

**OECD PROACTIVE AGENDA PROJECT ON RESPONSIBLE BUSINESS  
CONDUCT IN THE FINANCIAL SECTOR  
TERMS OF REFERENCE**

**Background**

1. This document presents the Terms of Reference for the Proactive Agenda project on responsible business conduct in the financial sector, adapted from the proposal for next steps of work supported by the OECD Working Party on Responsible Business Conduct (WPRBC).

2. Since 2011, the OECD Guidelines for Multinational Enterprises (the Guidelines) and the UN Guiding Principles on Business and Human Rights (UNGPs) introduced new expectations vis-à-vis corporate conduct by stating that enterprises should:<sup>1</sup>

1. “Avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur”;<sup>2</sup> and
2. “Seek to prevent or mitigate adverse impacts where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.”<sup>34</sup>

3. In this regard, under the Guidelines, companies are expected to undertake risk-based due diligence to identify prevent, mitigate and account for such adverse impacts.

4. Research conducted by Sustainable Finance Advisory (SFA) on the application of the Guidelines to the financial sector revealed a need for more clarity on the implications of these new expectations for enterprises operating in the financial sector.

5. In response, in 2013 the WPRBC mandated the Secretariat to develop notes on the scope and application of the term ‘business relationships’ in the context of the financial sector; the application of the Guidelines on Sovereign Wealth Funds and Central Banks;

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<sup>1</sup> The Guidelines are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. The expectations of the Guidelines build on and are consistent with the expectations in the UN Guiding Principles on Business and Human Rights (UNGP).

<sup>2</sup> The Guidelines, Chapter II, paragraph 11.

<sup>3</sup> The Guidelines, Chapter II, paragraph 12.

<sup>4</sup> In the remainder of this Terms of Reference, reference will be made to “the terminology on directly linked”.

and the terminology on ‘directly linked’ in the context of the financial sector. The WPRBC later approved the paper on ‘business relationships’, and further agreed to support the declassification of the paper on ‘directly linked’ as a Note by the Secretariat. The WPRBC and the Investment Committee agreed that the WPRBC approved the paper on “business relationships” and the note on “directly linked” from the Secretariat should support and inform this proactive agenda project on responsible business conduct in the financial sector.

## **Purpose**

6. The project, *Responsible Business Conduct in the Financial Sector*, will aim to support multinational enterprises in the financial sector that apply the Guidelines.<sup>5</sup> Specifically, the project will seek to elaborate practical and relevant approaches on how the different types of financial institutions (FIs) may integrate the provisions of the Guidelines into their due diligence practices, in a manner that builds off their existing practices and reflects the practical realities, regulations and special characteristics of the different parts of the financial sector.

7. The project will focus on situations where a financial institution’s operations, products and services are directly linked to adverse human rights, labour or environmental impacts through a business relationship,<sup>6</sup> keeping in mind that this should not shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship. The project will likewise seek to understand and clarify what constitutes appropriate due diligence in situations where a financial institution may be contributing to adverse human rights, labour or environmental impacts, prior to entering a business relationship as well as in existing business relationships.

8. As relevant the project will seek to complement and be consistent with related principles and initiatives (for example the OECD Principles of Corporate Governance, IFC Performance Standards, standards and instruments produced by the Equator Principles, Thun Group of Banks, UNEP Finance Initiative, UNPRI, Basel Committee, Financial Stability Board (FSB), the International Organization of Securities Commissions (IOSCO), International Association of Insurance Supervisors (IAIS), etc.) to avoid duplicating or contradicting internationally-recognised standards.

9. The project will be supported by a multi-stakeholder process through an Advisory Group (see below) and will be demand-driven in nature.

## **Adherence to Principles for the Proactive Agenda**

10. This project adheres to the principles for the proactive agenda of the OECD Guidelines.

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<sup>5</sup> Observance of the *Guidelines* by enterprises is voluntary and not legally enforceable. Nevertheless, some matters covered by the Guidelines may be regulated by national law or international commitments. MNEs are expected to fulfil the recommendations set out in the Guidelines and the countries adhering to the Guidelines make a binding commitment to implement them.

<sup>6</sup> While the due diligence provision of the Guidelines applies to all chapters except Taxation, Competition and Science & Technology, the first phase will only focus on impacts linked to the Human Rights, Environment and Employment and Industrial Relations chapters.

Principles	Responsible Business Conduct in the Financial Sector
Demand driven & broadly supported by NCPs and relevant stakeholders	<p>The Secretariat has received numerous requests from industry practitioners as well as from delegates to develop further guidance on this issue.<sup>7</sup></p> <p>The project will involve stakeholders from different parts of the financial sector and from different regions to contribute to broad input to promote the Guidelines while also anchoring current practises.</p>
Address issues where there may be risks of significant adverse impacts on matters covered by the Guidelines, and be sufficiently important and in need of attention to justify the time, energy and resources entailed in a broad inclusive multi-stakeholder process	<p>The financial sector has an important role to play in avoiding, preventing, mitigating and addressing adverse impacts across a range of industries. Often the financial sector can exercise significant leverage on clients which can contribute to improved conduct.</p>
Avoid duplication with other efforts relevant to the effective implementation of the Guidelines; and add value in terms of contributing to the effective observance by enterprises of the principles and standards contained in the Guidelines;	<p>Currently detailed guidance on the application of the Guidelines to specific financial instruments and services is lacking. However multiple initiatives do exist that are relevant for work the field, e.g. the Equator Principles Financial Institutions, UN PRI, UNEP Finance Initiative, IFC Performance Standards, and the Thun Group of Banks. These organisations will all be involved in the Advisory Group, and the suggested due diligence approaches prepared in the summary reports will draw on insights from that work, where relevant, to enable effective and streamlined implementation efforts by financial institutions.</p>
Have a reasonable expectation of success in reaching an outcome that will be supported by adherents to the OECD Declaration on Investment and Multinational Enterprises as well as affected stakeholders.	<p>The activities pursued under the project will directly support the effective application of the Guidelines. Consequently, the work must be developed so that it can expect to be supported by adherents to the OECD Declaration on Investment and Multinational Enterprises as well as affected stakeholders. Active involvement in the work by major financial institutions and initiatives</p>

<sup>7</sup> For instance in its letter to the Investment Committee, Norges Bank (NBIM) (Norway’s Central Bank), the operational manager of the Government Pension Fund Global (the GPF) explained, “the complexity of the relationships in the financial sector and the multitude of business models within this sector warrant a careful and thorough assessment of the proper functioning of the Guidelines within the sector. It is also NBIM’s opinion that the applicability of the Guidelines to minority shareholders warrants a separate and thorough assessment”. The Dutch NCP’s statements on the involvement of APG with POSCO also highlighted that further clarification of the applicability of the Guidelines in the day-to-day business of FIs is necessary. Representatives from various financial institutions as well as other stakeholders have also highlighted the need for such guidance in the final recommendations of the previous Advisory Group for the financial sector constituted in 2012, during discussions at the [2013](#) and [2014](#) Global Forum on Responsible Business Conduct (see 2013 and 2014 GFRBC summary reports), as well as in stakeholder consultations of the WPRBC.

	will help foster ownership of results, while targeted follow up activities, e.g. on outreach or areas for peer-learning, will enable greater implementation by the sector.
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## Project Activities

### Phase I: Exploring responsible business conduct among specific financial services

10. The *Responsible Business Conduct in the Financial Sector* project will be organised around three activities: (1) identifying and developing case studies (2) multi-stakeholder expert working sessions and (3) development of a summary report on case studies and due diligence.

#### 1) *Developing case studies*

11. Development of concrete case studies on the principal categories of financial services, drawing from the case studies prepared in the SFA study. Case studies may include, but not be limited to:

- 1) Investments (including minority shareholdings in public and private companies, pension funds, institutional investors, mutual funds, types of investment strategies, etc.)
- 2) Asset based and project finance
- 3) Corporate lending (beyond asset based finance)

12. Case studies may also be developed for additional financial services (e.g. retail banking, insurance, etc.) as deemed necessary by the AG. The case studies should deepen the understanding of the various (practical) complexities in the financial sector, in relation to the Guidelines, RBC and other relevant international standards and national regulations.<sup>8</sup> If the Advisory Group decides that the discussions on, and findings from, these case studies could feed into the development of more detailed practical guidance on due diligence for those financial services, such an additional step may be considered by the WPRBC.

13. These case studies should protect the identity of individual firms as well as OECD member countries. They may be inspired by real-life examples, for instance provided by the experiences of the NCPs, but should be extrapolated to avoid singling out or rendering identifiable any scenarios or cases associated with specific FIs. The case studies should be identified using the following criteria:

- Relevancy and representation for the service/ transaction category (e.g. no peripheral issues);

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<sup>8</sup> Therefore, the financial sector itself will be involved and relied on (through the multi-stakeholder advisory group) in selecting the case studies that reflect real-life practical challenges.

- From simple to complex, with various levels and types of complexity involved in each case study, e.g. due diligence and compliance with rules on corporate governance and disclosures;
- Different types of adverse RBC impacts (either human rights, labour rights or environment) as well as different severity of harm;
- Different business models and business relationships within a given category.

### **2) *Multi-stakeholder expert working sessions***

14. This activity includes 2-day in-depth working sessions on included categories of financial services, to describe the potential implications of the Guidelines and expectations of due diligence in the selected case studies. In particular, issues such as seeking to create deeper understanding of what leverage, severity of harm, complexities of various business relationships, the legal, policy and market contexts and business models can mean to different financial institutions should be reflected in the analysis of appropriate approaches to due diligence in the case studies. Furthermore, an initial identification of good practices will be an important part of this activity.

15. The working sessions will be organised with the multi-stakeholder Advisory Group (or a selection of Advisory Group members) and other relevant experts. They will build upon the initial exploratory work done by the Secretariat regarding the scope and application of business relationships as approved by the WPRBC, and maybe further informed by the notes of the Secretariat on ‘directly linked’ in the context of the financial sector.

### **3) *Summary report on case studies and due diligence***

16. The OECD Secretariat will produce a draft summary report on approaches to due diligence for included categories of financial services as discussed during the expert working sessions. In advance of each multi-stakeholder expert working session a draft report will be prepared outlining initial expectations on due diligence with regard to specific case studies, highlighting the various complexities of the cases, complementary due diligence responsibilities for various entities involved, metrics and tools that can be used, modes of prioritisation and engagement, and any other possible responses to avoid, prevent, mitigate and address (if relevant) adverse impacts.

17. The draft reports on due diligence for each product or service will be revised in light of the working sessions and circulated to the Advisory Group for discussion and feedback prior to their finalisation and wider public release. At the completion of Phase I, the Secretariat will solicit feedback from the Advisory Group and inform the WPRBC of the result. The WPRBC will consider the results of Phase I and decide whether to proceed with a Phase II.

### **Phase II: Follow-up, and/or developing recommendations and practical guidance**

18. Consistent with the Principles for the Proactive Agenda, no follow-on phase of work will be considered until after the results of Phase I are communicated, so the WPRBC can assess the demand for further work. In such an instance, a Terms of Reference for

Phase II of this project would be reviewed and submitted for approval by the WPRBC prior to its commencement.

## **Organisational Structure of the Project**

### ***OECD Secretariat***

19. In accordance with the Principles for the Proactive Agenda the OECD Secretariat, under the guidance of the Chair of the Working Party, and in collaboration with the Chair of the Advisory Group, is responsible for coordinating and administering the *Responsible Business Conduct in the Financial Sector* project in a manner consistent with the Rules of Procedures of the Organisation.

### ***Working Party on Responsible Business Conduct***

20. The Working Party on Responsible Business Conduct (WPRBC) oversees activities related to the implementation of the Guidelines, as well as other activities related to RBC more broadly. The WPRBC will be updated on the process of the project.

21. The Investment, Financial Markets, and Insurance and Private Pensions Committees will be periodically updated on the progress of the project.

### ***Advisory Group***

22. The Advisory Group is the primary body for multi-stakeholder dialogue and coordination for the *Responsible Business Conduct in the Financial Sector* project. The role of the Advisory Group is to support the project in the following ways:

- Contribution to development of case studies and describe current practises (Activity 1)
- As relevant, participation in expert working sessions (Activity 2)
- Providing feedback on summary reports and next steps (Activity 3)

23. Membership of the Advisory Group will reflect practical expertise on the subject matter from different parts of the financial sector as well as a diversity of perspectives (e.g. representation of governments, international organisations, industry practitioners and civil society). The Advisory Group should in addition seek to have broad geographical representation. An initial list of potential members is included in Appendix 2.

24. The Advisory Group will seek to ensure that under-represented constituencies, including non-OECD countries are included as members where possible. Where that is not possible, it will consult with under-represented constituencies. The number of members of the Advisory Group will be limited to approximately 25-30 to ensure effectiveness and to facilitate coordination.

25. The Working Party will designate a Chair for the Advisory Group. Any adherent to the Declaration on International Investment and Multinational Enterprises may volunteer to chair the Group. Advisory Group members may seek to nominate Vice-Chairs to the Advisory Group to represent the stakeholder group.

26. The OECD Secretariat and the Advisory Group Chair will be responsible for organising conference calls and meetings to seek input from the Advisory Group. The Advisory Group may meet in person once a year and through conference calls every two months (or as needed). Advisory Group members are expected to participate regularly in meetings and contribute actively to the work.

**APPENDIX 1: TENTATIVE TIMELINE FOR RESPONSIBLE BUSINESS CONDUCT IN THE FINANCIAL SECTOR PROJECT**

Main deliverables	June 2015	July 2015	August – September 2015	October – November 2015	December 2015	January 2016 – May 2016
<p><b>4-5 expert meetings on due diligence in different financial products and services</b></p> <p><b>4-5 related reports on due diligence approaches discussed / agreed in expert meetings</b></p>	<ul style="list-style-type: none"> <li>-WPRBC approves Terms of Reference</li> <li>- Advisory Group (AG) constituted</li> </ul>	<ul style="list-style-type: none"> <li>- Prepare initial draft report on due diligence (DD) in <b>investment</b> (according to different asset classes)</li> <li>- Case studies / scenarios on investment prepared with AG input</li> </ul>	<ul style="list-style-type: none"> <li>- First expert working session (<i>topic investment</i>)</li> <li>- Draft Report on investment DD updated after expert working session and circulated to AG for comment, then finalized</li> <li>- Meeting of AG to develop</li> </ul>	<ul style="list-style-type: none"> <li>- Prepare initial draft reports on due diligence in <b>corporate lending</b> and <b>project finance</b></li> <li>- End-November: Second and third expert working session (<i>topics: corporate lending and project finance</i>)</li> <li>- Draft reports updated after expert working session and circulated to AG for comment, then finalized</li> </ul>	<ul style="list-style-type: none"> <li>- AG conference calls and written input to develop case studies / scenarios on two more financial services</li> <li>- Prepare initial draft reports on due diligence for two more financial products/services.</li> </ul>	<ul style="list-style-type: none"> <li>Fourth and fifth expert consultations as necessary</li> <li>Finalise all publications, submit to WPRBC for consideration as necessary.</li> <li>AG prepares follow-up plan for phase II of the project, based on Phase I results and findings</li> </ul>



			case studies / scenarios on corporate lending and project finance			
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**APPENDIX 2: INITIAL LIST OF THE ADVISORY GROUP**

1. The below lists represents an initial list of potential members to the Advisory Group for Responsible Business Conduct in the Financial Sector:

<b>Government</b>	
	Canada
	EU
	France
	Italy
	Netherlands
	Norway
	Norwegian Export Credit Guarantee Agency
	Switzerland
	South Africa
	UK
<b>Industry</b>	
	ABN AMRO
	APG
	Barclays (representing Thun Group of Banks)
	Caixa de Previdencia
	Black rock
	ING
	JP Morgan
	NBIM
	UBS
	USS Investment Management
	U.S. Council for International Business
	Manulife Financial
<b>International Organizations</b>	
	IFC
	OHCHR
	UNCTAD Sustainable Stock Exchanges
	UNEP Finance Initiative

	UNPRI
Worker representatives and civil society	
	Bank Track
	Berne Declaration
	OECD Watch
	WWF
	ICAR
	TUAC
	ITUC
	Institute for Human Rights and Business