OECD Seminar on Business and Human Rights

Spotlight on: Due Diligence for Responsible Business Conduct

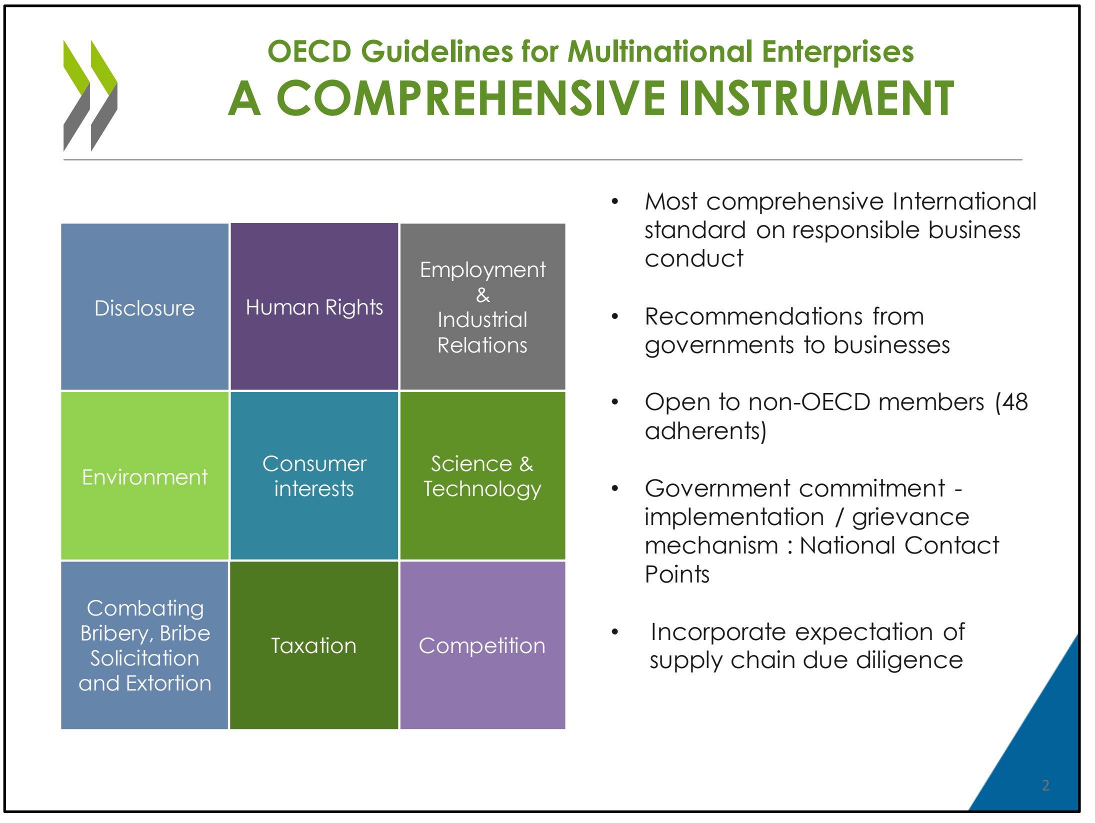
22 August, 2018

INTRODUCTION

The main objective of this presentation is to give an overview of **the OECD Guidelines for Multinational Enterprises**, to promote the Guidelines, and to **provide a deep-dive into the Due Diligence process** for Responsible Business Conduct

Hyperlinks to resources:

OECD Guidelines for Multinational Enterprises
http://www.oecd.org/daf/inv/mne/48004323.pdf?_ga=2.81142359.1922360891.1546862855-1110450162.1536045527



<u>OECD GUIDELINES – A COMPREHENSIVE INSTRUMENT</u>

The OECD Guidelines for Multinational Enterprises are **the most comprehensive standard of Responsible Business Conduct (RBC).**

The Guidelines cover **9 substantive areas that go beyond just human rights** (areas are on slide).

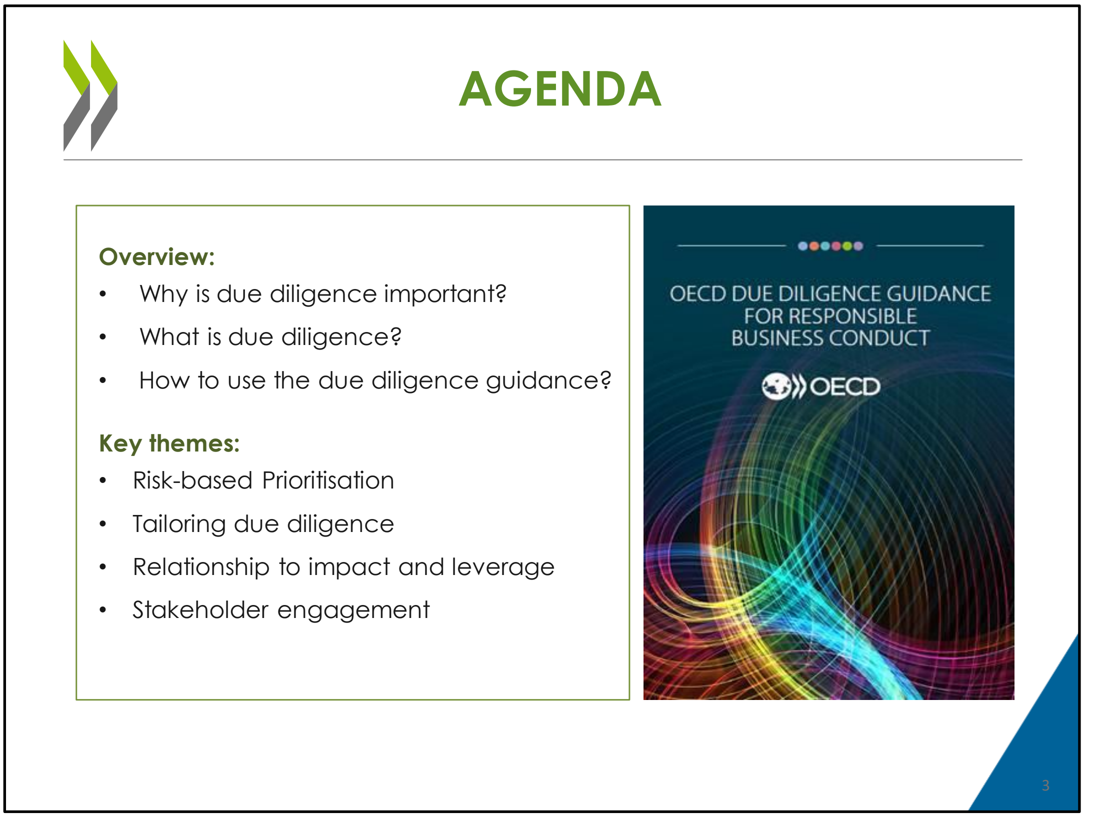
They are recommendations **by governments to business operating in or from their territories.** Currently, there are 48 countries that adhere to the Guidelines, representing some of the world's most advanced economies and they promote these recommendations.

The Guidelines contain a unique implementation mechanism, called the National Contact Points (NCPs), whose mandate is to **promote the recommendations** of the Guidelines and to serve as a **non-judicial state-based grievance mechanism** in instances where companies do not respect the recommendations of the Guidelines.

First introduced in 1976 and updated 5 times since, **most recently in 2011**. In 2011, the human rights chapter and due diligence expectation were added. Since this update, due diligence has become the leading framework for business in implementing RBC.

Hyperlinks to resources:

OECD Guidelines for Multinational Enterprises
http://www.oecd.org/daf/inv/mne/48004323.pdf?_ga=2.81142359.1922360891.1546862855-1110450162.1536045527



AGENDA

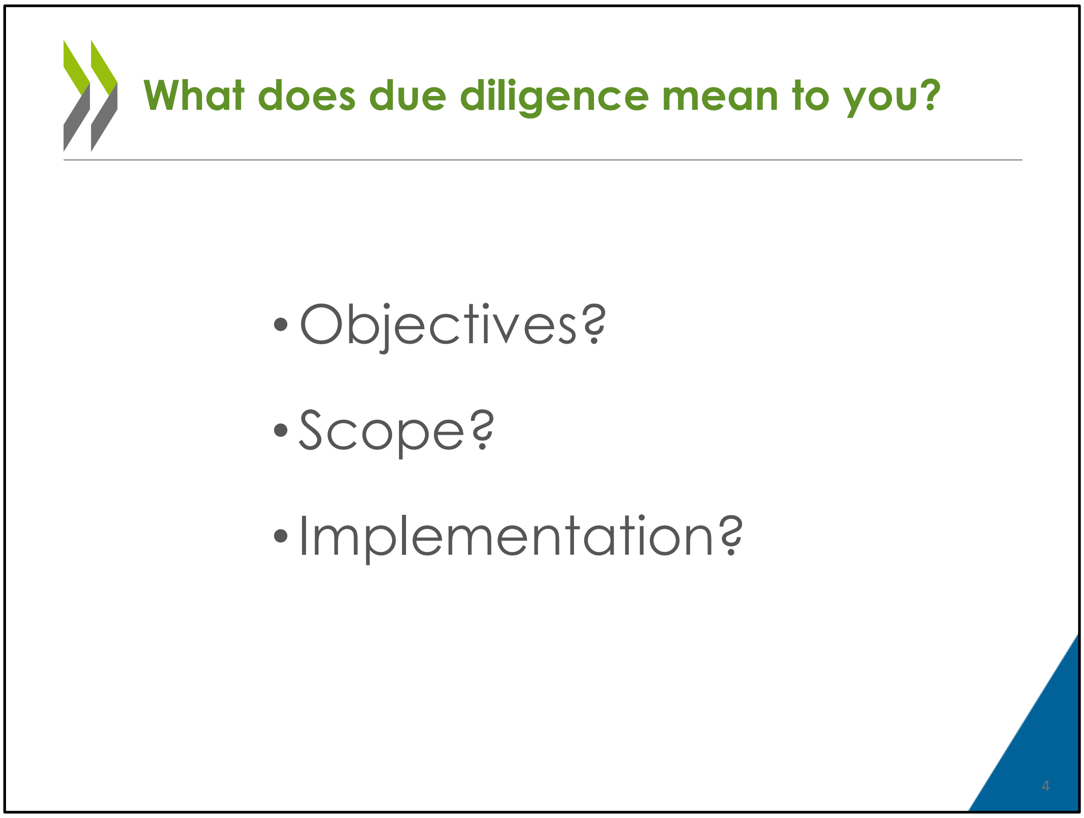
This presentation will cover **why due diligence is important**, what exactly is meant by due diligence and **how it differs from more traditional due diligence processes**. Finally, an explanation of the OECD general due diligence guidance will be provided.

The presentation also includes deep-dives into some key themes relevant to the OECD due diligence :

- Risk-based prioritisation – what that means and how it can be applied
- Tailoring due diligence to different sectors and businesses
- Relationships to impact and leverage
- Stakeholder engagement and how that fits into the due diligence process

Hyperlinks to resources:

General OECD Due Diligence Guidance:
http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf

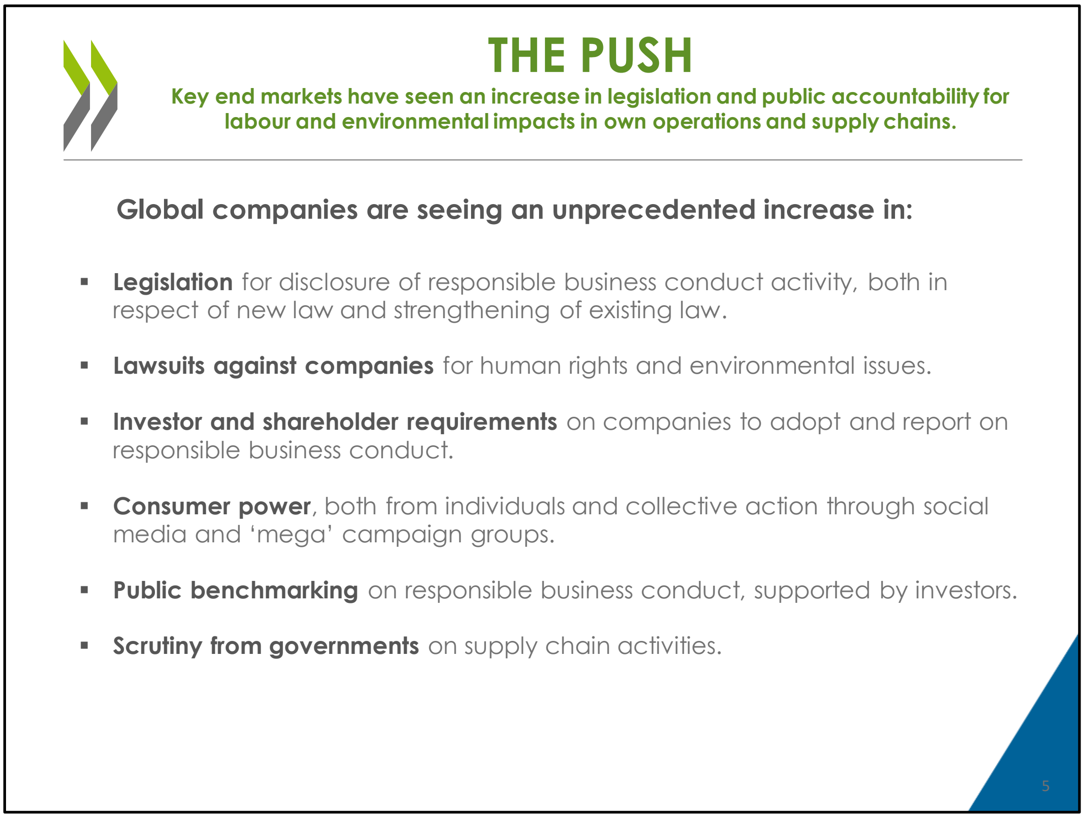


WHAT DOES DUE DILIGENCE MEAN TO YOU?

Before getting started, how do you currently think about due diligence in your own processes:

- What are your **objectives**?
- What types of **risks** are you looking to manage?
- And how is due diligence implemented (i.e. who is **responsible** for it, and how do you **track** it?)

OECD due diligence process differs a little bit but potentially **complement and enhance the approaches** that you may already have.



THE PUSH

Why is due diligence **important** and why should businesses **care**?

Global companies are experiencing a lot of **push** and **pull** factors. Some of the push factors include: new legislation around supply chain due diligence.

This involves both legislation focusing on **disclosure** (UK modern slavery act, Section 1502 of the US Dodd Frank act), as well as legislation that is linked to import and export activity and responsible business conduct standards surrounding products and supply chains. [See further information on legislation below.]

Companies are also experiencing an increase in **lawsuits for human rights and environmental issues** not only in the context of their own operations, but **also for harms related to their subsidiaries or related to their business relationships.**

How these cases are being decided really varies in practice, (i.e. courts have reached different conclusions on whether there is standing for complaints to bring suits against parent companies involving adverse impacts related to subsidiaries or those related to business relationships), but **these topics are increasingly being raised in legal processes.**

Investors are also thinking about responsible business conduct standards more deeply. This is most seen in the context of climate issues subsequent to the Paris agreement, but also in other areas as well

RBC is also being demanded from consumers – this is particularly relevant for consumer facing industries but also other industries which have consumer facing industries in their supply chains as those expectations will transfer onto suppliers as well.

Starting in 2017, the Business and Human Right Resource Center launched the Corporate Human Rights Benchmark which aims **to rank companies across certain criteria related to their performance on human rights.** Reporting on these criteria is **becoming a trend**, pushing businesses to look at this issue more closely.

Finally, **governments are taking this issue seriously and including it in their international policy agendas**, but also building it into their commercial activities such as in the context of public procurement policies, or export credit support.

Hyperlinks to resources:

Corporate Human Rights Benchmark
https://www.corporatebenchmark.org/

Background on legal developments:

EU Non-Financial Reporting Directive
On 26 June 2017, the EU released Guidelines on non-financial reporting to enhance business transparency on social and environmental matters, which supplement the already existing EU rules on non-financial reporting (Directive 2014/95/EU). The EU Guidelines are based on and reference the OECD Guidelines throughout, as well as the sector-specific OECD due diligence guidance instruments.
Within the preamble of the EU Directive the Guidelines are referenced as one of the frameworks that businesses may rely on in providing the information required by the Directive.

The Guidelines include a set of disclosure recommendations which call for timely and accurate disclosure on all material matters regarding the corporation, including the financial situation, performance, ownership and governance of the company. The Guidelines also encourage a second set of disclosure or communication practices in areas where reporting standards are still evolving such as, for example, social, environmental and risk reporting. Additionally, specific reporting recommendations are provided with regard to certain themes treated by the Guidelines (e.g. environment, human rights, corruption).

The EU Directive also calls on companies to report on the due diligence processes they have implemented as well as the risks of adverse impacts with regard to own operations or products, services and business relationships. This language used in the Directive and in its preamble draws on that included in the Guidelines calling on businesses to ''*carry out risk-based due diligence to identify, prevent and mitigate actual and potential adverse impacts and account for how these impacts are addressed.''*

A consultation period is currently open (until 20 March 2019) for considering comments regarding modification of the EU Directive on non-financial reporting. Many comments submitted thus far have sought to better reflect the recommendations of the Task-Force on Climate Related Disclosures within the law.

UK Modern Slavery Act (addressing slavery and human trafficking)

In March 2015, the UK enacted the Modern Slavery Act. The act mandates that commercial organisations prepare an annual statement on slavery and human trafficking and report on their due diligence processes to manage risks of slavery and human trafficking within their operations and supply chains. The Guidelines are referenced in the statutory guidance to section 54 of the Act, noting that “whilst not specifically focused on modern slavery, they provide principles and standards for responsible business conduct in areas such as employment and industrial relations and human rights which may help organisations when seeking to respond to or prevent modern slavery”.

Notably, in July 2018, the UK Home Secretary, at the request of the Prime Minister, announced an independent review of the 2015 Modern Slavery Act (UK, 2018). The recommendations of the reviewers are expected in March 2019.

US Dodd Frank Act (covering due diligence requirements with regards to conflict minerals)

Section 1502 of the Dodd Frank Act is a requirement for publically listed companies in the US that manufacture or contract to manufacture products containing tin, tantalum, tungsten or gold. The OECD minerals guidance is referenced in the secondary rules by Securities and Exchange Commission which provide that:

"...the final rule requires an issuer to use a nationally or internationally recognized due diligence framework, if such a framework is available for the specific conflict mineral." "Presently, it appears that the only nationally or internationally recognized due diligence framework available is the due diligence guidance approved by the Organisation for Economic Co-operation and Development (“OECD”)." "The OECD’s “Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas” satisfies our criteria and may be used as a framework for purposes of satisfying the final rule’s requirement that an issuer exercise due diligence in determining the source and chain of custody of its conflict minerals.“

EU Minerals Regulation

In May 2017, the EU adopted a regulation that will require importers of tin, tantalum, tungsten and gold minerals and metals to carry out supply chain due diligence aligned with the OECD Minerals Guidance. Explicit alignment with the regulation is referenced throughout the regulation. For example:

“In the context of this Regulation, and as set out in the OECD Due Diligence Guidance, supply chain due diligence is an ongoing, proactive and reactive process through which economic operators monitor and administer their purchases and sales with a view to ensuring that they do not contribute to conflict or the adverse impacts thereof."

In accordance with the OECD Due Diligence Guidance, upstream economic operators such as smelters and refiners should undergo an independent third-party audit of their supply chain due diligence practices, with a view to also being included in the list of global responsible smelters and refiners.

Union importers of minerals shall: (a) identify and assess the risks of adverse impacts in their mineral supply chain on the basis of the information provided pursuant to Article 4 against the standards of their supply chain policy, consistent with Annex II to, and the due diligence recommendations set out in, the OECD Due Diligence Guidance;

Etc…

EU Investor Disclosure Regulation

A provisional agreement was reached at the EU on the amended EU Investor Disclosure Regulation (7 March 2019). This represents the second legislative agreement under the EU Action Plan on Sustainable Finance. The regulation calls on investors to report on their due diligence process in line with the OECD recommendations in our paper on Responsible Business Conduct for institutional investors . We have yet to see the final text of the agreement but have been told that there is a direct reference to the OECD paper on RBC for Institutional investors in the recitals to the regulation.

Other relevant laws without direct reference to the Guidelines:

Australia Modern Slavery Act (no reference to the Guidelines, implementation guidance pending):
On 29 November 2018, Australia passed a Modern Slavery Act, which will require businesses based or operating in Australia to report annually on the risks of modern slavery in their operations and supply chains, as well as the actions they have taken to address those risks. The Act applies to businesses with $100+ million revenue, but it invites other entities to report voluntarily. The statements will be published in a public repository. The government itself is expected to report on its own activities (Australia, 2018).

France introduced the Duty of Care Law (no direct reference to the Guidelines, implementation guidance pending):
In March of 2017 France adopted legislation imposing a duty of vigilance on large companies to prepare, implement, and publish details of their due diligence plan to prevent adverse serious human rights and environmental impacts associated with their operations and supply chains. The law applies to all French joint-stock companies employing 5 000 employees or more domestically or 10 000 employees or more internationally, as well as their subsidiaries and certain relevant suppliers and subcontractors.

US Trade Facilitation & Enforcement Act
The 2015 U.S. Trade Facilitation and Trade Enforcement Act seeks to prevent goods produced using forced labor from being imported into the United States. The Act amended Section 307 of the 1930 Tariff Act on forced labor. Prior to the amendment, the import ban was only enforced if the product was already available in the U.S. market in quantities high enough to meet consumptive demand. The Trade Facilitation and Trade Enforcement Act closed this loophole. Today, all importing companies must conduct supply chain due diligence to prove to U.S. Customs and Border Protection (CBP) authorities their products were not made using forced labor.

Communication from the Commission — Guidelines on non-financial reporting (methodology for reporting non-financial information)
, C/2017/4234, 5 July 2017, http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017XC0705(01)&from=EN
"In providing this information, undertakings which are subject to this Directive may rely on […]the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises." Id. Preamble para. 9

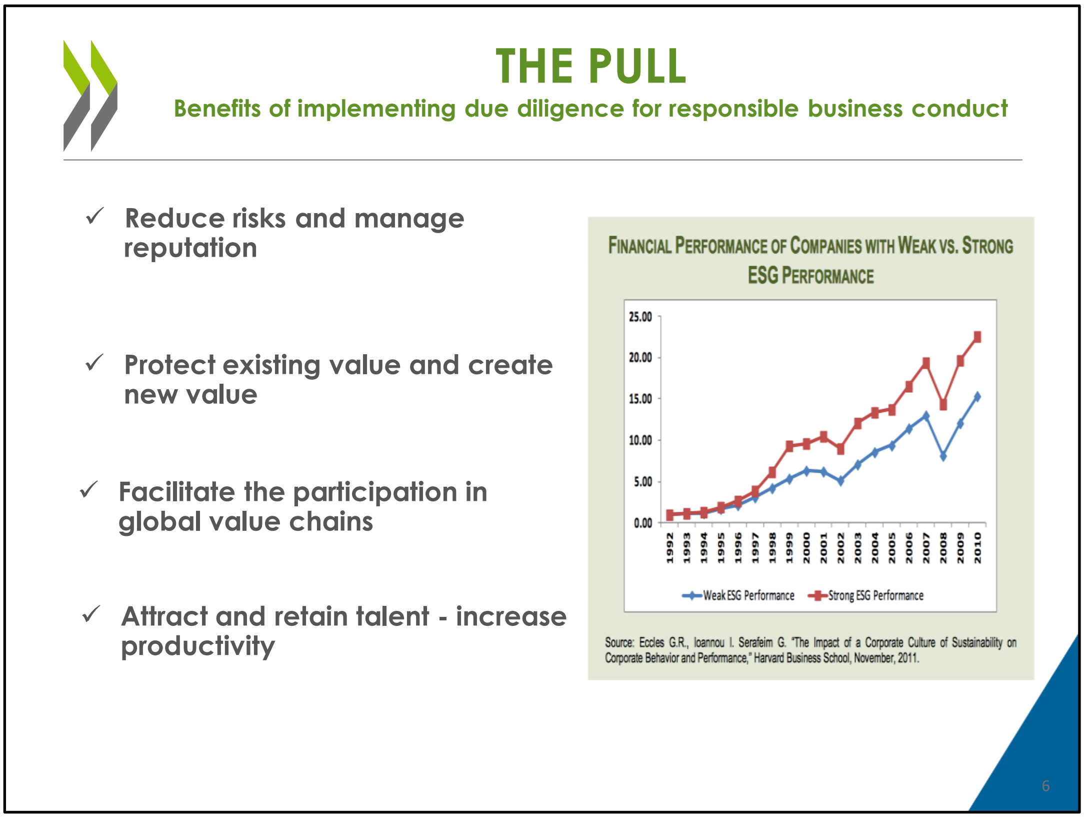
OECD Guidelines for Multinational Enterprises (2011), Chapter III: Disclosure, para. 32.

"The non-financial statement should also include information on the due diligence processes implemented by the undertaking, also regarding, where relevant and proportionate, its supply and subcontracting chains, in order to identify, prevent and mitigate existing and potential adverse impacts." EU Directive, Preamble art. 6; See also Id. Article 19(a)1(b).

Hyperlinks:

UK Modern Slavery Act (2015)
http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted
UK Government (2015) Slavery and human trafficking in supply chains: guidance for businesses. https://www.gov.uk/government/publications/transparency-in-supply-chains-a-practical-guide
UK (2018), Independent Review of the Modern Slavery Act, Second interim report: Transparency in supply chains,
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/773372/FINAL_Independent_MSA_Review_Interim_Report_2_-_TISC.PDF
https://www.sec.gov/spotlight/dodd-frank-section.shtml#1502 ;
https://www.sec.gov/rules/final/2012/34-67716.pdf
Australia (2018), Modern Slavery Bill 2018,
https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r6148
Act no. 2017-399 of 27 March 2017 published in OJ no. 0074 of 28 March 2017
https://www.legifrance.gouv.fr/eli/loi/2017/3/27/2017-399/jo/texte.
See Trésor Info
https://www.tresor.economie.gouv.fr/Publications/Articles/2017/05/09/devoir-de-vigilance-des-societes-meres-et-des-entreprises-donneuses-d-ordre.

https://www.assentcompliance.com/u-s-trade-facilitation-and-trade-enforcement-act/



THE PULL:

Due diligence is not all about the push, but there is also a lot of pull. By implementing strong RBC due diligence, business can **reduce risks and improve their reputation.**

RBC due diligence can help enterprises prevent risks, indeed this is one of the core objectives oft he due diligence process.

It can create new value - for example through better understanding of supply chains to improve efficiencies and relationships with suppliers.

As it becomes a legal requirement of companies it can also help ensure market access and ability to **participate in global value chains.**

It can also help attract and retain talent - especially with younger generations putting an emphasis on good corporate behaviour.

Figure:

The graph shown is from a Harvard Business School study that measured the performance of weak sustainability companies and strong sustainability companies over 18 years, and which found that **high sustainability companies consistently out-performed as measured in stock performance and real accounting terms**.

Hyperlinks to resources:

Eccles, R. & Ioannou, I. & Serafeim, G., (2014), The Impact of Corporate Sustainability on Organizational Processes and Performance, https://www.hbs.edu/faculty/Publication%20Files/SSRN-id1964011_6791edac-7daa-4603-a220-4a0c6c7a3f7a.pdf

OECD Guidelines for Multinational Enterprises DUE DILIGENCE

Risk-based due diligence is main tool to identify, prevent or mitigate risk

"Enterprises should:

- *Carry out **risk-based due diligence** , (…), to identify, prevent and mitigate actual and potential adverse impacts (…), and account for how these impacts are addressed.*
- ***Avoid causing or contributing to adverse impacts** on matters covered by the Guidelines, through their own activities, **and address such impacts when they occur.***
- ***Seek to prevent or mitigate an adverse impact** 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."***

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<u>OECD GUIDELINES FOR MNEs – DUE DILIGENCE</u>

So what is due diligence?

It is a **tool** which businesses can use to know and show that they are acting responsibility.

It is a **risk management approach** relevant both for potential impacts related to direct operations as well as those across an enterprises supply and value chains.

THE OECD GUIDELINES – ALIGNED WITH OTHER INTERNATIONAL STANDARDS IN RBC

The expectation of due diligence is also included in other leading instruments on RBC including the United Nations Guiding Principles on Business and Human Rights (UNGPs) and the latest version of the ILO MNE declaration. The OECD works closely with both the UN and ILO to ensure an **alignment in approaches.**

Additionally, there is an increasing recognition that the **respect of human rights and RBC** is a an **important entry point to business contribution to the SDGs.**

Hyperlinks to resources:

OECD Guidelines for Multinational Enterprises
http://www.oecd.org/daf/inv/mne/48004323.pdf?_ga=2.81142359.1922360891.1546862855-1110450162.1536045527

UN Guiding Principles on Business and Human Rights
https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

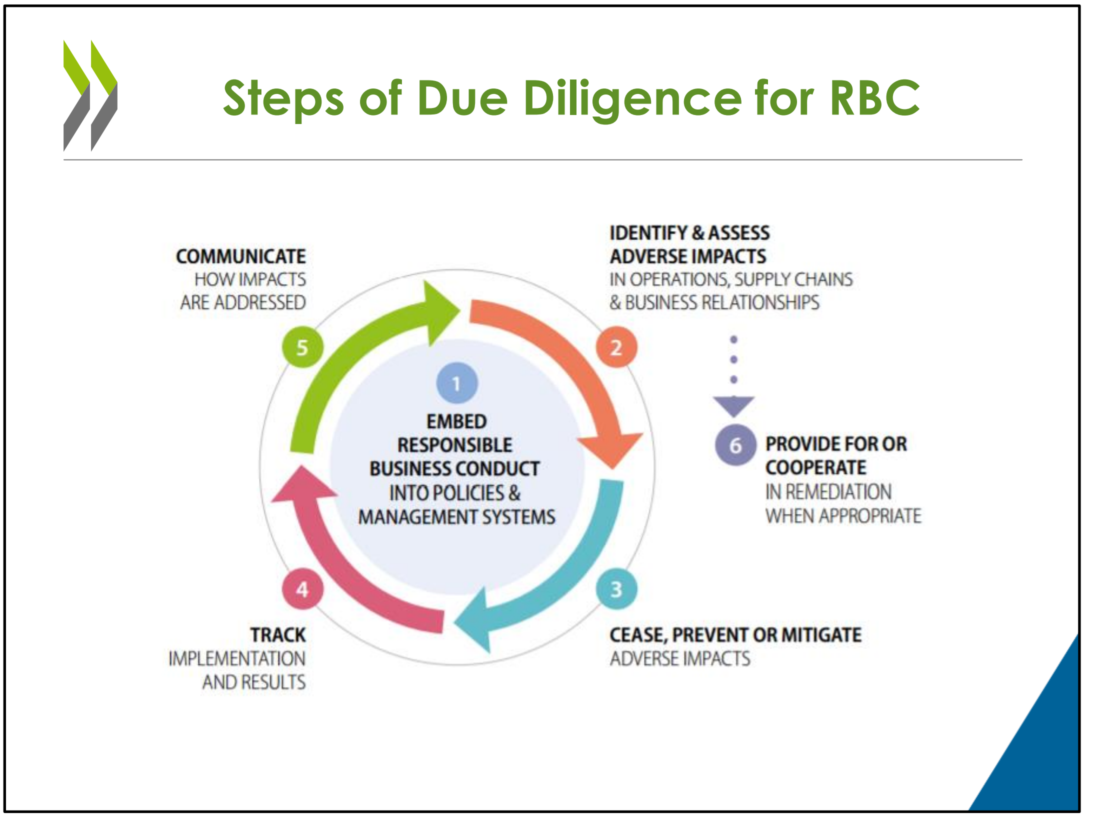
Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration)
https://www.ilo.org/empent/areas/mne-declaration/lang--en/index.htm

WHO IS DUE DILIGENCE RELEVANT FOR?

Under the OECD's standards, due diligence standards are **relevant to all companies**.

Every actor in the supply chain has a due diligence responsibility.

It is also relevant for collaborative initiatives in certain sectors that aim to mitigate risks or engage stakeholders. This framework can be used as an assessment tool for these approaches.



<u>STEPS OF DUE DILIGENCE FOR RBC</u>

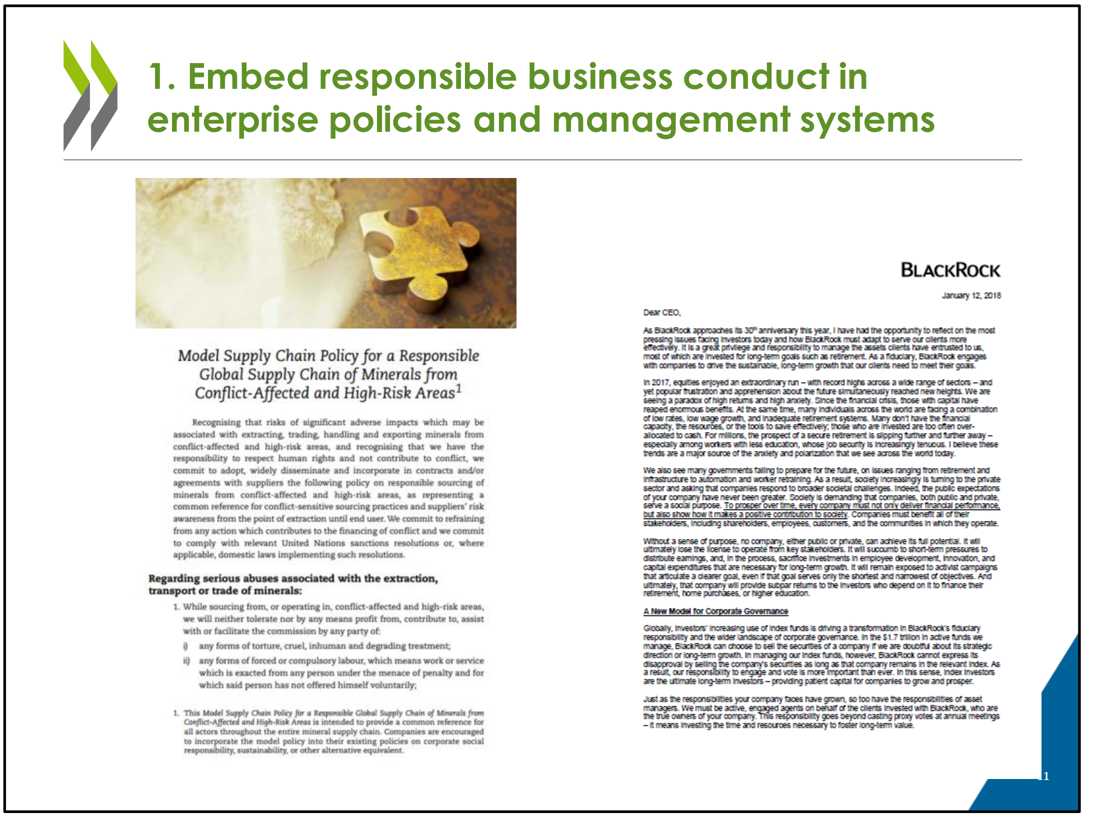
The due diligence approach is an **ongoing, non-linear process. It is meant to be dynamic and evolving based on changes in risk landscapes and as processes are further refined.**

As a foundation, it is important to have an RBC policy and embed RBC into policies and management systems. Furthermore, it is important to think about who is needed in the company to implement the due diligence and **thinking beyond having isolated units.**

Then the due diligence approach requests that impacts be **identified on an ongoing basis** and very importantly once they are identified that efforts be made to cease, prevent or mitigate them.

In addition to identifying and responding to impacts, enterprises are expected **to track implementation** and results to ensure that it is effective and make changes as necessary and lastly to communicate on how impacts are addressed. **Communication is the key aspect of "showing" due diligence is being adequately implemented** and is important for companies with respect to their stakeholder engagement.

Lastly, a step on remediation is included which is also an important process with respect to the DDG but it is an independent expectation. The inclusion of this step is meant to recognise that a due diligence approach, in order to be meaningful, also requires businesses to remediate impacts which they caused or contribute to.



EMBEDDING RBC IN ENTERPRISE POLICIES AND MANAGEMENT SYSTEMS

Embedding responsible business conduct **requires a policy**, but it will **vary depending on the sector and company**

RBC policies are model policies which outline what should be included in such a policy, but in practice companies can have multiple policies.

It is important to have executives involved in the implementation of due diligence and setting a tone from the top. The slide shows a letter from the CEO of BlakcRock, Larry Fink, which was sent to investee companies:

From Letter: *To prosper over time, every company must not only deliver financial performance, but also show how it makes a positive contribution to society*

Hyperlink to resources:

Larry Fink's Annual Letter to CEOs
https://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter

IDENTIFY AND ASSESS ADVERSE RBC IMPACTS

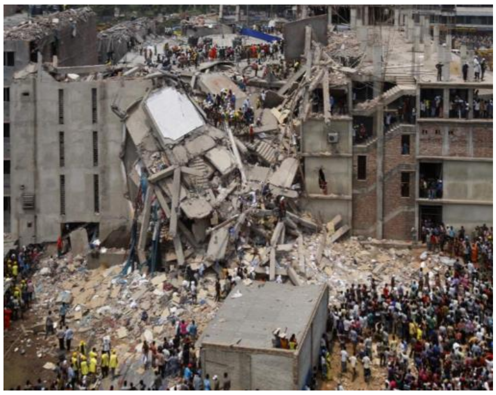
When talking about identification and assessment of impact, there are **two main stages**. First:

1. **Broad scoping of risks across activities and** business relationships to identify geographic, product, sector risks. Supply chain mapping or for investors use of market research provides which provide information on general areas of risks.

2. **More detailed assessment** for severe risks depending on prioritization- through audits, stakeholder engagement, engagement with company management.

A **combination of approaches** will help develop a strong understanding of the exposure to broad risks and how they get played out on the ground.

3. Cease, prevent, and mitigate



ACCORD on Fire and Building Safety in Bangladesh

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<u>CEASE, PREVENT, MITIGATE</u>

Cease, prevent, and mitigate is likely the most important step of the process. What do you do when you have identified risks?

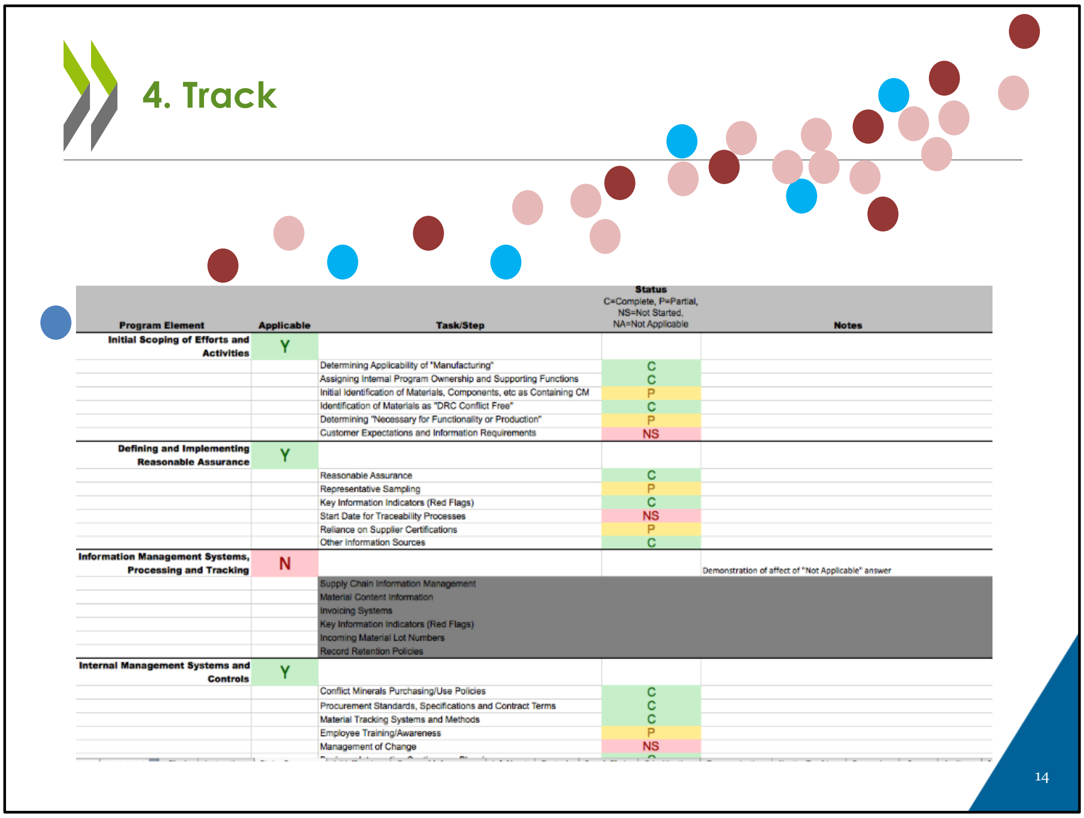
This will vary widely according to the risk or impact as well as the leverage of the enterprises in question- this will be addressed later.

An example is the Accord on Fire and Building Safety in Bangladesh which was introduced in the wake of the Bangladesh Rana Plaza building collapse. The Accord initiative has been signed by over 180 apparel brands, retailers and importers.
The agreement consists of six key components:

- A five year legally binding agreement between brands and trade unions to ensure a safe working environment in the Bangladeshi Ready Made Garment (RMG) industry
- An independent inspection program supported by brands in which workers and trade unions are involved
- Public disclosure of all factories, inspection reports and corrective action plans (CAP)
- A commitment by signatory brands to ensure sufficient funds are available for remediation and to maintain sourcing relationships
- Democratically elected health and safety committees in all factories to identify and act on health and safety risks
- Worker empowerment through an extensive training program, complaints mechanism and right to refuse unsafe work

Hyperlink to resources:

ACCORD on Fire and Building Safety in Bangladesh
https://bangladeshaccord.org/



Program Element	Applicable	Task/Step	Status C=Complete, P=Partial, NS=Not Started, NA=Not Applicable	Notes
Initial Scoping of Efforts and Activities	Y			
		Determining Applicability of "Manufacturing"	C	
		Assigning Internal Program Ownership and Supporting Functions	C	
		Initial Identification of Materials, Components, etc as Containing CM	P	
		Identification of Materials as "DRC Conflict Free"	C	
		Determining "Necessary for Functionality or Production"	P	
		Customer Expectations and Information Requirements	NS	
Defining and Implementing Reasonable Assurance	Y			
		Reasonable Assurance	C	
		Representative Sampling	P	
		Key Information Indicators (Red Flags)	C	
		Start Date for Traceability Processes	NS	
		Reliance on Supplier Certifications	P	
		Other Information Sources	C	
Information Management Systems, Processing and Tracking	N			Demonstration of affect of "Not Applicable" answer
		Supply Chain Information Management		
		Material Content Information		
		Invoicing Systems		
		Key Information Indicators (Red Flags)		
		Incoming Material Lot Numbers		
		Record Retention Policies		
Internal Management Systems and Controls	Y			
		Conflict Minerals Purchasing/Use Policies	C	
		Procurement Standards, Specifications and Contract Terms	C	
		Material Tracking Systems and Methods	C	
		Employee Training/Awareness	P	
		Management of Change	NS	

TRACK

Tracking is the monitoring and evaluation of your due diligence process. Are you meeting your objectives, and what are the actual outcomes of the process?

Companies have a flexibility in how they want to do this. Internal assessment, or third party assessment, or audit.

The point is to monitor the effectiveness of due diligence over time, and if you are not meeting your objectives with respect to your due diligence, this information should feed it back into the process in order to make adjustments and address the shortcomings.

COMMUNICATE

Communication involves two components:

1. Public reporting which can be done through integrated annual reporting, sustainability reporting, or more specifically human rights issues, the format is left open. The OECD Due Diligence Guidance asks companies to report on the main risks they have identified, how they have been addressed, and the outcomes of these eddorts.

2. In addition to public reporting, companies that are causing or contributing to adverse impacts are encouraged to communicate directly with the impacted stakeholders about how they are addressing risks. Such communication should happen in a culturally sensitive manner.

PROVIDE FOR OR COOPERATION IN REMEDIATION

When businesses are **causing** or **contributing** to adverse impacts themselves, they are **expected to remediate those impacts**. Remedy can take various forms: can be ann apology, restitution, or compensation. The ultimate objective is to restore the affected person to where they would have been if the impact would not have occurred or provide appropriate remedy.

The process for providing remediation is flexible. Companies could achieve this through legal proceedings, state based non-judicial grievance mechanisms, or it could be through establishing operational grievance mechanisms, or engaging in community level mechanisms. The most appropriate will be determined by the affected stakeholders and the company.

On this slide, a reference to the National Contact Points of the OECD Guidelines is included. They can receive complaints from all sorts of stakeholders regarding cases or "specific instances" (as they are officially called) of companies that have not adhered to the recommendations of the Guidelines. This can involve situations where a company has caused an impact itself, or when a company is dealing with a supplier or issues somewhere in the supply chain.

An example case is one of FIFA in their construction of infrastructure in the Qatar for the World Cup. The complaint involved alleged human rights violations and forced labour impacts on construction workers in Qatar. As a result of the mediation led by the

NCP, FIFA has now redone its due diligence approach and has included human rights criteria in their bid evaluations of countries seeking to host the World Cup games.

Another case is one involving a subsidiary of Heineken operating in the Democratic Republic of Congo (DRC) that had dismissed around 169 workers during the Civil War in the Congo without providing for adequate remuneration. Also through mediation led by the NCP, the workers were provided with financial compensation and Heineken modified it human rights due diligence process to make it more effective.

Hyperlinks to resources:

National Contact Points (NCP)
http://mneguidelines.oecd.org/ncps/

<u>DUE DILIGENCE GUIDANCE</u>

The OECD Due Diligence Guidance for Responsible Business Conduct is meant to provide a foundation for cross-cutting principles and approaches for Due Diligence.

It identifies cross-cutting due diligence actions and characteristics that are applicable across companies and sectors.

The OECD also has ongoing **sector projects** with more specific sectoral guidance, including for the extractive sector, conflict minerals, agricultural supply chains, and garment supply chains.

In the Guidance, there is a core section that outlines the main components of due diligence under each step of the process with potential practical actions for implementing it. And then attached to the Guidance, there is an annex that goes into deeper explanations with examples of some of the concepts to bring them to life.

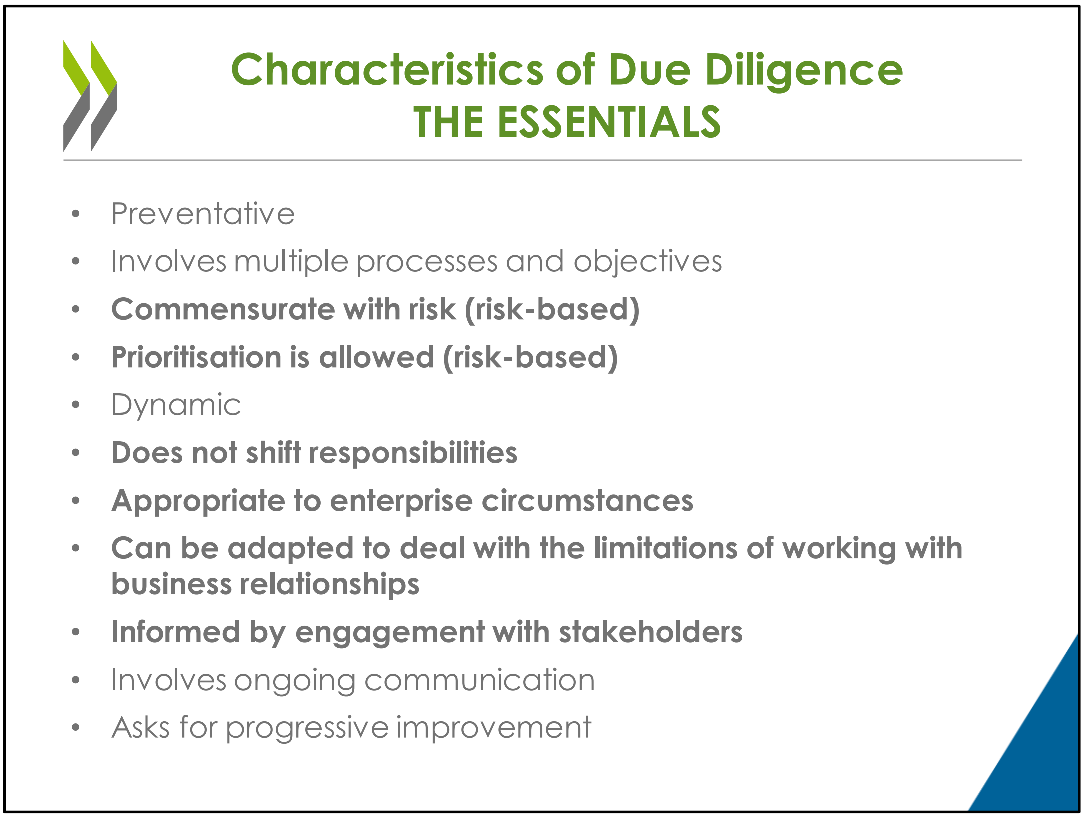
If there is a specific sector guidance, then the sectoral guidance should be the first reference point for business and the general guidance can be used as a supplement. But if there are no specific sectoral standards in your industry, the general guidance should be your first point of reference.

It is also important to note that theDue Diligence Guidance should be a resource for

Enterprises and not a basis for complaints to the NCP. The complaints have to be rooted in the OECD Guidelines for MNEs.

Hyperlinks to resources:

OECD Due Diligence Guidance for Responsible Business Conduct (includes links to sectoral Guidance)
http://mneguidelines.oecd.org/duediligence/



ESSENTIAL CHARACTERISTICS OF DUE DILIGENCE

Some important characteristics of the due diligence that should be kept in mind when designing the approach:

It is meant to be preventative, and only when it is not possible to prevent adverse impacts, then it is to mitigate them and remediate them.

Involves multiple processes and objectives. There will be various business units in the enterprise involved. It is encouraged that the due diligence approach be integrated into existing risk management systems and that the objectives be aligned across all.

Due Diligence commensurate with risk, if you work in a high risk sector or work with high risk suppliers or other business relationships, you might need a more thorough approach than if you work in a lower risk sector. Prioritization is allowed.

Meant to be dynamic. Not just ex-ante, it can involve over time and it is ongoing. Due diligence does not expect 100% perfect conduct overnight. Indeed if risks and impact are identified it could mean that the due diligence process is actually working.

Not meant to shift responsibilities. Each actor has its responsibilities.

It should be appropriate to enterprise circumstances – this means it is relatively flexible and can be adapted to dealing with limitations of certain business relationships. In some context, there are leverage limitations and that will inform what enterprises can do to identify or respond to impacts.

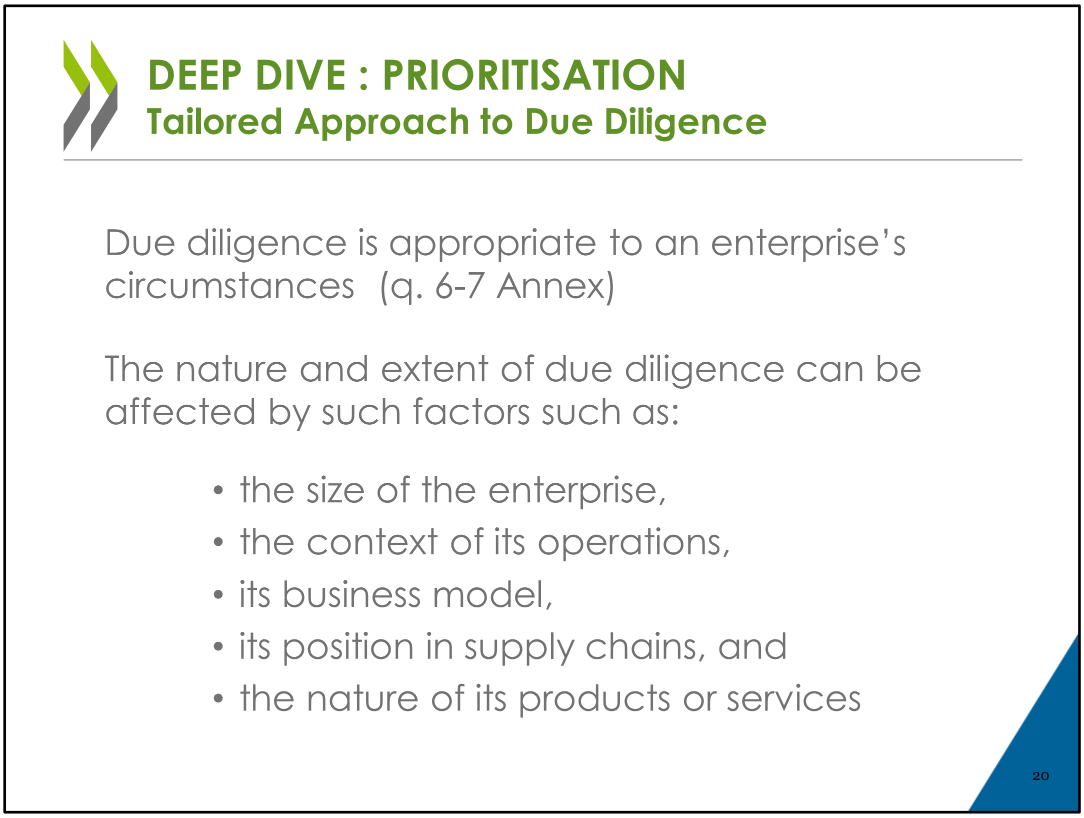
One of the important components of this Guidance is that it recognizes the key role that stakeholders play. **Stakeholder engagement** involves ongoing communication and asks for progressive improvement.

Due diligence is not:

A certification initiative – the OECD does not review individual companies
An audit or code of conduct - It is an ongoing performance based approach
A substantive standard - THE OECD Guidelines for MNEs themselves provide substantive standards and make reference to others, but this is meant to be a process standard to respond to substantive standard

QUESTIONS?

OCDE
DES POLITIQUES MEILLEURES
POUR UNE VIE MEILLEURE



<u>PRIORITISATION</u>

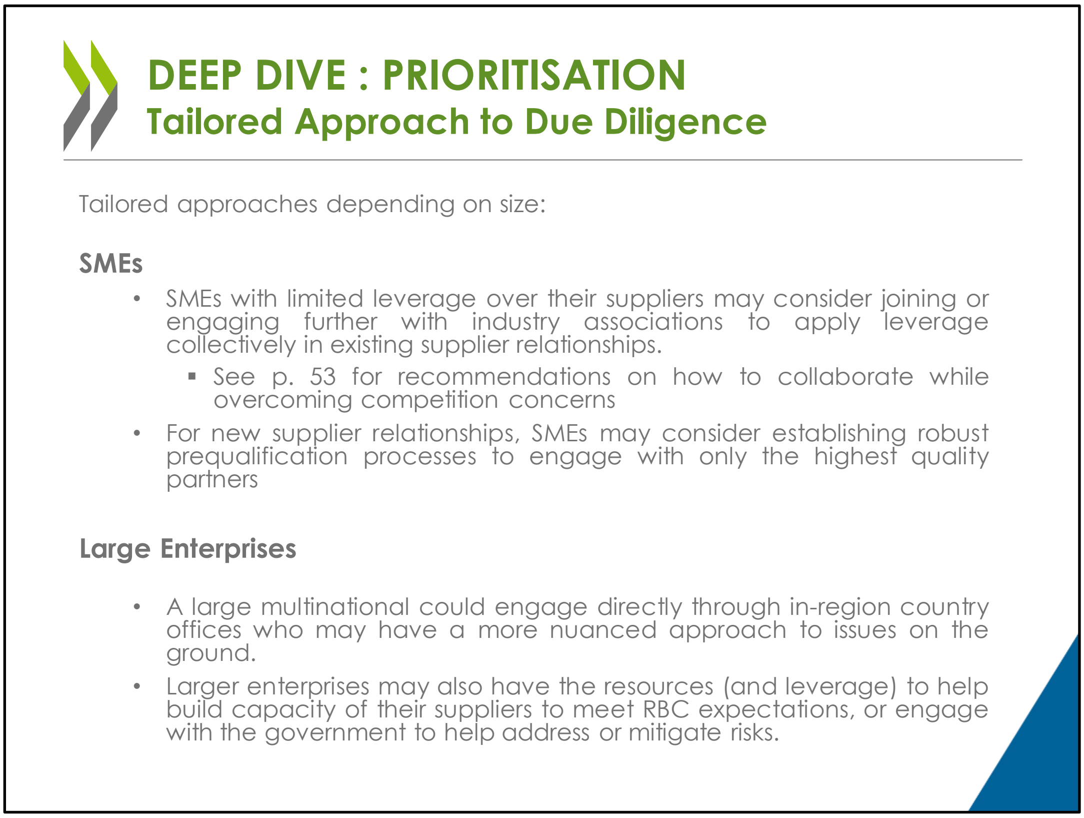
Due diligence should be tailored approach and depends on the company's circumstances.

The nature and extent of the due diligence varies according to a number of factors:

- the size of the enterprise – is the enterprise an MNE, or SME
- the context of its operations – are you operating in an OECD country or on the ground in a conflict affected area
- its business model – is it a long

term investment or are there short term operations

- its position in supply chains – are you an upstream company or downstream. How many tiers are between you and the adverse impact
- the nature of its products or services – medical device company vs. mining company as an example



<u>TAILORED APPROACH</u>

An SME for example can have limited leverage over their suppliers.

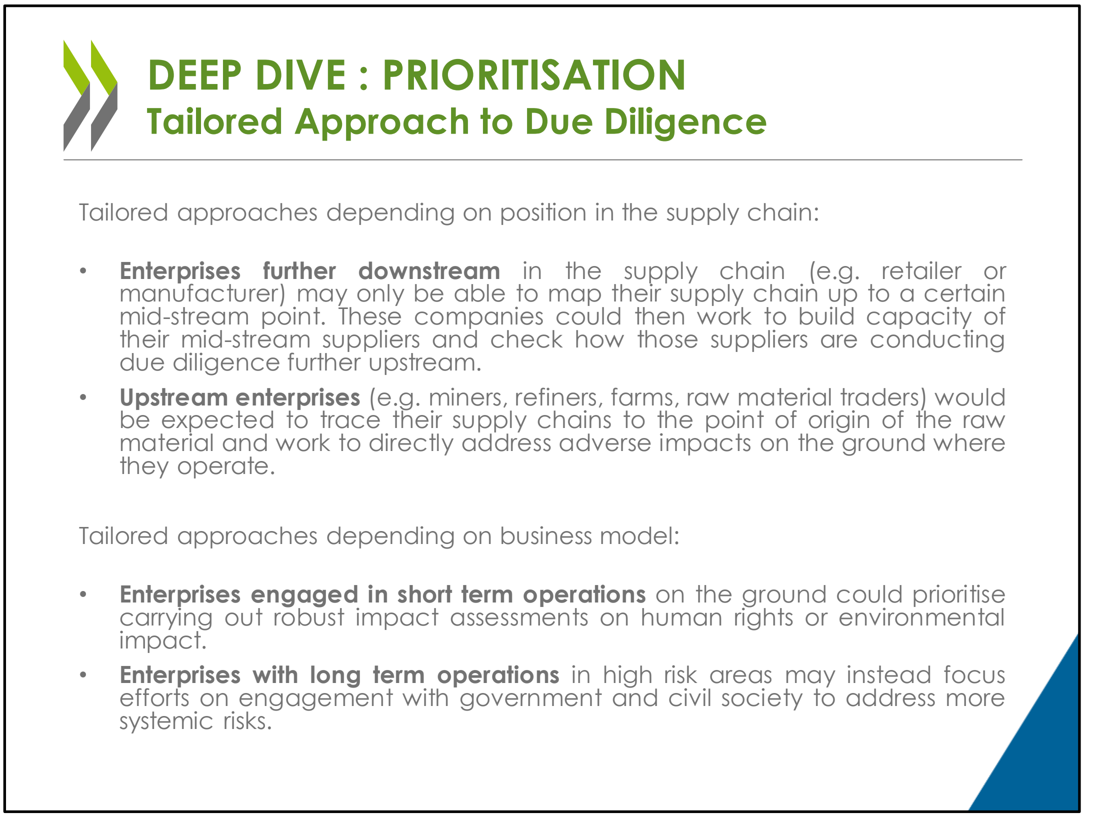
So they consider joining or engaging with industry association who are seeking the same goal.

Collective action is encouraged in the Guidance.

This way the SME can apply leverage to existing supplier relationships, and for new relationships, the Guidance recommends considering the establishment of prequalification processes.

A large enterprise can also do the same steps, but they would more expected to engage more directly through in-region offices.

Large enterprises can might also have the leverage and resources to help build capacity of their suppliers to meet RBC expectations, or engage with the government to help address or mitigate risks.



APPROACHES BASED ON THE POSITION IN THE SUPPLY CHAIN:

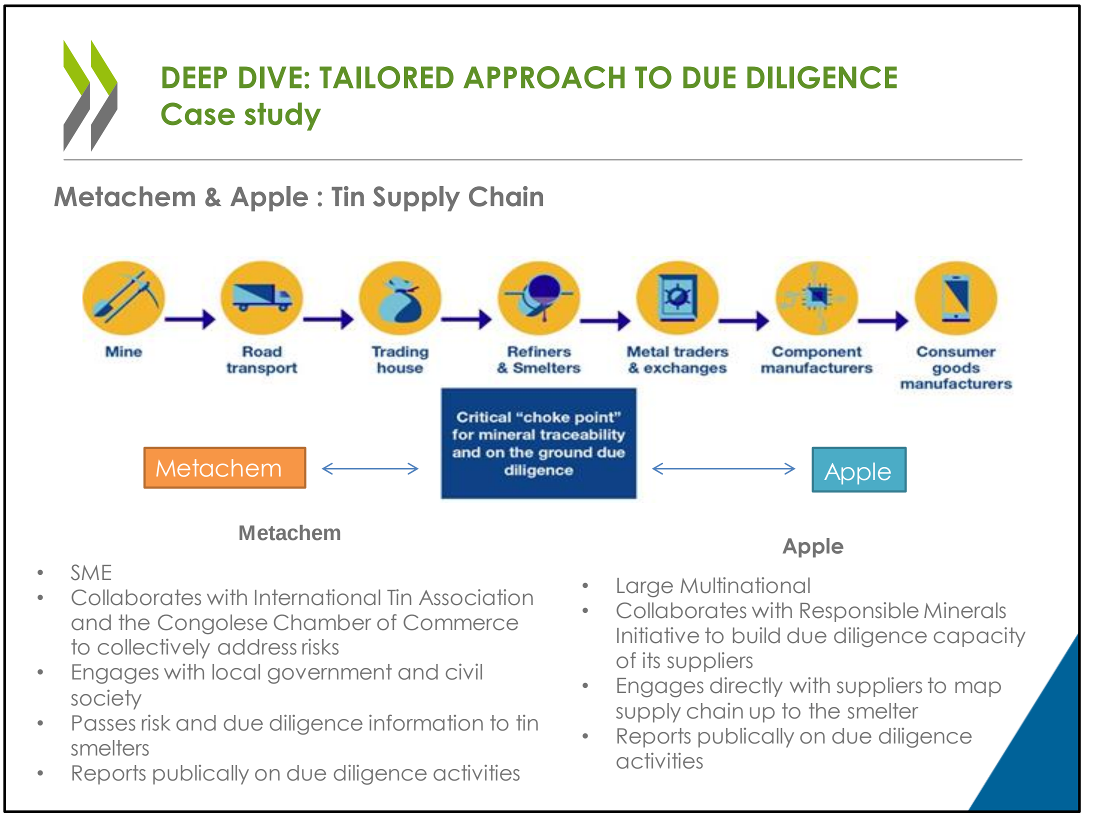
Approaches can depend on the position of the company in the supply chain.

Further downstream companies (retailer or component manufacturer for example) may only be able to map their supply chain up to a certain mid-stream point. These companies could then work to build capacity of their mid-stream suppliers and check how those suppliers are conducting due diligence further upstream. It is all about cascading responsibility and information sharing.

Upstream enterprises and those closer to the adverse impact would be expected to trace their supply chain and directly address adverse impacts on the ground.

Tailored approaches depending on business model:

Enterprises engaged in short term operations on the ground could prioritise carrying out robust impact assessments on human rights or environmental impact.
Enterprises with long term operations in high risk areas may instead focus efforts on engagement with government and civil society to address more systemic risks.



<u>CASE STUDY: TIN SUPPLY CHAIN</u>

This is a simplified version of the Tin Supply Chain.

On the left side is the Congolese company, Metachem a Tin trader, with less than 20 to 30 employees
The company is operating in a high risk area.

On the other side is Apple, a large multinational.
The company is likely a destination of the tin sourced from the Congo through Metachem.

Between these two companies, there may be hundreds of intermediaries – traders, logistics providers, tin smelters etc.

On the ground in the DRC, what is expected of this SME?

Menachem overcomes its lack of leverage by working with the International Tin Association, Congolese Chamber of Commerce. The company uses these two mediums to report on and collectively address risks related to their operations on the ground.

Menachem looks to provide full traceability of the tin that they are sourcing, up to the mine of origin. The company engages with local government officials and civil society to air their grievances, to describe their challenges and ask for assistance. Finally, publically report on their due diligence activities by posting them online on the Congolese Chamber of Commerce website.

On the other side, you have Apple.

As a large multinational, they should be able to devote a lot more resources and time to this due diligence process. Because of the nature of material, tin in this case, they cannot be expected to trace all the tin in their phones to the exact mine of origin.

Under the Guidance, they are only expected to trace their supply chain to the smelter and refiner, and help build the capacity and work with their suppliers all the way up to that smelter and refiner to conduct their own due diligence up to the mine of origin. Overlapping with Metachem's supply chain activities.

They publically report on their due diligence activities and their efforts, which is a bold move for a consumer facing company.

QUESTIONS?

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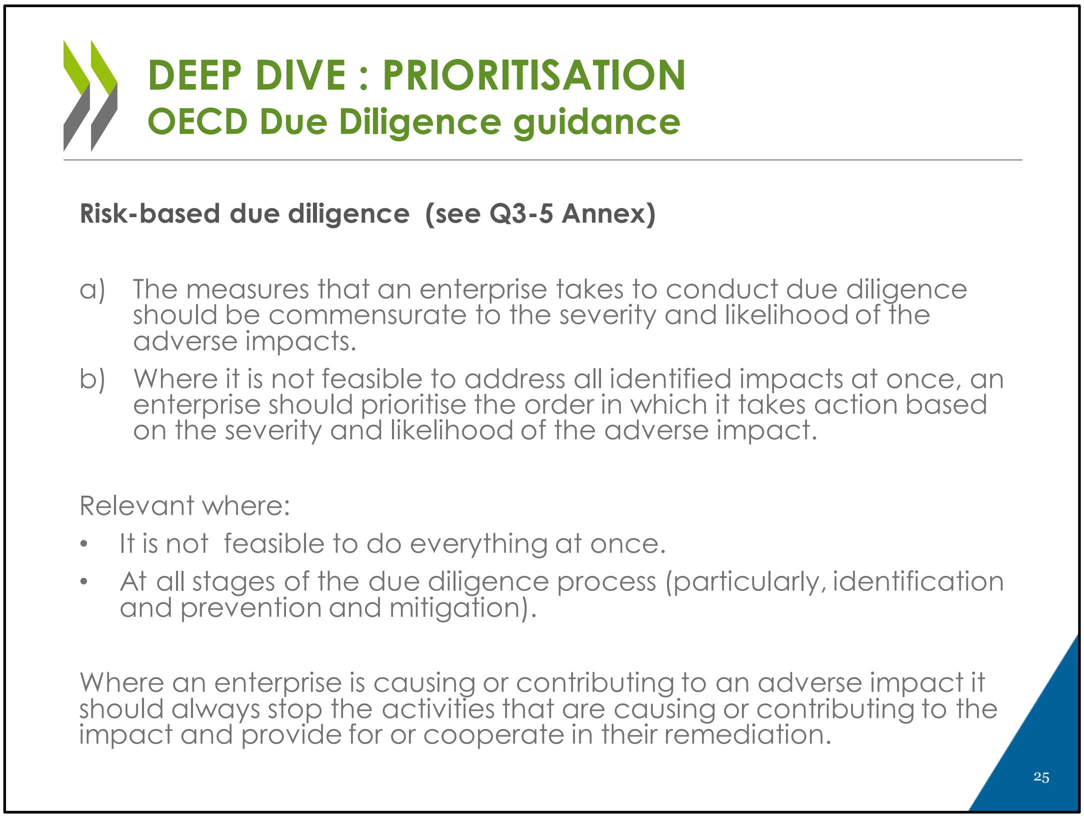
POUR UNE VIE MEILLEURE



<u>RISK-BASED DUE DILIGENCE:</u>

Second side of the coin of the risk based approach, which is prioritisation.

Risk-based due diligence mean two things:

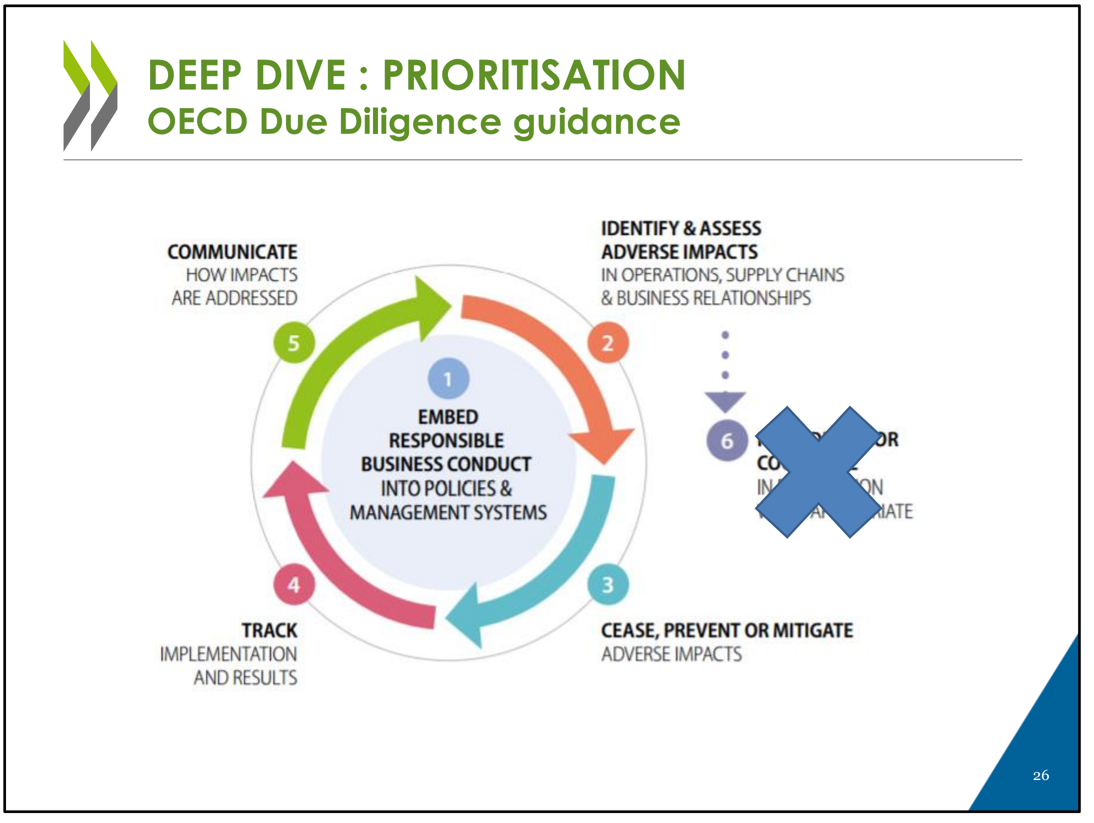
a) The measures that an enterprise takes to conduct due diligence should commensurate to the severity and likelihood of the adverse impacts.
b) Where it is not feasible to address all identified impacts at once, an enterprise should prioritise the order in which it takes action based on the severity and likelihood of the adverse impact.

Because impacts are not only related to the company's own operations and activities, but across your business relationships and global supply chains, there will always be a need to prioritize.

Importantly, risk-based due diligence is relevant where:

- It is not feasible to do everything at once.
- At all stages of the due diligence process (particularly, identification and prevention and mitigation).

Although the Guidance recognizes that there is a need for prioritization, it also recognizes that when an enterprise is causing or contributing to an adverse impact, it should always stop the activities that are causing or contributing to the impact and provide for or cooperate in their remediation.



<u>**PRIORITISATION**</u>

As mentioned, prioritisation is important across all steps.

Companies may have to, based on consultation and initial identification, **identify their priority issues** and it is recommended that they communicate them in their policies. Also explaining their rationale for their prioritisation in their policy is recommended. This will allow stakeholders to understand why they are focusing somewhere and not contributing resources elsewhere. Such explanations of a company's prioritisation can potentially shield it from criticism that it is not implementing the Guidance in good faith.

Prioritisation is most relevant in the identification process which happens at two stages. The first is a **broad scoping exercise**, and the second is an **assessment**.

Depending on the scale of your operations, they may be several stages. It is an iterative process for further identification based on prioritisation.

If you map your supply chain and there are certain high risk geographies or points in your supply chain with higher risks, you might prioritize those and go further to look at those companies and suppliers that you are working with. Afterwards you can further prioritize which ones you want to assess.

Then when you have an idea of your most significant impacts, you may again have to prioritise which ones you want to respond to immediately.

Communicating will reflect your prioritisation decisions in the first three steps. What you communicate on will be the most significant impacts that you have prioritised.

In remediation, prioritisation is not really relevant. Where companies actually cause an adverse impact themselves, they have to remediate it no matter what.

DEEP DIVE : PRIORITISATION
OECD Due Diligence guidance

- Prioritisation should be based on ***likelihood*** and ***severity*** of risk
  - Severity: Scale, scope, irremediable character

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PRIORITISATION

How should a company prioritize?

The UN Guiding Principles and OECD provide some criteria

Prioritization should be based on likelihood and severity of risk
- Severity is measured by:
  - Scale, scope, irremediable character of the impacts

DEEP DIVE : PRIORITISATION
OECD Due Diligence guidance

ADVERSE IMPACT	EXAMPLES OF SCALE	EXAMPLES OF SCOPE	EXAMPLES OF THE IRREMEDIABLE CHARACTER
Environment	• Extent of impact on human health • Extent of changes in species composition • Water use intensity (% use of total available resources) • Degree of waste and chemical generation (tons; % of generation)	• Geographic reach of the impact • Number of species impacted	• Degree to which rehabilitation of the natural site is possible or practicable • The length of time remediation would take
Corruption	• Monetary amount of the bribe • Loss of life or severe bodily harm caused by bribery • Criminal nature of the bribe • Extent of impact on markets, people, environment and society due to decisions made based on bribery • Size of the profit gained from the bribery	• Frequency at which bribes are paid • Geographic spread of bribery • Number and/or level of officials, employees or agents engaged in bribery • Extent of activities linked with bribery • Number of identifiable groups impacted by decisions based on bribery	• Extent of damage to society due to loss of public funds • Extent to which activities undertaken and enabled by bribery will lead to irremediable adverse impacts

<u>PRIORITISATION</u>

Scale means what is the depth of the impact, how severe is it.
Scope is how many people it affects, or reach of environmental impacts.

Irremediable character is to what degree can it be remedied – to what degree is the adverse impact permanent?

Some examples are included across adverse impact categories in the Guidance to make it a bit more clear, for some categories like corruption. [Example of adverse impacts on environmental and corruption on the slide.]

DEEP DIVE : PRIORITISATION
OECD Due Diligence guidance

Prioritisation decisions:

- Based on likelihood & severity PLUS:
  - Legal obligations
  - Most significant business relationships (e.g.% of products sourced)
  - Informed by stakeholders
- Well communicated
- Dynamic
- Focused on continuous improvement

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PRIORITISATION

In addition to the likelihood and severity of an adverse impact, there may be additional factors that come into play in prioritisation decisions.

In some jurisdictions, governments may make the prioritisation decision for the company. Examples include the introduction of legislation specific to modern slavery issues or conflict minerals. These serve as an important signal from the government to the companies that these issues need to be prioritised.

For a lot of global businesses, there may be a wide range of issues they may be exposed to, and they may choose to focus on their most significant business relationships first out of all significant areas that they have identified. Also consulting with stakeholders, which may include staff, shareholders, impact stakeholders, but also potentially local civil society, informs and impacts the company on what stakeholders think are priority issues.

Prioritisation should be dynamic. Certain risks may be addressed and adequately mitigated, and others can be moved onto later on, so prioritisation decisions should be revisited as circumstances change in a business operation.

DEEP DIVE : PRIORITISATION
Case study

Step 1: Identify and rank impacts

Impact Identified	L	S	R
Employees can be involved in events that can put in danger their life	2	5	H
Possibility of attacks in certain countries or environments	2	5	H
Employees can be pressured to work overtime, or work without the adequate conditions of Health and Safety	2	2	L
The condition of living provided by the Company and the Clients could not be adequate	3	2	M
Failure to implement the Health standards by the Client (he could not provide a healthy work environment).	3	2	M
Water and sanitation conditions may be deficient	2	3	M
Employees could be subjected to discrimination during their activities	1	4	M
Minorities can be subjected of discrimination during the execution of their activities	1	4	M
Candidates can be discriminate during the recruiting process	2	4	M

Source: Shift, "Business and Human Rights Impacts: Identifying and Prioritizing Human Rights Risks." New York, 2014.

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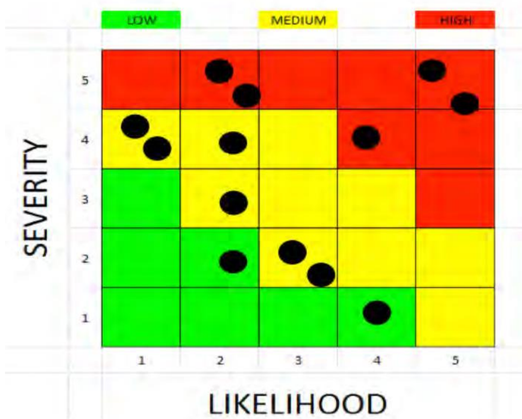
<u>IDENTIFYING AND RANKING IMPACTS</u>

This is a simplified table how a company can rank its impacts and shows the process for prioritisation.

L – Likelihood
S – Severity
R – High / Medium / Low ranking

DEEP DIVE : PRIORITISATION
Case study

Step 2: Risk matrix



Source: Shift, “Business and Human Rights Impacts: Identifying and Prioritizing Human Rights Risks.” New York, 2014.

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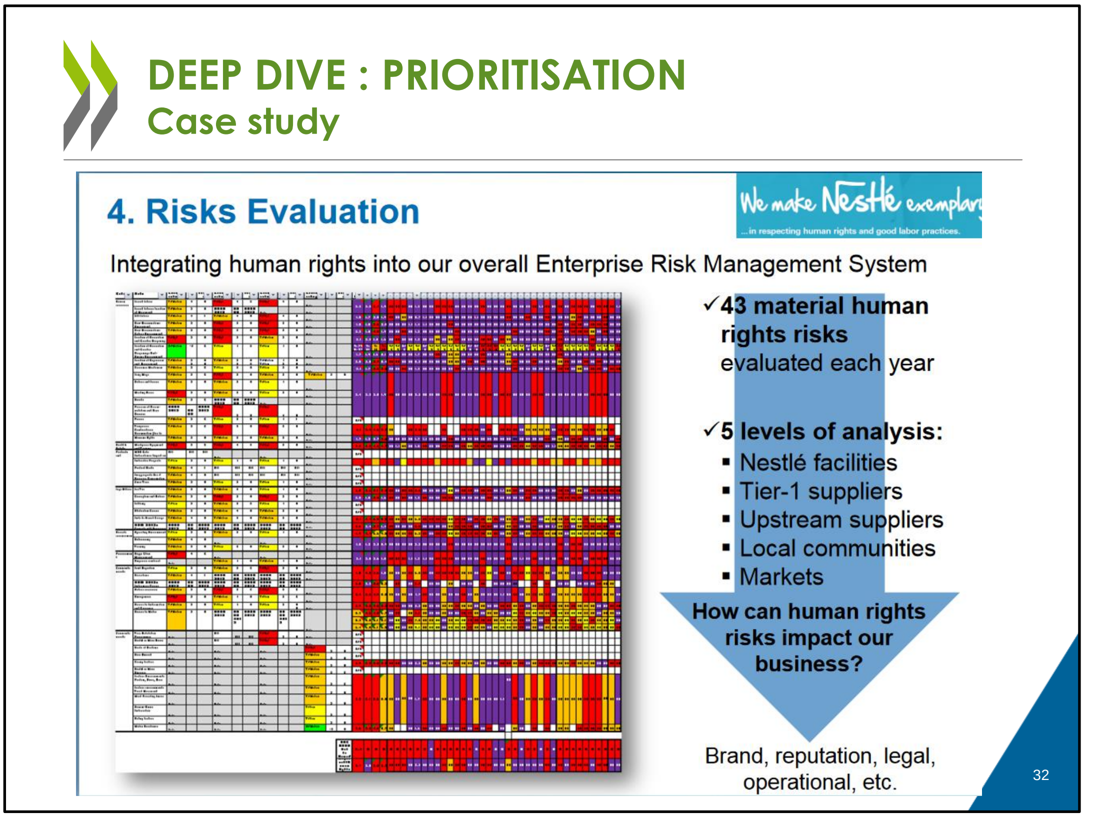
IDENTIFYING AND RANKING IMPACTS

The previous table can be organised and integrated into a risk matrix. This can help identify which impacts to further focus on.



<u>RISK EVALUATION</u>

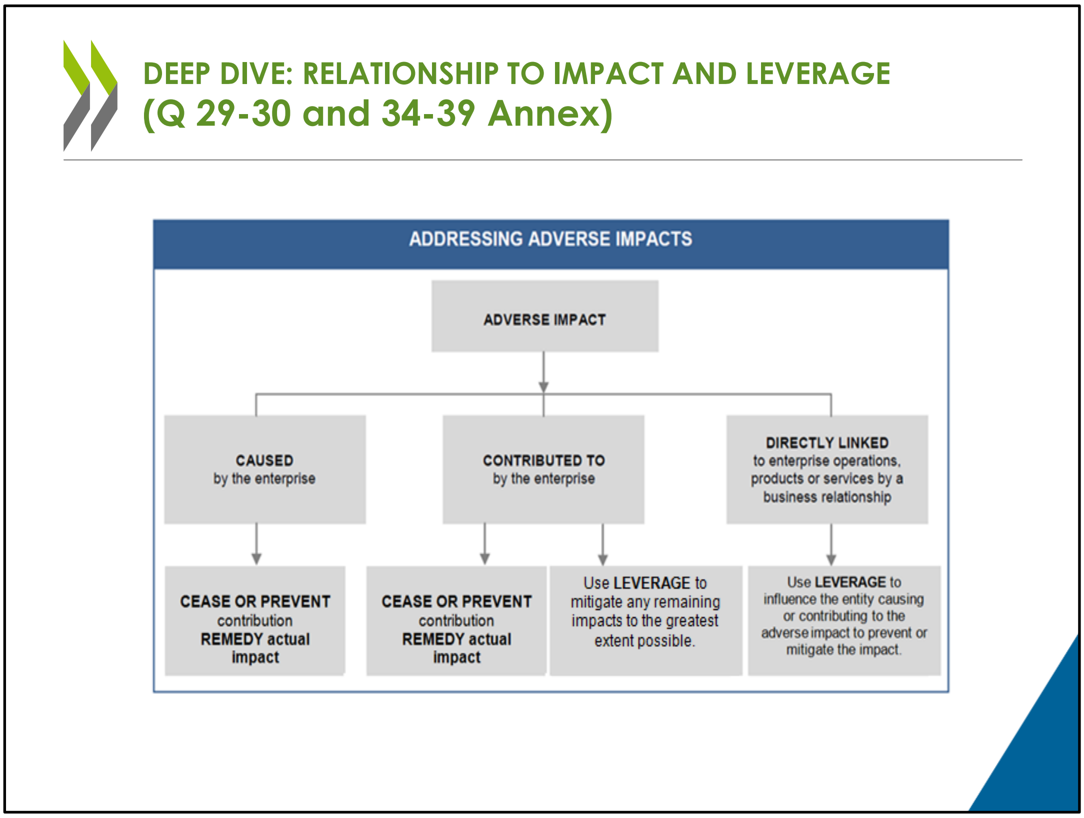
Of course, a risk matrix, especially for a large company, is often going to be much more complex.

Here is an example drawn from a presentation by Nestlé, where they identify and rank 43 human rights risks, also with regard to where they are located in their supply chains.

This, when linked to the impacts on their operations, helps the company establish priorities

Prioritisation is closely linked to understanding your supply chains and operations.


QUESTIONS?
OECD
BETTER POLICIES FOR BETTER LIVES



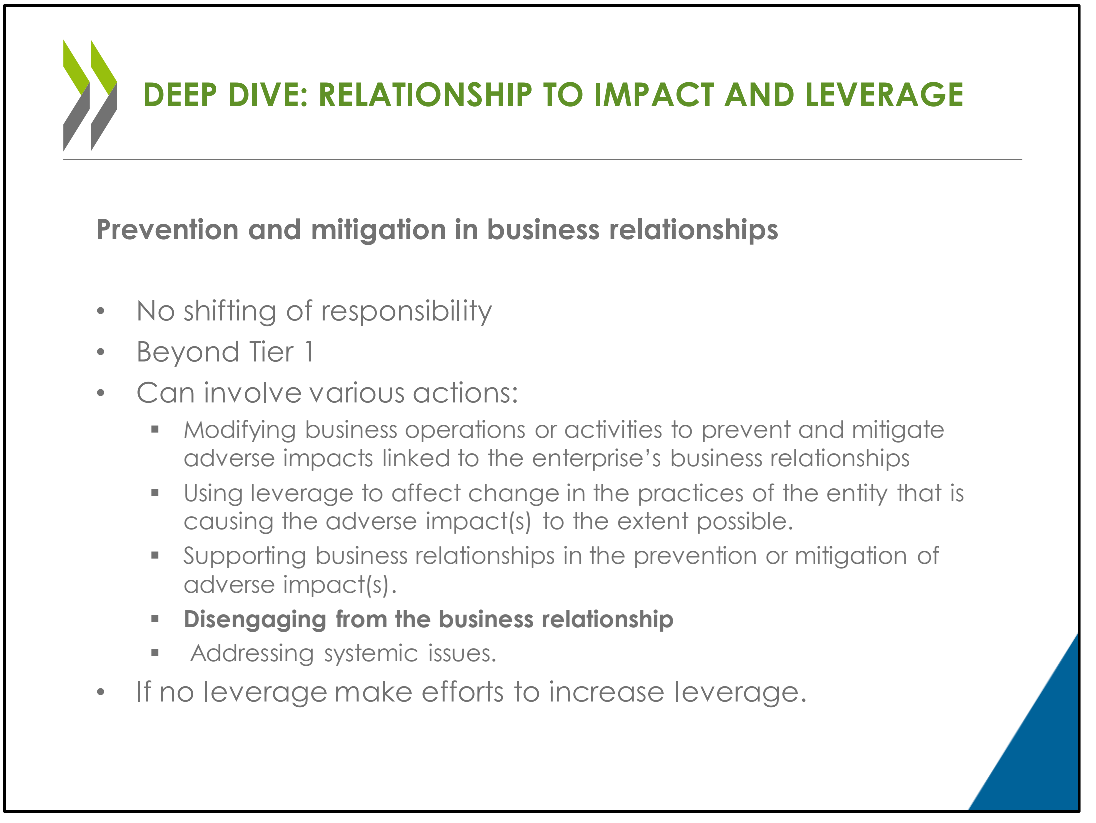
IMPACT AND LEVERAGE

Under the Guidelines as well as UNGPs, an enterprise can cause, contribute, or be directly linked to an impact through a business relationship. Understanding a company's relationship to impact is important because it will inform how an enterprise should respond to those impacts.

Where a company is causing or contributing to an impact, the company is meant to cease continuing the activity and also remedy it.

Where there is a relationship being **directly linked to impact through a business relationship**, enterprises are called to use their leverage to influence the entity causing or contributing to the adverse impact to prevent and mitigate that impact.

When you are talking about impacts in your supply chains, the responsibility for preventing, remediating, mitigating them does not fall to you, the responsibility is still held by the enterprise actually causing the impact. The role of an enterprise vis-à-vis their business relationship is to influence them or to engage in a variety of ways to encourage them to prevent or mitigate the issue themselves.



<u>PREVENTION AND MITIGATION IN BUSINESS RELATIONSHIPS</u>

Each enterprise retains responsibility.

Responsibility extends beyond Tier 1 relationships, beyond contractual relationships, beyond suppliers. It extends throughout an entire supply chain.

Enterprises can take a variety of actions to prevent and mitigate:

- Modifying business relationships- Product design (i.e. avoid sourcing certain materials), sourcing decisions (examining specific geographies based on standards of business), client on-boarding processing and practices

- Using leverage to affect change. This can involve the engagement of management of a company, collaborative initiatives, if you are an investor being an active shareholder and participating in resolutions.
  - The form it takes will vary depending on the sector and kind of business you have
  - The idea is that you communicate and engage with that business relationship to take action

- Supporting business relationships in the prevention or mitigation of adverse impact(s)

- When nothing else can be done or in situations where impacts are too severe, disengagement from the business relationship.

- Addressing systemic issues – a lot can be done without having to target the specific business relationship. This involves promoting positive change over time through advocacy or initiatives seeking to address systemic issues such as climate change, poverty etc.

- Lack of leverage does not impact whether you should take action but informs what kind of actions can be taken based on the above options. If you have no leverage, you should make efforts to increase leverage through building it in upfront for example through pre qualification processes, through collaborating with others.

DEEP DIVE: RELATIONSHIP TO IMPACT AND LEVERAGE

Deciding when to end a business relationship

	Have leverage	Lack leverage
Crucial business relationships	1 • Mitigate the risk that the abuse continues/recurs • If unsuccessful, go to step 2	2 • Seek to increase leverage • If unsuccessful, seek to mitigate risk that the abuse continues/recurs • If unsuccessful, consider ending the relationship**, or demonstrate efforts made to mitigate abuse, recognising possible consequences of remaining
Non-crucial business relationships	3 • Try to mitigate the risk that the abuse continues/recurs • If unsuccessful, take steps to end the relationship*	4 • Assess reasonable options for increasing leverage to mitigate the risk that the abuse continues/recurs • If impossible or unsuccessful, consider ending the relationship*

* Decisions on ending the relationship should take into account credible assessments of any potential adverse human rights impact of doing so.

** If the relationship is deemed crucial, the severity of the impact should also be considered when assessing the appropriate course of action.

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<u>DECIDING WHEN TO END A BUSINESS RELATIONSHIP</u>

Disengagement, may be appropriate as:
- last resort after failed attempts at preventing and mitigating severe impacts
- Or where impacts are irremediable- in this context the sector guidance's provides some “red-light” “no-go” scenarios
- Where there is no reasonable prospect of change

Enterprises should also consider and address the potential negative impacts of disengagement and can take some steps to mitigate potential harms of disengagement- for example through providing sufficient notice where possible.

It is recognized that in some situations it will not be possible to disengage.

- Where terms of business relationship are dictated by contract or practical considerations
- Where business relationship is crucial i.e. it provides a product or service that is essential for the enterprise’s business for which no reasonable alternative exists

When a business cannot disengage, in these cases it is recommended that the enterprise:
- Report the situation internally
- Continue to monitor the business relationship
- Revisit the decision as circumstances change or part of the enterprises long term

strategy to systemically respond to all adverse impact
- It is also useful to explain the decision to not end the business relationship- how this aligns for policies and priorities, what actions are being taken to continue to prevent and mitigate or monitor the business relationship.

EXAMPLE: Prevention and mitigation in business relationships: the case of investors

Advocating for sustainability

We advocate policy measures that support longer-term, more sustainable capital markets. We aim to correct market failures such as a lack of corporate disclosure on ESG risks and climate change – at a national, EU, OECD and UN level – to improve long-term policy outcomes.

Finance plays an important role in the Paris Climate Change Agreement. We remain engaged in how our industry can support the transition to a low-carbon economy, and how we can directly finance assets that help reach this goal.

AVIVA

NORGES BANK INVESTMENT MANAGEMENT

The following alphabetical overview shows companies that are currently excluded or under observation. Latest update: 10 July 2018

COMPANY NAME *(CLICK FOR PRESS RELEASE)*	CATEGORY	CRITERION	DECISION	PUBLISHING DATE
Aboitiz Power Corp	Product-based	Production of coal or coal-based energy	Exclusion	14.04.2016
AECOM	Product-based	Production of nuclear weapons	Exclusion	16.01.2018
Aerojet Rocketdyne Holdings Inc (formerly GenCorp Inc)	Product-based	Production of nuclear weapons	Exclusion	11.01.2008
AES Corp/VA	Product-based	Production of coal or coal-based energy	Exclusion	14.04.2016
AES Gener SA	Product-based	Production of coal or coal-based energy	Exclusion	14.04.2016
Africa Israel Investments Ltd	Conduct-based	Serious violations of individuals' rights in situations of war or conflict	Exclusion	30.01.2014
Airbus Finance BV (formerly EADS Finance BV)	Product-based	Production of nuclear weapons	Exclusion	02.09.2005

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EXAMPLES OF ACTIONS

Here are examples of the types of actions that can be taken vis-à-vis a business relationship.

In the context of investors:

- Investors can engage directly with companies that are subject to complaints with the OECD NCP mechanism
    - Positive outcomes have occurred
- Case involving SOCO, an oil exploration company in the Democratic Republic of the Congo, exploring in a world heritage site
    - Group of investors invested in the SOCO, arranged meetings with the management, and expressed dissatisfaction
    - As a result, the company pulled out of the Congo and made a commitment to not explore national parks
- Another case of Mylan, a pharmaceutical company, sold drugs to prisons in the United States that were using them for lethal injections
    - Investors in the Netherlands who were against this practice got involved, worked with Mylan and encouraged them to change and strengthen due diligence procedures
- Businesses can also engage in long-term systemic risk mitigation, often seen happening in the context of climate. Aviva is leader on this, and they promote better results in terms of climate management – better disclosures and better reporting.

- Has an ethics council that actually considers specific ESG or RBC risks as they arise and can make recommendations on their exclusions – of companies and certain industries. Can make recommendations on exclusions. Has a list of companies that it does not invest in.


QUESTIONS?
OECD
BETTER POLICIES FOR BETTER LIVES

Due diligence and stakeholder engagement (Q. 8-11 Annex)

Stakeholders will differ depending on the enterprise and its activities.

Impacted and potentially impacted stakeholders and rights holders may include:

- communities at local, regional or national level
- workers and employees including under informal arrangements within supply chains and trade unions
- consumers or end-users of products

Additionally, relevant stakeholders that may be important for meaningful engagement may include:

- NGOs, local civil society organisations, NHRIs
- community-based organisations and local human rights defenders
- industry peers
- host governments (local, regional and national)
- business partners
- investors/shareholders

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ON STAKEHOLDER ENGAGEMENT:

Stakeholders are people or groups who have interests that could affected by the company's activities.

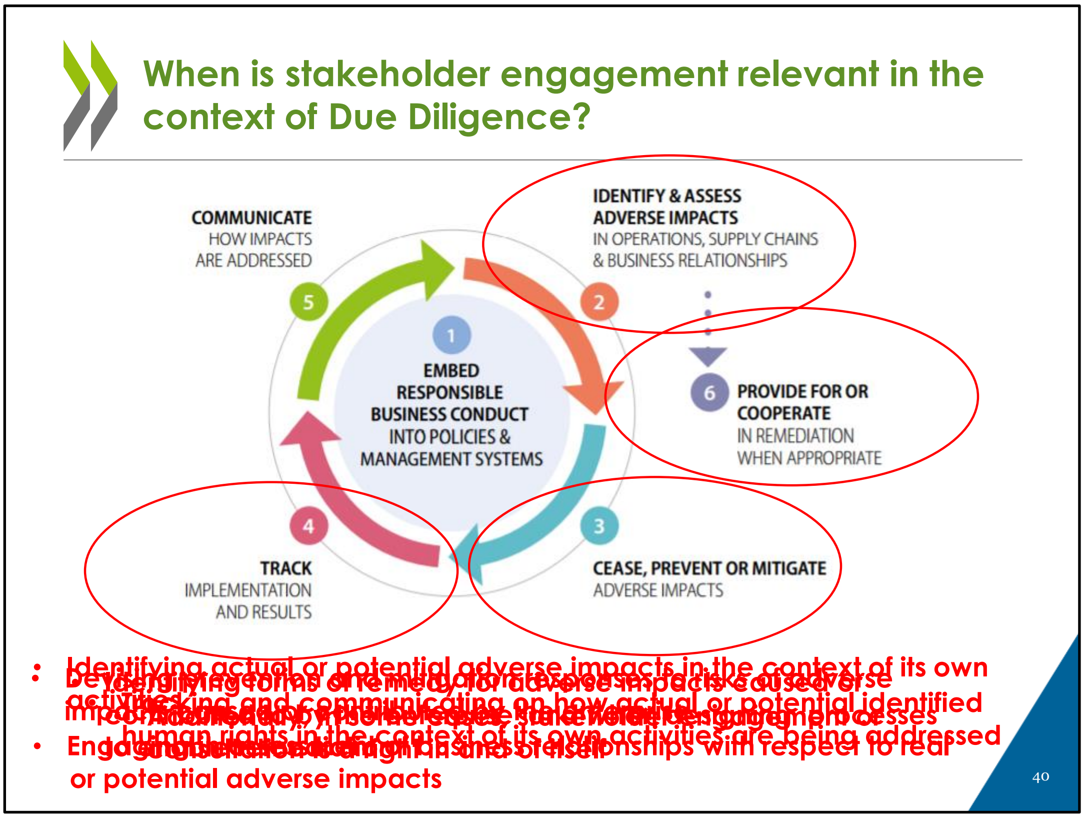
Not all stakeholders are treated the same way and not all stakeholders' interests are of equal importance.

Stakeholder can be broadly divided into two groups:

- Those impacted

  •communities at local, regional or national level
  •workers and employees including under informal arrangements within supply chains and trade unions
  •consumers or end-users of products

- Those whose voices are meaningful
  •NGOs, local civil society organisations, NHRIs
  •community-based organisations and local human rights defenders
  •industry peers
  •host governments (local, regional and national)
  •business partners
  •investors/shareholders



WHEN IS STAKEHOLDER ENGAGEMENT RELEVANT?

The stakeholder engagement component is in almost all six steps.

Step 2: Identifying actual or potential adverse impacts in the context of its own activities;

Step 2: Engaging in assessment of business relationships with respect to real or potential adverse impacts;

Step 3: Devising prevention and mitigation responses to risks of adverse impacts caused or contributed by the enterprise;

Step 4: Tracking and communicating on how actual or potential identified human rights in the context of its own activities are being addressed.

Step 6: Identifying forms of remedy for adverse impacts caused or contributed to by the enterprise and when designing processes to enable remediation;

Additionally, in some cases, stakeholder engagement or consultation is a right in and of itself. These are when stakeholders are also rights holders, whose rights are directly impacted by the company's operations.

Principles of stakeholder engagement

- ✓ Integrating stakeholder engagement into project planning and regular business operations through sharing of decision-making power
- ✓ On-going consultation and follow-through
- ✓ Most at risk-stakeholders are prioritized, rather than most influential stakeholders

Characteristics of Meaningful Stakeholder Engagement

- ✓ Two-way communication
- ✓ Timely sharing of relevant information
- ✓ Good faith of all parties

<u>PRINCIPLES OF STAKEHOLDER ENGAGEMENT:</u>

✓Integrating stakeholder engagement into project planning and regular business operations through sharing of decision-making power
✓On-going consultation and follow-through with the stakeholders
✓Most at risk-stakeholders are prioritized, rather than most influential stakeholders

Characteristics of Meaningful Stakeholder Engagement:

✓Two-way communication – both the company hearing from the stakeholder and the stakeholder hearing from you
✓Timely sharing of relevant information, so that stakeholders can make informed decisions
✓Good faith of all parties – really essential

QUESTIONS?

OCDE
DES POLITIQUES MEILLEURES
POUR UNE VIE MEILLEURE

What does due diligence mean to you?

- Objectives?
  - Avoiding, preventing, mitigating and remediating adverse impacts on people, the environment and society.
- Scope?
  - Own operations + business relationships across value chains
  - Broad scope of RBC issues (human rights, environment, labour corruption, consumer interests etc.
- Implementation?
  - Ongoing
  - Integrated
  - Focused on progressive improvement
  - Risk-based

Thank you/ Merci!