, 83 S.Ct. at 612-13; *McCulloch v. Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10, 19-22, 83 S.Ct. 671, 676-78, 9 L.Ed.2d 547 (1963); *Benz*, 353 U.S. at 143-44, 77 S.Ct. at 702, and we certainly can conceive of no basis for a different result where the relevant dispute occurs on foreign soil, cf. *Labor Union of Pico Korea v. Pico Prods., Inc.*, 968 F.2d 191, 194-96 (2d Cir.) (holding section 301 of LMRA inapplicable to labor contract executed between South Korean union and wholly-owned South Korean subsidiary of American corporation), cert. denied, --- U.S. ---, 113 S.Ct. 493, 121 L.Ed.2d 431 (1992); *RCA OMS, Inc.*, 202 N.L.R.B. 228, 1973 WL 12138 (1973) (holding NLRA inapplicable to employees located in Greenland). Of course, if the ILA itself had issued the threats involved in this case, the Board could have taken action against that union under section 8(b)(4)(ii)(B), for the ILA is a domestic entity. However, the undisputed facts present no basis for such a charge; the Japanese unions assisted the ILA not because they were coerced, but because they sympathized with the ILA's objectives. Thus, as the Board has acknowledged, this case gives rise to an unfair labor practice under NLRA section 8 (b)(4)(ii)(B) only if the threats issued by the Japanese unions somehow may be attributed to the ILA. Accordingly, we turn to the parties' agency law arguments.

In considering questions of agency under the NLRA, we must construe section 2 (13), which provides that, "[i]n determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling." 29 U.S.C. Sec. 152(13). Congress added this provision to the Act as part of the LMRA, and the legislative history of that statute makes clear that it was designed to render "both employers and labor organizations ... responsible for the acts of their agents in accordance with the ordinary common law rules of agency."<sup>3</sup> H.R.CONF.REP. NO. 510, 80th Cong., 1st Sess. 36 (1947) U.S.CODE CONG.SERV. 1947, pp. 1135, 1142; see also 93 CONG.REC. 6859 (1947) (statement of Sen. Taft) (stating agreement of conference committee that "the ordinary law of agency should apply to employer and union representatives"); *Local 1814, ILA v. NLRB*, 735 F.2d 1384, 1394 (D.C.Cir.) ("Beyond doubt, the legislative intent of [section 2(13)] was to make the ordinary law of agency applicable to the attribution of individual acts to both employers and unions."), cert. denied, 469 U.S. 1072, 105 S.Ct. 565, 83 L.Ed.2d 506 (1984).

For this reason, we accord only limited deference to the Board's agency law analysis. Our cases establish that, when confronted with a question regarding the meaning of an NLRA provision incorporating common law agency principles, we need not defer to the agency's judgment as we normally might under the doctrine of *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843, 104 S.Ct. 2778, 2781, 81 L.Ed.2d 694 (1984). See *Aurora Packing Co. v. NLRB*, 904 F.2d 73, 75-76 (D.C.Cir.1990) ("Deference under the Chevron doctrine ... does not apply here because of the 1947 congressional direction that the Board and the courts apply the common law of agency to the issue.") (footnote omitted); *North Am. Van Lines, Inc. v. NLRB*, 869 F.2d 596, 598 (D.C.Cir.1989) (stating that "the court is not to extend any great amount of deference" to NLRB's interpretation of statutory provision incorporating common law of agency) (internal quotations omitted).<sup>4</sup> Nevertheless, because even common law agency questions are "permeated at the fringes by conclusions drawn from the factual setting of the particular industrial dispute," *North Am. Van Lines, Inc.*, 869 F.2d at 599, our standard of review is not de novo. Rather, in a situation of this sort, we must give due weight to the Board's judgment to the extent that "it made a choice between two fairly conflicting views." *Id.* (quoting *NLRB v. United Ins. Co.*, 390 U.S. 254,

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« up 260, 88 S.Ct. 988, 991, 19 L.Ed.2d 1083 (1968)).<sup>5</sup>

Applying that standard here, we cannot say that the Board's decision represented "a choice between two fairly conflicting views," for, in our view, the Japanese unions were in no sense the agents of the ILA. It is a fundamental principle of hornbook agency law that an agency relationship arises only where the principal "has the right to control the conduct of the agent with respect to matters entrusted to him." RESTATEMENT (SECOND) OF AGENCY Sec. 14 (1958); accord *Eyerman v. Mary Kay Cosmetics, Inc.*, 967 F.2d 213, 219 (6th Cir.1992); *United Packinghouse Workers v. Maurer-Neuer, Inc.*, 272 F.2d 647, 648 (10th Cir.1959), cert. denied, 362 U.S. 904, 80 S.Ct. 611, 4 L.Ed.2d 555 (1960); see also, e.g., *Edwards v. John Hancock Mut. Life Ins. Co.*, 973 F.2d 1027, 1031-33 (1st Cir.1992) (finding that trustees were agents of insurance company where deeds of trust empowered company to control conduct of trustees with respect to property at issue). Indeed, as to this requirement, the Restatement's reporter comments that, "[i]f the existence of an agency relation is not otherwise clearly shown, as where the issue is whether ... an agency has been created, the fact that it is understood that the person acting is not to be subject to the control of the other as to the manner of performance determines that the relation is not that of agency." RESTATEMENT (SECOND) OF AGENCY Sec. 14 cmt. b. Here, the ILA exercised no control over the conduct of the Japanese unions. To the contrary, the ILA and the Japanese unions are completely independent entities, bound together only by the fact that both seek to further the goals of organized labor worldwide. We discern nothing in the law of agency to support a theory transforming one union into the agent of another based upon the spirit of labor solidarity alone.

Certainly, none of the cases cited by the Board supports such a theory. Neither the Board nor any of its supporting intervenors has cited a single case involving two unions situated similarly to those here in which one has been held the agent of the other. The Board in its decision below relied heavily upon its reasoning in the previously discussed *Aero Plumbing* case, in which it attributed the actions of one local union to another. See 184 N.L.R.B. at 398. We note initially that the attribution theory adopted by the Board in that case never has received judicial approval.<sup>6</sup> Even assuming its validity, however, we find *Aero Plumbing* readily distinguishable. The two unions involved in that case were sister locals of a single parent union operating under the same collective bargaining agreement.<sup>7</sup> Therefore, the Board's decision in *Aero Plumbing* may be viewed as no more than a particularized application in the labor context of the common law principle that one agent is liable for the tortious actions of another if he or she directs such actions. See RESTATEMENT (SECOND) OF AGENCY Sec. 358(1). No matter how interpreted, however, *Aero Plumbing* involved a relationship between two unions bound by a formal affiliation and a common agreement, and, thus, the relationship was far closer than that existing between the Japanese unions and the ILA. Accordingly, it provides no support for the Board's finding of an agency relationship in this case.<sup>8</sup>

26 We also are unpersuaded by the Board's reliance on language from *Local 1814, ILA v. NLRB*, 735 F.2d at 1384. In that case, we said that

27 [t]ransplantation of ordinary agency law, which arises out of ordinary contract and tort disputes, into the NLRA context necessarily requires sensitivity to the particular circumstances of industrial labor relations. Courts have concluded that under the NLRA, agency principles must be expansively construed, including when questions of union responsibility are presented.

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Id. at 1394. However, to say that we must construe agency principles expansively under the NLRA is not to say that we may abandon the core principles of agency law. Indeed, in Local 1814 itself, we applied principles derived from the "scope of employment" branch of agency law to determine that a union officer acted as an agent of Local 1814 when he entered into an illegal kickback agreement. 735 F.2d at 1394-95. Although we inferred that the officer was authorized by the union to enter the illegal scheme based on his "actual authority over representational matters in general, together with the substantial benefits received by Local 1814 as a result [of] the entire agreement of which the kickback arrangement was an integral part," 735 F.2d at 1397, we did not discard the basic agency law rule that a principal is liable for only those acts of its agent committed within the scope of employment, nor could we have done so without also discarding our duty to apply the NLRA consistently with the intent of Congress.

Equally inapposite are cases in which courts have held employers responsible for the actions of employees and others conducting anti-union campaigns. Chief among such cases are the Supreme Court's decisions in *International Ass'n of Machinists v. NLRB*, 311 U.S. 72, 61 S.Ct. 83, 85 L.Ed. 50 (1940), and *H.J. Heinz Co. v. NLRB*, 311 U.S. 514, 61 S.Ct. 320, 85 L.Ed. 309 (1941). In the former case, the Court affirmed a Board decision holding an employer responsible for the actions of four senior employees who, in conversations with coworkers during the weeks preceding a plant election pitting one union against another, stressed the employer's preference for one union and suggested that employees siding with that union would receive better treatment--all with the apparent acquiescence of the employer itself. See 311 U.S. at 76-77, 61 S.Ct. at 86-87. Reviewing these circumstances, the Court stated that, "where the employees would have just cause to believe that solicitors professedly for a labor organization were acting for and on behalf of the management, the Board would be justified in concluding that they did not have the complete and unhampered freedom of choice which the Act contemplates." Id. at 80, 61 S.Ct. at 88 (footnote omitted). Similarly, in *H.J. Heinz Co.*, 311 U.S. at 520-21, 61 S.Ct. at 323, the Court attributed to an employer the actions of superintendents and foremen who conducted a zealous anti-union campaign, where the employer failed to disavow their efforts even after receiving a complaint from a union representative. Lower courts have extended the rationale of such cases to hold employers responsible for the actions of even some non-employee third parties. See, e.g., *Cagle's Inc. v. NLRB*, 588 F.2d 943, 947-48 (5th Cir.1979) (holding employer responsible for actions of local chamber of commerce official who campaigned against union and acted as de facto intermediary between union committee and employer).

However, as the foregoing description suggests, the holdings of *International Association of Machinists* and its progeny turn upon the reasonable perceptions of those involved in the collective bargaining process. Thus, the courts in those cases held employers liable for the unlawful conduct of third parties when, under all the circumstances, employees reasonably could have believed that such third parties were acting for and on behalf of the employer.<sup>9</sup> See 311 U.S. at 80, 61 S.Ct. at 88 (attributing acts of employees to employer "where the employees would have just cause to believe" that employer was responsible); *Cagle's, Inc.*, 588 F.2d at 948 ("The record fully supports the Board's finding that [the chamber of commerce official] represented corporate policy in the eyes of union members."). Here, by contrast, nothing in the record suggests that any party perceived the Japanese unions to be the agents of the ILA, nor that such a perception would have been reasonably justified had it arisen. Thus, nothing in this line of precedent supports the theory that one union may become the agent of a second, completely

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independent union merely by responding to a request for assistance in a labor dispute.

Indeed, at bottom, the Board's theory depends not upon a liberal construction of agency principles, but upon a complete abrogation of such principles. Were we to accept the Board's theory, the notion of "agency" under the NLRA would become a limitless doctrine to be applied wherever it becomes necessary to attribute the actions of one entity to another in order to effectuate what the Board perceives to be the purposes of the Act. This view ignores the fact that Congress in the NLRA enacted specific--not blanket--prohibitions on certain conduct, including secondary boycotts. As the Supreme Court has stated, "[w]hatever may have been said in Congress preceding the passage of the Taft-Hartley Act concerning the evil of all forms of 'secondary boycotts' and the desirability of outlawing them, it is clear that no such sweeping prohibition was in fact enacted." *Local 1976, United Bhd. of Carpenters*, 357 U.S. at 98, 78 S.Ct. at 1015. Instead, the NLRA's secondary boycott provision targets specific union conduct by means of carefully circumscribed legislative language, see *id.*, and we would subvert rather than effectuate the statute by allowing the Board to nullify its express limitations through the application of an infinitely malleable agency theory. We are not shaken in this conclusion by the Board's claim that legal principles in the labor arena must expand to address newly emerging problems on an international scale. If the nation's increasingly global economy requires an expansion of federal labor law, it is for Congress--not the Board or the federal courts--to make the necessary changes. See *Arabian American Oil Co.*, 499 U.S. at 259, 111 S.Ct. at 1236 (holding that Title VII does not apply extraterritorially, but noting that "Congress, should it wish to do so, may ... amend Title VII and in doing so will be able to calibrate its provisions in a way that we cannot.").

Finally, we observe that, in addition to its other flaws, the agency theory propounded by the Board in this case is impractical. The Board at oral argument acknowledged that the ILA could have evaded an unfair labor practice finding in this case merely by publicizing its labor dispute with Florida stevedoring companies and then disclaiming responsibility for any assistance offered by other unions, for in that case a critical element of the Board's agency theory--the ILA's request for specific assistance--would be absent. Moreover, the Board's theory appears to have little application beyond this case. Even were we to uphold the Board's decision, unions in future cases surely could seek aid from their foreign counterparts without expressly soliciting such assistance as the ILA did here.

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In sum, we hold that the Board erred in attributing the actions of the Japanese unions to the ILA for the purpose of an unfair labor practice finding under NLRA section 8(b)(4)(ii)(B). In this regard, to the extent that the Eleventh Circuit reached a contrary conclusion, we respectfully disagree. Bereft of its underlying agency theory, the Board's cease and desist order in this case merely prohibits the ILA from requesting assistance from the Japanese unions--an action that, as we have said, the Board has conceded to be lawful. Thus, we grant the petition for review.

### III. CONCLUSION

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For the foregoing reasons, this case is remanded to the Board for further proceedings consistent with this opinion.

So ordered.

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In noting that its remedial order in this case had no direct impact on the Japanese unions, the Board explained that "[t]his is not to say that the [ILA's] request, standing alone, was the unfair labor practice. As explained above, the unfair labor practice was the conduct of the Japanese Unions, for which the Respondent [ILA] is responsible." *Id.* at 418 n. 17, 1993 WL 497343

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<sup>2</sup>

The NLRA defines the term "commerce" to mean

trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

29 U.S.C. Sec. 152(6). It also defines the term "affecting commerce" to mean

in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

*Id.* Sec. 152(7).

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As the legislative history demonstrates, see 93 CONG.REC. 6859 (statement of Sen. Taft), the 80th Congress drafted the specific language of NLRA section 2(13), providing that neither authorization nor ratification shall be dispositive of agency issues, to overrule the Supreme Court's then-recent decision in *United Bhd. of Carpenters v. United States*, 330 U.S. 395, 67 S.Ct. 775, 91 L.Ed. 973 (1947). The Court in that case held that labor unions and their members could be held responsible for the illegal actions of individual officers or members committed during labor disputes only if they "actually participated, gave prior authorization, or ratified such acts after actual knowledge of their perpetration." *Id.* at 403, 67 S.Ct. at 779 (footnote omitted). As Justice Frankfurter noted in dissent, the majority's decision imposed evidentiary burdens that exceeded those established by the common law of agency. See *id.* at 417-20, 67 S.Ct. at 786-88 (Frankfurter, J., dissenting). The Congress that passed the LMRA therefore designed section 2(13) to "restore[ ] the law of agency as it has been developed at common law." 93 CONG.REC. 6859 (statement of Sen. Taft)

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As the court noted in *Aurora Packing Co.*,

Chevron presumes that Congress delegated primarily to executive branch agencies the interpretation of ambiguous [statutory] terms ... in part because of an agency's expertise, and in part because of the policy role inherent in that function--which the Court thought Congress prefers the agencies rather than the nonelected judiciary to perform. See 467 U.S. at 843-44[, 104 S.Ct. at 2781-82]. When Congress indicated that it wanted the judge-made common law of agency to govern the construction of [a statutory provision], it rejected the basis of these presumptions.

904 F.2d at 76 n. 1 (citation omitted); see also *NLRB v. United Ins. Co.*, 390 U.S. 254, 260, 88 S.Ct. 988, 991, 19 L.Ed.2d 1083 (1968) (stating that "a determination of pure agency law involve[s] no special administrative expertise that a court does not possess").

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The result we reach in this case would be the same even if the Chevron doctrine were fully applicable. For one thing, there is no doubt that the Board's decision is not

« UP supported by the plain meaning of section 2(13). See *Chevron*, 467 U.S. at 842-43, 104 S.Ct. at 2781 ("If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress."). And, even assuming, arguendo, that section 2(13) is ambiguous in its definition of "agent," we would reject the Board's interpretation as wholly unreasonable under well-established principles of agency law. See *id.* at 844, 104 S.Ct. at 2782 (stating that court must defer to agency's "reasonable interpretation" of ambiguous language in statute it administers)

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Although the labor dispute at issue in *Aero Plumbing* eventually reached the Ninth Circuit, the court did not review the Board's attribution theory, but rather considered only the enforceability of a labor contract containing provisions obtained by the union through unfair labor practices. See *NLRB v. Southern California Pipe Trades Dist. Council No. 16*, 449 F.2d 668 (9th Cir.1971)

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Both were affiliated with the Southern California Pipe Trades District Council No. 16 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO. See 184 N.L.R.B. at 398-99, 400

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The same is true of another case cited by the Board in its decision below, *ILA (Shipside Packing Co.)*, 227 N.L.R.B. 659, 1976 WL 7703 (1976). In that case, the Board held *ILA Local 333* responsible for the unlawful activities of *ILA Local 953*, stating that *Local 333* "was aware of the activities, knew they were on behalf of the employees it represents, and, therefore, is responsible for the activities found illegal herein." *Id.* at 659 n. 1, 1976 WL 7703. As the foregoing recitation of facts suggests, both *Local 333* and *Local 953* were sister locals of the *ILA*

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In this respect, this line of precedent appears to proceed upon a theory similar to the common law agency doctrine of apparent authority, which holds a principal responsible for the acts of an alleged agent where the principal, "by written or spoken words or any other conduct ..., reasonably interpreted, causes [a] third person to believe that the principal consents to have the act done on his behalf by the person purporting to act for him." *RESTATEMENT (SECOND) OF AGENCY* Sec. 27

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**FOR PUBLICATION**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE NINTH CIRCUIT**

JANE DOE I; JANE DOE II; JOHN DOE I; JOHN DOE II individually and on behalf of Wal-Mart workers in Shenzhen China; JANE DOE III; JANE DOE IV, individually and on behalf of Wal-Mart workers in Dhaka, Bangladesh; JANE DOE V; JANE DOE VI; JOHN DOE III, individually and on behalf of Wal-Mart workers in Bogor, Indonesia; JANE DOE VII; JANE DOE VIII individually and on behalf of Wal-Mart workers in Mastaphia Swaziland; JANE DOE IX; JANE DOE X; JANE DOE XI; JOHN DOE IV, individually and on behalf of Wal-Mart workers in Managua and Sebaco, Nicaragua; KRISTINE DALL; BRUCE REEVES; CHRISTINE KAPOSY; SHARLOTTE VILLACORTA, individually and on behalf of similarly situated California workers, c/o 8530 Stanton Avenue, Buena Park, CA 90622,

*Plaintiffs-Appellants,*

v.

WAL-MART STORES, INC.,

*Defendant-Appellee.*

No. 08-55706  
D.C. No.  
2:05-cv-07307-AG  
OPINION

Appeal from the United States District Court  
for the Central District of California  
Andrew J. Guilford, District Judge, Presiding

Argued and Submitted  
May 8, 2009—Pasadena, California

Filed July 10, 2009

Before: Betty B. Fletcher, Raymond C. Fisher, and  
Ronald M. Gould, Circuit Judges.

Opinion by Judge Gould

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**COUNSEL**

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Daniel J. Popeo, Richard A. Samp, Washington Legal Foundation, Washington, D.C.; Michael A. Carvin, Daniel R. Volkmuth, Jones Day, Washington, D.C., for the amicus Washington Legal Foundation and Allied Educational Foundation.

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**OPINION**

GOULD, Circuit Judge:

The appellants were among the plaintiffs in the district court and are employees of foreign companies that sell goods to Wal-Mart Stores, Inc. (“Wal-Mart”). They brought claims against Wal-Mart based on the working conditions in each of their employers’ factories.<sup>1</sup> These claims relied primarily on a code of conduct included in Wal-Mart’s supply contracts, specifying basic labor standards that suppliers must meet. The district court dismissed the complaint for failure to state a

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<sup>1</sup>The complaint also included claims by California plaintiffs, who were employees of Wal-Mart’s competitors. However, this appeal is brought only by the foreign plaintiffs.

claim under Federal Rule of Civil Procedure 12(b)(6). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

## I

Plaintiffs are employees of Wal-Mart's foreign suppliers in countries including China, Bangladesh, Indonesia, Swaziland, and Nicaragua. Plaintiffs allege the following relevant facts, which we take as true for purposes of this appeal:

In 1992, Wal-Mart developed a code of conduct for its suppliers, entitled "Standards for Suppliers" ("Standards"). These Standards were incorporated into its supply contracts with foreign suppliers. The Standards require foreign suppliers to adhere to local laws and local industry standards regarding working conditions like pay, hours, forced labor, child labor, and discrimination. The Standards also include a paragraph entitled "RIGHT OF INSPECTION":

To further assure proper implementation of and compliance with the standards set forth herein, Wal-Mart or a third party designated by Wal-Mart will undertake affirmative measures, such as on-site inspection of production facilities, to implement and monitor said standards. Any supplier which fails or refuses to comply with these standards or does not allow inspection of production facilities is subject to immediate cancellation of any and all outstanding orders, refuse [sic] or return [sic] any shipment, and otherwise cease doing business [sic] with Wal-Mart.

Thus, each supplier must acknowledge that its failure to comply with the Standards could result in cancellation of orders and termination of its business relationship with Wal-Mart.

Wal-Mart represents to the public that it improves the lives of its suppliers' employees and that it does not condone any violation of the Standards. However, Plaintiffs allege that

Wal-Mart does not adequately monitor its suppliers and that Wal-Mart knows its suppliers often violate the Standards. Specifically, Plaintiffs claim that in 2004, only eight percent of audits were unannounced, and that workers are often coached on how to respond to auditors. Additionally, Plaintiffs allege that Wal-Mart's inspectors were pressured to produce positive reports of factories that were not in compliance with the Standards. Finally, Plaintiffs allege that the short deadlines and low prices in Wal-Mart's supply contracts force suppliers to violate the Standards in order to satisfy the terms of the contracts.

Plaintiffs filed a class action lawsuit in California Superior Court in 2005 and Wal-Mart removed the case to federal court based on diversity of citizenship. Plaintiffs then filed an amended complaint in federal court, which is the complaint relevant here. Wal-Mart filed a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. The district court granted the motion in a written order, and judgment was entered on March 27, 2008.<sup>2</sup> Plaintiffs timely appealed.

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<sup>2</sup>The district court granted Wal-Mart's motion to dismiss on April 2, 2007, but granted Plaintiffs 21 days' leave to amend. Instead of amending, Plaintiffs appealed; however, because no final judgment had been issued the parties stipulated to dismiss that appeal. The parties returned to district court and executed a stipulation stating that the April 2, 2007 order granting Wal-Mart's motion to dismiss was a final judgment. Wal-Mart now summarily contends that we might be without jurisdiction because the stipulation executed in the district court did not expressly reserve Plaintiffs' right to appeal. However, we conclude that we have jurisdiction because it is readily apparent that Plaintiffs did not give their "actual consent" to the entry of judgment on the merits against them; rather, they executed the stipulation so that they would have a final judgment to appeal. *See Tapper v. Comm'r of Internal Revenue*, 766 F.2d 401, 403 (9th Cir. 1985) (stating that we have jurisdiction when a stipulation is entered without a party's "actual consent" to judgment against that party).

## II

We review a dismissal under Rule 12(b)(6) *de novo*. *Witt v. Dep't of the Air Force*, 527 F.3d 806, 810 (9th Cir. 2008). We take a plaintiff's allegations in the complaint as true, but we are "not required to indulge unwarranted inferences." *Metzler Inv. GMBH v. Corinthian Colls., Inc.*, 540 F.3d 1049, 1064 (9th Cir. 2008).

## III

Plaintiffs present four distinct legal theories, all of which aim to establish that the Standards and California common law provide substantive obligations that can be enforced by the foreign workers against Wal-Mart: (1) Plaintiffs are third-party beneficiaries of the Standards contained in Wal-Mart's supply contracts;<sup>3</sup> (2) Wal-Mart is Plaintiffs' joint employer; (3) Wal-Mart negligently breached a duty to monitor the suppliers and protect Plaintiffs from the suppliers' working conditions; (4) Wal-Mart was unjustly enriched by Plaintiffs' mistreatment. Applying California law, we address each claim in turn.

## A

[1] We first address Plaintiffs' third-party beneficiary theory. The common law in California and elsewhere establishes that, as recited in the applicable Restatement (Second) of Contracts: "A promise in a contract creates a duty in the promisor to any intended beneficiary to perform the promise, and the intended beneficiary may enforce the duty." Restatement (Second) of Contracts § 304 (1981). However, the

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<sup>3</sup>The parties disputed before the district court whether California or Arkansas law applies to Plaintiffs' third-party beneficiary contract claim. However, we need not now address that issue because the parties agree that both states apply the Restatement (Second)'s approach to third-party beneficiaries.

Restatement also explains that a beneficiary is only “an intended beneficiary if recognition of a right to performance in the beneficiary is appropriate to effectuate the intention of the parties . . . .” Restatement (Second) of Contracts § 302(1). Contract interpretation is a question of law that we review *de novo*. See *Milenbach v. Comm’r of Internal Revenue*, 318 F.3d 924, 930 (9th Cir. 2003).

Plaintiffs argue that Wal-Mart promised the suppliers that it would monitor the suppliers’ compliance with the Standards, and that Plaintiffs are third-party beneficiaries of that promise to monitor. Plaintiffs rely on this language in the Standards: “Wal-Mart will undertake affirmative measures, such as on-site inspection of production facilities, to implement and monitor said standards.” We agree with the district court that this language does not create a duty on the part of Wal-Mart to monitor the suppliers, and does not provide Plaintiffs a right of action against Wal-Mart as third-party beneficiaries.

[2] The language and structure of the agreement show that Wal-Mart reserved the right to inspect the suppliers, but did not adopt a duty to inspect them. The language on which Plaintiffs rely is found in a paragraph entitled “Right of Inspection,” contained in a two-page section entitled “Standards for Suppliers.” And after stating Wal-Mart’s intention to enforce the Standards through monitoring, the paragraph elaborates the potential consequences of a supplier’s failure to comply with the Standards—Wal-Mart may cancel orders and cease doing business with that supplier—but contains no comparable adverse consequences for Wal-Mart if Wal-Mart does not monitor that supplier. Because, as we view the supply contracts, Wal-Mart made no promise to monitor the suppliers, no such promise flows to Plaintiffs as third-party beneficiaries. See *Marina Tenants Ass’n v. Deauville Marina Dev. Co.*, 226 Cal. Rptr. 321, 327 (Cal. Ct. App. 1986) (“A third party beneficiary cannot assert greater rights than those of the promisee under the contract.”).

[3] Plaintiffs alternatively argue that they are third-party beneficiaries of the suppliers' promises to maintain certain working conditions, and that Plaintiffs may therefore sue Wal-Mart. This theory fails because Wal-Mart was the promisee vis-a-vis the suppliers' promises to follow the Standards, and Plaintiffs have not plausibly alleged a contractual duty on the part of Wal-Mart that would extend to Plaintiffs. *See Martinez v. Socoma Cos.*, 521 P.2d 841, 844-45 (Cal. 1974) (holding a "donee" third-party beneficiary may recover only against the party that undertook a promise under the contract for the benefit of the beneficiary).<sup>4</sup>

[4] Plaintiffs' allegations are insufficient to support the conclusion that Wal-Mart and the suppliers intended for Plaintiffs to have a right of performance against Wal-Mart under the supply contracts. *See* Restatement (Second) of Contracts § 302(1). We therefore conclude that Plaintiffs have not stated a claim against Wal-Mart as third-party beneficiaries of any contractual duty owed by Wal-Mart, and we affirm the district court's dismissal of the third-party beneficiary contract claim.

## B

We next address Plaintiffs' theory that Wal-Mart was Plaintiffs' joint employer, such that they can "sue Wal-Mart directly for any breach of contract or violation of labor laws." We conclude, to the contrary, that Wal-Mart cannot be considered Plaintiffs' employer on the facts alleged.

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<sup>4</sup>The Restatement does suggest that a promisee may be liable to a third-party beneficiary when "the performance of the promise will satisfy an obligation of the promisee to pay money to the beneficiary." Restatement (Second) of Contracts § 302(1)(a). The third-party creditor in such a case is commonly known as a "creditor beneficiary." Restatement (Second) of Contracts § 302, cmt. d. However, Plaintiffs have alleged no prior obligation by Wal-Mart that could support finding a contractual duty owed to Plaintiffs by Wal-Mart, and so the suppliers' employees cannot be considered to be creditor beneficiaries.

[5] The key factor to consider in analyzing whether an entity is an employer is “the right to control and direct the activities of the person rendering service, or the manner and method in which the work is performed.” *Serv. Employees Int’l Union v. County of L.A.*, 275 Cal. Rptr. 508, 513 (Cal. Ct. App. 1990) (internal quotations and citation omitted). “A finding of the right to control employment requires . . . a comprehensive and immediate level of ‘day-to-day’ authority over employment decisions.” *Vernon v. State*, 10 Cal. Rptr. 3d 121, 132 (Cal. Ct. App. 2004).

[6] Here, Plaintiffs’ allegations do not support the conclusion that Wal-Mart is Plaintiffs’ employer. Plaintiffs’ general statement that Wal-Mart exercised control over their day-to-day employment is a conclusion, not a factual allegation stated with any specificity. We need not accept Plaintiffs’ unwarranted conclusion in reviewing a motion to dismiss. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (stating that “a plaintiff’s obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do”) (internal quotation marks and alterations omitted); *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1953 (2009) (holding that the pleading requirements stated in *Twombly* apply in all civil cases); *Adams v. Johnson*, 355 F.3d 1179, 1183 (9th Cir. 2004) (stating that “conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss”). Plaintiffs allege specifically that Wal-Mart contracted with suppliers regarding deadlines, quality of products, materials used, prices, and other common buyer-seller contract terms. Such supply contract terms do not constitute an “immediate level of ‘day-to-day’ ” control over a supplier’s employees so as to create an employment relationship between a purchaser and a supplier’s employees. *Vernon*, 10 Cal. Rptr. 3d at 132.

Plaintiffs also allege that Wal-Mart exercised control over their employment through Wal-Mart’s promise to monitor the

suppliers and Wal-Mart's system for monitoring. However, we have already concluded that Wal-Mart undertook no duty to monitor the suppliers and the monitoring and inspections by Wal-Mart were performed to determine whether suppliers were meeting their contractual obligations, not to direct the daily work activity of the suppliers' employees.

[7] Plaintiffs have provided no persuasive support for finding a common law employment relationship between a purchaser and its suppliers' employees on the facts of this case.<sup>5</sup>

We conclude that the joint employer theory should here be rejected, and we hold that Wal-Mart is not Plaintiffs' employer.

### C

We next address Plaintiffs' negligence claims, which Plaintiffs bring under four distinct theories: third-party beneficiary negligence, negligent retention of control, negligent undertaking, and common law negligence. Whichever theory is invoked, however, we conclude that Wal-Mart did not owe Plaintiffs a common-law duty to monitor Wal-Mart's suppliers or to prevent the alleged intentional mistreatment of Plaintiffs by the suppliers. Without such a duty, Plaintiffs' negligence theories do not state a claim. *See Paz v. State*, 994 P.2d 975, 980-81 (Cal. 2000) ("The threshold element of a

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<sup>5</sup>The cases cited by Plaintiffs regarding employment relationships are inapposite. Some of Plaintiffs' authorities rely on specific statutory and regulatory schemes, like the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201-219, that use a definition of "employer" inapplicable to this context. *See, e.g., Bureerong v. Uvawas*, 922 F. Supp. 1450, 1467 (C.D. Cal. 1996) (applying the FLSA's definition of "employer," which covers entities "who might not qualify as [employers] under a strict application of traditional agency law principles"). Other cases cited by Plaintiffs involved significantly more control by the defendant over employment decisions than existed in this case. *See, e.g., Loomis Cabinet Co. v. OSHRC*, 20 F.3d 938, 942 (9th Cir. 1994) (where the alleged employer "owned the workshop and all the equipment" and "participated to a great extent in . . . hiring and firing").

cause of action for negligence is the existence of a duty . . . .”).

[8] Plaintiffs’ “third-party beneficiary” negligence theory relies on the assumption that Wal-Mart owes Plaintiffs a duty under Wal-Mart’s supply contracts. Because we have already determined that no legal obligation flows from Wal-Mart to Plaintiffs under Wal-Mart’s supply contracts, Plaintiffs do not state a claim for third-party beneficiary negligence.

[9] In order to state a claim for “negligent retention of control and supervision,” Plaintiffs must allege facts that, if proven, would show that Wal-Mart exercised significant control over Plaintiffs and that “exercise of retained control *affirmatively contributed* to the employee’s injuries.” *Hooker v. Dep’t of Transp.*, 38 P.3d 1081, 1083 (Cal. 2002) (emphasis in original). We have already determined that Wal-Mart is not Plaintiffs’ employer because Wal-Mart exercised minimal or no control over the day-to-day work of Plaintiffs in the suppliers’ foreign factories. Accordingly, we hold that Wal-Mart did not owe Plaintiffs a special duty to protect Plaintiffs from the suppliers’ alleged intentional misconduct.

[10] Plaintiffs’ “negligent undertaking” theory relies on the assumption that Wal-Mart undertook to protect Plaintiffs, and therefore Wal-Mart had to exercise reasonable care in monitoring the suppliers. *See Delgado v. Trax Bar & Grill*, 113 P.3d 1159, 1175 (Cal. 2005) (stating that one who “undertakes to provide protective services to another” must exercise a duty of care). This theory fails because, as we have already concluded, Wal-Mart did not undertake any obligation to protect Plaintiffs. “[T]he scope of any duty assumed depends upon the nature of the undertaking,” *id.*, and here Wal-Mart merely reserved the right to cancel its supply contracts if inspections revealed contractual breaches by the suppliers. Any inspections actually performed by Wal-Mart were therefore gratuitous, and do not independently impose a duty on Wal-Mart to protect Plaintiffs. *Id.*

[11] Plaintiffs' "common law negligence" claim provides no additional ground for finding a duty on the part of Wal-Mart. Wal-Mart had no duty to monitor the suppliers or to protect Plaintiffs from the intentional acts the suppliers allegedly committed. Thus, Plaintiffs' theories sounding in negligence do not state a claim. *See Paz*, 994 P.2d at 980-81.

## D

[12] We turn finally to Plaintiffs' claim of unjust enrichment. Plaintiffs allege that Wal-Mart was unjustly enriched at Plaintiffs' expense by profiting from relationships with suppliers that Wal-Mart knew were engaged in substandard labor practices. Unjust enrichment is commonly understood as a theory upon which the remedy of restitution may be granted. *See* 1 GEORGE E. PALMER, LAW OF RESTITUTION § 1.1 (1st ed. 1978 & Supp. 2009); Restatement of Restitution § 1 (1937) ("A person who has been unjustly enriched at the expense of another is required to make restitution to the other."). California's approach to unjust enrichment is consistent with this general understanding: "The fact that one person benefits another is not, by itself, sufficient to require restitution. The person receiving the benefit is required to make restitution only if the circumstances are such that, as between the two individuals, it is *unjust* for the person to retain it." *First Nationwide Sav. v. Perry*, 15 Cal. Rptr. 2d 173, 176 (Cal. Ct. App. 1992) (emphasis in original).

[13] The lack of any prior relationship between Plaintiffs and Wal-Mart precludes the application of an unjust enrichment theory here. *See Smith v. Pac. Props. & Dev. Corp.*, 358 F.3d 1097, 1106 (9th Cir. 2004) (noting that a party generally may not seek to disgorge another's profits unless "a prior relationship between the parties subject to and benefitting from disgorgement originally resulted in unjust enrichment"). Plaintiffs essentially seek to disgorge profits allegedly earned by Wal-Mart at Plaintiffs' expense; however, we have already determined that Wal-Mart is not Plaintiffs' employer, and we

see no other plausible basis upon which the employee of a manufacturer, without more, may obtain restitution from one who purchases goods from that manufacturer. That is, the connection between Plaintiffs and Wal-Mart here is simply too attenuated to support an unjust enrichment claim. *See, e.g., Sperry v. Crompton Corp.*, 863 N.E.2d 1012, 1018 (N.Y. 2007) (holding that “the connection between the purchaser of tires and the producers of chemicals used in the rubber-making process is simply too attenuated to support” the purchaser’s claim of unjust enrichment).

#### IV

In sum, we conclude that Plaintiffs have not stated a claim against Wal-Mart.<sup>6</sup> Wal-Mart had no legal duty under the Standards or common law negligence principles to monitor its suppliers or to protect Plaintiffs from the suppliers’ alleged substandard labor practices. Wal-Mart is not Plaintiffs’ employer, and the relationship between Wal-Mart and Plaintiffs is too attenuated to support restitution under an unjust enrichment theory.

**AFFIRMED.**

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<sup>6</sup>Because we have determined that Plaintiffs did not state a claim under state law, we need not address Wal-Mart’s additional contentions that United States domestic law does not apply and that foreign affairs preemption bars application of state law.

# “Going Global”

An Overview of International Employment  
Issues

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## I. Introduction: Planning Your Global Strategy

The decision to “go global” is increasingly happening sooner in a company’s development. Twenty years ago, only the largest companies typically considered becoming a “multinational.” In today’s global economy, the desire to “go global” is stronger and occurs earlier because the economy is global, the market is global, supply is global, distribution chains are global, technology is global, and the labor market is global. If your company does not yet have an international presence or only limited operations outside the United States, is your company going to try to “go global” everywhere, all at once? Or is it going to phase in its operations, and if so, where first? In today’s economic climate in particular, your company’s customer market and business needs will drive the decision about the extent of your global reach. Depending on the company’s needs, companies may send employees of the U.S. parent company (e.g., a skeletal sales force) into a country to test the market before committing greater resources to the global initiative, hire locally or even utilize independent contractors. Indeed, this may have been your own company’s experience at the initial stages of its global development. While the desire to “go global” is exciting, perhaps even glamorous, and unquestionably opens up the world for business opportunity, it also creates a challenge for the company’s legal department, human resource department and its international operations to maximize potential while minimizing legal exposure on employment related issues.

Before simply establishing a non-U.S. presence or adding new territories to your company’s portfolio, it is now, more than ever, vital to consider the employment-related issues that impact on the economic viability and profitability of the decision to “go global.” For instance, some jurisdictions offer far more favorable tax opportunities than others, a subject that is beyond the scope of this paper, but that can have a significant economic effect on the bottom line. Import and export control and licensing and other regulatory practices, also outside the scope of this paper, can have a huge impact on the decision to “go global” or to embark on additional ventures in non-U.S. jurisdictions.

Similarly, some non-U.S. jurisdictions provide an employer with much more flexibility in entering into, maintaining and exiting the employment relationship than other jurisdictions; the last being extremely relevant in present times. Few jurisdictions in commercial centers, however, permit employers to exit as easily from the labor market as does the United States. For that reason, it is paramount that before a company enters a non-U.S. labor market, it consider its ongoing personnel management as well as its exit strategy should its initial in-roads not be quite as promising as initially hoped or the direction of the global initiative shift. Even if such analysis was not carried out at the outset, it is still a worthwhile exercise to undertake now, so that you become familiar with many of the legal constraints and (often mandatory) severance and collective consultation requirements that will impact on any future exit program.

## II. Who is Hiring?

### A. Permanent Establishment Considerations.

In order to exploit the possibilities in foreign markets, U.S. parent companies often hastily engage a local resident who initially works from home or travels from potential customer to potential customer, from trade show to trade show as a business consultant or sales representative. Elsewhere, U.S. employees or technical consultants may be sent abroad for prolonged periods of time. Such hasty decisions raise the potential risk of the U.S. company inadvertently creating a permanent establishment in the non-U.S. jurisdiction. Foreign tax agencies are quick to assume that a U.S. company has opened a taxable local presence if the U.S. company has personnel with negotiating or contracting powers abroad, maintains technical support services outside the U.S., or otherwise pursues revenue-producing operational activities in a foreign country. A U.S. company that unwittingly creates a permanent establishment abroad often finds itself obligated to file tax returns with a foreign tax agency, to observe local accounting standard for foreign tax purposes, and to pay higher taxes on a worldwide basis. The existence of a non-U.S. permanent establishment may also trigger registration, filing, and publication obligations for the U.S. company.

### B. Determining the Appropriate Corporate Structure: Extra-Territorial Concerns

Depending upon the circumstances driving the work abroad and the particular jurisdiction, companies have several choices in deciding how they will conduct business abroad. In some situations, the U.S. company may elect, for at least a short period of time, to simply base its employees abroad or hire in the local, foreign market. As discussed above, however, such informal “branch” practices are rarely a permanent solution, as they give rise to complex and often costly permanent establishment tax issues and directly enmesh the U.S. company in all the employment laws of the host company, exposing the U.S. company directly to foreign jurisdiction liability.

Many companies, therefore, elect to establish non-U.S. subsidiaries, which in turn hire and manage the employees overseas. Such structure allows the U.S. parent company to begin to insulate itself from the foreign jurisdiction and allows the typically smaller, foreign company to be taxed on its typically lower income than its typically larger, U.S. parent company. The use of non-U.S. subsidiaries, however, will not insulate the U.S. parent company from joint employer liability if the U.S. parent, in fact, continues to exercise the “right of control” over the employees sent to or hired overseas. In addition, some U.S. employees are reluctant to “transfer” to the non-U.S. subsidiary, as such “transfer” generally causes the employee to lose eligibility to participate in the U.S. company’s 401(k) and other uniquely U.S. employee benefit plans.

In order to allow a U.S. employee to work overseas without creating a permanent establishment and without the U.S. employee losing the ability to participate in the U.S. company’s benefit plans, companies frequently look to two different solutions: (1) “seconding” the U.S. employee to a foreign subsidiary while permitting the employee to continue to receive benefits from the U.S. company; or (2) establishing a U.S. holding company from which the U.S. employee may still receive U.S. benefits while at the same time putting some “distance” between the U.S. parent and the foreign work. Where employees are hired locally and there is no need or desire for the employee to continue in U.S. employment benefits plans, an offshore holding company may also provide some insulation between the U.S. parent company and the foreign operation and permit taxation on a more favorable basis. If, however, the U.S. parent continues to

manage or control the day-to-day activities of the employees overseas, the insulation of the U.S. parent may be limited as it is likely that a joint employer relationship will be found.

Even with the establishment of a non-U.S. subsidiary, some U.S. laws can still be “imported” into the employment relationship. For instance, the Civil Rights Act of 1964 (“Title VII”), the Age Discrimination in Employment Act (“ADEA”), and the Americans with Disabilities Act (“ADA”) all have been expressly amended by Congress to protect U.S. citizens employed abroad by non-U.S. entities that are “controlled” by the U.S. company.<sup>1</sup> Conversely, if the non-U.S. subsidiary of a U.S. parent company is not controlled by the U.S. parent employer, its U.S. citizen employees do not carry with them extraterritorial application of these U.S. employment discrimination laws. All three of these federal discrimination statutes establish basically a four factor test in determining whether the parent U.S. company maintains control over the non-U.S. subsidiary and hence whether these statutes reach beyond the territorial boundaries of the United States: (1) interrelation of operations; (2) common management; (3) centralized control of labor relations; and (4) common ownership or financial control. When these four factors are present, the U.S. citizen, even though employed by the non-U.S. subsidiary, will carry with him or her extraterritorial application of Title VII, the ADEA and ADA. Although all three of these federal discrimination statutes have an exception and provide a defense if they directly conflict with a local jurisdiction’s laws, at times, the mandates and protections of these U.S. discrimination laws fall short of a direct conflict yet nevertheless create tension with local employment laws. For instance, Title VII’s mandate that the employer take prompt, remedial measures in the event of sexual harassment may collide with the more onerous “good cause” requirements of non-U.S. jurisdictions that restrict disciplinary action or terminations. In such cases, the employer must walk a fine line between the two legal systems to avoid an affront to either.

Irrespective of whether the U.S. citizen working abroad carries with him or her Title VII, ADEA or ADA protection, the U.S. citizen will also generally have the protection of the local employment laws as do his or her fellow employees who are citizens in the foreign jurisdiction. Accordingly, U.S. citizens working abroad for a U.S. company or a foreign subsidiary controlled by the U.S. company may find themselves with both jurisdictions’ protection.

### C. Employment Relationship.

Once the corporate structure has been determined, the next step is to determine who will be the employer. If a non-U.S. subsidiary is formed, the “employer” will generally be that subsidiary. In order to avoid

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<sup>1</sup> On the other hand, two other U.S. discrimination laws, the Equal Pay Act and Civil Rights Act of 1866, expressly do not have extraterritorial application. As with most non-discrimination U.S. employment laws, extraterritorial application of U.S. employment laws generally are limited to instances where Congress has expressly allowed for such application. For instance, U.S. wage and hours laws have no extraterritorial application. Indeed, Congress amended the Fair Labor Standards Act (“FLSA”) in 1957 to remove any extraterritorial application. Accordingly, for instance, a United States citizen working in France would not be subject to either state or federal U.S. wage and hour laws, but would be subject to France’s maximum workweek of 35 hours. In the United Kingdom, U.S. citizens would be subject to U.K. wage and hour laws, but could opt-out of the law limiting the workweek to 48 hours. Similarly, the U.S. National Labor Relations Act (“NLRA”) has no extraterritorial application to the U.S. citizen working abroad, but the U.S. citizen would be afforded the protections of the local jurisdiction’s laws governing collective employment rights and representation.

needlessly enmeshing the U.S. parent company in the laws of the host country, including its employment laws, employment-related documents should generally come from the non-U.S. subsidiary, rather than the U.S. parent. It is the non-U.S. subsidiary that should make the offer, set the terms of employment, and direct the employment relationship. In order to avoid offending local employment laws or customs, it is imperative that U.S. companies not assume, or impose upon its non-U.S. subsidiary, the misconception that what works in Silicon Valley or elsewhere in the United States can simply be spun off for the non-U.S. subsidiary. Nor is it enough to take the United States offer letter, confidentiality and assignment of inventions agreement, or commission plan for that matter, and simply place it on the non-U.S. subsidiary letterhead. While the U.S. parent company may wish to strive for its employment-related documents to have some degree of continuity with and among its non-U.S. subsidiaries, the host countries' employment law will inevitably create differences in not only the style but also the content of such documents.

### III. Who is Being Hired

#### A. Independent Contractors.

Depending upon the type of work performed and the particular jurisdiction, it may be more beneficial for the U.S. company to hire independent contractors rather than enter into employment relationships. With that said, however, companies should not attempt to avoid U.S. or non-U.S. jurisdiction employment laws by characterizing the person's status as that of an independent contractor, if, in fact, the company intends to exercise a right of control over the person's work. Most non-U.S. jurisdictions, like U.S. jurisdictions, draw a distinction between employees and independent contractors. As in the United States, this determination generally focuses on "right of control" issues. Failure to properly distinguish an employee from an independent contractor can wreak havoc in a host of substantive areas such as violations of employment, tax and social security laws in multiple jurisdictions.

Not only is the proper identification and distinction between employee and independent contractor important under the non-U.S. jurisdiction's legal systems, it also has federal, and even California state law, ramifications.<sup>2</sup>

#### B. What Kind of Employee is Being Hired?

Assuming that the company has properly determined that the person is an employee rather than an independent contractor, it is then important to identify what kind of "employee" the person is. In many jurisdictions, "director" level "executive" or "managerial" employees are exempt from many of the employment statutes regulating the workplace, such as maximum work-hour restrictions, or they may be subject to a wholly different set of severance rules. Because the definition of "executive" or "management" employees varies so dramatically from jurisdiction to jurisdiction, it is also imperative that not only the job title but also the duties and responsibilities of the person be clearly understood and reflected in the employment documents to avoid confusion and liability. Nor should U.S. companies assume that simply because the person is an exempt "executive" employee under the Fair Labor Standards Enforcement Act ("FLSA"), the employee is an "executive" or "manager" under French, Japanese or Taiwanese laws, for instance. Such erroneous assumption can expose the company to legions of employment law violations.

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<sup>2</sup> Effective January 1, 2001, for instance, the California Employment Development Department ("EDD") requires that all "California businesses" must report their use of an independent contractor if it pays the contractor US\$600 or more or the business and contractor enter into a contract for payment of US\$600 or more and the independent contractor is an individual or sole proprietorship. This reporting obligation in principle also attaches to the California business even if the independent contractor performs services wholly outside of California (even abroad) if the business is "headquartered" in California. The EDD also imposes reporting obligations upon those businesses headquartered outside of California if the company has a California location, the independent contractor is engaged by the California location and the independent contractor derives income from the California location, irrespective of the location in which the independent contractor provides the services. In order to avoid this California EDD reporting obligation, California companies would be well advised for the non-U.S. subsidiary, not the California location, to engage the independent contractor who performs the services outside of the State of California.

## C. What Are Key Employment Terms?

### 1. Pre-Hire Considerations.

Even before reaching the stage of making actual employment offers, care needs to be taken to ensure that any job vacancies advertised in the foreign location and application forms used for prospective candidates fully comply with local (non-U.S.) requirements. For instance, questions about a job candidate's previous criminal convictions, or even whether someone is able to drive a car, can infringe data privacy and anti-discrimination requirements in many jurisdictions. Therefore it is never safe to assume that your standard U.S. template application forms or job advertisement style can simply be adopted outside the United States. Other pre-employment checks and requirements may present hidden dangers for companies that have not previously hired employees to work overseas. For instance, while many U.S. companies are familiar with the requirements of the federal Fair Credit and Reporting Act, 15 U.S. C. § 1681 *et seq.*, and state counterparts of that statute, other background checks, including pre-employment medicals, drug /alcohol screening and criminal conviction checks, are not the norm at least in the European Union countries and raise both cultural and potential privacy and discrimination issues. In addition, information that U.S. companies retain and transmit freely in order to confer common and desired employee benefits could, if transmitted from the European Union countries' subsidiaries to a U.S. parent company, violate a host of data privacy laws unless very specific employee's written consent is obtained in advance, or the U.S. company complies with the data privacy "Safe Harbor" or other data transfer "alternate safeguards."

### 2. Form of the Offer.

#### a. Offer letters v. employment agreements.

As a threshold matter, several non-U.S. jurisdictions, such as France, require that all employment-related documents be translated into the native language. Even in the absence of such statutory mandate, however, it is often advisable to translate key employment-related documents to avoid confusion and claims of unconscienability.

While most U.S. companies have become accustomed to an informal offer letter (or perhaps nothing at all), many non-U.S. jurisdictions require either a more formal letter or a written employment contract, setting forth specific terms and conditions of employment. As a general rule of thumb, jurisdictions with their roots in the Napoleonic Code tend to have relatively brief employment contracts (*e.g.*, France and much of Latin America), since the vast majority of employment requirements are determined by statute or in collective agreements. In these jurisdictions, the employment agreement may add new benefits and in limited situations may permit the employer to reserve some rights or greater flexibility, but the bulk of employment rights are fixed by the employment codes or collective agreements. In contrast (and with the exception of the United States), jurisdictions rooted in Anglo-Saxon law (*e.g.*, the United Kingdom, Australia, Canada) tend to "read into" offer letters or agreements the missing terms, which are often much more onerous on the employer than those that the employer could have included, if it had properly drafted the employment agreement in the first place. For this reason, properly drafted Anglo-Saxon based agreements tend to be quite long and detailed covering virtually every imaginable employment term and contingency.

In yet other jurisdictions, such as Germany, employers must be extremely careful about providing a casual offer letter in anticipation of providing a more detailed employment agreement later. In these jurisdictions, the courts may find that introducing any additional term following acceptance of employment constitutes a unilateral change in the terms and conditions of employment and cannot be imposed upon the employee without his/her consent.

For the European Union Member States, EC law has harmonized the diverging standards of national employment laws: Under EC Directive 91/533/EEC *On An Employer's Obligation to Inform Employees of the Conditions Applicable to the Contract or Employment Relationship of 14 October 1991*, employers are obligated to provide their employees with detailed written employment contracts that specify a list of issues including the identities of the parties, name and address; the place of work (where there is no fixed or main place of work, the principle that the employee may be employed at various places and the registered place of business or, where appropriate, the domicile of the employer); a brief specification or description of the work; the date of commencement of the contract or employment relationship; in the case of a temporary contract or employment relationship, the expected duration thereof; the amount of paid leave to which the employee is entitled or, where this cannot be indicated when the information is given, the procedures for allocating and determining such leave; the length of the periods of notice to be observed by the employer and the employee should their contract or employment relationship be terminated or, where this cannot be indicated when the information is given, the method for determining such periods of notice; the initial basic salary as well as any additional elements of compensation, including bonuses and other special payments and frequency of payment; the length of the employee's normal working day or week; and a general note on the collective agreements governing the employee's conditions of work.

Because many non-U.S. jurisdictions will not permit a unilateral amendment of the terms and conditions of employment once the initial employment relationship has been established, it is imperative that the initial communication with the employee extending the offer of employment be complete and provide the requisite protection for the employer and its intellectual property rights. While most non-U.S. jurisdictions will permit agreements between the employer and employee very similar to those to which Silicon Valley employers are accustomed regarding proprietary information and assignment of inventions, it is extremely important that employers address these issues at the outset in its initial communication with the employee to be hired so that issues of unilateral changes or additions do not become a problem.

**b. Proprietary Information and Invention Agreements ("PIIA").**

In many non-U.S. jurisdictions, protection of company confidential information and assignment of inventions is governed by statute, and thus, separate contractual agreements are not needed. Given the propensity for U.S. companies to require PIAs from their employees, however, many multi-nationals have begun to request PIAs from local hires and such agreements, if properly drafted, do not typically violate local laws.

**c. Side Stock Letters.**

For reasons addressed later in this paper, companies should not include reference to stock options or stock grants in the offer letter or employment agreement. Aside from the tax, corporate and securities ramifications in many jurisdictions, if stock options are included as a component of compensation in the employment contract, then the value of such options (whether exercised or not) will be included in calculation of statutorily mandated severance upon termination of employment. Accordingly, a side stock letter should be provided to the employee from the U.S. parent company to help rebut this argument. Increasingly, however, some jurisdictions, such as Spain, include the value of stock options in calculating severance even if the options are contained in a separate U.S. side letter. The concept of a side stock letter is a major exception to the general rule that employment-related documents should not come from the U.S. parent company.

#### d. Commission and Bonus Plans.

Similarly, because they are a term or condition of employment, commission and bonus plans should be presented at the time of the initial employment engagement, together with the underlying rules of these plans, and should be reviewed to ensure compliance with the local employment laws, including wage and hour laws. Indeed, in some non-U.S. jurisdictions such as Canada, commission plans (and, in fact, any plan relating to a term of employment) must be attached to the original offer letter. Many jurisdictions tightly regulate by statute when commissions are earned and protect employees from what they perceive as wage forfeitures. Common U.S. boilerplate language allowing the company to modify its commission plans at any time unilaterally may also conflict with the employment laws in many jurisdictions, although they may have a psychological benefit. On the other hand, in many jurisdictions it is helpful to provide that a commission plan expires after a certain period of time and then to introduce a new plan in order to mitigate vested rights issues.

#### e. Other Employment Policies.

In addition to ensuring that the employer has properly crafted the initial employment-related documents, some non-U.S. jurisdictions also require the employer to maintain written disciplinary and/or work rules, which often are incorporated into the employment relationship and, importantly, have contractual status. Still other jurisdictions have prevalent work councils or collective bargaining representatives with whom management must consult, and in many cases reach agreement, before seeking to introduce changes to employment terms. Work council and collective bargaining agreements may be imposed at a national level within a particular industry sector or alternatively, are a product of collective negotiation at a particular foreign site. Often such agreements may remove a significant amount of discretion over the question of salary, overtime pay, holidays or even working hours and in some instances may preempt “deals” that could otherwise be reached with individual employees themselves.

### 3. Duration of Employment.

Once the form of the initial employment engagement is determined, the employer must decide its terms. While “at will” employment clauses are typical in the United States and expressly recommended within California and most other jurisdictions within the United States, very few non-U.S. jurisdictions recognize, or even tolerate, such language or concept. The vast majority of jurisdictions in the commercial centers of the world do not recognize the concept of employment “at will” or, if they do, will only recognize the “at will” concept for a relatively short “probationary” or “trial” period, which differs from jurisdiction to jurisdiction.<sup>3</sup> In the vast majority of non-U.S. commercial jurisdictions, the law requires that employers have “good cause” to terminate the employment relationship, or at a minimum requires statutory notice and/or severance pay in the absence of demonstrable “good cause.”

And, unlike in the United States where economic forces resulting in a layoff or plant closures are considered “good cause,” as a matter of law, to terminate the employment relationship,<sup>4</sup> many jurisdictions have specific and onerous protocols and costly severance requirements before an employee

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<sup>3</sup> In most jurisdictions that recognize probationary periods, the period must be agreed upon by the employee in writing and before the employee commences services.

<sup>4</sup> Although U.S.-mass layoffs and plant closings may trigger the Workers Adjustment and Retraining Act (“WARN”) and its notice provisions in the United States as well as similar state statutes.

can be laid off. In Japan, for instance, an economic layoff should only be considered as a matter of last resort and then will typically expose the employer to one or more years' of negotiated severance pay and benefits. In France, an economic layoff can effectively be stopped by the courts if specific time periods for consultation and agreement on a social plan are ignored, which can prevent management from taking further action and cause the lay-off process to become extremely protracted.

In many jurisdictions, terms that are beneficial to the employer when the employment relationship with the employee breaks down must to be expressly included in the contract at the outset. This may include the ability to terminate immediately by paying the employee "in lieu" of having them work their notice period, or in the United Kingdom, being able to require an employee to take a period of "garden leave" during the notice period. Such clauses may permit the employer to remove the employee from the workplace, and prohibit the employee's access to clients or competitors, without having to rely on post-termination non-competition or non-solicitation provisions, which may be more difficult to enforce.

Most non-U.S. jurisdictions permit fixed-term contracts in only limited situations and generally require indefinite term contracts. Additionally, if special termination arrangements are negotiated (such as "change of control" or so-called "golden parachute" exit packages), these may require specific approval by the shareholders or Board of the non-U.S. subsidiary or even the court or Labor authorities before such provisions are enforceable.

#### 4. Transfers or Reassignments.

Most non-U.S. jurisdictions require that the location where the employee is to provide services be set out clearly in the employment agreement. If the employer thereafter wishes to transfer the employee to another office or plant (even next door) or to another country or another non-U.S. subsidiary, such a change can again be deemed an invalid unilateral change in the employment agreement. Without the employee's written consent, such a unilateral change can give rise to a "constructive termination" claim, triggering severance benefits and liability. In order to minimize such risk, in many jurisdictions the employer should explicitly reserve in the employment agreement the right to transfer or reassign the employee. Other jurisdictions, however, will disregard the employer's purported reservation of rights unilaterally to transfer or reassign the employee and will still deem the transfer a constructive termination. For that reason, it is important that companies do not blindly accept at face value certain purported employer reserved rights and consult with counsel whenever contemplating such action.

#### 5. Vacations, Holidays and other Leave of Absence.

Unlike in the United States where employers are not generally required by statute to provide for any paid vacation, sick days or holidays, most non-U.S. jurisdictions have statutorily mandated holidays and vacation requirements. France, for instance, requires in excess of one month's paid vacation plus national holidays. Most jurisdictions require days of rest and some prohibit work on particular days, such as Sunday or days of worship. Other countries, such as Brazil, required the payment of a "thirteenth" or "fourteenth salary." Common U.S. practices such as vacation caps and "cashing out" any accrued but untaken vacation at the end of the year may also be unlawful outside the U.S.

Similarly, the concept of "personal leave," intended to encompass various types of time off for personal reasons, is also likely to be unfamiliar. Many non-U.S. jurisdictions regulate various types of leave either by statute, by virtue of supplementary provisions in the contract itself or through rules imposed in the work council or collective bargaining agreement. Most EU countries also have significantly greater maternity, paternity and parental leave requirements than in the United States, providing for periods of both paid and unpaid leave and protecting employees from potential discrimination before, during and after such leave.

In addition, periods of paid sick leave may be prescribed by law in these jurisdictions and in certain cases, attempts to terminate an employee's employment contract during a period of sickness may be rendered invalid by the courts, such as in Italy.

## 6. "Perks."

While it is essential that the employer understand the "black letter" of the law before entering into employment relationships in non-U.S. jurisdictions, it is also important that the employer understand the cultural issues and "customs" of the local jurisdiction as well as local competitive pressures. Benefits that are routinely offered in the United States may not be the norm in other jurisdictions or may be covered by separate government social security plans. Conversely, certain benefits may be standard "perks" in some job areas and will have great significance attached to them in particular non-U.S. jurisdictions. For instance, any company with sales employees in the United Kingdom will probably be familiar with the status attached to company cars (particularly if provided on a "fully expensed" basis), as this will invariably form an important component of the compensation package.

## 7. Overtime and Work Hour Restrictions.

Many countries have enacted maximum work hour restrictions that are significantly more restrictive than those imposed in the United States. France, for instance, has a 35 hour maximum workweek, except for its high level managers, and restrictions on the use of overtime. The United Kingdom has a 48 hour maximum workweek. Although in some of these countries it is possible to opt out from these limits by employee consent, this often has to be in prescribed form. These work hour laws may additionally impose rules on the length of rest breaks that employers must give employees on a daily or weekly basis, place limits on overtime and regulate the length of time that employees may undertake night or shift work. Nor are such laws limited to the EU. Many Asian countries also have overtime restrictions. Mexico, for example, also limits work hours, and even high-level executives are entitled to overtime pay.

## 8. Choice of Law and Forum/Arbitration Agreements.

Because labor law is considered a matter of public policy in most jurisdictions, a contractual choice of law or choice of forum provision may not be upheld. Similarly, pre-dispute employment arbitration clauses are rarely recognized in non-U.S. jurisdictions, although the employer might have greater luck in enforcing such provisions with a U.S. citizen working overseas if the employee has maintained some nexus with the U.S.

As stated above, however, stock options or stock grants can and should be addressed outside the employment offer letter and agreement. Not only does such separation enhance the company's chances that it may be able to reduce the value of the employee's compensation when calculating severance, but also choice of law and forum clauses in such separate side letters between the U.S. parent company and subsidiary employee may have a better chance of being upheld, as such grants have a more commercial arms-length feel than pure employment agreements.

## 9. Non-Competition Provisions.

For employers in Silicon Valley that have been conditioned to understand that post-termination non-competition provisions are generally invalid, they may, in fact, find a pleasant surprise outside the U.S. Most jurisdictions do acknowledge the validity of limited non-competition clauses provided they are narrowly drafted in both scope and time. And unlike in California, most jurisdictions recognize and enforce reasonable notice requirements imposed upon employees before they may quit and commence work for another.

It is, however, important to check whether there are any specific consequences that flow from using non-competition and other post-termination restrictions. For example, in certain jurisdictions, the use of such provisions may automatically require the employer to continue to pay a prescribed amount of separate severance to the employee after termination, on top of any normal severance or notice monies, irrespective of whether the employer wants to rely on these provisions. For example, in Germany, employers must provide employees with 12 months' advance notice (*i.e.*, prior to termination) if they do not wish to rely on these such provisions, otherwise they are obliged to pay 50% of the employee's total compensation package for the "restricted" period.

Different jurisdictions also vary in the way that the courts approach post-termination restrictions. In certain countries, such as in the Netherlands, a court will reduce the scope of restriction if it deems its geographic coverage too wide or its temporal scope too lengthy and will impose instead what it considers appropriate under the circumstances. In other countries, such as Canada and the United Kingdom, the courts may simply refuse to enforce such provisions if they attempt to limit the former employee's activities beyond what is reasonable to protect the employer's legitimate business interests.

Consequently, in order to benefit from these restrictive covenants (and maximize their enforceability), such restrictions should be clearly set out and specifically drafted with input from local counsel.

## D. Acquisitions and Outsourcing

Employers must exercise additional caution where they are engaged in acquiring or disposing of a business or are outsourcing particular business functions or seeking to reabsorb such functions back "in-house" outside the United States.

In the context of mergers and acquisitions, a buyer of a business in the United States has relative freedom to "cherry-pick" those employees of the seller whom it wishes to employ following the acquisition and consequently will make employment offers to the seller's employees on this basis. Similarly, if a company outsources or sub-contracts part of its business functions to a contractor in the United States, the contractor can decide whether or not it wishes to take on any of the outsourcing company's employees to help provide the requisite functions in the future.

While this may an accepted practice in the United States, however, such practices may not be practicable elsewhere and may even be unlawful. This is particularly true in Europe by virtue of the provisions of the *EC Acquired Rights Directive (2001/23/EC) on the approximation of the laws of the Member States relating to the safeguarding of employees rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses* ("the Acquired Rights Directive").

The purpose of the Acquired Rights Directive is to protect employees' rights in the event of business transfers and consolidates earlier legislation on this topic. The original Directive was passed in 1977 and it is also know as the "Business Transfers Directive." Each EC member state has specific implementing legislation giving effect to the Acquired Rights Directive's provisions.

Broadly, the Acquired Rights Directive applies whenever there is a transfer of the whole or part of an undertaking or business situated in one of the EC member states to another employer as a result of a legal transfer or merger.<sup>5</sup> (Similar legislation also applies in a number of countries outside Europe.) It

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<sup>5</sup> As a result of considerable legal debate and case law at both national and EC, the 2001 consolidating Directive now clarifies that the Directive applies "*where there is a transfer of an economic entity which*

therefore applies in the context of asset sales/disposals where the whole or part of a business is being acquired or sold, but also potentially applies where an organization decides to outsource part of its business functions or services, takes back such outsourced activities “in-house,” or consolidates or re-organizes its corporate group structure with the result that employees are transferred from one corporate entity to another within its group.

The Acquired Rights Directive provides certain key protections for employees in these circumstances. Briefly these protections are as follows:

- Automatic Transfer: All employees working in the undertaking at the time of the transfer automatically transfer into the employment of the transferee with all of their terms and conditions intact. This transfer takes place by operation of law, and consequently, there is no obligation for the transferee to send offers to the employees. The employees can object to the transfer, and the impact of such objection is likely to be different in each EC country, for example, as to whether there is any obligation to re-deploy the individual or provide redundancy or other notice or severance indemnity payments. The transferee is required to assume or rights and responsibilities under and in respect of such transferred employees’ contracts of employment and is liable for the acts of the transferor pre-transfer in relation to those transferred employees.
- Protection from Termination: Employees are afforded additional special protection from termination in these circumstances. Consequently, any terminations connected with the transfer are automatically unfair unless for an economic technical or organizational reason entailing changes in the workforce and effected pursuant to a recognized fair procedure.
- Limitations on Changing Employment Terms: Also, as employees transfer automatically on their existing employment terms, they are also protected from changes to their terms and conditions of employment that are introduced solely or mainly because of the transfer (irrespective of whether such changes result in the same or no less favorable position for the employee overall).
- Information and Consultation Requirements: The transferor and the transferee must inform their “affected” employees’ representatives of (i) the date, or the proposed date of the transfer, (ii) the reasons for it, (iii) the legal, economic and social implications for the employees, and (iv) any measures envisaged in relation to the employees. (Employee representatives in this context include trade union representatives, works councils or where none, elected employee representatives.) Where the transferor or the transferee envisages taking measures (*e.g.*, redundancies / reductions in force, changes in hours of work, work location, benefits, pay, etc.) in relation to the employees, it must consult with the employees’ representatives in good time on such measures with a view to reaching agreement. Failure to inform / consult can result in sanctions against the offending organization, including potential injunctive proceedings to stop the transfer. Also, affected employees may be awarded damages. It is not a defense to any failure to inform/ consult for a transferor to say that its controlling company failed to provide the requisite information.

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*retains its identity, meaning an organized grouping of resources which has the objective of pursuing an economic activity, whether or not that activity is central or ancillary.”*

## E. Exiting the Employment Relationship.

Before hiring in a jurisdiction, it is important to consider the exit strategy as well. In the United States, with the exception of WARN, which governs mass layoffs and plant closures, U.S. employers are generally (with notable exceptions) free to hire and fire at will with little or no notice should the business climate or the employer's impression of the employee become less favorable. In contrast, very few non-U.S. jurisdictions will permit what is perceived outside of the U.S. as "whimsical" behavior by the employer. Instead, they impose upon the employer a duty to "take care" of the employee should the employee be terminated for other than "cause" as narrowly defined. Indeed, poor performance often falls short of constituting "good cause" in many jurisdictions or at least without the employer demonstrating repeated efforts to "save" the employment relationship. As a result, overly aggressive projections in hiring needs or poor hiring decisions resulting in the employment of persons who do not fit the needs of the company may result in significant employment severance obligations. In many jurisdictions, this may result in not only statutory obligations to the employee but also requires specific notification to, and in some instances, negotiations with, work councils or other collective bargaining representatives.

Where the termination of employment is not limited to a single individual but relates to a collective reduction in the work force or plant closing, the statutory obligations of the employer can be significant, both in time and money. Indeed, as mentioned previously, some non-U.S. jurisdictions purposely make plant closures so difficult and painful for employers that employers will be forced to consider every possible conceivable alternative before resorting to a collective termination.

As in the United States, companies may elect in certain situations to enter into a post-termination separation and release agreement with a former employee. As in the United States, these are specific rules and procedures that must be followed in order to effectuate a valid release of claims. At a minimum, where there is any potential joint employer liability for the U.S. company (*e.g.*, because of "right of control" or because the offer letter, PIIA, commission plan, handbook, etc. was provided to the non-U.S. employee from the U.S. parent company), it behooves the U.S. company to ensure that the separation and release agreement provides for a release of claims against all subsidiaries and affiliates, including the parent company.

## IV. Immigration and Employment Issues in Ex-patriate Assignments.

Often times U.S. companies will elect to send current employees of the U.S. parent company abroad. Such ex-patriate assignments raise issues involving the interplay of and treatment under U.S. and non-U.S. immigration, tax and employment laws.

### A. Structuring the Employment Relationship.

Taking time at the outset of any proposed ex-patriate assignment to plan the terms that will apply during that individual's assignment outside the United States and more importantly, the exit strategy, is a critical task and one that will reap considerable rewards in the longer term. As discussed above, the U.S. employer should determine which entity will employ the individual during his or her assignment, and there are a number of options which it may wish to explore. The route chosen may be dictated in part by local immigration requirements and/or tax considerations.

For instance, the employee could remain employed by the U.S. entity, but have a separate assignment letter setting out the terms of his assignment in the "host" country. As noted above, however, this assignment could give rise to the U.S. entity having a permanent establishment abroad with all of its negative tax implications.

Transferring the U.S. employee to a non-U.S. subsidiary generally avoids permanent establishment problems, but may create other problems of its own. The U.S. employee assigned overseas may still wish to remain an employee of the U.S. company in order to continue to vest in his 401(k) and other benefits. Similarly the U.S. parent company may want to still direct and control the U.S. employee's work abroad. In such cases, a secondment agreement may be the answer where the U.S. parent company "seconds" the employee for a period of time to the foreign subsidiary. While a properly documented secondment may avoid permanent establishment issues, if the U.S. parent continues to direct and control the employee's work, a joint employer relationship is probably inevitable, subjecting both companies to employer status and triggering the protection of at least many employment laws in both jurisdictions. In addition to the assignment letter between the U.S. company and the employee, the basis of the employee's secondment should also be reflected in a separate secondment agreement between the U.S. company and the non-U.S. subsidiary. This agreement can be a further useful tool and can reflect any charges that the non-U.S. subsidiary is required to pay for the ex-patriate's services allowing the U.S. parent to re-coup salary and other compensation and expenses, often on a "cost plus" basis. This agreement should also reflect any limits on the ex-patriate's ability to transact business on the U.S. company's behalf and the degree to which day-to-day responsibility for the ex-patriate is transferred to the non-U.S. subsidiary.

Alternatively, it may be appropriate for the employee to become an employee of the non-U.S. subsidiary in the host country and for existing links with the original U.S. employer to be severed. Recently, in an effort to insulate the ultimate U.S. parent company from liability, and in particular the risk of creating a permanent establishment in the non-U.S. jurisdiction, many companies have chosen to establish a separate U.S. "global" or "holding employment company," which is a subsidiary of the U.S. parent company and is used, among others, as the vehicle to employ ex-patriates abroad. This route can be beneficial as employees may be maintained on the U.S. parent company's 401(k) plans and also, potentially other employee benefit plans, and it avoids the direct link with the U.S. parent company itself. Usually, such an arrangement is supplemented by an additional and separate assignment letter that is provided to the ex-patriate employee setting out further details of his assignment to the non-U.S. host company. Of course,

if the U.S. parent continues to direct the employee's work activity, his or her assignment to the U.S. global or holding company may still result in joint employer liability.

## B. Visa /Immigration Issues.<sup>6</sup>

The visa should be one of the first concerns when planning an expatriate assignment. Usually it will be the employer's rather than the employee's responsibility to obtain any necessary work visas or other documentation allowing the employee to work in the country to which they are posted. Processing times and requirements vary from country to country and the type of visa required. Processing can take weeks or months in some countries, and will be delayed until all of the necessary information and documents are collected by the employer and employee.

It is important to identify visa processing times and availability before making any firm offers to the employee about the timing of a potential ex-patriate assignments, since this can impact housing, schooling and relocation plans for the employee and family. A job description for the proposed position should be prepared that describes in detail the duties, level of responsibility, and the anticipated length of the assignment. An updated curriculum vitae, and often diploma(s) and academic transcripts, are frequently needed to establish the employee's qualifications. Copies of the passports for the employee and all accompanying family members is a must. This information is often key in determining the type of visa needed. Be sure to verify what conditions or limits apply, including whether any additional "entry clearance" requirements or registration may be required after the employee arrives in the new country. Important topics include whether the spouse may work or what happens if employment terminates.

## C. Setting out the terms of the assignment.

If the individual is to remain an employee of the U.S. company, it is advisable to prepare a separate expatriate assignment letter setting out the terms of their assignment abroad. This document should "dovetail" closely with any U.S. offer letter or term agreement to ensure that it does not alter the status of the employee, but it should also contain a severability clause because in many instances, any U.S. term, of at-will employment for instance, is unlikely to be recognized in the non-U.S. jurisdiction. U.S. employers should also be careful to ensure that no irresponsible or grandiose commitment is given as to what will happen upon relocation. If the U.S. employer makes such a commitment and fails to honor it, there are not only grave personnel difficulties but also significant legal exposure. For instance, California Labor Code Section 970 provides that if the Company, or any of its agents or officers, "knowingly makes false representations" to influence, persuade or engage any person to change from one place in California to another site within or outside the State, it is a misdemeanor and also gives rise to double damages in a civil action.

## D. Tax Issues.

Many countries have tax treaties with the U.S. to avoid or minimize double tax hits. The timing of the overseas assignment may also impact tax liabilities for both the company and the employee. In addition, the way that the assignment documentation is structured, and in particular, the terminology used in relation to the provision of any benefits such as housing or car allowances or other relocation assistance

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<sup>6</sup> Special thanks to C. Matthew Schulz of the San Francisco/Palo Alto Baker & McKenzie office for his contribution to the immigration portion of the paper.

that may be offered in connection with the ex-patriate assignment, may also afford more favorable tax treatment in certain cases.

## E. Governing Law.

As with any employment arrangement, it will be important to decide and expressly provide what law is intended to govern the international assignment, particularly if there will be an alteration to the individual's U.S. employment terms. As noted above, however, U.S. citizens assigned abroad by a U.S. company may be afforded the protections of both U.S. contract law (and in some cases Title VII, ADA and ADEA protection) as well as the local jurisdiction's employment law protection.

## V. U.S. Stock Plans – A Special Consideration.<sup>7</sup>

Offering employee stock plans internationally can be a complex process. The legal and financial issues that arise span across every aspect of a U.S. company's operations. Specifically, international implementation of equity compensation programs requires a careful analysis of the legal, tax, accounting, human resources, privacy and labor considerations attendant with such plans. Rarely can a company simply use its standard U.S. plan and grant documents. Most often, when offering a U.S. stock plan internationally, for each law impacting the offering in the U.S., there will be a corresponding law in each foreign jurisdiction governing the award.

The steps a company can take to reduce the cost and legal exposure associated with offering stock plans internationally is lengthy. Four key pitfalls that can be avoided with proper planning are: (1) unfavorable employee tax treatment; (2) high employer social insurance contributions; (3) the need to comply with the local securities and exchange control laws; and (4) labor entitlement claims. While there are general strategies that can be used in numerous jurisdictions, the specific method of overcoming these pitfalls must be addressed on a country-by-country basis.

### A. Avoiding Unfavorable Tax Pitfalls.

#### 1. Early Taxation of Stock Options.

In the U.S., nonqualified stock options are taxed at the time the employee exercises the option. Thus, a taxable event will not occur until the employee makes the decision to exercise the options. In the great majority of non-U.S. jurisdictions, stock options are also taxed at exercise. However, for instance, in Belgium and Switzerland employees may be taxed at the time the option is granted. This is true even though the option cannot be exercised at the time of grant because of a vesting requirement.

There are two key issues that arise when an employee is subject to tax prior to exercise. First, tax at grant requires the employee to produce funds to pay the applicable tax at a time when he or she cannot convert the option into cash. Second, as the employee pays tax based on the value calculated at the time of the grant, early taxation introduces a risk not normally associated with stock options. If the stock price decreases, the employee may not be entitled to a tax refund or credit for having paid tax on an option that may have no value (i.e., the employee could buy the company stock at a lower price on the open market).<sup>8</sup>

The good news is that there are tax-planning alternatives which can soften this tax result or, in some cases, delay taxation until exercise. These tax-planning devices should be in place prior to the grants being made and communicated to the employees. In this regard, planning ahead is on-going. International laws, including tax laws, change frequently (often in a very positive direction). A company should regularly update its taxation information to ensure that the company is utilizing the most current tax planning alternatives available.

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<sup>7</sup> Special thanks to Robert Marshall of the San Francisco/Palo Alto Baker & McKenzie office for his contribution to the U.S. stock plan portion of the paper.

<sup>8</sup> Under certain circumstances, taxation at grant may present an "advantage" over taxation at exercise. For example, if the underlying stock appreciates substantially after grant, the employee will avoid paying tax on that appreciation. Nonetheless, the risks involved tend to outweigh this potential benefit.

## 2. Modifying the Terms to Improve the Employee's Tax Situation.

Generally, stock option awards made internationally will be nonqualified stock options. Yet, like U.S. incentive stock options, many foreign jurisdictions allow for more favorable tax treatment of stock options and employee stock purchase rights provided the terms of the grant fall within the local tax guidelines established for such tax-preferred schemes. Thus, prior to grants being made, the company should examine whether modifying the terms of the grant in a specific country is in the best interest for the employees, the company and the local subsidiary. Achieving a better tax result for the employee through tax planning must be done on a country-by-country basis. The most common method is to adopt a sub-plan to the U.S. plan document, which in some cases, must be approved by the local tax authorities.

### B. Avoiding the Social Insurance Pitfall.

In many countries, the spread (i.e., the difference between the exercise price and the fair market value of the shares at the time of exercise) is subject to social insurance contributions from both the employee and the local employer. Ordinarily, the employer is responsible for collecting the employee's portion of the social insurance charge and paying it to the appropriate governmental agency, along with the employer's portion. In some countries, the employer's portion of the social insurance contribution is high and uncapped, such that offering the stock plan may be prohibitively expensive. Similar to the tax planning discussed above, there may be ways to structure grants in such a way to eliminate this employer expense in several jurisdictions.

The most common method of avoiding social insurance charges is to adopt a sub-plan that fits the local jurisdiction's definition of an employee stock plan eligible for preferred social insurance treatment. In other countries, social insurance can be avoided by having all grant materials delivered by the U.S. company, thus removing the local employer from the process. In the United Kingdom, it is also possible to pass the employer's social insurance obligation on to the employee. The key is to structure the awards prior to grant so that this expense can be avoided where possible.

### C. Avoiding the Securities and Exchange Control Pitfalls.

#### 1. Securities Laws.

As in the U.S., most foreign jurisdictions have securities laws which make the offering of securities subject to registration and prospectus requirements, unless the offer falls within a recognized exemption. Fortunately for companies offering their employee stock option and employee stock purchase plans internationally, the securities laws of many foreign jurisdictions characterize employee stock plans as private offers, exempt from the prospectus requirements. This is not the case everywhere. Several jurisdictions define private offerings based on the number of individuals receiving the offer.

By anticipating the registration requirements imposed by foreign securities laws, companies can control the costs of securities law filings and avoid penalties for non-compliance. In some cases, imposing certain restrictions on the options can minimize or eliminate the need to file a prospectus or registration statement. For example, in some countries, if the company restricts the employees to a cashless for cash method of exercise, the plan will fall outside the scope of the securities laws.

In certain countries, a securities filing may be avoided by staggering the grants in order to keep the number of optionees below the filing threshold. Additionally, the need to file a prospectus may be eliminated by limiting the value of the grant to fall under certain value thresholds. Caution must be used when opting for these structuring methods as many countries apply aggregation rules which can require a prospectus if the applicable thresholds are exceeded by multiple grants.

To take advantage of these securities alternatives, the modifications and restrictions should be in place at the time of grant. Thus, investigating the relevant securities laws before the grants are made can save both time and money.

## 2. Exchange Control Laws.

One problem that occurs when offering stock plans internationally is complying with the local exchange control rules. Exchange control rules exist in many countries to protect the value and stability of the local currency. Exchange control laws regulate the flow of currency into and out of the country. To the extent they exist, these laws tend to regulate more heavily the out-flow of currency because currency flight is a substantial threat to a stable local currency in many countries. The in-flow of currency often is regulated, but generally not with the same vigor.

In many countries, the cashless exercise method of exercise can eliminate many of the local exchange control rules that apply to stock option plans. However, for employee stock purchase plans, it is more difficult to find alternatives because at the heart of those plans' design is the use of the employee's funds to purchase stock which requires the outflow of currency.

In some countries, exchange control approvals must be obtained prior to offering the plan. In other countries, the approval process does not come into play until the option becomes exercisable. The approval process can take several months and, in some cases, may not be forthcoming. Therefore, reserving the right to restrict the exercise of a stock option to a cashless method of exercise should be part of the grant terms in the countries where exchange control approvals may be problematic.

## D. Avoiding the Labor Entitlement Pitfalls.

As noted above, it is prudent for U.S. companies to take steps to mitigate the chance that their employee stock plans will become part of the local statutory employment framework. The following list highlights steps companies can take to minimize employment liability exposure when making stock options grants.

- Separate options from offer letters and employment agreements
- Keep local subsidiaries out of the option process
- Include proper waiver and acknowledgment language in option documents
- Provide that the plan and the grant are governed by U.S. law and designate a U.S. forum
- Provide for specific definition of termination of employment for option vesting/termination

By inserting the appropriate language into the option agreements and enrollment forms, a company will be in a better position to defend itself against claims of labor entitlement associated with offering its stock plan to its global workforce. At this time, however, there is no way to eliminate these risks entirely.

## VI. Implications of the Foreign Corrupt Practices Act and Corporate Compliance Policies.

### A. What is the Foreign Corrupt Practices Act?

The Foreign Corrupt Practices Act (the “FCPA”) is a U.S. federal criminal statute that prohibits U.S. corporations and other domestic concerns from paying, giving or offering to pay or give money or any other thing of value, directly or indirectly, to any foreign official for the purpose of obtaining or retaining business, or obtaining any other improper advantage. In essence, this means that neither a company nor anyone acting on behalf of that company may pay or offer money or other gifts to a foreign official (whether directly or indirectly ) in order to win the award of a government contract or other improper government benefit. The FCPA also imposes a series of accounting requirements and standards on U.S. corporations and their foreign subsidiaries and affiliates, which are intended to prevent the use of “secret slush funds” for disguised payoffs to foreign officials. All disbursements of company funds, and all other company transactions, must be made solely in accordance with management’s instructions, and must be properly recorded on the company’s accounting books and records. The FCPA also requires companies to comply with proper accounting of employment payroll records.

Most of the leading industrial and commercial countries are enacting or have enacted laws similar to the FCPA that are intended to prohibit the payment of foreign bribes. Thus, a subsidiary of the U.S. parent company in Europe may be subject both to the FCPA and to the laws of the country where it is based when it is conducting business in another country, such as one of the countries in Africa or the Middle East.

Not only does the FCPA apply to all U.S. corporations and all other domestic concerns, but foreign corporations, including a company’s foreign subsidiaries and other affiliates, are also subject to the prohibitions of the FCPA if a person acting on their behalf takes any action (including authorization, participation or ratification) in the United States in furtherance of the payment of a bribe or other improper payment to a foreign official.

Under the FCPA, paying, offering or giving money or any other thing of value to a foreign official in order to obtain or retain business or some other improper advantage is prohibited. Payment of money to a foreign official is, therefore, clearly prohibited by the statute. The FCPA, however, also prohibits the giving of gifts and other benefits to foreign officials, where the purpose of such gifts is to obtain or retain business. Gifts of high value are particularly problematic, but even items of relatively modest cost in the United States, such as televisions and VCRs, may be highly prized in some countries, where those items are either extremely expensive or generally unavailable. Similarly, intangible benefits, such as foreign travel and accommodations, are “things of value” for purposes of the FCPA. For example, arranging an all expense paid golfing weekend for a foreign official may constitute an illegal bribe under the FCPA. The size of the payment or gift is not important under the FCPA, if the intent is to cause a foreign official to direct business to, or confer some other improper advantage upon, the person or firm making the payment or gift.

#### 1. Who is classified as a “foreign official” under the FCPA?

The answer is wider than you may think! The FCPA prohibits the paying and giving of money and other things of value to “foreign officials”. For purposes of that prohibition, a “foreign official” includes not only officials and employees of foreign government agencies and departments, but also officials and employees of state-owned commercial enterprises. Therefore, for example, a manager of a state-owned

telecommunications company in a foreign country is a “foreign official” for purposes of the FCPA. Foreign officials for purposes of the FCPA also include officials and employees of public international organizations, such as the various agencies of the United Nations, the World Bank, the IMF and the World Trade Organization. Also included within the scope of the term “foreign officials” are officials of foreign political parties and candidates for foreign political office.

## 2. What are the Penalties under the FCPA?

A corporation that violates the FCPA may be subject to a fine of up to \$2 million. An individual who violates the FCPA, including an officer, director, employee or agent acting on behalf of the Company, may be subject to a fine of up to \$100,000 and a prison sentence of up to 5 years. In addition, if a corporation is convicted of violating the FCPA, that corporation may be ineligible from contracting with any agency of the United States Government, or may lose its exporting privileges. Public disclosure that a company paid a bribe to officials in a particular country could cause that company to be expelled from or blacklisted by that country, and could expose local employees in the country to fines and imprisonment.

Companies should ensure that all employees who are sent or hired locally overseas are made fully aware of the requirements of FCPA and other similar requirements that apply in their relevant local jurisdictions, including the obligation to comply with proper accounting of payroll records. Additionally, before engaging any consultant to perform services outside the United States, it is also advisable to ensure that any consulting agreement is FCPA compliant as a means of providing the company with additional protection.<sup>9</sup>

## B. Should Your Company Have “Global” Corporate Social Responsibility and Compliance Policies?

In the quest to be globally “ethical,” companies may be ironically violating employment and privacy laws and voluntarily subjecting themselves to significant litigation risks both abroad and in the United States. Although § 301 of the Sarbanes-Oxley Act (“SOX”) requires that an “issuer” establish a means for anonymously reporting concerns regarding questionable accounting matters, nothing in SOX suggests that all suspected unethical conduct worldwide must have a way of being reported anonymously. Indeed, on February 1, 2006, the European Union Article 29 Working Party issued an opinion that use of anonymous whistleblower hotline for matters going beyond that legally required by SOX is illegal.

Many policies that now find their way into global Codes of Conduct are voluntarily imposed and go well-beyond anything legally mandated by SOX or other statutes. Global Codes often purport to regulate discrimination, dating, drug and alcohol testing, confidential information, use of company equipment, surveillance and monitoring, and other policies one might find in U.S. employee handbooks. The recent proliferation of expansive global Codes has not only caused U.S. multinationals to waive defenses that would otherwise bar extraterritorial application, but also has ironically exposed otherwise litigation-adverse companies to both employment and data privacy violations abroad and to unfair business practices claims in the United States, particularly California.

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<sup>9</sup> More details regarding the FCPA are provided in “Foreign Corrupt Practice Act: How Does it Affect Your Organization?” by John McKenzie, a partner in Baker & McKenzie’s San Francisco office.

## 1. Notification and Consultation Obligations Require Pre-Roll-Out Procedural Measures.

Several countries have already found the roll-out of Codes illegal. For instance, in France, the introduction of a Code for companies with 20 or more employees is considered an appendix to the company's Internal Regulations (*Règlement Intérieur*). The introduction of a Code for such companies requires the filing of the Code with the French Labor Inspector and Clerk of the Labor Court and posting at the worksite. All three steps must be completed at least one full month before the Code's effective date. Failure to comply with these formalities can lead to a fine and the Code being void. As with all French employment documentation, the Code must be translated into French. If a works council is present, French law also requires notification and consultation before roll-out.

In Germany, a Labor Court held in 2005 that Wal-Mart's Code could not be legally rolled out without prior consultation with, and consent of, the works council. The court held that the following policies could not be unilaterally rolled out before consultation: acceptance and dealing with gifts (commonly included in Codes to comply with the FCPA); restrictions regarding press releases; harassment and inappropriate behavior; private relationships, including dating between employees; and reporting violations of the Code, particularly on an anonymous basis.

China, for instance, expects companies to engage in a "democratic process" prior to roll out of Codes. If labor unions are present, notification and consultation is also expected.

## 2. Data Privacy Laws Must Be Considered Before Global Roll-Outs.

Data privacy laws must also be considered before globally rolling out Codes. Many U.S. multinationals have erroneously assumed that they are required, or at least permitted, to promulgate anonymous hotlines globally addressing subjects well beyond the parameters of SOX. They are wrong.

In 2005, the French data privacy authority, the CNIL, found the existence of anonymous whistleblowing provisions in McDonald's, as well as another multinational's, Codes to violate French data privacy law. In June 2005, a German Court found Wal-Mart's anonymous whistleblower provisions in violation of German data privacy laws.

## 3. The EU Article 29 Working Party Attempts to Reconcile Tension.

On February 1, 2006, in an attempt to reconcile the anonymous SOX whistleblower scheme with EU data privacy laws, an independent European advisory body, the Article 29 Working Party, issued an opinion setting forth the following principles:

1. Not any violation of the Code can justify anonymous whistleblowing. The Code must limit the availability of anonymous whistleblowing to alleged accounting, internal accounting, auditing, bribery or insider trading, and banking and financial concerns. Codes which extend the anonymous whistleblower hotline to other policies will violate EU data privacy laws.
2. Companies should not encourage anonymous reports. The whistleblower's identity, however, should be kept confidential to the maximum extent possible.
3. Companies should assess whether to limit personnel eligible to report alleged misconduct or who may be incriminated through an anonymous scheme.

4. Data collected and processed must be limited to data strictly and objectively necessary to verify the allegations made. Data must at all times be “proportionate” to the specific purposes for which they are collected. Reports should be kept separate from other personal data.
5. Personal data processed by whistleblowing schemes should be deleted promptly, usually within two months of completion of the investigation, unless legal proceedings or disciplinary measures are initiated. “Unsubstantiated reports” should be deleted immediately. As this could run afoul of U.S. obstruction of justice issues, U.S. companies must carefully weigh the EU Advisory Opinion against U.S. obligations.
6. Incriminated persons must be informed as soon as possible, although notification may be delayed if notification would jeopardize evidence gathering. Once evidence is preserved, the accused must be informed about the entity responsible for the investigation, facts in support of the accusation, the departments that might receive the report, and how to access information and correct the record.
7. Whistleblowing schemes must be administered by a specific organization within the company composed of specially trained individuals who are limited in number and contractually bound to confidentiality obligations. The whistleblowing system should be separated from other departments.
8. Companies must adhere to all data processing and requirements, and may not transfer whistleblower data to “unsafe” jurisdictions such as the United States without a properly authorized data privacy transfer mechanism.

#### 4. Contents of Some Codes Do Not “Translate” Internationally.

In addition to notification, consultation and data privacy violations that may occur upon a precipitous global roll-out of a Code, some polices may run afoul of statutory or cultural norms in the local jurisdiction. Imposition of overbroad, U.S.-centric policies may not only be unenforceable and cause the company to be deemed insensitive to local culture, but also could expose the company to labor violations in the local jurisdiction.

For instance, it is not uncommon that global Codes purport to impose discipline upon employees who fail to sign and return the Code. As few countries outside the U.S. permit “at will” termination, few would recognize failure to sign and return a Code as “cause” for termination. It is also quite common to see Codes that threaten termination against employees who not only commit a violation of the Code but also against those employees who fail to report a violation by someone else. Even in those countries where an employee’s own act of “cooking the books” would be “cause” for termination, the knowing failure to report another employee’s wrongdoing might not be “cause.” Policies threatening to discipline an employee for dating another employee, speaking to the press, misusing company property or servers, using alcohol, or even accepting gifts, that are often found in global Codes, may not be “cause” for termination in many jurisdictions. Accordingly, irrespective of the Code, companies need to confirm whether it constitutes “cause” locally and what if any consultation is required first.

#### 5. Codes May Inadequately Waive Jurisdictional Defenses or Violate Local Law.

While one may applaud principles of non-discrimination throughout the world, these well recognized U.S. principles found, for instance, in Title VII, the ADEA and the ADA, generally have very limited extraterritorial application outside the US borders. Moreover, equal treatment regardless of gender, sexual orientation and religion may violate the law in some Islamic nations, where a U.S. subsidiary may

be legally required to discriminate on such basis. Anti-nepotism policies that prohibit “romantic relationships” between employees may be unenforceable and deemed an illegal invasion of the employees’ private lives. Some countries, like France, consider employee monitoring without, at a minimum, registering its monitoring system with the relevant data protection authority to be a data privacy violation carrying criminal sanctions.

## 6. Overzealous Codes Can Create Litigation Risks.

An overzealous Code of Conduct also exposes the company to litigation in the United States, particularly in California. In Kasky v. Nike, the California Supreme Court, 27 Cal. 4th 939 (2002) held that Kasky had stated claims under California Business and Professions Code 17200 and 17600 for unfair business practices and deceptive trade practices based upon allegedly overzealous representation of Nike’s employment practices in Vietnam, China and Indonesia in its global Code. Because these statutes permit “disgorgement of profits” among its remedies, such claims can be substantial. Some Codes go further by extending their reach to suppliers, distributors, agents or independent contractors and their respective employees. This good deed, too, is not without US litigation risks.

## 7. Conclusion: Companies Must Practice What They Preach.

Adoption of voluntary Codes simply because other companies are doing it, a consultant has recommended it, it sounds “noble and aspirational,” or it makes for good “PR” should not be reasons for inclusion of voluntary provisions in a Code. Corporate Social Responsibility is not about marketing and branding fluff: it is a serious corporate commitment that, if not engrained into the company culture, can give rise to legal liability and destroy the very corporate image that the company is attempting to create. An ill-conceived, overly aspirational voluntary Code is worse than no Code at all, and an invitation to litigation.

In order to mitigate against the legal liabilities, U.S. multinationals should:

1. Distinguish legally mandated from voluntary provisions in the Code. If the company determines that voluntary policies are critical to its stakeholders, it should commit sufficient time and money to monitor, train and ensure compliance.
2. Understand and monitor for compliance with local legal requirements (e.g., wage and hour, child and convict labor laws and other employment regulations, environmental, import-export, data privacy and other local laws).
3. Observe all local employment and privacy procedural prerequisites before rolling out the Code.
4. Do not assume that “cause” to discipline in the US will be “cause” in the local jurisdiction.
5. Do not permit anonymous whistleblower reports through anonymous hotlines in the EU except to report violations of accounting, internal accounting controls, auditing matters, bribery, securities, banking and financial matters.
6. Consider deleting voluntary “feel good” policies, unless they are truly core to the company’s culture and engrained into corporate practice. In some jurisdictions such as China, merely requiring compliance with local law may require “raising the bar” significantly and constant training and reinforcement.
7. Review the Code with the same precision as a proxy statement. Better to under-promise and over-deliver, than the opposite.

## VII. Conclusion.

The company that is able to “go global” and successfully manage its global operations can gain an enormous business advantage. With advanced planning and consideration of employment issues, which in turn encompasses corporate, tax, immigration, and corporate social responsibility issues, the company need not shy away from such opportunities. The key to avoid global employment-related pitfalls is to plan ahead and understand not only the legal requirements, but also the cultural norms in the various jurisdictions. Only then can the company, or its global network of companies, truly benefit from its international operations.

## Attachment - Did You Know?

Even the savviest in-house counsel and human resources professionals are often surprised by the complexity of issues raised when a company “goes global.” For instance, **Did You Know** . . .

- (1) Whereas in the U.S., the employer may choose whether to provide offer letters or written employment contracts, or neither, in many non-U.S. jurisdictions a written employment agreement is required. Further, specific types of agreements are required in some countries for executive level employees.
- (2) Commission plans, though often provided in separate documents, are part of the employment contract and likewise must comply with local employment laws.
- (3) Proprietary information agreements and assignment of inventions agreements may be used in both U.S. and non-U.S. jurisdictions with modifications for compliance with local laws, but should be presented in the initial employment offer.
- (4) If the company grants stock options in the U. S. parent company to employees of a branch or subsidiary in the non-U.S. jurisdiction, care should be taken to register or otherwise comply with the local jurisdiction’s requirements. Such grant should come from the parent company and should be expressed in a confidential side letter. In some non-U.S. jurisdictions, stock option grants may not be a benefit at all, as taxes may be levied on the stock option at the time of grant.
- (5) In some non-U.S. jurisdictions, employers are required to maintain written disciplinary rules and/or work rules once the number of employees hits a certain threshold.
- (6) In contrast to the law in California regarding post-termination non-competition agreements, such agreements may be enforceable in non-U.S. jurisdictions, provided that they are properly drafted and limited in scope.
- (7) Some non-U.S. jurisdictions require that all employment documents be translated into the local language in order to be effective legally binding contracts, though translation into the local language, or the language spoken by the individual employee, is generally recommended in all jurisdictions to ensure a meeting of the minds.
- (8) Once the company has determined whether to establish a subsidiary, affiliate or branch office in the foreign jurisdiction, employment-related documents should come from that non-U.S. entity (with the exception of the confidential side stock option letter), not the U.S. company.
- (9) In several non-U.S. jurisdictions, the company cannot enter into individual agreements with employees without first determining if they are subject to works councils or collective bargaining representatives.
- (10) The concept of “at-will” employment is virtually non-existent in most of the commercial centers of the world outside of the United States and will not be upheld. Most non-U.S. jurisdictions have very specific laws as to what constitutes “good cause” for termination of employment.
- (11) In the majority of non-U.S. jurisdictions, the terms and conditions of employment, including compensation and benefits, may not be unilaterally modified by the company, but rather require the employee’s express consent. The company cannot contract out of this rule with language

allowing the company to modify or amend the agreement. Similarly, if a company provides a benefit to an employee over a period of time, that employee may be found to have obtained an “acquired right” in the benefit.

- (12) In the majority of non-U.S. jurisdictions, background checks are not the norm and raise both cultural and privacy issues.
- (13) In many non-U.S. jurisdictions, employees are entitled to statutorily provided benefits, such as vacations, sick time, leaves, health care and pension plans.
- (14) Many non-U.S. jurisdictions impose specific limitations on the amount of hours worked.
- (15) In the majority of non-U.S. jurisdictions, employees are entitled to a statutorily provided notice period prior to termination. Depending upon the jurisdiction, the company may or may not be allowed to offer pay in lieu thereof. Employees may also be entitled to statutorily required severance pay.
- (16) In almost all non-U.S. jurisdictions, employment pre-dispute arbitration provisions are invalid.
- (17) Although the company may include a choice of law provision of, for example, California law, in the majority of non-U.S. jurisdictions, the courts will disregard such a provision and interpret the employment agreement under local law.
- (18) All European Union countries are subject to data privacy laws most of which require, among other things, that the employer maintain a data privacy policy and generally obtain the employee’s consent before transmitting private information.
- (19) As in the United States, specific considerations must be taken into account before characterizing an individual as consultant and entering into our independent contractor agreement.
- (20) California businesses may be required to report the use of independent contractors to the California Employment Development Department, even if the independent contractor performs his or her services in a foreign jurisdiction.

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## Going Global

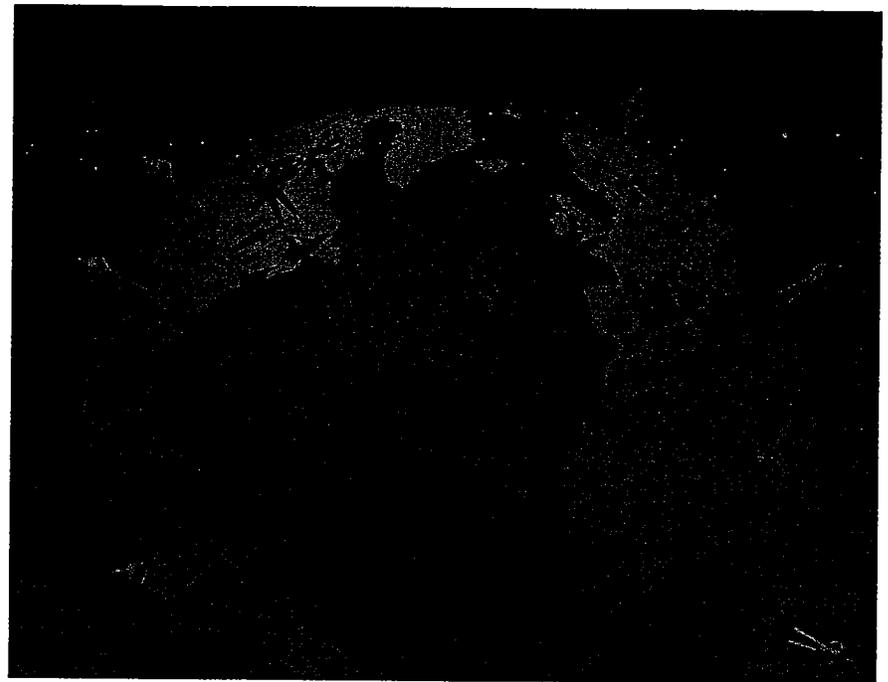
*Emboldened by their newfound political clout, unions set their sights on bringing stricter labor standards to the wider world.*

BY MICHAEL D. GOLDHABER

**W**hen representatives of the countries that make up the Group of Twenty major world economies convened in Washington, D.C., in April, the meeting was hosted not by the Treasury secretary and the federal reserve chairman, but by U.S. Department of Labor secretary Hilda Solis. To the nation's unions, Solis's prominent role at the multilateral talks is a hopeful sign that workplace issues are moving to the top of the international economic agenda.

High on Big Labor's wish list is linking stricter labor standards to the trade advantages the United States doles out to its favored partners. It's an issue that's simmering on a number of fronts, as various trade pacts are revised or negotiated. While the nation's model bilateral investment treaty undergoes State Department review, Congress is considering renewal of the so-called generalized system of preferences, which affords favorable trade treatment to many developing nations. Meanwhile, ratification is pending for new free trade agreements with Colombia, South Korea, and Panama. And in March, the United States trade representative began negotiating a new multilateral treaty known as the Trans-Pacific Partnership Trade Agreement with Chile, Peru, Singapore, Australia, New Zealand, Brunei, and Vietnam.

The union push for greater trade-labor linkage comes on the heels of the "May 10 trade deal" of 2007. Under that agreement, labor and business interests ostensibly agreed to use the International Labor Organization (ILO) 1998 Declaration of Fundamental Principles and Rights at Work as the statement of labor commitments to which the U.S. will hold its free trade partners. The compromise paved the way for the Peru free trade treaty, and was also enshrined in the trio of pending trade deals with Colombia, South Korea, and Panama. (As of March, those three pacts were stalled over human rights, automobile trade, and international tax concerns,



**"Labor advocates," says one expert, "are generally optimistic that over the course of four or eight years some progress can be made."**

respectively.) Conflict continues, however, over how the 1998 declaration should be interpreted. Labor advocates believe it incorporates the ILO's eight core conventions and jurisprudence on matters such as freedom of association, collective bargaining, forced labor, child labor, and discrimination. The U.S. Chamber of Commerce disagrees.

The labor lobby is now trying to build on the May 10 deal. In the model U.S. bilateral investment treaty, for instance, labor wants to insert a commitment to adopt and maintain the ILO core labor rights, and to subject that commitment to the treaty's state-to-state dispute resolution procedures. In the generalized system of preferences, Big Labor aims to toughen up mushy aspirational language—swapping, for example, the current call for nations to "strive to afford" workers labor rights with the sterner "adopt and maintain."

Unions also want teeth added to enforcement efforts in the preferences program. Under one labor proposal, time limits would dictate how long the government has to evaluate union complaints about preferred nations violating their labor obligations. The goal is to spur U.S. authorities to address grievances like those lodged

against Sri Lanka and Iraq that have languished for two years without even being considered. Sri Lanka's alleged infractions: blocking labor inspectors from free trade zones and enjoining legitimate strikes. Iraq has drawn labor's ire for, among other things, allegedly deploying the military against striking oil workers. "They're making a mockery of the petition process," says Jeff Vogt, global economic policy specialist for the American Federation of Labor-Congress of Industrial Organizations. In the trans-Pacific talks, international unions are pushing a broad statement of labor obligations that signatories must honor to gain greater access to the U.S. market. Because the pact would replace existing treaties with Chile, Peru, Singapore, and Australia, Vogt calls the talks "a rare opportunity to build on labor protections."

While no one predicts fast legislation in light of Washington's partisan bickering, labor activists are heartened by the March ascension of former trade subcommittee chair Representative Sander Levin (D-Michigan) to the chairmanship of the pivotal House Committee on Ways and Means. "Trade is close to Levin's heart," one union lobbyist says.

In the meantime, the Labor Depart-

ment's International Labor Affairs Bureau (ILAB) promises to be more active in enforcing the labor provisions of existing trade agreements and programs. To date, about three dozen North American Free Trade Agreement complaints have been filed by unions, mostly against Mexican labor practices—yet none have been pursued in state-to-state arbitration. Labor activists plan to file the first such complaints under bilateral trade agreements soon.

"The labor chapters of free trade agreements have been dismissed as toothless," says Lance Compa, a labor law professor at Cornell University. "What I've found is that, while they might not have hard-edged sanctions, along the way you expose a lot of problems and create dynamics for change."

Dispute resolution aside, deputy under secretary for international affairs Sandra Polaski is advancing "soft law" approaches to boosting labor rights abroad. Under her leadership, ILAB is expected to bolster the ability of poor countries to enforce labor laws (by giving factory inspectors more training and better vehicles, for example) and to expand programs that encourage higher labor standards overseas by giving cooperating companies a gold star for being sweatshop-free—often an advantage with today's consumers.

Though no dramatic breakthrough looms for America's international labor policy, Democratic labor reformers express patience. "After eight years of total stagnation, when ILAB was underfunded and basically restricted to child labor," says Compa, "labor advocates are generally optimistic that over the course of four or eight years some progress can be made." ■

#### THE NUMBER

**\$6.2**  
MILLION

Amount of settlement between Sears, Roebuck & Co. and the Equal Employment Opportunity Commission in connection with claims by 235 former Sears employees that the company fired them after they went on disability leave. The settlement is the largest ever reached by the EEOC in an Americans with Disabilities Act class action.



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