



## Response to Consultation on Sector Discussion Papers (ICT Sector)

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### Introduction

This submission has been prepared by Kate Elliot, Ethical Researcher at Rathbone Greenbank Investments, part of Rathbone Investment Management Ltd (Rathbones). Rathbone Greenbank Investments (Rathbone Greenbank) is the specialist ethical and responsible investment unit within Rathbones.

Rathbone Greenbank provides a bespoke ethical investment service for private individuals, trusts and charities who want their investments to take account of their environmental, social and ethical concerns. In doing this we use a variety of approaches from simple negative screening to more complex analysis of positive and negative factors.

This submission is the personal, professional opinion of the author. It is based on a review of the ICT Sector Discussion Paper, and has also been informed by discussions with companies, members of the socially responsible investment (SRI) community and NGOs. It is made with the support of Rathbone Greenbank, but does not represent an official position of Rathbone Greenbank or of Rathbones.

Rathbone Greenbank welcomes the work of the Institute for Human Rights and Business and Shift in developing these sector guidelines for consideration by the European Commission. We feel that clear, practical guidance is vital for assisting companies in implementing the 'protect, respect, remedy' framework of the UN Guiding Principles for Human Rights.

I trust you find these comments useful and I look forward to seeing the guidance as it develops. If I can be of any further assistance, please let me know.

### Does the discussion paper identify the most serious and the most likely impacts that companies in this sector may have on human rights?

Yes, I feel the discussion paper identifies the keys risks faced by companies within the ICT sector.

### Does the discussion paper identify the major challenges that companies in this sector are facing in respecting human rights?

- 1) I feel that the discussion paper overlooks the important role ownership structures play in either encouraging or hindering a company in meeting its responsibility to respect human rights.

For a state-owned company, pressure to respect human rights will largely be received from the stance of its government. If a state is proactive in addressing its own responsibility to protect human rights, then it is likely a company entirely or partially owned by that state will be actively encouraged and supported in its efforts to respect human rights. However, if a state is not willing to meet its own responsibilities, then this will present a significant challenge to any company owned by the state wishing to implement measures to respect human rights.

A key challenge or contextual factor for state-owned companies is therefore how to manage conflicts and alignments between their own human right policies and those of the states which own them.

The boards of stock-market listed companies are accountable to the company's shareholders. Some shareholders will welcome and even request companies take steps to

reduce the risk of complicity in human rights abuses. However, there will likely be some investors who view such measures as unnecessary distractions from or limitations on a company's primary goal of generating shareholder return. Such investors may not see that involvement (even involuntarily) in abuses of human rights, exposes companies to significant reputational and legal risks.

A key challenge for listed companies is therefore communicating to all investors the *business* risks and opportunities associated with human rights.

- 2) In section 5.2, the difficulty of assessing the risks of rapidly developing technologies are discussed. It should also be noted that rapid changes in the social, political and cultural backdrop make risks difficult to predict and assess. Whilst not specific to the ICT industry, the need to assess the impact of and be prepared for events such as the Arab Spring is a key challenge.
- 3) In section 5.4 of the discussion paper, the challenges posed by various business relationships are discussed. I feel the impact of internal business relationships should also be recognised.

Many companies (particularly telecommunication service providers) operate through a network of international subsidiaries and franchise partners. If the parent company holds only a minority stake in a subsidiary then it may have limited influence on the management of that subsidiary, including on human rights issues. In the case of franchise partners, where a local company leases an international company's brand, parent company control is non-existent.

The challenge of how companies can exert influence across these different ownership models should therefore be noted.

### **Are there good practices in addressing these human rights challenges that could be built on in developing the forthcoming guide on the corporate responsibility to respect in this sector?**

With respect to the specific issue of human rights challenges in the supply chain, initiatives such as the Fair Labor Association (FLA) could be a useful reference point. To date, participation in such initiatives has largely been limited to apparel manufacturers. However, Apple's decision earlier in 2012 to join the FLA could signal wider participation from ICT product manufacturers.

### **What form should the forthcoming guidance take in order to add greatest value in advancing respect for human rights in this sector?**

- 1) I support the suggestions in section 6 of the discussion paper for the guidance to include clarification of companies' responsibilities and practical measures that can be taken by companies.
- 2) I feel the guidance should emphasise the benefit of a multi-stakeholder approach. This could include:
  - Companies working with both home and host governments to improve the regulatory and legal framework in which they operate. This could have particular relevance to the issue of license agreements raised in section 5.4.
  - Engaging with stakeholders as part of risk assessments, both prior to market entry and during an operation's lifetime.
  - Public disclosure of relevant policies and procedures aimed at supporting a company in its responsibility to respect human rights. Reporting should be sufficient to allow stakeholders to assess the adequacy of a company's response to a risk.
- 3) It is essential that the guidance is in a form such that stakeholders can clearly assess the extent to which companies have implemented it. This will ensure that companies are commended for taking positive steps and also held to account should they be found not to have met their responsibilities.

- 4) A 'comply or explain' framework could provide a useful basis for companies wishing to report on their implementation of the guidelines.

Under such a framework, companies would be required to report on their implementation of the guidance. In addition, an opt-out would exist for companies choosing not to report on this issue. In the latter situation, companies would be required to explain to stakeholders their reasons for not reporting.

This would encourage all companies, even if they consider their HR risks to be immaterial, to consider the guidance, report and explain their reasoning. Companies are also often reluctant to begin reporting on a particular issue unless they are confident that they can show compliance with all (or at least the majority) of the expected standards. The inclusion of an opt-out and explain option could therefore encourage more companies to begin reporting on their implementation of the guidance.

Such approaches also tend to be favoured by the SRI industry as it creates a common framework against which to assess companies.

- 5) The guidance should be well-defined, whilst also taking into account the challenges of different business models and operating environments.

Given the diversity of companies and activities covered by the discussion paper's definition of the ICT sector, it may be advisable to include sections for different sub-sectors (i.e. manufacturers, infrastructure providers, and service providers).

In support of segregated sub-sector guidance, the Project Team should note the experience of the GNI in attempting to develop a framework acceptable to the ICT sector as a whole. Despite three telecoms companies being involved in the early stages of the GNI's development, these later withdrew. The primary reason cited by telecoms companies for not joining the GNI is that they require personnel on the ground (unlike software providers) and as such face different risks.

It should also be noted that companies are often reluctant to write off issues as immaterial. Categorising the guidance according to the specific challenges of different activities within the ICT sector could prove useful in focusing companies on the issues and guidance most relevant to their business model.

- 6) I would also urge the Project Team to consider the role of the SRI industry in communicating and promoting the final guidance to companies in the ICT sector. Endorsement by a coalition of investor groups is a common way of showing broad support for initiatives and guidelines. Examples include:

- An investor statement released in June 2012 calling on Member States of the United Nations to adopt a strong, legally binding and comprehensive Arms Trade Treaty. This was supported by 39 investors collectively representing \$3 trillion of assets under management.
- The Carbon Disclosure Project, supported by over 550 investors representing some \$70 trillion in assets.
- An investor statement released in May 2011 expressing support for the UN Guiding Principles on Business & Human Rights. This was signed by 29 investors, representing \$2.7 trillion in assets under management.