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## Quick reference guide

**OECD Guidelines:** recommendations of governments on the standard of business behaviour that is expected of multinational enterprises (MNEs) throughout their global operations in areas ranging from human rights and employment and industrial relations, to information disclosure and the environment.

**National Contact Point (NCP):** government offices responsible for promotion and implementation of the Guidelines, including a complaint mechanism for handling cases concerning alleged breaches of the Guidelines.

**Due diligence:** process through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts

**Workers' capital:** assets accumulated in collectively funded schemes in order to provide workers with financial security in their retirement

## The OECD Guidelines for Multinational Enterprises

### ABOUT THE GUIDELINES

#### *What are the OECD Guidelines for Multinational Enterprises?*

The OECD Guidelines for Multinational Enterprises (the Guidelines) are recommendations of governments on the standard of business behaviour that is expected of multinational enterprises (MNEs) throughout their global operations in areas ranging from human rights and employment and industrial relations, to information disclosure and the environment.

#### *Do MNEs sign up to the Guidelines?*

No. Governments sign the Guidelines, not MNEs. This makes the Guidelines qualitatively different from company codes of conduct and other initiatives such as the UN Global Compact.

#### *Do the Guidelines apply to all MNEs?*

No. The Guidelines only apply to those MNEs headquartered in countries that have signed the Guidelines. So far 44 countries have signed. The Guidelines apply to all MNEs headquartered in adhering countries, irrespective of ownership (state-owned, public or private) or sector (including the financial sector), wherever they operate, including abroad.

### Signatories to the OECD Guidelines

**OECD members:** Australia, Austria, Belgium, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Luxembourg, Mexico, New Zealand, Norway, The Netherlands, Poland, Portugal, Republic of Korea, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, UK, US.

**Non-OECD members:** Argentina, Brazil, Colombia, Egypt, Latvia, Lithuania, Morocco, Peru, Romania, Tunisia.

#### *Do the Guidelines apply to supply chains?*

Yes. MNEs are expected to encourage their suppliers and business partners, including sub-contractors, franchises and licensees, to apply the Guidelines. Following the 2011 Update<sup>1</sup>, MNEs, including pension funds, are expected to conduct due diligence to *avoid* being involved in so-called "adverse impacts" on matters covered by the Guidelines and to *address* those adverse impacts which they are involved, including through their supply chains and business relationships.



### **Are the Guidelines legally binding?**

No. The Guidelines are an example of a ‘soft law’ instrument. They are neither strictly legally binding in nature, nor completely lacking legal significance. As they are not ‘hard’ law, the Guidelines cannot be enforced through the courts. But because governments have a legal commitment to implement the Guidelines, MNEs are expected to comply with the Guidelines.

### **So how are the Guidelines enforced?**

Governments that sign the Guidelines are required to set up National Contact Points (NCPs) to promote and implement the Guidelines, including handling cases concerning alleged breaches of the Guidelines. The government-backed complaints mechanism is a unique characteristic of the Guidelines. Most NCPs are located within government, either as a single departmental or inter-departmental body. However a small number is tripartite, where trade unions participate as equal partners with governments and business. A small but growing number of NCPs operates independently of government.

### **Who can submit cases?**

Any organisation – including any trade union, NGO or community group – is able to submit a case providing it has a legitimate interest. Cases should be filed directly with NCPs. Where the alleged breach occurs in a country that has signed the Guidelines then the case should be submitted to the NCP of that country. Where it occurs in a country that has not signed the Guidelines, then the case should be submitted to the NCP of the country where the MNE has its headquarters.

### **What does a NCP do with a case?**

The NCP carries out an initial assessment to check that the case is eligible. If the case is accepted, it then offers conciliation or mediation to the parties. If the parties come to an agreement, then the NCP publishes its report and closes the case. If conciliation or mediation fails, then best practice NCPs carry out an examination of the case to assess whether the MNE has breached the Guidelines and publish their findings in a Final Statement.

#### **“Mediation of the OECD Guidelines helped resolve a longstanding dispute”**

In 2006, UNI Global Union filed a complaint at the UK NCP concerning alleged breaches of the Guidelines by G4S (a private security group employing 620000 employees in 125 countries, listed on the London and Copenhagen Stock Exchanges) in the Democratic Republic of Congo, Malawi, Mozambique and Nepal. The issues raised included the right of workers to join a trade union, the payment of the legal minimum wage, and over-time rates. The parties were asked to confirm that they would implement the conciliator’s recommendations in the event that no agreement was reached. This provided the incentive for both sides to come to an agreement. As a result of the dialogue established at the UK NCP, UNI Global Union and G4S signed a Global Framework Agreement in 2008. For Christy Hoffman, UNI Global Union, “*Mediation of the OECD Guidelines case provided the opportunity for G4S and UNI to resolve a longstanding dispute. While G4S and UNI ultimately crafted their own agreement, the involvement of the mediator and the process itself provided an incentive to find solutions to the difficult problems presented in our case. It was a turning point in our relationship*”.

## Chapters of the Guidelines: Key Expectations

### I. Concepts and Principles

- Obey domestic laws.
- Seek ways to honour the Guidelines to the fullest extent.

### II. General Policies

- Abstain from improper involvement in local political activities.
- Refrain from retaliating against workers who report practices that contravene the law, the Guidelines, or the enterprise's policies.
- Conduct due diligence to avoid being involved in adverse impacts on matters covered by the Guidelines, including the supply chain and business relationships, and to address such impacts when they occur.
- Engage with relevant stakeholders for their views to be taken into account.

### III. Disclosure

- Disclose information on material matters regarding their activities structure, financial situation, performance, ownership and governance and workers
- Apply high quality standards to financial and non-financial reporting.

### IV. Human Rights

- Respect human rights and address adverse impacts when they occur, including using their leverage to ensure that other business partners address their adverse impacts.
- Have a human rights policy & conduct human rights due diligence
- Provide for the remediation of adverse impacts where they have caused or contributed to these impacts.

### V. Employment and Industrial Relations

- Respect the right to form or join a trade union and to bargain collectively.
- Contribute to the effective abolition of child labour and to the elimination of all forms of forced or compulsory labour.
- Respect the right to non-discrimination in employment and occupation.
- Provide information to workers' representatives for meaningful negotiations on conditions of employment.
- Provide information to workers and their representatives for a true and fair view of the company's and group performance.
- Provide best possible wages which at a minimum should meet the basic needs.

- Ensure occupational health and safety.
- Provide reasonable notice to workers of restructuring or closures.
- Not threaten to transfer operations in response to negotiations on employment conditions, or workers forming or joining a union.

### VI. Environment

- Maintain environmental management systems to collect and evaluate information on their environmental, health and safety impacts.
- Provide timely information to the public and workers on potential impacts, communicate and consult with affected communities.
- Provide adequate education and training to workers in environmental health and safety.

### VII. Combating Bribery, Bribe Solicitation and Extortion

- Not offer, give or demand a bribe to or from a public or private official nor use intermediaries, such as agents, for this purpose.
- Prohibit or discourage the payment of facilitation payments
- Ensure that political contributions comply fully with public disclosure requirements and are reported to senior management.

### VIII. Consumer Interests

- Provide consumers with sufficient information to make informed decisions and provide access to non-judicial dispute resolution and redress mechanisms.
- Not make misrepresentations or omissions, nor otherwise engage in deceptive, misleading, fraudulent or unfair practices.
- Cooperate with public authorities to address serious threats to public health and safety or to the environment associated with their goods and services.

### IX. Science and Technology

- Adopt practices to support technology transfer in a way that contributes to sustainable development.
- Develop ties with local public research institutions.

### X. Competition

- Refrain from price fixing, bid rigging, or dividing up markets.

### XI. Taxation

- Contribute to the public finances of host countries by making timely payment of their tax liabilities.
- Comply with both the letter and the spirit of the tax laws of the country in which they operate.
- Provide timely information to the public authorities.
- Apply the arm's length principle in transfer pricing practices.

## ***Are there other instruments for holding MNEs to account?***

Yes. There are two other authoritative international instruments: the *ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy* (ILO MNEs Declaration) (1977, revised 2006); and the *UN Guiding Principles on Business and Human Rights* (UNGP 2011). Chapter V of the Guidelines, Employment and Industrial Relations, is based on the ILO MNEs Declaration. Chapter IV, Human Rights, is based on the UNGPs.

## ***How have trade unions used the Guidelines?***

Between 2000 and May 2013, trade unions submitted 145 cases, an average of 12 cases per year. 96% of cases have concerned Chapter V, Employment and Industrial Relations. Since the 2011 update of the Guidelines, trade unions have made strong use of the new recommendations on conducting due diligence to avoid and address adverse impacts (Chapters II, General Policies and IV, Human Rights).

### **“Protect, Respect, Remedy”, the New Global Standard for Human Right Corporate Responsibility**

Traditionally, the international legal architecture for addressing human rights imposed human rights duties on states and not on non-state entities such as enterprises. There was no general international human rights standard setting out the responsibilities of enterprises until June 2011, when the UN Human Rights Council endorsed the Guiding Principles on Business and Human Rights. The Guiding Principles implement the United Nations ‘Protect, Respect, Remedy’ Framework, which comprises three pillars: I. The State Duty to Protect Human Rights; II. The Corporate Responsibility to Respect Human Rights; and III. Access to Remedy. The corporate responsibility to respect human rights is the new global standard of expected conduct for enterprises, wherever they operate. Its concepts and recommendations were incorporated into a new chapter on human rights (IV) in the 2011 Update of the OECD Guidelines. Enterprises cannot pick and choose which rights they respect.

## THE RESPONSIBILITY OF INSTITUTIONAL INVESTORS UNDER THE OECD GUIDELINES

### ***How do the OECD Guidelines apply to institutional investors?***

Under the OECD Guidelines institutional investors are considered as MNEs. They too have a responsibility to *avoid* being involved in “adverse impacts” on matters covered by the *Guidelines*, including in their supply chains and business relationships, and to *address* those adverse impacts with which they are involved. The Guidelines identify three ways in which institutional investors, like any other MNE, can be involved in adverse impacts:

- **Cause or contribute** to an adverse impact *through their own activities*, including in
- **Linked to:** finally an adverse impact can be linked to a pension fund’s operations, products or services by a *business relationship*.

### ***What does it mean to be linked to an adverse impact?***

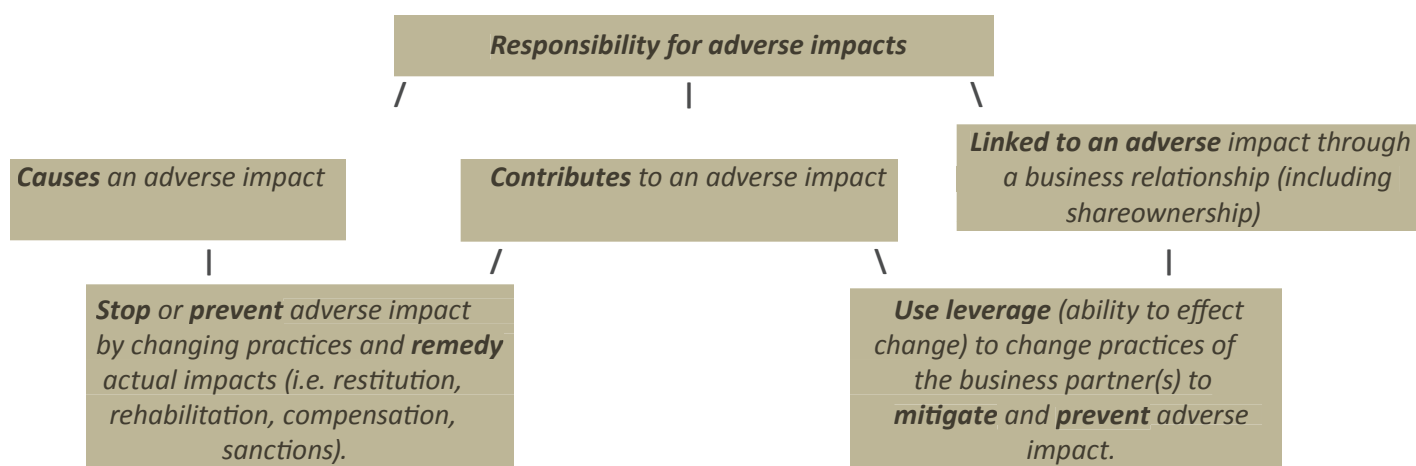
Under the Guidelines institutional investors may be responsible for adverse impacts, even where the investor is not itself causing or contributing to adverse impacts but is linked to an adverse impact through a “business relationship”, including ownership of securities. The respective decisions of the Dutch NCP (see below) and the UN Human Rights Office of the High Commissioner on the responsibility of minority shareholders are examples of this responsibility.<sup>2</sup>

### **Linked to an adverse impact - the case of Dutch APB & APG**

On 9 October 2012, the NGOs Lok Shakti Abhiyan, KTNC Watch, Fair Green and Global Alliance and Fo-ruM filed a complaint under the OECD Guidelines with the Dutch NCP concerning the investments of the ABP and its asset manager APG in the MNE Pohang Iron and Steel Company (POSCO). In its conclusions the Dutch NCP stated that: “*the Guidelines are applicable to financial institutions and to investors, including minority shareholders*”.

*What should institutional investors do to avoid being involved in adverse impacts?*

Under the Guidelines, institutional investors are required to undertake *due diligence* in order to “know and show” that they are meeting their responsibility to *avoid* adverse impacts on matters covered by the *Guidelines* and to *address* those adverse impacts with which they are involved. This means having in place a risk management process that collects the information needed for assessing the risk of adverse impacts occurring, identifying actual adverse impacts that have occurred and accounting for how these risks are addressed.



*What is the meaning of “due diligence”?*

The Guidelines define due diligence as “the process through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts as an integral part of business decision-making and risk management systems”. More specifically the Guidelines define human rights due diligence as a process that “entails assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, as well as communicating how impacts are addressed”.

Understanding Human Rights Due Diligence

What determines the scope of human rights due diligence?	Identification of adverse human rights impacts that are: <ul style="list-style-type: none"> <li>• <i>Caused</i> by the investors’ own activities</li> <li>• <i>Contributed to</i> by the investors’ own activities</li> <li>• <i>Linked to</i> the operations of another MNE by a business relationship</li> </ul>
What determines the level of human rights due diligence?	<ul style="list-style-type: none"> <li>• Severity of actual and potential adverse impacts</li> <li>• Nature and context of operations (country, region, sector or product)</li> <li>• Size of the enterprise.</li> </ul>
What are the characteristics of human rights due diligence?	<ul style="list-style-type: none"> <li>• Risks of the enterprise’s activities to rights-holders, not to the enterprise. Rights-holders include workers</li> <li>• On-going: risks of adverse impacts change over time</li> <li>• Involves stakeholders, including workers and their trade unions</li> </ul>

## WHAT TRADE UNION TRUSTEES AND THEIR PENSION FUNDS CAN DO

Pension funds have a responsibility to exercise responsible ownership of the corporate shares and bonds they own on behalf of their plan members. As shareholders pension funds should expect the companies in which they invest to comply with the OECD Guidelines and with the UN Guiding Principles.

### *What pension funds can do on human rights due diligence*

Under the OECD Guidelines, MNEs should have in place due diligence systems to identify and address their adverse impacts. Pension funds can play an oversight role in this regard, in line with their fiduciary duty.

What the MNE is expected to do:	What pension funds could ask:
Embed a policy commitment to respect human rights throughout the enterprise	<ul style="list-style-type: none"> <li>• Is the policy statement made public?</li> <li>• How is the policy commitment embedded in operational policies and procedures?</li> <li>• Who in the company has oversight of the human rights policy commitment &amp; what is the involvement of the highest governance body?</li> </ul>
Identify actual and potential adverse impacts	<ul style="list-style-type: none"> <li>• Are stakeholders involved? How are they selected? Are trade unions involved?</li> <li>• Does the company seek to identify actual and potential adverse impacts in its supply chain and other business relationships?</li> </ul>
Integrate findings and act to avoid and address adverse impacts.	<ul style="list-style-type: none"> <li>• How does the company integrate its findings?</li> <li>• Who has overall responsibility?</li> <li>• How are the findings being used to change practices?</li> </ul>
Remedy actual impacts, where the MNE has caused or contributed to these impacts.	<ul style="list-style-type: none"> <li>• Are there established grievance mechanisms for remedying adverse impacts? If so:</li> <li>• Are these mechanisms: legitimate, accessible, predictable, equitable, transparent, in line with internationally recognised standards, based on dialogue?</li> <li>• Who has oversight? How are they evaluated?</li> <li>• Does the company negotiate with trade unions in the remediation of actual adverse impacts affecting workers?</li> <li>• Have these grievance mechanism undermined the role of trade unions in any way?</li> </ul>
Track responses.	<ul style="list-style-type: none"> <li>• <i>How does the company use findings of due diligence to change the behaviour of business partners?</i></li> </ul>
Communicate how adverse impacts are addressed.	<ul style="list-style-type: none"> <li>• Does the company disclose how it manages its social and environmental impacts including in the supply chain?</li> <li>• What are the communication and reporting systems in place?</li> <li>• Does the company use different means of communication for different groups?</li> </ul>

## What the PRI would mean for an effective use of the OECD Guidelines

The table below lists the UN Principles for Responsible Investments (PRI) and some (but not all) of its “possible actions” and what PRI signatories, including pension funds, could do in relation to the effective use of the Guidelines.

The UN Principles for Responsible Investment	Implications for the effective use of the Guidelines
<p><b>1 We will incorporate ESG issues into investment analysis and decision-making processes.</b> Possible actions (inter alia):</p> <ul style="list-style-type: none"> <li>• Address ESG issues in investment policy statements;</li> <li>• Assess the capabilities of internal and/or external investment managers to incorporate ESG issues; Ask investment service providers to integrate ESG factors into evolving research and analysis;</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Reference the Guidelines in the investment policy document.</i></li> <li>• <i>Ask investment managers and external service providers to include the Guidelines in their ESG framework;</i></li> <li>• <i>Verify that they have a good understanding of the Guidelines.</i></li> </ul>
<p><b>2 We will be active owners and incorporate ESG issues into our ownership policies and practices.</b> Possible actions (inter alia):</p> <ul style="list-style-type: none"> <li>• Participate in collaborative engagement initiatives;</li> <li>• Develop and disclose an active ownership policy consistent with the Principles;</li> <li>• Develop an engagement capability (either directly or through outsourcing);</li> <li>• File shareholder resolutions consistent with long-term ESG considerations &amp; engage with companies on ESG issues;</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Check if the shareholder campaign would involve a potential breach of the Guidelines.</i></li> <li>• <i>Reference the Guidelines in the proxy voting policy.</i></li> <li>• <i>Train internal staff on how to engage with a company that is subject to an NCP procedure</i></li> <li>• <i>Check the trade union and the NGO public list of cases on a regular basis;</i></li> <li>• <i>Engage with senior management whose company is subject to an NCP procedure.</i></li> </ul>
<p><b>3 We will seek appropriate disclosure on ESG issues by the entities in which we invest.</b> Possible actions (inter alia):</p> <ul style="list-style-type: none"> <li>• Ask for standardised reporting on ESG issues (using tools such as the Global Reporting Initiative);</li> <li>• Ask for information from companies regarding adoption of/adherence to relevant norms, standards, codes of conduct or international initiatives (such as the UN Global Compact)</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Verify that corporate sustainability reporting claiming compliance with the GRI Principles are effectively referencing the Guidelines</i></li> <li>• <i>Engage with senior management on how the company is ensuring compliance with the Guidelines</i></li> </ul>
<p><b>4 We will promote acceptance and implementation of the Principles within the investment industry.</b></p> <p><b>5 We will work together to enhance our effectiveness in implementing the Principles..</b></p>	<ul style="list-style-type: none"> <li>• <i>Promote the Guidelines as tool for the effective implementation of the PRI</i></li> </ul>
<p><b>6 We will each report on our activities and progress towards implementing the Principles.</b></p>	<ul style="list-style-type: none"> <li>• <i>Publish on-line any NCP reports involving invested companies</i></li> </ul>

### What pension funds can do when an OECD case is submitted

Once a case has been filed under the OECD Guidelines regarding the activities of an entity in which the pension fund invests, then the fund could take steps to ensure that it is not linked to adverse impacts through its securities holdings. The pension fund should use its leverage to change the behaviour of the entity concerned so as prevent and mitigate the adverse impacts.

The following sets out the different stages of the complaints process, indicating what pension funds can do at each stage. Because transparency is one of the core criteria of NCPs, then information concerning the case and the process should be in the public domain (the exception is during conciliation/mediation proceedings, where parties are required to respect confidentiality). This means that pension funds are able to play a role in supporting the NCP process.

### NCP Procedure

### What a pension fund owning shares or bonds of the targeted company could do to ensure that is not linked to adverse impacts:

The case is submitted to the NCP

Check regularly the list of cases:

- Trade union cases: [www.tuacoecdmneguidelines.org/cases.asp](http://www.tuacoecdmneguidelines.org/cases.asp)
- NGO cases: [oecdwatch.org/cases](http://oecdwatch.org/cases)

The NCP carries out an initial assessment to check that the case is eligible:

- **The NCP rejects the case**

- Look at why the case has been rejected.
- If the case has been rejected due to the existence of ongoing court proceedings, or where the issues are still of concern then consider bringing the issue to the next AGM of the MNE.

Or

- **The NCP accepts the case and offers mediation to the parties.**

- Seek information from senior management on how it is handling the case and in particular whether it has accepted to participate in mediation provided by the NCP





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### KEY RESOURCES FOR TRUSTEES

#### *OECD Guidelines for Multinational Enterprises*

##### **Trade Union Advisory Committee to the OECD (TUAC)**

TUAC is the official voice of labour at the OECD. TUAC leads the trade union movement's work on the OECD Guidelines and provides support to trade unions on filing complaints and running training events, together with partner organisations. TUAC maintains a dedicated website on the Guidelines, where it publishes trade union cases submitted under the Guidelines.

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www.tuacoecdmneguidelines.org

##### **OECD Watch**

OECD Watch is an umbrella organisation comprising around 80 non-governmental organisations (NGOs) from around the world. OECD Watch maintains an online database of all NGO cases submitted under the Guidelines.

www.oecdwatch.org

##### **Organisation for Economic Cooperation and Development (OECD)**

The OECD publishes the OECD Guidelines, in English, French and German, together with a range of other materials.

www.oecd.org/daf/inv/mne/

#### *UN Guiding Principles on Business and Human Rights*

##### **Office of the United Nations High Commissioner for Human Rights**

The Office of the United Nations High Commissioner for Human Rights publishes links to available resources on the *UN Guiding Principles on Business and Human Rights* (2011), including the Principles themselves in English, French and Spanish, and an Interpretive Guide on the Corporate Responsibility to Respect Human Rights:

<http://www.ohchr.org/EN/Issues/Business/Pages/Tools.aspx>

##### **International Trade Union Confederation (ITUC)**

The ITUC has published a Briefing Note and a Guide to the UN Guiding Principles on Business and Human Rights (2011) which provides the basis for the OECD Guidelines chapter on Human Rights.

- Briefing Note for Trade Unionists: <http://www.ituc-csi.org/the-united-nations-protect-respect.html>
- A Guide for Trade Unionists: [http://www.ituc-csi.org/IMG/pdf/12-04-23\\_ruggie\\_background\\_fd.pdf](http://www.ituc-csi.org/IMG/pdf/12-04-23_ruggie_background_fd.pdf)



### **Business and Human Rights Resource Centre**

The Business and Human Rights Resource Centre maintains a number of useful portals, including on the UN Guiding Principles on Business and Human Rights and the Working Group on Business and Human Rights:

- Guiding Principles on Business and Human Rights: <http://www.business-humanrights.org/SpecialRepPortal/Home/Protect-Respect-Remedy-Framework/GuidingPrinciples>
- Working Group on Business and Human Rights: <http://www.business-humanrights.org/Documents/UNWorkingGrouponbusinesshumanrights>

### **International/Global Framework Agreements (IFAs)**

International/Global Framework Agreements are agreements that are negotiated between Global Union Federations and Multinational Enterprises. To date around 20% of Global Framework Agreements reference the OECD Guidelines. The full list of IFAs is published by the Council of Global Unions:

<http://www.global-unions.org/framework-agreements.html>

### **The Global Unions Committee on Workers' Capital (CWC)**

The CWC is an international labour union network for dialogue and action on the responsible investment of workers capital. Workers' capital is invested in companies operating in a globalised economy, with increasingly complex supply chains. By leveraging their retirement savings, workers can influence how companies respect human and labour rights, remain financially sustainable, and minimize adverse impacts on the environment.

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### Endnotes

1 Since their adoption in 1976, the OECD Guidelines have been subject to periodic review, most recently in 2011 as a result of which the scope of responsibility of MNEs under the Guidelines was extended to cover adverse impacts with which the MNE was involved including in the supply chain and other business relationships.

2 United Nations Office of the High Commissioner for Human Rights; the issue of the applicability of the Guiding Principles on Business and Human Rights to minority shareholdings; 26 April 2013



The CWC brings together representatives of the international labour movement to share information and develop strategies for joint action in the field of workers' capital. CWC works on shareholder activism, corporate and financial market governance, pension trustee education and economically targetted investments.