OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES
NATIONAL CONTACT POINT NORWAY

Department for Business Innovation & Skills

Ponto de Contato Nacional
Diretrizes da OCDE para as Empresas Multinacionais

Institute for Human Rights and Business
Shaping Policy • Advancing Practice • Strengthening Accountability

Workshops on the OECD Guidelines for Multinational Enterprises in Brazil

Workshop Report
Awareness Raising on the OECD Guidelines with Brazilian Industry
Monday, 27 January 2014
São Paulo, at the Confederation of National Industries

Implementation of the OECD Guidelines in the Financial Sector
Tuesday, 28 January 2014
São Paulo, at the Brazil Central Bank

INTRODUCTION

The Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises (the "OECD Guidelines")[1] are the most comprehensive set of government-backed recommendations on responsible business conduct. Adhering governments make the commitment to establish a National Contact Point ("NCP"), which play a unique role of providing a grievance and mediation mechanism, contributing to the resolution of issues that arise from the alleged non-observance of the OECD Guidelines in specific instances. The NCPs also further the effectiveness of the OECD Guidelines by undertaking promotional activities and handling enquiries. The Guidelines aim to encourage the positive contributions businesses can make to sustainable development while minimising the negative impacts of their operations and their business relationships. The 2011 revision to the OECD Guidelines includes an entirely new chapter on human rights that builds on the United Nations Guiding Principles on Business and Human Rights[2] and strengthens the possibility of bringing complaints for mediation to NCPs established pursuant to the OECD Guidelines.

The Brazilian, Norwegian and UK NCPs have established a productive collaboration to exchange and learn from each other's experiences, as encouraged by the OECD Guidelines' Implementation Procedures. These joint meetings also provide an opportunity for NCPs to understand the practices and challenges in other OECD markets where MNEs from their own country may be operating. In 2013, the three NCPs held an awareness raising workshop in Brasilia with various actors, including government, business, trade unions and academia. This year, the Brazilian NCP decided to focus on an awareness-raising event targeted at business.

The three NCPs held two meetings in São Paulo, Brazil:

- 27 January 2014, hosted by the National Confederation of Industry of Brazil, involving more than 40 participants from the business community, with invited speakers from business, government, international organizations and CUT, a major Brazilian

[1] http://mneguidelines.oecd.org/
[2] http://www.business-humanrights.org/UNGuidingPrinciplesPortal/Home

confederation of trade unions. The workshop provided an overview of the purpose and contents of the OECD Guidelines, and of the role and main tasks of the NCPs, including important mediation efforts. The workshop linked the NCP's work to wider developments in Brazil and drew the connection to other related initiatives.

- 28 January 2014, hosted by the Brazilian Central Bank, involving almost 70 participants from financial institutions, government and invited speakers, dedicated to the process of learning from each other on implementing the OECD Guidelines in the financial sector. The workshop aimed to present the recent discussions at the OECD Investment Committee on the application of the OECD Guidelines to institutions in the financial sector, including minority shareholders and sovereign wealth funds. A real case, involving the Norwegian sovereign wealth fund, was presented to illustrate what is expected from investors and asset managers under the OECD Guidelines. Also, opportunity was given to bank representatives, investors and asset management institutions, supervision and regulating agencies and pension funds to react to issues discussed at the OECD Investment Committee and to provide an overview of how they address social risks.

The agendas for the two meetings are included in the Annex.

AWARENESS RAISING WITH BRAZILIAN INDUSTRY ON THE OECD GUIDELINES – 27 JANUARY 2014

The purpose of the half-day meeting was to **raise awareness among businesses of the OECD Guidelines on Multinational Enterprises (OECD Guidelines) and the work of the OECD National Contact Points (NCPs)**. The meeting provided an overview of the OECD Guidelines and the NCPs and focused on the two main functions of the OECD NCPs: mediating disputes concerning the implementation of the OECD Guidelines by businesses (referred to as "specific instances" under the OECD Guidelines) and awareness raising around the OECD Guidelines.

The OECD Guidelines were **updated in 2011, significantly expanding the chapters and therefore scope of the Guidelines**, adding a new chapter on human rights. The discussions at the meeting highlighted in particular the human rights chapter as this has been one of the most cited chapters in specific instances among all NCPs since the update of the Guidelines in 2011. The human rights chapter is based on and aligned with the recent UN Guiding Principles on Business and Human Rights.[3]

Under the OECD Guidelines, **governments adhering to the Guidelines make a binding commitment to the OECD** to promote the Guidelines and establish the implementation mechanism through its NCP. All participating Governments are required to establish and facilitate the activities of an NCP but there is no single organisational format for doing so. As for multinational enterprises (MNEs) based in OECD countries or in countries adhering to the Guidelines including Brazil, the OECD Guidelines set out standards of conduct. The Guidelines are intended to guide MNE behaviour operating in or from adhering countries to the OECD Guidelines – both domestically and abroad. The Guidelines **are not binding for the MNEs to which they apply, but that is not to say that they are entirely voluntary**. There is no legally binding enforceability mechanism, but there is a monitoring and enforcement mechanism through the NCP specific instance process by which civil society, trade unions and individuals can bring complaints about non-compliance with the Guidelines against an MNE. And similar to the UN Guiding Principles on Business and Human Rights, the Guidelines are a global set of expectations of business conduct.

The OECD Guidelines **apply equally to private and state owned enterprises (SOEs), and on-going discussions in the OECD imply that the Guidelines also apply to other state-owned**

[3] http://www.business-humanrights.org/UNGuidingPrinciplesPortal/Home

entities with activities of commercial nature. For SOEs, the Guidelines acknowledge that the public may have even higher expectations for responsible conduct than for private enterprises.[4] Some governments have developed specific guidance for their SOEs on responsible business conduct. The OECD is in the process of updating its Guidelines on the Corporate Governance of State Owned Enterprises[5] and there may be opportunities for further alignment between these guidelines and the OECD Guidelines on Multinational Enterprises could be expected. The Brazil NCP has had bilateral meetings with most of the large Brazilian SOEs, given their extensive visibility in the country.

With respect to its function as a **mediator of specific instances**, which involve disputes with respect to MNE implementation of the Guidelines, the Brazilian NCP noted that there have been numerous specific instances since the NCP started its work in 2003, though relatively few compared to the number of MNEs, SOEs and the size of the country. The vast majority of Brazilian cases have been brought by the trade unions against MNEs in the financial sector. The OECD Guidelines are supported in the OECD by a secretariat and three multistakeholder groups: BIAC (the Business and Industry Advisory Committee to the OECD, an independent international business association advising government policy makers at the OECD of which CNI, the host of the meeting is the Brazilian member), TUAC (the Trade Union Advisory Committee to the OECD, an international trade union organisation that represents the views of trade unions at the OECD, of which CUT, who spoke at the meeting is a member) and OECD Watch (a global network of civil society organisations). TUAC has been very active in engaging and training its members in Brazil on bringing specific instances under the Guidelines, including CUT which has been the author of many of the complaints before the Brazilian NCP. The member of CUT noted during the meeting that once more trade unions learn more about the NCP, further specific instances can be expected, which will in turn require resources for capacity building for instance on facilitating informal social dialogue for the Brazilian NCP.

Through its specific instance process, the NCP seeks to mediate the disputes between the parties, aiming at an agreed resolution of the issue. The role of NCPs to help businesses and other stakeholders by serving as **informal problem solvers** and supporting them in developing relevant approaches to responsible business in the specific instance. The Brazilian NCP uses mediators from one of the 11 government departments that are members of the NCP. As most of the specific instances to date have involved labour issues, the Ministry of Labour and Employment has handled the mediation processes. As the Brazil NCP noted, it is a sign of maturity of society that stakeholders are willing to dialogue instead of filing a lawsuit. The UK NCP shared its experience in conducting mediation in the UK where the NCP involves a professional and independent mediator to assist the parties in reaching a solution – a different approach than Brazil. The Norwegian NCP has an independent NCP expert panel who may mediate, but can also choose to hire external mediators. One of the very important lessons learned by both the Norwegian and the UK NCPs is to include within any resolution specific agreement and terms on a follow up and monitoring on the steps agreed by both parties.

When parties to a specific instance do not agree or do not even agree to participate, there is a difference in approach among NCPs as to whether or not NCPs should **make "recommendations" as to whether a company has "not observed" or "failed to observe" the OECD Guidelines**. For some NCPs, including the Brazilian, Norwegian and UK NCPs such determinations are clearly a core part of operations and are also perceived to be a useful way of encouraging companies into a mediation process. Others do not share this view and point to the possibility of recommendations affecting the motivations of those bringing complaints and their willingness to enter mediation in good faith. Greater disclosure by all NCPs about the participation

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[4] The Guidelines state: "State-owned multinational enterprises are subject to the same recommendations as privately-owned enterprises, but public scrutiny is often magnified when a State is the final owner", Commentary 10 to OECD Guideline Chapter II, General Policies.

5 http://www.oecd.org/corporate/ca/corporategovernanceofstate-ownedenterprises/oecdguidelinesoncorporategovernanceofstate-ownedenterprises.htm

of all parties in the process and assessment of specific instances, through consensus whenever possible and if necessary without consensus, is in line with the Guideline's broader emphasis on disclosure.

As part of its awareness raising agenda, the **Brazil NCP has been reaching out to numerous stakeholders to highlight the OECD Guidelines and encourage their application and use**. The NCP has so far engaged relevant government departments, trade unions, SOEs and businesses through various meetings and plans to do further outreach among CSOs. In addition to these general outreach functions, the NCPs and the OECD Secretariat have a proactive role in promoting the OECD Guidelines and working with stakeholders to develop guidance on applying the Guidelines in particular contexts and particular sectors. The "**proactive agenda**" is a complement to the specific instance procedure and is intended to be forward-looking to provide guidance and support in order to effectively reduce the number of future specific instances. The OECD Secretariat is currently running four proactive agenda projects to develop guidance and tools on the application of the Guidelines in the following sectors: 1) agricultural supply chains; 2) stakeholder engagement in the extractive sector; 3) textiles; 4) the financial sector (this project was the focus of the second day of the workshop). The OECD Secretariat is also continuing its activities on the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas [6] The Brazilian NCP and the OECD Secretariat encouraged the businesses present to engage in the proactive agenda work, bringing Brazilian good practices and challenges to the work.

The meeting closed with brief presentations by various stakeholders of **current topics and events related to the Guidelines**, demonstrating the wide relevance of the Guidelines in providing standards of responsible behaviour. The Ministry of Labour and Employment noted its initiatives on "Decent Work" with the construction sector around the forthcoming World Cup and Olympic venues. The current discussions on temporary workers in the National Congress were highlighted, demonstrating the complexities of reaching a common understanding on the application of the labour rights standards of the Guidelines to new forms of work arrangements.

APPLICATION OF THE OECD GUIDELINES TO THE FINANCIAL SECTOR – 28 JANUARY 2014

The following day the three NCPs and the OECD Secretariat held a full day meeting on the application of the OECD Guidelines on Multinational Enterprises (OECD Guidelines) to the financial sector in order to:

- explain and explore **the linkages between the OECD Guidelines and the sustainability agenda many Brazilian financial institutions** (FIs) are pursuing
- **highlight the current OECD discussions on financial institutions** under its "proactive agenda"
- to understand **Brazilian challenges** and good practices in the financial sector as an input into the forthcoming OECD work on the financial sector and encourage active participation of Brazilian FI into the forthcoming work

The meeting involved almost 70 representatives from various parts of the financial sector – a wide range of banks, pension funds and other investors, asset managers and development banks. Several financial sector regulators also attended: the Central Bank, the private insurance supervisor (SUSEP) and the Securities and Exchange Commission of Brazil (CVM), as well as several industry associations.

[6] See http://www.oecd.org/corporate/mne/mining.htm

The Current State of Play on the OECD Work on the Financial Sector

The meeting opened with a presentation of the **current OECD discussions on the application of the OECD Guidelines to the financial sector** that formed the basis for the discussion for the remainder of the day. FIs have been involved in approximately 8-10 % of all recorded specific instances since 2000.[7] Some of these cases have spurred discussion on how the Guidelines can be applied in practice,[8] and revealed confusion about the relevance of the Guidelines to the financial sector. The OECD "Proactive Agenda" projects serve to operationalize the principle based Guidelines to specific sectors.

Drawing on the analysis of the Norwegian NCP in the NBIM case and a parallel case involving the Dutch NCP,[9] input from the UN Office of the High Commissioner for Human Rights (OHCHR has a mandate to lead the business and human rights agenda within the United Nations system, and, in collaboration with the UN Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, provide guidance on interpretation of the Guiding Principles),[10] the Secretariat has already issued two draft clarifications **on the application to sovereign wealth funds and central banks,** and the **concept of "business relationships."** These drafts have been circulated to participants and the Secretariat is working on a clarification of **"directly linked,"** as explained below. Once approved by OECD bodies, these papers will be publicly released to enable better understanding and implementation of the Guidelines to the financial sector, and inform the next steps in the OECD's work to develop practical approaches to due diligence across the various financial products and services, building on existing practices.

The OECD Guidelines apply to businesses, including financial institutions (FIs). The Guidelines apply to FI's own operations and their **"business relationships"** a term used in both the OECD Guidelines and the UN Guiding Principles. As the recent draft paper issued by the OECD highlights, "business relationships" is to be interpreted widely and covers **the full range of clients of FIs, including companies invested in, even where the FI is a minority shareholder**. For the purposes of this report, in order to simplify terminology, these business relationships, whether established by the FI making investments or providing loans or other financial products or services, will be referred to as "clients".

Having established the coverage of the Guidelines, the Secretariat then explained what is expected of FIs for their own operations and with respect to their clients. Under the OECD Guidelines, businesses must carry out due diligence for all types of adverse impacts covered by the Guidelines (unless explicitly excluded), meaning that the due diligence must cover environment, industrial relations, corruption, and consumer protection as well as human rights. All businesses are expected to respect human rights – that is to do no harm. This means not causing or contributing to harm to human rights, and to "[s]eek[ing] ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts. The **"do no harm" standard does not mean "do nothing"**. Instead, the **Guidelines call on businesses to take a number of steps, including**:

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7 See specific instance database http://mneguidelines.oecd.org/

8 For instance, in response to a specific instance before the Norwegian NCP involving the Norges Bank Investment Management (NBIM), one of the three operational wings of the Norwegian Central Bank and the asset manager of the Norwegian Sovereign Wealth Fund, the Norwegian Ministry of Finance asked the OECD Secretariat to clarify the application of the Guidelines to minority shareholders and sovereign wealth funds.

9 http://www.oesorichtlijnen.nl/en/news/publication-final-statement-posco-ao-lok-shakti-abhiyan-ao

10 See *http://www.ohchr.org/EN/Issues/Business/Pages/BusinessIndex.aspx* and the Opinion issued by OHCHR in response to a request regarding the Guiding Principles and the financial sector

1. adopt a **policy statement** on human rights (which does not need to be standalone policy and can be incorporated in other corporate documents but which sets out the business' approach to human rights)
2. **carry out due diligence** on potential adverse impacts on human rights from their own operations and their business relationships.
3. provide or participate in providing a **remedy** where the business has caused or contributed to a harm.

"Due diligence" within the meaning of the OECD Guidelines and the UN Guiding Principles on Business and Human Rights may be broader than the way the term is typically used by many FIs. It covers not only the **initial investigation** of a potential client and the transaction but **also the steps to prevent and mitigate those potential adverse impacts, as well as the on-going monitoring of its clients operation**s. In other words, due diligence is conceived of as an on-going process. In addition, the focus of the due diligence called for under the Guidelines is to understand the risks the FI or its business relationships creates for society, human rights, and the environment, rather than focusing on the risk to the FI itself. The due diligence approach cuts across the OECD Guidelines chapters on General Policies, Disclosure, Human Rights, Employment and Industrial Relations, Environment, Combating Bribery and Consumer Interests[11]. Recognising that FIs may have hundreds, if not thousands of clients and that it could be impractical to conduct specific due diligence on all such clients, the OECD Guidelines instead call on businesses (including FIs) to develop risk based systems that they can use to screen potential clients and monitor existing clients operations for the risks they pose to the environment and society, including human rights.[12]

The OECD Secretariat is in the process of finalising its third piece of general guidance that will elaborate on the Guidelines' concept that an FI's responsibility to respect human rights applies to impacts on human rights caused or contributed to by a client and that are **directly linked** to the FI's products (i.e financial products) or services (i.e. financial services). The key point is to explain when and how FIs are considered "directly linked" to potential human rights impacts through their business relationships with their clients and when FIs may actually be contributing to those impacts. The guidance will draw attention to another key difference in terminology that that has already caused some confusion among FIs. Many FIs use the concept of "indirect impacts" to refer to their relationship to their client's impacts. The **OECD Guidelines do not use the concept of "indirect impacts" and instead consider impacts of a client on human rights that are linked to the FIs products or services to be "directly linked"** and therefore within the scope of application of the Guidelines for the FI. In other words, there is no concept of "indirect impacts" that excludes a client's impacts from the scope of the Guidelines.

As the OECD Secretariat noted, while these relationships with clients and their potential and actual impacts on human rights are within scope for the application of the Guidelines, there is **differentiated responsibility** for responding to (actual or potential) impacts. The client that causes or contributes to the harm has the primary responsibility to remedy those harms while an FI has a complementary responsibility. Where that dividing line is drawn will depend on whether the FI contributes to the harm (in which case it shares responsibility with the client for addressing the harm and preventing future harm) or whether the FI is only directly linked to that harm by the fact that it has a business relationship (in which case it is expected to use its leverage to prompt its client to take action). In this later case, recognising that the FI is not actively contributing to the harm but nonetheless is in the business relationship to profit from the operations of the client that has caused (or contributed to) the harm, it retains a more limited responsibility.

The OECD Secretariat highlighted that the discussions currently in the OECD bodies indicate that the OECD Guidelines do apply to **minority shareholders** as well as majority shareholders. There

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[11] The approach does not apply to the chapters on Science and Technology, Competition and Taxation.

[12] For a further explanation, see the Norwegian NCP final statement in the NBIM case, http://www.responsiblebusiness.no/en/assessment-of-complaints/nbim/

is no basis in the Guidelines for exempting minority shareholders. Ownership is the most comprehensive business relationship that exists so it would not make sense conceptually to exempt minority shareholders from responsibilities under the Guidelines when other types of business relationships are covered. While the size of an investor's share is not in itself a factor in determining whether the Guidelines apply, it is a factor in considering how a minority shareholder is expecting to meet its responsibility to respect human rights under the Guidelines. A minority shareholder, like other investors, is expected to have a system in place to identify risks to human rights among its investments and to exercise its leverage in the companies in which it has invested to prompt them to take their responsibilities, if alerted to risks to human rights (or other risks covered by the Guidelines).[13]

The OECD Secretariat noted that the forthcoming **proactive agenda project** will build on and elaborate these basic approaches, **working with different types of FIs and other stakeholders to work through the application of these principles to different types of financial transactions**, such as corporate loans, asset management, fixed income transactions, minority shareholding, index investing, etc. to develop more specific and relevant guidance for these different types of transactions. The OECD Secretariat recognises the challenges of applying the Guidelines to complex financial products and identifying the appropriate division of roles in exercising that responsibility between FIs and their clients and is therefore seeking active input from the sector in the work. The guidance can then be used by the FIs, as well as the NCPs and other stakeholders in developing, modifying and reviewing risk management systems and broader approaches to align them to the Guidelines.

The Current State of Play on Application of the OECD Guidelines among Brazilian Financial Institutions

The FI participants and the regulators were **invited to respond to the concepts presented by the OECD Secretariat** and to present their current approaches to due diligence to provide some "food for thought" for the OECD Secretariat in developing the forthcoming guidance for the financial sector. The discussion was also intended to prompt reflections by the FIs and regulators in considering how closely their existing risk management systems and product development approaches are aligned with their responsibilities under the OECD Guidelines.

None of the FIs in the workshop challenged the basic approach put forward by the Secretariat and the NCPs. No one questioned *whether* the Guidelines apply to the financial sector; rather the discussion focused on *how* the Guidelines apply. No one questioned that the financial sector has a responsibility for reviewing clients' operations, and indeed, as will be discussed below, many of the FIs in the workshop already have in place systems to do so. The remaining discussion focused on how far responsibility extends. The presentations generally validated that the approach set out in the OECD Guidelines that was modelled on existing FI practices of carrying out due diligence and on the financial sector's increasingly in-depth and widespread approach to managing ESG (environmental, social and governance) risks. For those FIs that have already started or are well along the path in incorporating sustainability concerns, the standards of performance set out in the OECD Guidelines are no surprise. Instead the Guidelines may require adjustments to incorporate emerging risks, such as human rights. Many of the presentations highlighted key concepts that were already in their systems that could be built on in making those adjustments, such as environmental and social responsibility, integrity or similar values. Several of the presentations demonstrated that a few of the FIs already have specific requirements on human rights.

For a number of the participants, attention to human rights is just a part of doing business already. One participant questioned "**this is the 21st century do we still need such guidelines to tell us**

[13] For further discussion on this point see Opinion issued by OHCHR in response to a request regarding the Guiding Principles and the financial sector.

something that is so simple?" One of the pension funds highlighted that the core business of pension fund is people, so it makes sense to pay attention to these broader social, people issues.

The rise in incorporation of ESG issues into asset management, corporate and project finance and even retail banking dovetails with the approach the OECD Guidelines. As one participant noted, **"[w]hen you start to observe social and environmental factors, you start to add value to the due diligence process."** Most of the presentations affirmed that environmental and social risks have become an integral part of credit risk decision-making. The presentations outlined the environmental and social risk management systems the FIs have in place, allowing them to take a systemic approach to risk management, prioritising companies that can have the greatest impact.

Starting with a policy is key to getting the necessary commitment and resources from management, as one bank highlighted. Policies provide the guidance client managers need as a benchmark to verify client operations. This must be backed up by continuous training for FI employees and routine monitoring of client operations, through tools such as client reporting, responding to questionnaires and monitoring on the ground. "If you do not systematize, if you do not train people, there is no way you will implement" was one lesson learned shared by a participant. For investors, several of the pension funds noted that they address key risks around human rights in their instructions to fund managers, which is backed up by specific monitoring.

Several participants highlighted that as important as it is to bring their own on board, it is equally important to **explain to clients the importance of managing environmental and social risks**, and where necessary, provide them with the support needed to incorporate these concepts into their operations. There were several lessons learned highlighted during the discussions: this is not just about reputational damage, there are credit risks and environmental and social risks involved; if clients are not managing environmental and social risks well, it is likely that they are not managing other types of risk well either; and social issues now have the same weight as environmental issues.

The presentations also built on another key concept of the OECD Guidelines approach to exercising responsibility – using leverage to improve outcomes. **Leverage** is of course a well-known concept both in its classic financial sense (using various financial instruments or borrowed capital to increase the potential return of an investment), and is also used in a similar sense in the OECD Guidelines -- that is, structuring deals to increase an FI's control over a client. Many of the techniques FIs already use to improve their leverage in structuring deals can also improve leverage for the purposes of prompting clients to act responsibly – such as through syndications based on common environmental and social performance standards among banks (such as the Equator Principles) and joint engagement among investors. One of the pension funds noted their active participation in the **UN Principles for Responsible Investment**, working with other investors to address responsible business issues in Brazil and wider Latin America, providing a specific example of investors working together to improve their collective leverage over the companies they invest in. As a participant highlighted "we have a power – the power to influence. As providers of capital, businesses are going to need our resources. If we show that we care about environmental and social issues, they will change their operations and it will make all the difference."

The importance of providing **remedies** as set out in the OECD Guidelines was less discussed, in part potentially because this should in most circumstances be the responsibility of the client who has caused harm. Nonetheless, a few participants noted that when issues are raised, there needs to be systems in place to respond to complaints. Other participants highlighted the importance of learning by doing.

One of the clear points that came out of the presentations was that FIs are creating positive **business opportunities** for themselves, their clients and their communities by addressing the risks covered in the Guidelines in a proactive way and building new business lines around those opportunities. As one of the participants noted, the

Banco do Brasil

Banco do Brasil is the largest bank in Latin America and

twin objective of ESG due diligence is always risk management and identification of opportunities. Twinning microcredit to large ventures or financial education to loans, financing community housing and using the opportunity to build community engagement were some of the examples presented.

Another significant point the meeting highlighted is the complementary and reinforcing role that **Brazilian regulators**, industry associations, and the stock exchange play and will continue to play in reinforcing the need for environmental and social risk management by the financial sector. The UN Guiding Principles that underpin the OECD Guidelines chapter on human rights highlight the state's role in developing a smart mix of regulatory and non-regulatory measures to advance the agenda. The **Brazilian Central Bank** is leading the way among Central Banks globally by developing new regulations for the Brazilian financial sector that are very aligned with the OECD Guidelines. The Central Bank recently held hearings on its proposals with the financial sector and civil society through a public consultation launched in the UN Conference on Sustainable Development – Rio+20. The Central Bank is currently in the process of finalising the draft rules, which require the implementation of an environmental and social policy by financial institutions. As noted by the Central Bank representative, Brazil has a huge financial system that "needs a standard of behaviour to be followed." When finalised, the regulations will apply to entire financial sector and are expected to provide a regulatory framework for the standard of conducts covered in the OECD Guidelines and a model for other financial regulators. As the Central Bank noted, it is taking a norm which is principle based and requiring banks to turn that into a system to address financial risks due to exposure to social and environmental issues. . This is an important example of a regulator facilitating implementation of a global norm.

The forthcoming Central Bank regulation is not about philanthropy (which some parties mistakenly associate with the term "corporate social responsibility") but instead about an issue the Central Bank considers important – market failure and a failure of voluntary actions to cover the risks adequately; it identified deficiencies in current practice among Brazilian FI that can lead to risks for the whole financial sector. The Central Bank therefore decided to **adopt a regulation to level the playing field and ensure that all FIs adopt minimum standards on environmental and social responsibility to ensure efficient governance and risk mitigation**. In its white paper, the Central Bank highlighted the need for banks to identify: components of social and environmental risks, how social and environmental issues impact their risk structure, credit, operational and market risks, and how their market values could be impacted by social and environmental issues. Under the proposed regulation, each FI will need to define a policy and an operational plan that demonstrates that they have an adequate systems to manage environmental and social risks. It will be up to the FI to decide the scope of its policy, but whatever that scope is, they must report on it and the policy must be proportional to the risk to which the FI is exposed and to the complexity of its activities, services and products. The Central Bank's expectation is that the policy should be effective in creating efficiency in the FI's system. The Central Bank will be able to evaluate each FI's proposed policy and system.

has operations in 24 countries in North America, Europe and Asia. The bank established the Unit for Sustainable Development (UDS) which brings together the areas of social and environmental responsibility and sustainable development in 2009. Moreover, the company has adhered to many international initiatives and protocols, including: UN Global Compact, the Equator Principles, Global Reporting Initiative, Carbon Disclosure Project, Caring for Climate and the World Water Council.

Banco do Brasil has adopted a series of projects in their "Bank of Society" approach: Business Strategy for Regional Sustainable Development; Productive Microcredit; Current Account for Entrepreneur Women; the National Program for Strengthening Family Agriculture; Student Financing Fund (FIES); Gold Life Insurance Woman; Athletic Association Bank of Brazil (AABB) Community; Program Minha Casa Minha Vida, to finance popular home construction; and Credit Accessibility. In addition, Banco do Brasil highlighted its project oriented for the women, aligned with its participation in the initiative "Women's empowerment principles: equality means business", launched by the UN Global Compact and the UN Women.

When evaluating environmental and social risks, as the Central Bank pointed out, the OECD Guidelines provide important guidance.

Several **industry associations** presented their work on developing guidance and methodologies on environmental and social risk management and joint development of training, joint discussions with regulators and follow up on the NCP specific instances in the financial sector, financial education, microfinance and providing finance in socially excluded areas. These aspects highlighting the role industry associations can play in helping to lead transitions to more responsible business practices rather than representing the lowest common denominator.

The leadership position of BM&F Bovespa among global **stock exchanges** in providing carrots and sticks to promote better sustainability practices among companies is well recognised. The Corporate Sustainability Index (ISE) reflects shares from companies with recognized commitments to social responsibility and business sustainability and is built on a range of international standards, including international human rights standards. As noted, the stock exchange promotes a vision of corporate sustainability as a competitive advantage.

The presence of a number of other international initiatives during the workshop highlighted the **complementary role of other initiatives** in reinforcing a more structured approach to integration of environmental and social issues. The Global Reporting Initiative and the references to the new integrated reporting initiative are important tools in promoting transparency around sustainability, with the noted challenge of ensuring that sustainability reports are not simply marketing tools. The Global Compact, UNDP, Instituto Ethos and others all play roles in reinforcing the broader sustainability message.

In closing, one participant observed that the presentations provided an important overview of good examples in dealing with the **tip of the iceberg, but there are more and bigger challenges in the submerged part of the iceberg lurking beneath the surface that still lie ahead and that may require even deeper structural challenges and changes in the financial sector**. The discussion on the OECD Guidelines is an important step as many noted. "We are defining the path to the Guidelines, as you walk new ways come up."

BM&FBovespa

The Brazilian *Securities, Commodities and Futures Exchange*, BM&FBovespa, is one of the biggest stock exchanges in the world and internationally recognized for its practices on responsible business conduct. BM&FBovespa was the 1st exchange in the world to adhere to the UN Global Compact, the 1st exchange of the emerging markets to become a signatory of the Principles for Responsible Investment (PRI) and also one of the founding signatories of the Sustainable Stock Exchanges (SSE). In addition, the exchange is currently chair of the Advisory Council of the Global Reporting Initiative (GRI) Brazil and member of the GRI International Council.

BM&FBovespa has built a sustainability policy based on four pillars: market, environment, social and corporate governance. One of the main elements of the market pillar is the Corporate Sustainability Index (ISE), the 4th Sustainability Index in the world and 1st in Latin America. ISE was created in 2005 to measue the average return on a theoretical portfolio of stocks of publicly traded companies listed on the BM&FBovespa with best practices in sustainability. The index portfolio comprises no more than 40 stocks selected by the ISE Governance Committee. In 2014, for the first time, ISE's portfolio reached the maximum number of companies (40).

CONCLUSIONS

Both workshops reflected that in-depth use and understanding of the updated OECD Guidelines and the UN Guiding Principles on Business and Human Rights are still at early stage for many stakeholders but given the long-standing attention to sustainability in Brazil, some companies are already well on their way to integrating many dimensions of the OECD Guidelines in their work. Nevertheless, it was also clear that these principle-based non-judicial guidelines clarify general expectations across sectors and may thus contribute to building a level playing field. In the "grey areas" in between hard law and stakeholder expectations, NCPs have a role to play to facilitate informal dialogue and problem solving with the aim to reduce human rights and other adverse impacts and improve the sustainable quality of business. It was also clear that practical examples, guidance and tools of how these general expectations can be operationalized particularly on a sectoral basis will contribute to further implementation of the Guidelines.

On the application of the Guidelines to FIs, a number of specific conclusions from the discussions regarding next steps should also be noted:

- FIs should be adequately informed that the OECD Guidelines apply to them and their business relationships with their clients. There is differentiated responsibility for FIs for responding to actual or potential impacts depending on whether the FI is causing /contributing to the impact or is directly linked to the impact of their clients through their operations, products or services.

- The on-going clarification on how the OECD Guidelines apply to the financial sector at the OECD through its proactive agenda should build on leading FIs practices in social and environmental risk management and lead to practical guidance to FIs. Such practical guidance will also serve as capacity-building for NCPs.

- Governments are obliged to establish NCPs and to promote the OECD Guidelines. More attention should be given by NCPs on outreach to FIs, clearly communicating that all private sector and state activities of a commercial nature are encouraged and expected to follow the Guidelines. Leadership in applying the OECD Guidelines by state owned enterprises or state entities may facilitate and increase the legitimacy of governmental-based outreach to private sector FIs to do the same.

- FIs should be informed of the importance of engaging with NCPs and the option that many NCPs have of issuing final statements on specific instances whether or not the FI engages with the NCP.

- FIs may be able to build positive business opportunities for themselves and society alongside addressing the risks highlighted in the OECD Guidelines.

Appendix: Agendas

Workshop on the OECD Guidelines for Multinational Enterprises
Awareness Raising on OECD Guidelines
Monday, 27 January 2014
São Paulo, at CNI (Rua Surubim, 504 – Brooklin Novo)

Program

Chair: Marcos Guimarães, Coordinator of the NCP Brazil

Awareness Raising on OECD Guidelines	
Timing	**Topic**
14h00 –14h10	**Opening Remarks** *Brief welcoming words from the NCPs of Brazil, Norway and UK and from CNI.* Hans Petter Graver, NCP Norway Danish Chopra, NCP United Kingdom Flavio Castelo Branco, *National Confederation of Industry*
14h10 –14h30	**Session 1 - Introduction to OECD Guidelines on Multinational Enterprises** *This panel will provide a brief overview of the purpose and function of the OECD Guidelines on Multinational Enterprises and the basic content of the Guidelines* Hevellyn Albres, NCP Brazil
14h30–15h10	**Session 2 - The National Contact Point (NCP) Role – Mediating Disputes** **Moderator:** Hans Petter Graver, NCP Norway *This panel will provide further details on one of the OECD National Contact Point (NCP) main tasks – mediating disputes about company's application of the OECD Guidelines at home and abroad. The panel will provide different perspectives on the value of having a mediation process, how it works, the possible outcomes of cases and their publication.* Danish Chopra, NCP United Kingdom Marcos Guimarães, NCP Brazil João Felício, CUT – Unified Worker's Central
15h10–15h30	**Coffee Break**
15h30–16h00	**Session 3 - The Proactive Agenda – Views from OECD**

	This panel will give examples from the Secretariat on steps they have taken to raise awareness of the OECD Guidelines with specific business sectors and the main themes being discussed presently at the Working Party. Tyler Gillard, OECD Secretariat
16h00–16h30	**Session 4 - Linking the NCP and the OECD Guidelines to other initiatives in Brazil – Views from Brazil** ***Moderator:*** Danish Chopra, NCP of United Kingdom *This panel will link the NCP's work to wider developments in Brazil (such as the upcoming major sporting events and the business issues involved), to the forced labour list, to the work of the Brazilian export credit agency, and to draw the connection to other related initiatives from business community and NGOs.* Heloísa Covolan, Itaipu Binacional Hélida Alves Girão, Ministry of Labor and Employment Hevellyn Albres, NCP Brazil
16h30 –17h00	**Concluding Remarks** ***Moderator:*** Margaret Wachenfeld, Institute for Human Rights and Business *This panel will wrap up the discussion of the day, allowing the participants to make comments or ask questions.* Renata Seabra, Global Compact Audience NCPs from Brazil, Norway and United Kingdom

Workshop on the OECD Guidelines for Multinational Enterprises
Implementation at the Financial Sector
Tuesday, 28 January 2014
São Paulo, at BCB (Avenida Paulista, 1804, 17th Floor)
Program
Chair: Carlos Cozendey – Secretary for International Affair/MoF

Learning from Each Other on Implementing the OECD Guidelines on Multinational Enterprises in the Financial Sector	
Timing	**Topic**
08h30–09h30	Breakfast will be available from 8.30 onwards
09h30 – 09h40	**Opening Remarks** *Brief welcoming words from the NCPs of Brazil, Norway and UK and from CNI.* Hans Petter Graver, NCP Norway Danish Chopra, NCP United Kingdom Sergio Odilon dos Anjos, Head of Denor, Central Bank of Brazil
09h40 – 10h00	**Session 1 - Introduction to OECD Guidelines on Multinational Enterprises** *This panel provides an overview of the purpose and function of the OECD Guidelines and the basic content of the Guidelines. It will then focus in on the Human Rights Chapter.* Hevellyn Albres, NCP Brazil
10h00 – 11h00	**Session 2 - The OECD Guidelines and the Financial Sector – Key Points** Moderator: Danish Chopra, UK NCP *This panel will involve a presentation on main issues in question about the application of the OECD Guidelines, including the Human Rights Chapter, to the financial sector, drawing on the recent in-depth discussions at the OECD Investment Committee on the finance sector, NCP cases and other initiatives in the financial sector. The discussion will cover the concept of human rights due diligence, and probe the recent guidance and remaining challenges on applying this concept to a wide range of financial products and services.* Tyler Gillard, OECD Secretariat Margaret Wachenfeld, Institute for Human Rights and Business William Baghdassarian, Brazilian Sovereign Fund
11h00 – 11h15	**Break**
11h15 – 12h15	**Session 3 - Lessons from the Field: Applying the OECD Guidelines to Investments and Asset Management** Moderator: Margaret Wachenfeld, Institute for Human Rights and Business

	This panel will present the recent discussions at the OECD Investment Committee on the application of the human rights chapter and the OECD Guidelines due diligence process to a wide range of investors, including minority shareholders and sovereign wealth funds. The panel will include a presentation of the Norwegian NCP's case against the Norwegian sovereign wealth fund to illustrate what is expected from investors and asset managers under the OECD Guidelines. Brazilian investors will provide an overview of how they are addressing social risks, including human rights risks, in their investments to provide a grounded view of the kinds of human rights challenges they face. Hans Petter Graver, NCP Norway Acyr Xavier Moreira, Previ Fund Newton Carneiro, Petros Fund Vânia Borgerth, BNDES – Brazilian Development Bank
12h15 – 14h00	**Lunch Break**
14h00 – 15h10	**Session 4 - Lessons from the Field: Applying the OECD Guidelines to Corporate and Investment Finance** Moderator: Tyler Gillard, OECD Secretariat *This panel will present the views of the Brazilian banks and small associations, including Equator and Thun banks, on the recent discussions at the OECD Investment Committee. The panel will draw on cases from Brazil to highlight key challenges in addressing human rights risk in Brazilian finance. Brazilian banks will provide an overview of how they are addressing social risks, including human rights risks, in and with their corporate and investment banking clients to provide a grounded view of the kinds of human rights challenges they face.* Rodrigo Porto, Central Bank of Brazil Deborah Vieitas, President of ABBI (Association of International Banks) Linda Murasawa, Santander Maurício Messias, Banco do Brasil
15h10 – 15h30	**Coffee Break**
15h30 – 16h30	**Session 5 - Lessons from the Field: Applying the OECD Guidelines to Financial Associations** Moderator: Hans Petter Graver, Norway NCP *This panel will involve an exposure of views by the financial institutions associations on the experiences and challenges to date in applying the Guidelines to the financial sector, looking at lessons learned and challenges ahead. The financial institutions on the panel will take the opportunity to highlight key considerations the NCPs may want to take into account in reviewing cases involving the financial sector. This panel will highlight some of the on-going discussions on the application of human rights to the financial sector, looking at other initiatives and activities.*

	Sonia Favaretto, BM&FBOVESPA (Securities, Commodities and Futures Exchange) Nicolino Eugênio da Silva, FEBRABAN (Federation of Brazilian Banks) Soraya Alves, ANBIMA (BR Financial and Capital Markets Assoc.) Glaucia Terreo, GRI (Global Reporting Initiative)
16h30 – 17h00	**Session 6 - Looking ahead on the financial sector – what are the next steps** Moderator: Margaret Wachenfeld, Institute for Human Rights and Business *This panel will wrap up the discussion of the day and highlighting the main ideas presented. Participants will have the opportunity to state their concluding remarks.* Audience NCPs of Brazil, Norway and UK
17h00	**Closing**