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**OECD DUE DILIGENCE GUIDANCE FOR RESPONSIBLE SUPPLY CHAINS IN THE GARMENT  
AND FOOTWEAR SECTOR**

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## FOREWORD

The OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector (hereafter “Guidance”) aims to help enterprises to implement the due diligence recommendations contained in the OECD Guidelines for Multinational Enterprises along the garment and footwear supply chain in order to avoid and address the potential negative impacts of their activities and supply chains. It seeks to support the aims of the OECD Guidelines to ensure that the operations of enterprises in the garment and footwear sector are in harmony with government policies to strengthen the basis of mutual confidence between enterprises and the societies in which they operate. This Guidance will also support enterprises to implement the due diligence recommendations contained in the UN Guiding Principles on Business and Human Rights. The Guidance is aligned with the International Labour Organization’s (ILO) Declaration on Fundamental Principles and Rights at Work, relevant ILO Conventions and Recommendations and the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy. Together with its modules on due diligence for specific risk areas, this Guidance provides enterprises with a complete package to operate and source responsibly in the garment and footwear sector.

This Guidance was developed through a multi-stakeholder process with in-depth engagement from OECD and non-OECD countries, representatives from business, trade unions and civil society, and was overseen by the Working Party on Responsible Business Conduct. A multi-stakeholder Advisory Group, chaired by Germany, was established in March 2015 to support the development of this Guidance. This Guidance benefited from regular input from members of the Advisory Group and other experts, including during a Roundtable on Due Diligence in the Garment and Footwear Supply Chain, held on 1-2 October 2015, as well as during a public consultation held in February-March 2016. As a result, this Guidance is intended to be practically oriented, with an emphasis on collaborative constructive approaches to complex challenges.

This Guidance builds on the in-depth reports of the National Contact Points (NCPs) of France and Italy on the implementation of the OECD Guidelines in the textile and garment sector and the leading initiatives of Belgium, Canada, Denmark, the European Union, Germany, the Netherlands, Sweden, the United Kingdom and the United States. It seeks to respond to statements made in June 2013 and 2014 by NCPs following the tragic collapse of Rana Plaza. The Guidance was also developed in response to the Ministerial Communiqué on Responsible Business Conduct adopted on 26 June 2014, and the G7 Leaders’ Declaration adopted on 7-8 June 2015 in Schloss Elmau, which welcomed international efforts to promulgate industry-wide due diligence standards in the textile and ready-made garment sector.

This Guidance was approved by the Working Party on Responsible Business Conduct on 24 October 2016 and the OECD Investment Committee on 14 January 2017.

The OECD has also developed tailored guidance to help enterprises build responsible supply chains in other sectors, specifically: extractives, and particularly minerals from conflict-affected and high-risk areas; agriculture; and finance.

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### **About the OECD Guidelines for Multinational Enterprises**

The OECD Guidelines for Multinational Enterprises (OECD Guidelines) are one of four parts of the 1976 OECD Declaration and Decisions on International Investment and Multinational Enterprises (hereafter “the Declaration”). In the Declaration, Adherents recommend that multinational enterprises (MNEs) observe the principles and standards set out in the OECD Guidelines, which aim to ensure an open and transparent international investment environment and to encourage the positive contribution of MNEs to economic, environmental and social progress. There are currently 46 Adherents to the Declaration – all 35 OECD countries and 11 non-OECD countries. The OECD Guidelines have been revised several times, most recently in 2011. They are the most comprehensive set of government-backed recommendations on what constitutes responsible business conduct (RBC). They cover nine major areas of RBC: information disclosure, human rights, employment and industrial relations, environment, combating bribery and corruption, consumer interests, science and technology, competition, and taxation. The recommendations set out in the OECD Guidelines are addressed from governments to MNEs operating in or from their territories.

Pursuant to the Decision of the Council on the OECD Guidelines for Multinational Enterprises, Adherents must set up a National Contact Point (NCP) to further the effectiveness of the OECD Guidelines by undertaking promotional activities, handling inquiries, and contributing to the resolution of issues that arise relating to the implementation of the Guidelines in specific instances. The OECD Guidelines are the first international instrument to incorporate risk-based due diligence into major areas of business ethics related to adverse impacts.

## TERMS USED IN THE GUIDANCE

<b>Adverse impact</b>	<p>Impacts on matters covered by the OECD Guidelines which include adverse impacts related to disclosure; human rights; employment and industrial relations; environment; combatting bribery, bribe solicitation and extortion; and consumer interests.</p> <p>The term “harm” is used throughout this Guidance to refer to adverse impacts.</p>
<b>Business relationship</b>	<p>Includes relationships with business partners, entities in its supply chain, and any other non-State or State entity directly linked to its business operations, products or services. Business relationships may include any supplier or other business partner in an enterprise’s supply chain. (OECD Guidelines, IV, Commentary 45)</p>
<b>Choke point</b>	<p>“Choke points” include:</p> <ul style="list-style-type: none"><li>• key points of transformation in the supply chain</li><li>• stages in the supply chain that generally include relatively few actors that process a majority of the commodity</li><li>• stages in the supply chain with visibility and control over the circumstances of production and trade upstream.</li></ul>
<b>Corrective action plan</b>	<p>Time-bound and actionable plan to prevent or mitigate harm. See section 3.</p>
<b>Direct sourcing</b>	<p>An enterprise holds a direct contractual relationship with its supplier.</p>
<b>Discrimination</b>	<p>Any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin (among other characteristics), “which has the effect of nullifying or impairing equality of opportunity and treatment in employment or occupation”. (ILO Convention [No.111]).</p>
<b>Due Diligence</b>	<p>The process through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts.</p> <p>Due diligence can be included within broader enterprise risk management systems, provided that it goes beyond simply identifying and managing material risks to the enterprise itself to include the risks of harm related to matters covered by the Guidelines. (OECD Guidelines, II, Commentary 14)</p>
<b>Forced labour</b>	<p>All work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily. (ILO, Forced Labour Convention, 1930 [No. 29])</p>
<b>Gender-based discrimination</b>	<p>Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms. This would apply to scenarios even where discrimination was not intended. Identical or neutral treatment of women and men might constitute discrimination against women if such treatment resulted in or had the effect of women being denied the exercise of a right because there was no recognition of the pre-existing gender-based disadvantage and inequality that women face. (UN Convention on the Elimination of all</p>

Forms of Discrimination against Women)

<b>Harm</b>		The term “harm” is used throughout this Guidance to refer to adverse impacts.
<b>Indirect sourcing</b>		An enterprise sources products (e.g. raw materials or finished goods) through an intermediary.
<b>Leverage</b>		When an enterprise has the ability to effect change in the wrongful practices of the entity that has caused harm. (OECD Guidelines, II, Commentary 19)
<b>Meaningful engagement</b>	<b>stakeholder</b>	Engagement with stakeholders that is characterised by two-way communication and depends on the good faith of the participants on both sides. (OECD Guidelines, II, Commentary 2)
<b>Mitigation</b>		“Mitigation” refers to actions taken to diminish or eliminate harm if a negative event occurs. Mitigation measures may be taken before, during or after an event with the aim of reducing the degree of harm.
<b>Prevention</b>		“Prevention” refers to actions taken to prevent harm from occurring or re-occurring. In other words, prevention measures are taken before harm occurs. This Guidance uses the term “prevent” broadly to include any action that is intended to stop harm from occurring.
<b>Remediation</b>		The provision of remedy for adverse impacts.
<b>Risk</b>		Throughout this Guidance, “risk” refers to the risk of harm to individuals, other organisations and communities in relation to human rights, labour rights and the environment. This Guidance does not focus on risks to the business itself.
<b>Risk-based</b>		The procedures that an enterprise implements to conduct due diligence are proportionate to the severity of the harm.
<b>Sector risks</b>		Sector risks are risks that are prevalent in the sector. Sector risks in the garment and footwear sector include, but are not limited to, the following: child labour; discrimination; forced labour; excessive hours of work; work-related injury and health; violations of the right of workers to establish or join trade unions and representative organisations of their own choosing and the right of workers to bargain collectively; non-compliance with minimum wage laws and wage levels that do not meet the basic needs of workers and their families; discrimination; hazardous chemicals; water consumption; water pollution; greenhouse gas emissions; bribery and corruption. See Section II, Modules on sector risks for targeted due diligence guidance for sector risks.
<b>Stakeholder</b>		Stakeholders include persons or groups who are or could be directly or indirectly affected by the actions of the enterprise and its interlocutors.
<b>Subcontracting</b>		Subcontracting is when a person or enterprise performs a service or activity necessary for the completion of another enterprise’s contract.
<b>Subsector risks</b>		Risks that are unique to a subsector of the garment and footwear sector. Example subsectors include athletics apparel, footwear, uniforms, etc.
<b>Supplier</b>		For the sake of simplicity, this Guidance uses the term “supplier” to include all business relationships that provide a product or service to an enterprise, either directly or indirectly. “Suppliers” may therefore include manufacturers, textile producers and farmers but may also include intermediaries, such as buying agents, logistical providers, and global commodities merchandisers and processors.
<b>Traceability</b>		The process by which enterprises track materials and products and the conditions in which they were produced through the supply chain.

## **OVERVIEW OF THE GUIDANCE**

### **Background**

The garment and footwear sector employs millions of low-skilled workers, many of whom are women, and acts as an entry point into the formal economy in many countries. As such, enterprises operating in the sector have the potential to generate growth, employment and skill development through their own operations and sourcing. However, human rights and labour abuses and harm to the environment by enterprises are prevalent throughout the supply chain in this sector. While such impacts are not new to the sector, the characteristics of modern global supply chains – such as stages of the production process spread across diverse countries, short lead times and short-term buyer-supplier relationships – can reduce visibility and control over an enterprise’s supply chain and can create challenges for enterprises to meet their responsibilities. Within this context, the risks of human rights and labour abuses, of environmental damage and integrity risks should be managed throughout the supply chain in order to ensure that the positive impacts of this global industry are maximised.

### **Purpose of this Guidance**

The purpose of this Guidance is to support a common understanding of due diligence in the garment and footwear sector aligned with the OECD Guidelines. This Guidance provides recommendations for enterprises on how to implement due diligence according to the OECD Guidelines in their own operations and in their supply chains. Due diligence should be ongoing, proactive and reactive and applied with flexibility and should not lead to a “tick the box” approach.

### **Target audience**

This Guidance is relevant for all enterprises operating in the garment and footwear supply chain seeking to implement the OECD Guidelines. This includes, but is not limited to, raw material and fibre producers, material manufacturers and processors, components manufacturers, footwear and garment manufacturers, brands, retailers and their intermediaries.

This Guidance is therefore also relevant for:

- Enterprises operating at various points along the supply chain, including global commodities merchandisers, buying agents, distributors, etc.
- Small, medium and large enterprises operating in the sector alike. While the expectation of due diligence is applicable to all enterprises regardless of their size, this Guidance does seek to highlight instances in which a small and medium-sized enterprise may choose to use different mechanisms to apply due diligence in light of its resources, position in the supply chain and leverage. See Introduction.
- Enterprises that are privately owned, state-owned or mixed.



The OECD Guidelines are addressed to multinational enterprises. However, in line with the OECD Guidelines, this Guidance reflects good practice for all and is not aimed at introducing differences of treatment between multinational and domestic enterprises.<sup>1</sup>

This Guidance can also serve as a reference for stakeholders to understand the measures enterprises are recommended to take with regard to managing their impacts. It may be used by National Contact Points (NCPs) for the OECD Guidelines to promote the OECD Guidelines.<sup>2</sup> Finally, the recommendations in this guidance are relevant for any third party, such as sector-wide and multi-stakeholder initiatives, that facilitates collaboration on some or all steps of the due diligence process.

### **Basis for this Guidance**

This Guidance is based on the principles, recommendations and standards contained in the OECD Guidelines. As such, it is intended to clarify existing expectations under the OECD Guidelines in relation to due diligence in the garment and footwear sector but is not intended to create any additional expectations. In relation to human rights, the OECD Guidelines and this Guidance are intended to align with the UN Guiding Principles on Business and Human Rights (UNGPs) and the relevant ILO Conventions and Recommendations.

This Guidance was developed through a multi-stakeholder process building on the reports from the Italian NCP and the French NCP on responsible supply chains in the textile and garment sectors.<sup>3</sup> Observance of this Guidance is voluntary and not a legal obligation.<sup>4</sup>

### **Legal compliance**

Obeys domestic laws is the first obligation of enterprises. The OECD Guidelines are not a substitute for nor should they be considered to override domestic law and regulation. While the OECD Guidelines may be broader in scope than domestic laws and regulations in many areas, they should not and are not

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1. A precise definition of multinational enterprises (MNEs) is not required for the purposes of the OECD Guidelines. These enterprises operate in all sectors of the economy. They usually comprise companies or other entities established in more than one country and so linked that they may co-ordinate their operations in various ways. The OECD Guidelines are addressed to all the entities within the MNE (parent companies and/or local entities). (OECD Guidelines, I, 4)

2. In accordance with the Decision of the Council on the OECD Guidelines as amended in 2011, National Contact Points (NCPs) are set up to further the effectiveness of the Guidelines by undertaking promotional activities, handling enquiries and contributing to the resolution of issues that arise relating to the implementation of the Guidelines in specific instances. This Guidance may be used by NCPs to promote the OECD Guidelines but is not intended to serve as a basis for the submission of specific instances. See also OECD Guidelines, Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises, 25.

3. See French NCP for the OECD Guidelines for Multinational Enterprises (2013), *NCP Report on the Implementation of the OECD Guidelines in the Textile and Clothing Sector*, Ministry of Economy and Finance, Paris; Italian NCP for the OECD Guidelines for Multinational Enterprises (2014), *Report on Responsible Business Conduct in the Textile and Garment Supply Chain, Recommendations of the Italian NCP on Implementation of the OECD Guidelines for Multinational Enterprises*, Ministry of Economic Development – General Directorate for Industrial Policy, Competitiveness, and Small and Medium Enterprises (DGPICPMI), Rome.

4. While this Guidance does not create legal obligations, some of the practices, standards and principles set out in the Guidance may also be regulated by national laws, for example, non-financial reporting requirements and due diligence on bribery and corruption.

intended to place an enterprise in situations where it faces conflicting requirements. However, in countries where domestic laws and regulations conflict with the principles and standards of the OECD Guidelines, enterprises should seek ways to honour such principles and standards to the fullest extent which does not place them in violation of domestic law.

## **Benefits**

This Guidance supports the aims of the OECD Guidelines of ensuring that the operations of enterprises are in harmony with government policies, strengthening the basis of mutual confidence between enterprises and the societies in which they operate, and reducing the negative impacts of an enterprise's activities.

This Guidance will also support enterprises in implementing the due diligence recommendations contained in the OECD Guidelines and the UNGPs, and other relevant RBC standards, such as the Universal Declaration of Human Rights, the International Labour Organization's (ILO) Declaration on Fundamental Principles and Rights at Work, relevant ILO Conventions and Recommendations, and the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy.

In addition, this Guidance may also help enterprises to satisfy regulatory compliance for doing business in jurisdictions that require due diligence for RBC, including reporting on non-financial risk. Finally, this Guidance may support business in strengthening their relationships with government, workers and civil society.

Other expected benefits to enterprises implementing this Guidance include:

- increased ability to meet expectations of customers and markets regarding responsible supply chains in the garment and footwear sector
- improved reputation of participating enterprises and of the sector
- increased ability to manage global operations consistently across a single set of RBC standards and across offices, sites, countries and regions, thereby supporting greater uniformity of operational outcomes and efficiency and effectiveness of compliance, and in some cases leading to cost savings
- decreased disruptions in the enterprise's operations and in its supply chain linked to risks on matters covered by the OECD Guidelines in the long term.

## **Structure of the Guidance**

### **Section I**

#### **Core Due Diligence Guidance for the Garment and Footwear Sector**

This section opens with a high-level introduction to the expectations under the OECD Guidelines and factors that may affect the nature and extent of due diligence. Considerations for stakeholder

### **Section II**

#### **Modules on sector risks**

This section provides information on how enterprises may apply the due diligence recommendations under Section I to sector risks in the garment and footwear sector. The modules

engagement, collaboration and gender – which may be applied throughout Sections I and II – are also included.

The core of Section I is a set of guidance on how enterprises in the garment and footwear sector may conduct due diligence in alignment with the OECD Guidelines. Each subsection corresponds to a different step of the due diligence process. The recommendations found in the Core Due Diligence Guidance are generally applicable to all risks that an enterprise may face in its own operations and in its supply chain.

under Section II are not intended to act as stand-alone guidance but rather should supplement the Core Guidance under Section I and provide enterprises with information on how to tailor their due diligence approach when addressing specific sector risks. Furthermore, modules are not intended to provide technical Guidance. Enterprises are encouraged to rely on existing guidance where it aligns with the recommendations in this Guidance.

## **INTRODUCTION TO DUE DILIGENCE UNDER THE OECD GUIDELINES AND KEY CONCEPTS FOR IMPLEMENTING DUE DILIGENCE**

### **Expectations under the OECD Guidelines**

“Enterprises should ... carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent or mitigate actual and potential adverse impacts [...] The nature and extent of due diligence depend on the circumstances of a particular situation.” (OECD Guidelines, II, A10)

“Enterprises should ... avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.” (OECD Guidelines, II, A11)

“Enterprises should ... 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. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.” (OECD Guidelines, II, A12)

**Due diligence process and supporting measures for responsible supply chains**

Embed responsible business conduct in enterprise policy and management systems

- Adopt a policy that articulates the enterprise's commitments to responsible business conduct in its own operations and in its supply chain.
- Strengthen management systems in order to conduct due diligence on risks of harm in the enterprise's own operations and in its supply chain.

Identify potential and actual harms in the enterprise's own operations and in its supply chain

- Scope the risks of harm in the enterprise's own operations and in its supply chain.
- Conduct a self-assessment of the enterprise's own operations.
- Assess suppliers associated with higher risks at the site level.
- Assess the enterprise's relationship to impacts.

Cease, prevent or mitigate harm in the enterprise's own operations and in its supply chain

- Cease, prevent or mitigate harm in the enterprise's own operations.
- Seek to prevent or mitigate harm in the enterprise's supply chain.

Track

- Verify, monitor and validate progress on due diligence and its effectiveness in the enterprise's own operations.\*
- Verify, monitor and validate progress on due diligence and its effectiveness in the enterprise's supply chain.

Communicate

- Communicate publicly on the enterprise's due diligence processes, including how the enterprise has addressed potential and actual harms.
- Communicate with affected stakeholders.

Provide for or co-operate in remediation when appropriate

- Establish a process to enable remediation in the enterprise's own operations.
- Commit to hearing complaints against the enterprise that are raised through legitimate processes.

Due diligence process

\* The effectiveness of due diligence is measured by the extent to which actual and potential harm is prevented and mitigated in the enterprise's own operations and in its supply chain.

## Due Diligence under the OECD Guidelines

Due diligence is the process through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts.<sup>5</sup> Due diligence is conducted against the OECD Guidelines regarding specific adverse impacts (i.e. harm). An enterprise is expected to conduct due diligence on its own activities and on its suppliers across its supply chain and other business relationships. Due diligence is an ongoing exercise, recognising that risks of harm may change over time as the enterprise's operations and operating context evolve.<sup>6</sup>

### *Risk-based*

Due diligence should be risk-based. In practice, this concept, which may be applied throughout this Guidance, can be understood in the following way:

- The measures that an enterprise takes to conduct due diligence should be commensurate to the likelihood and severity of the harm. For example, if an enterprise is sourcing from a country with a weak labour inspectorate, the measures that the enterprise will need to take to prevent child labour, forced labour and other labour impacts will be more extensive than the measures an enterprise may need to take if sourcing from a supplier operating in a jurisdiction with a strong labour inspectorate.
- The enterprise may prioritise the order in which it takes action based on the likelihood and severity of harm.

### *Factors that may affect the nature and extent of due diligence*

All enterprises have a responsibility to conduct due diligence regardless of their size or operating context. However, the nature and extent of due diligence, such as the specific steps to be taken appropriate to a particular situation, will be affected by factors such as the size of the enterprise, the context of its operations, the specific recommendations in the OECD Guidelines, and the likelihood and severity of its adverse impacts.<sup>7</sup> Furthermore, the specific steps taken to conduct human rights due diligence may vary from due diligence on other risk areas. This Guidance looks at how the size of an enterprise, the nature of its business and its sourcing models may affect the nature and extent of its due diligence. However, other factors may likewise affect the specific steps the enterprise takes to conduct due diligence.

- *Sourcing models:* The organisation of an enterprise's sourcing may affect how it conducts due diligence. For example, if an enterprise is sourcing through buying agents, it may partner with its buying agent to assess suppliers. For the sake of simplicity, this Guidance characterises sourcing models in the following ways:

#### KEY TERMS

**Adverse impact** - In the context of the OECD Guidelines, "adverse impacts" can be considered harmful impacts on matters covered by the OECD Guidelines (e.g. child labour, discrimination, hazardous chemicals, etc.). The term "harm" and "adverse impacts" are therefore used interchangeably throughout this Guidance.

**Risk** - Throughout this Guidance, "risk" refers to the risk of harm to individuals, other organisations and communities in relation to human rights, labour rights and the environment. This Guidance does not focus on risks to the business itself.

<sup>5</sup>. OECD Guidelines, II, Commentary 14.

<sup>6</sup>. OECD Guidelines, IV, Commentary 45.

<sup>7</sup>. OECD Guidelines, II, Commentary 15.

- Direct sourcing: An enterprise holds a direct contractual relationship with its supplier.<sup>8</sup>
- Indirect sourcing: An enterprise sources products (e.g. raw materials or finished goods) through an intermediary.
- *Size of the enterprise:* While the size of an enterprise does not change its responsibility to conduct due diligence, how an enterprise goes about applying due diligence may be affected by its size. For example, the resources, knowledge and capacity to implement due diligence may be more limited in small and medium-sized enterprises (SMEs) compared to larger enterprises. At the same time, SMEs often have smaller operations and fewer suppliers.
- *Nature of the business:* The nature of the enterprise’s business, whether it is a retailer, brand, buying agent, manufacturer, etc., will likely affect how the enterprise conducts due diligence. For example, the steps that a retailer takes to conduct due diligence on the brands that it sells but does not own will likely be different from the steps that it takes to conduct due diligence on its own brands and products.

### Meaningful stakeholder engagement

Enterprises should engage meaningfully with affected stakeholders as part of the due diligence process. Such engagement should be two-way, conducted in good faith and responsive. Stakeholders should be provided with truthful and complete information and should be given opportunity to provide input prior to major decisions being made that may affect them.

Stakeholders include persons or groups who are or could be directly or indirectly affected by the actions of the enterprise and their interlocutors. In the garment and footwear sector, an enterprise’s stakeholders likely include:

- the enterprise’s own employees, other workers performing work on behalf of the enterprise, and trade unions and representative organisations of the workers’ own choosing
- the workers and trade unions and representative organisations of the workers’ own choosing in the enterprise’s supply chain that are affected by the enterprise’s activities
- the enterprise’s suppliers
- community members that are affected by the enterprise’s operations
- governments of the jurisdictions that the enterprise operates in or sources from.

**Stakeholders should be involved** – meaning that they should actively participate in their design and implementation – in the following due diligence processes:

- On-site supplier assessments. See section 2.3.
- Development of corrective action plans. See section 3.

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<sup>8</sup>. The term “direct sourcing” should not be confused with the term “directly linked” used in the OECD Guidelines. An enterprise does not have to be directly sourcing from a supplier to be directly linked to adverse impacts in its supply chain.

- Verification, validation and monitoring of impacts. See section 4.
- Design of operational-level grievance mechanisms. See section 6.1.

In practice, this means that workers and trade unions and representative organisations of the workers' own choosing should be involved in the above due diligence processes for labour risks.

**Enterprises are also encouraged to consult stakeholders** – meaning that their input and feedback is requested – during the scoping of risks in the enterprise's operations and its supply chain.

Practically, there are a number of ways in which enterprises may engage with stakeholders. Together enterprises and stakeholders are encouraged to identify methods for engagement that are effective for them. Industrial relations can be considered an important form of stakeholder engagement in which management engages the workforce collectively. The enterprise should prioritise engaging with stakeholders, or their interlocutors, who are most likely to be affected by the activities of the enterprise.

### **Collaboration on due diligence**

Many of the recommendations in this Guidance may be applied in collaboration at a sector level, directly in partnership with trade unions or through multi-stakeholder initiatives, and indeed collaboration is encouraged throughout this Guidance. Collaboration does not alter the responsibility of the individual enterprise to identify, prevent or mitigate harm. However, collaboration can be used as a means of applying due diligence. Further guidance is provided throughout Section I on where collaboration may be beneficial. Nonetheless, guidance on collaboration is not comprehensive.

#### ***Sector collaboration***

Sector collaboration can take a number of forms, but in general is pursued in order to pool knowledge, increase leverage, and scale up effective measures.

- *Pool information* – many enterprises in the garment and footwear sector source from the same countries and suppliers. Sharing information can therefore help increase the awareness of specific risks in the sector and bring attention to emerging risks more quickly than would be possible for most individual enterprises.
- *Increase leverage* – leverage refers to the ability of an enterprise to influence another enterprise. An enterprise's leverage with its suppliers is important when identifying, preventing and mitigating harmful impacts associated with a supplier. However, there are many reasons why an individual enterprise may lack leverage on its own, such as its small size or its relatively insignificant buying power. Where a single enterprise may lack leverage, a group of enterprises operating together may wield greater leverage, for example by aligning on the activities, timelines and follow-up measures included in a supplier's corrective action plan.
- *Scale up effective measures* – collaborative initiatives can play a role in scaling up solutions (e.g. policy, training, capacity building, etc.) that have been demonstrated to be effective as well as avoid duplications in programming.<sup>9</sup> Scaling-up can likewise engage SMEs who may have limited resources to initially invest in piloting solutions.

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<sup>9</sup> Duplication of supplier assessments and programming (e.g. training initiatives) may create an unnecessary burden on suppliers without necessarily increasing the quality of information collected or disseminated or the capacity of suppliers. Collaborative initiatives that focus on harmonising assessment methodology and



- *Increase sector transparency* – collaboration can help to facilitate the disclosure of aggregate information, for example, on supplier assessments, corrective action taken and measured improvements, and therefore increase the transparency of the sector broadly, while enabling individual enterprises to communicate on site-level information as they are ready.

Cost sharing and savings is often a benefit to sector collaboration. This can be particularly useful for SMEs.

In addition to the above, in cases in which an impact is prevalent in more than one sector within a particular region, cross-sector collaboration can also facilitate the identification and scaling-up of more effective solutions (rather than pushing the impact from one sector to another). For instance, see Module 1, Child labour and Module 3, Forced labour.

### ***Direct agreements with trade unions***

Enterprises should involve workers and trade unions and representative organisations of the workers' own choosing in the due diligence process as referenced in the section above. Enterprises may also directly enter into agreements with trade unions: (i) to facilitate worker involvement in the design and implementation of due diligence processes, (ii) to implement standards on workers' rights and hold enterprises accountable to them, or (iii) to raise grievances against enterprises in relation to workers' rights. Collaboration may be legally binding or voluntary. Examples of direct collaboration with trade unions include global framework agreements and freedom of association protocol agreements. However, these examples are not comprehensive.

- Global framework agreements (GFAs) are agreements negotiated at a global level between an enterprise and a Global Union Federation. They serve to uphold the rights of workers across a company's operations and its supply chain by implementing standards on trade union rights, health, safety and environmental practices, and quality of work principles, regardless of the standards existing in a particular country. GFAs may be legally binding.
- Freedom of association protocol agreements establish a joint understanding and commitment between trade unions and enterprises regarding the implementation of freedom of association within industrial relations relating to a specific context. They may be established locally between a single brand, supplier and trade union or at a regional or sector-wide level between a group of buyers, suppliers and trade unions. Protocol agreements may be legally binding. See Box 13.
- Sector agreements between enterprises and trade unions at a global level are agreements established to address specific sector risks in the garment and footwear sector through collaboration between global trade unions and enterprises. These agreements establish a common goal and framework for action that all members agree to implement.

### ***Multi-stakeholder initiatives***

Enterprises may also collaborate through multi-stakeholder initiatives (MSIs). MSIs are often established to facilitate collaboration between stakeholders to address specific sector risks or implement specific steps in the due diligence process. While by definition MSIs include the participation of stakeholders, there is a wide variance in the members and objectives of MSIs.

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support recognition of such harmonised assessments could reduce the burden placed on suppliers as well as increase the quality of assessment, provided harmonised assessments conform to high standards.

### ***Potential challenges to collaboration***

One of the challenges to collaboration is the ability of enterprises to identify and share supplier information amongst those participating in the collaborative initiative. In order to facilitate collaboration, the sector is encouraged to work towards sharing information and a common approach to identifying suppliers (e.g. common supplier registrars or ID codes).

The compatibility of collaborative initiatives with competition law is a challenge that is often raised in the sector in relation to collaboration for the purposes of due diligence. However, competition law does not prohibit collaborative activities by companies unless they affect important parameters of competition. See Box 1 for more information.

#### **Box 1. Competition law and responsible business conduct<sup>1</sup>**

Competition law does not prohibit collaborative activities by companies unless they affect important parameters of competition.

In general, competition laws and policies prohibit: (i) hardcore cartels/naked restrictions; (ii) other anti-competitive agreements; (iii) anti-competitive unilateral conduct that exploits or extends market dominance or market power; and (iv) anti-competitive mergers and acquisitions. Collaborative activities between independent competitors are generally reviewed under i and ii.

In many cases – and perhaps most cases – enterprises can collaborate on responsible business conduct and due diligence without breaching competition law. However, where there are concerns, enterprises can take steps to avoid any competition law issues. For example, enterprises – or the collaborative initiatives in which they are involved – are encouraged to:

- Seek the advice of competition authorities if they are in doubt as to whether a particular course of conduct or co-operative activity may be viewed as contrary to competition law and therefore raise regulatory risks.
- Establish transparency around collaborative initiatives to mitigate competition concerns. Competition authorities tend to be more sceptical of initiatives or agreements amongst competitors if conduct is completely private. Furthermore, transparency can help to bring to light potentially problematic issues and thus ensure they are addressed quickly.
- Establish anti-trust compliance programmes. Guidance documents on how to best design and enforce compliance programmes are often provided by competition authorities in specific jurisdictions. General guidance on best practices also exists.

1. For more guidance, see Capobianco, Gillard and Bijelic, (2015), "Competition law and responsible business conduct", reference material for the session on Competition Law and Responsible Business Conduct of the Global Forum on Responsible Business Conduct, OECD, Paris.

### ***Accountability***

As stated above, enterprises retain individual responsibility for their due diligence and should ensure that all joint work duly takes into consideration circumstances specific to the individual enterprise. In practice, this means that enterprises are encouraged to consider how they might contribute towards the effectiveness of collaborative initiatives. For example by:

- reporting instances of harm and emerging risks that it has identified independently<sup>10</sup>
- sharing relevant information on the enterprise's own operations or suppliers (e.g. share list of suppliers confidentially to the initiative)
- providing technical assistance, where appropriate.

Furthermore, when an enterprise engages in an initiative in order to collaborate on the steps of the due diligence process, the enterprise should identify which aspects of due diligence the initiative is helping it to fulfil and which components the enterprise will need to pursue on its own. It is also recommended that initiatives which intend to facilitate collaboration on due diligence:

- Clearly articulate which components of due diligence the initiative is helping to facilitate (e.g. identification of sector risks, prioritisation of risks, etc.).
- Demonstrate that its approaches align with the recommendations in this Guidance. In this regard, the initiative may seek to be reviewed by an advisory group of experts and stakeholders to determine the extent to which the initiative supports due diligence in alignment with this Guidance.

### **Gender considerations when applying due diligence**

Women account for a majority of the labour force in the garment and footwear supply chain. Risks of harm often differ for men and women. For example, women are more likely to be paid lower wages than men; women are more often linked to precarious, informal or irregular employment; and low-income women workers are particularly vulnerable to harassment in the workplace. The unique position of women within a particular context should therefore be systematically considered at all stages of due diligence. Enterprises are encouraged to:

- Consider how women may be disproportionately affected by impacts (e.g. migrant workers, minorities, young women, etc.). For example, sexual harassment and sexual and gender-based violence predominantly affect women in the sector.
- Consider whether a programme or policy could have unintended negative consequences for women.
- Include women in the design of monitoring and evaluation measures.
- Assess whether grievance mechanisms are equally accessible to all affected parties (e.g. women, men, migrant workers, etc.).
- Ensure that the individual serving as the access point for a grievance mechanism is approachable regardless of the complainant's gender, religion, etc. Special attention should be paid to women from vulnerable groups.

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<sup>10.</sup> For example, a stakeholder may flag a change in the context on the ground which may increase the risk of harm to the enterprise. The enterprise should share this with the initiative.

*SECTION I*

**CORE DUE DILIGENCE  
GUIDANCE FOR THE GARMENT  
AND FOOTWEAR SECTOR**

## 1. EMBED RESPONSIBLE BUSINESS CONDUCT IN ENTERPRISE POLICY AND MANAGEMENT SYSTEMS

### Expectations under the OECD Guidelines

The OECD Guidelines explicitly recommend that enterprises make policy commitments on disclosure (II, 2d) and human rights. (OECD Guidelines, IV, 4; OECD Guidelines, IV, Commentary 44)

The OECD Guidelines also recommend that “enterprises express their commitment to respect human rights through a statement of policy that: (i) is approved at the most senior level of the enterprise; (ii) is informed by relevant internal and/or external expertise; (iii) stipulates the enterprise’s human rights expectations of personnel, business partners and

other parties directly linked to its operations, products or services; (iv) is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties; (v) is reflected in operational policies and procedures necessary to embed it throughout the enterprise”. (OECD Guidelines IV, Commentary 44)

While the OECD Guidelines do not explicitly recommend that enterprises establish a policy commitment on matters beyond disclosure and human rights, it can be considered good practice which may be applied to all chapters of the OECD Guidelines.

### **1.1 Adopt a policy on responsible business conduct that articulates the enterprise's commitments to responsible business conduct in its own operations and in its supply chain**

The enterprise policy on responsible business conduct (hereafter RBC policy):

- Should include commitments regarding its own activities and should articulate the enterprise's expectations of its business partners – including suppliers, licensees and intermediaries – across the full length of its supply chain.
- Should cover matters covered by the OECD Guidelines. The enterprise RBC policy should also commit to upholding international standards on sector risks and subsector risks relevant to the enterprise and make explicit reference to relevant international standards.<sup>11</sup>
- Should include commitments to conduct due diligence on the enterprise's most significant risks in its own operations and in its supply chain. See section 2.1.
- (*Retailers, brands and other buyers*) should include a commitment to responsible sourcing practices, meaning that the enterprise commits to seeking to prevent its contribution to harmful impacts through its sourcing practices. See Box 4.
- Should stipulate the enterprise's expectations regarding the use of subcontractors by direct suppliers, when relevant, including a definition of "subcontract" and distinctions in subcontracted work if they exist. See Box 2.
- Should put forth the enterprise's expectations regarding the outsourcing to homeworkers and the use of handwork, where relevant to the enterprise's business models. See Module 12.
- Should include a commitment to meaningful engagement with affected stakeholders through the course of due diligence. See Introduction to due diligence under the OECD Guidelines.
- Is encouraged to include a commitment to hear and address all complaints against the enterprise regarding its own operations regardless of how they are raised; and include a commitment to hear and address measured and substantiated complaints that the enterprise has caused or contributed to harms in its supply chain that are raised through legitimate processes. See section 6.2.

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<sup>11.</sup> Sector risks in the garment and footwear sector include, but are not limited to: child labour; discrimination; forced labour; hours of work; occupational health and safety; the right to establish or join a trade union and representative worker organisation and right to collective bargaining; compensation; discrimination; hazardous chemicals; water consumption; water pollution; energy consumption and CO<sub>2</sub> emissions; bribery and corruption.

Examples of international standards include the OECD Guidelines for Multinational Enterprises, the UN Guiding Principles on Business and Human Rights, the Universal Declaration of Human Rights and the ILO's Declaration on Fundamental Principles and Rights at Work. In all cases and irrespective of the country or specific context of enterprises' operations, reference should be made to the internationally recognised human rights expressed in the International Bill of Human Rights. OECD Guidelines, IV, 39.

**Box 2. Policy on subcontracting and other due diligence processes**

Subcontracting orders to third parties is a fairly common practice at many stages of the garment and footwear supply chain. Subcontracting enables an enterprise to respond quickly to short lead times and changes in orders, to specialise in certain tasks, such as design, or outsource specialised tasks that are not performed in-house, for example screen printing. Outsourcing, however, can also decrease transparency in the supply chain and has been demonstrated to increase the risk of human rights and labour abuses and environmental impacts in higher-risk contexts. Therefore, when operating in higher-risk contexts and where there is a high likelihood of subcontracting, the due diligence measures that an enterprise should take to mitigate these risks should be increased.

As a component of due diligence, enterprises should establish clear expectations for their direct suppliers operating in higher-risk contexts on whether subcontracting is authorised or not and the corresponding expectations.

**Box 2. Policy on subcontracting and other due diligence processes (cont.)**

**Enterprise permits subcontracting**

If the enterprise permits subcontracting, it should conduct due diligence on the subcontractors in its supply chain or ensure that its supplier has done so. In practice, this means that all steps of the due diligence process – including measures such as developing and monitoring corrective action plans, as appropriate – should be carried out on subcontractors. Collaborative initiatives can help to facilitate due diligence on subcontractors.

Additionally, the enterprise is encouraged to establish clear requirements on transparency and on the selection of subcontractors. Example measures are provided below.

- *Prequalification of subcontractors:* Subcontractors should be prequalified through similarly rigorous processes to those used for direct contractors. See section 3.2.2. It is recommended that this is a systematic process where suppliers apply to be on a pre-approved subcontractor list. Approved subcontracts may be reviewed on a semi-regular (e.g. annual) basis to remain approved. Workers of those subcontractors should have access to grievance mechanisms, similar to those of direct contractors.
- *Contract process:* Direct suppliers may subcontract to previously approved subcontractors. However, direct contractors should be prepared to disclose the following:
  - intent to subcontract work
  - selection of pre-approved subcontractor
  - up-to-date information on subcontractor
  - size of contract allocation.
- Where feasible, manufacturers are encouraged to establish ongoing relationships with their subcontractors and become actively involved in the establishment and monitoring of corrective action, as relevant.

**Enterprise does not permit subcontracting**

If an enterprise chooses to prohibit subcontracting, the enterprise should put in place additional measures to mitigate the risk that subcontracting continues to unauthorised suppliers or ensure that the placement of orders does not result in forced overtime or other labour impacts. For example, in instances in which the enterprise changes the specifications of orders, the lead time should likewise be amended to reduce the risk of unauthorised subcontracting. In other words, the enterprise should reduce incentives to subcontract work.

***Nature of the policy***

The enterprise RBC policy may consist of one single policy or several stand-alone policies or be integrated into wider governance documents of the enterprise – such as the code of conduct or principles of business ethics. The enterprise RBC policy may also build on existing policies and commitments.<sup>12</sup>

<sup>12</sup>. A gap analysis against the OECD Guidelines and this Due Diligence Guidance, particularly in relation to the expectations of due diligence, can help to highlight areas in need of updating.



***Adopting and updating the policy***

The enterprise RBC policy should be developed with and informed by relevant internal and external expertise and should be approved at the most senior level of the enterprise.

The RBC policy should not be a static document but should be updated through an iterative process that builds on increasing knowledge about risks of harm in the enterprise's supply chain and on input from internal and external stakeholders. For example, the enterprise may identify a gap in its policy after scoping the risks of harm in its own operations and in its supply chain. See section 2.1.

***Communicating the policy***

The enterprise RBC policy should be made publicly available and communicated to all employees, suppliers and other business partners and other relevant parties. See section 5.1.

**Collaboration**

The garment and footwear sector includes numerous sector initiatives, trade union agreements and multi-stakeholder initiatives that have developed policies or codes of conduct for their members. Enterprises are encouraged to adopt or align their policies with such existing commitments in order to facilitate sector collaboration on assessments against those policies. However, the policies that the enterprise adopts should align with the recommendations in this Guidance. Sector initiatives, trade union agreements and multi-stakeholder initiatives should have processes in place to review and update their policies to reflect changing circumstances and emerging risks.

**Factors that may affect the nature of due diligence**

All enterprises, regardless of their size, position in the supply chain and location should adopt an RBC policy. However, the enterprise's policy should reflect the specific risks of harm in its own operations and in its supply chain – which in turn will be affected by its products, business models, sourcing models and countries it operates in or sources from. Furthermore, enterprises are encouraged to adopt policies that address their specific circumstances and sourcing models. For example, an enterprise that uses third-party recruitment or employment agencies is encouraged to establish a policy on responsible recruitment and hiring.

**1.2 Strengthen management systems in order to conduct due diligence on risks of harm in the enterprise's own operations and in its supply chain*****Oversight***

The enterprise:

- is encouraged to establish or strengthen corporate governance to oversee and support RBC, including assigning board and senior management level accountability for guiding the enterprise's approach and implementation of RBC
- should assign responsibility to senior staff with the necessary competence, knowledge and experience to oversee the implementation of the RBC policy
- should give adequate attention and support to due diligence on human rights, labour, environment and integrity risks and allocate resources accordingly

- should secure adequate staff time and ensure that those who work on supply chain due diligence have the competence to perform their duties.

### ***Decision-making***

The enterprise should incorporate due diligence into decision-making processes. Examples include the following:

- An enterprise is considering developing a new product that may increase the risk of using hazardous chemicals due to the recommended dye colours and materials. The enterprise includes the cost and feasibility of conducting due diligence in the decision-making processes.
- An enterprise is considering expanding its own operations to a country with known human rights abuses. The enterprise includes in the decision-making process the cost and feasibility of conducting human rights due diligence to determine whether it can operate in the country responsibly.

### ***Functional alignment***

The RBC policy, by its nature, will be relevant across several internal departments (e.g. sourcing, design, etc.). As such, the enterprise is encouraged to establish alignment across teams and business units, particularly when the incentives of one business unit do not align with the RBC policy. Some examples of how an enterprise might promote functional alignment include:

- Facilitate feedback and learning on due diligence and the RBC policy between business units.
- Ensure that information related to due diligence is provided to relevant decision makers and is adequate and appropriate.
- Include multiple business units in making a decision that may increase the risk of harm in the enterprise's own operations or in its supply chain (e.g. sourcing from a new, higher-risk country).

For example, in the garment and footwear sector, the incentives of buying units may not align with the incentives of the business units overseeing supplier human rights, labour and environmental performance. In light of this, it is recommended that buying units have access to ongoing and updated information such as: suppliers that are prequalified for sourcing; subcontractors that are prequalified for sourcing (if relevant); and supplier order capacity.

### ***Information systems to support due diligence***

The enterprise should develop information management systems that are accurate and current and are capable of storing the full extent of information necessary to conduct due diligence. It is recommended that information be stored for five years. Throughout this Guidance, reference is made to the identification of the information included in Table 1 for the purposes of due diligence.<sup>13</sup>

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<sup>13</sup>. Much emphasis has been placed on supply chain mapping in the garment and footwear sector. Identifying who the enterprise sources from and where is an important process that facilitates aspects of due diligence, notably the identification of actual and potential harm (see section 2) and the prevention and mitigation of those impacts (see section 3). The enterprise should identify its suppliers and other business relationships to the extent that is necessary to conduct due diligence in accordance with this Guidance. Importantly, while this Guidance does not specify to which tier in the supply chain the enterprise should map, the

Table 1. **Information to be collected and stored for the purposes of conducting due diligence**

<b>Information</b>	<b>Reference in Guidance</b>
Products that the enterprise buys and produces and the general risks of harm associated with the production and sale of those products	Section 2.1
<i>(For retailers)</i> List of brands that the enterprise sells and associated products	Table 3
<i>(For retailers)</i> Information on whether the brands that the enterprise sells conduct due diligence	Table 3
Countries from which the enterprise is sourcing where the risk of harm is considered to be higher. This includes countries that may be upstream in an enterprise's supply chain, such as exporters of raw materials	Section 2.1
The enterprise's suppliers and other business partners operating at stages or in sourcing countries where the risk of harm is considered to be higher	Section 2.3
<i>(Optional)</i> Choke points in the supply chain for products linked to severe harms upstream in the enterprise's supply chain	Box 3
Stages in the supply chain (e.g. beading, embroidery, leather working) which have a higher likelihood of employing homeworkers	Module 12
Stages in the supply chain which have a higher likelihood of including subcontracting	Box 2
Findings of the enterprise risk-scoping exercise	Section 2.1
Findings of individual supplier assessments	Section 2.3
Supplier commitments under relevant corrective action plans	Section 3.1
List of prequalified suppliers and subcontractors	Section 3.2.2

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enterprise is expected to justify how it conducts due diligence (see section 5). In other words, an enterprise should be able to explain how it identified and addressed risks in its supply chain.

**2. IDENTIFY ACTUAL AND POTENTIAL HARMS  
IN THE ENTERPRISE’S OWN OPERATIONS  
AND IN ITS SUPPLY CHAIN**

**Expectations under the OECD Guidelines**

The OECD Guidelines put forth the expectation that enterprises “identify actual and potential adverse impacts on matters covered by the OECD Guidelines”. (OECD Guidelines, II, A10)

This includes impacts from the enterprise’s own activities (II, A11) as well as “those that the enterprise has not contributed to, but which are nevertheless directly linked to their operations, products or services by a business relationship”. (OECD Guidelines, II, A12)

In the context of the OECD Guidelines, “business relationships” include “relationships with business partners, entities in its supply chain, and any other non-State or State entity directly linked to its business operations, products or services”. (OECD Guidelines, IV, Commentary 43)

## 2.1 Scope the risks of harm in the enterprise's own operations and in its supply chain

The enterprise should conduct a scoping exercise to identify the most significant risks of harm in its own operations and in its supply chain. The scoping should build on known sector risks and take into consideration relevant risk factors. It should be periodic, informed and documented.

The enterprise is encouraged to draw from known sector and subsector risks to determine the likelihood of risks and severity of harm in its own operations and in its supply chain based on the countries that the enterprise operates in or sources from, the products that the enterprise produces or sells, and its business and sourcing practices. Each of these risk factors is described below. The enterprise should consider general risk areas from raw materials to retail. Based on all known information, the enterprise should determine which risks of harm are (or are likely to be) the most significant risks in its own operations and in its supply chain. Factors such as the number of product lines the enterprise has, the number of countries it sources from, etc. may affect how the enterprise scopes the risks of harm in its supply chain. See Table 3.

### *Methodology*

The enterprise may rely on desk research. Where gaps in information exist, the enterprise is encouraged to engage with stakeholders and experts. The enterprise may establish an external stakeholder advisory group, which includes worker representatives, to provide inputs into the scoping process and flag new issues as they arise. Issues raised through early warning systems or grievance mechanisms may also provide information on patterns of impact.

The enterprise should review the findings of its scoping assessment on a semi-regular basis (e.g. every two years). However, due diligence is not a static process. As such, the enterprise should continuously update the information feeding into its understanding of the risks of harm in its operations and in its supply chain and should account for changing circumstances – such as changes in the regulatory framework of a country – on an ongoing basis and be ready to respond to emerging risks.

### *Sector risks*

Sector risks are risks that are prevalent in the garment and footwear sector globally across product lines and geographies. Key characteristics of the garment and footwear supply chain – low-skilled, labour-intensive, dispersed production, short lead times – make it higher-risk for certain labour and human rights impacts. Many of these risks exist at every level of the supply chain. Similarly, the materials themselves used in products and processes to develop products increase the risk of certain environmental harms at various stages of the garment and footwear supply chain. For example, wet processing is higher-risk for use of hazardous chemicals than cut-make-trim. The most common sector risks are well documented and are listed below. Some subsectors (e.g. luxury goods, sports apparel, work apparel, etc.) may face unique risks which are not included in Table 2 (such as animal welfare), but should likewise be considered if relevant.<sup>14</sup>

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<sup>14</sup>. Specific guidance regarding risks related to animal welfare, husbandry and land rights is not included in this Guidance but may be relevant to some actors in the garment and footwear supply chain. The OECD provides due diligence guidance on these issues in the OECD-FAO Guidance for Responsible Agricultural Supply Chains.

Table 2. Sector risks in the garment and footwear sector\*

Human rights & labour risks	Environmental risks	Integrity risks
Child labour Discrimination Forced labour Occupational health and safety (e.g. worker-related injury and ill health) Violations of the right of workers to establish or join a trade union and to bargain collectively Non-compliance with minimum wage laws Wages do not meet basic needs of workers and their families	Hazardous chemicals Water consumption Water pollution Greenhouse Gas (GHG) emissions	Bribery and corruption

\* Sector risks are not limited to the above

### ***Product risk factors***

Some products hold a higher risk of impact than others due to the processes used to make them. For example, cotton products may hold a higher risk of hazardous insecticides such as Parathion, Aldicarb and Methamidophos, whereas polyester products may hold a higher risk of contributing to greenhouse gas emissions.<sup>15</sup>

### ***Country risk factors***

Country risk factors are conditions in a particular country or production cluster, or within the industry within a particular country, which may make the above sector risks more likely. These generally include governance, socio-economic and industry factors. For example, high rates of migrant labour is a risk factor for child labour, forced labour, non-compliance with wage legislation, and sexual harassment.<sup>16</sup> See Section II modules for country risk factors across sector risks.

### ***Business-model risk factors***

The enterprise's business model, such as the number of product lines that it sells and how often those product lines are changed (i.e. seasons per year), may affect the risk of harm in the enterprise's supply chain. This is particularly relevant for retailers and brands but may also be true for manufacturers who produce a wide variety of finished goods. Some examples of how an enterprise's business model may affect risks of harm in its own operations and in its supply chain are included below.

<sup>15.</sup> The production of polyester fibre is an energy-intensive process (as high as 125 MJ/kg of fibre) which produces high levels of greenhouse gas emissions. Muthu, S. (2014), *Assessing the Environmental Impact of Textiles and Clothing Supply Chain*, Series in Textiles, Woodhead Publishing, Cambridge.

<sup>16.</sup> While high rates of migrant labour may flag an increased risk for certain human rights and labour abuses, enterprises are not encouraged to disengage from suppliers simply because migrant workers are employed. Rather, enterprises should tailor their due diligence to ensure that the employment of migrant workers is responsible.

- Enterprises with numerous and highly diversified product lines are generally more exposed to a wider range of risks of harm in their supply chain due to the variance in materials, production processes, etc.
- Enterprises with numerous product cycles or seasons per year generally require that products are taken from design to production on shorter time frames. Short response times increase the risk of changes in orders, rushed orders and other purchasing practices which may contribute to labour and human rights abuses such as excessive overtime, forced overtime and unauthorised outsourcing.
- Numerous product cycles can likewise lead to increased use of materials and resources by the enterprise, and therefore an increased carbon, water and waste footprint.
- The extent of an enterprise's foreign operations and the extent of its control over those operations can increase its exposure to integrity risks.

### ***Sourcing-model risk factors***

Similarly, the enterprise's sourcing models – whether it sources from a large range of suppliers, the nature of its contractual relationships and whether sourcing is direct or indirect – may increase (or decrease) the risks of harm in its supply chain. Some examples are included below, although this list is not comprehensive:

- Large numbers of suppliers may increase the exposure to harm in the enterprise's supply chain. Furthermore, a large number of suppliers in relation to the size of the enterprise and its resources dedicated to supply chain due diligence can be more difficult to control.
- The volatility of an enterprise's relationship with its suppliers may affect its ability to identify, prevent or mitigate harm in its supply chain. For example, short-term relationships with suppliers may mean that an enterprise does not have time to adequately prevent or mitigate risks that have been identified during supplier assessments. It may also mean that the enterprise lacks leverage with the supplier to prevent or mitigate any impacts that have been identified. Similarly, the typical length of the enterprise's contracts, whether long-standing orders or short-term orders, may decrease an enterprise's leverage with its suppliers.
- Enterprises that source indirectly (e.g. through buying agents) and do not have an adequate selection process for these intermediaries have limited visibility and control over their suppliers.
- Enterprises that are operating in or sourcing from many countries – relative to their size – may have an increased exposure to harm and therefore may find preventing and mitigating harm more challenging.

### ***Identify the enterprise's most significant risks of harm***

Based on all known information, the enterprise should determine which risks of harm are most significant – in relation to likelihood and severity of harm – in its own operations and in its supply chain and prioritise those risks for action first. Severity of harm is judged on scale, scope and irremediable character.

- “Scale” refers to the gravity of the adverse impact.
- “Scope” concerns the number of individuals that are or will be affected.
- “Irremediable character” means any limits on the ability to restore those affected to a situation at least the same as, or equivalent to, their situation before the adverse impact.

Given the complexity and diversity of issues within the garment and footwear sector, determining the most significant risks of harm in the enterprise’s own operations and in its supply chain is likely to entail some judgement on the part of the enterprise. The enterprise is encouraged to engage with stakeholders and experts in this process. In all cases, the enterprise should be prepared to justify how it determined and prioritised risks. See section 5.

### Collaboration

Enterprises are encouraged to share information publicly or at an industry level related to risks of harm linked to specific production processes, countries, sourcing models, etc. Sharing of information at a sector level is particularly important for identifying emerging risks of harm.

### Factors that may affect the nature of due diligence

With a view to scoping general risks of harm across all product lines and sourcing countries, an enterprise may take a risk-based approach to implementing the above Guidance. However, if it is brought to the enterprise’s attention (e.g. through reports, stakeholder engagement, grievance mechanism, etc.) that a product line or subcomponent is associated with particular risks, the enterprise should not discard this information but should consider it alongside other information gathered during its scoping exercise.

Table 3. **Factors that may affect the nature and extent of due diligence**

Context	Recommendations
Enterprise has many product lines	The enterprise is encouraged to examine the risks of harm linked to product lines that are core to its business first or product lines that are likely to hold the most severe risks of harm. Once it has identified and addressed these risks, it should move on to identify and address risks linked to other product lines.
Enterprise sells complex products (i.e. numerous subcomponents)	With a view to scoping the risks of harm across all subcomponents, the enterprise may first identify risks of harm linked to the most significant component of a finished good. If an enterprise sells leather jackets with zippers and studs, for example, it may focus initially on its sourcing of leather, the dyeing and finishing process, and the manufacturing of the finished good.
Enterprise is operating in or sources from many countries	Enterprises are encouraged to identify countries where the risk of impact is most significant and, based on this risk assessment, prioritise sourcing countries to be included in the scoping exercise.
Enterprise does not have visibility into the countries of origin for its materials (e.g. raw materials)	Where information exists, the enterprise may identify trade flows of raw materials to determine the likely country of origin of raw materials being sold to material processors in their supply chain (e.g. map where the majority of cotton is purchased for spinners operating in a given country). For commodities that are traded by large multinational enterprises, enterprises may seek to link to international commodities traders (e.g. cotton traders) and ask for information on where they source their raw materials that are then sold in the country where the enterprise’s material processors are located.



Context	Recommendations
Retailer	<p>The enterprise should conduct due diligence on both its own brands and the products that it sells that are not its own. The specific steps that it takes may be different for each.</p> <p>The enterprise should follow this Guidance for its own brands. For the brands that are not its own, the enterprise may collect information on whether those brands conduct due diligence and the extent of that due diligence. If the enterprise sells numerous brands, it may prioritise the brands that represent the greatest percentage of its merchandise first or products that hold the highest risks of harm.</p> <p>Over time, the enterprise is encouraged to establish systematic measures to mitigate the risk of harm linked to the brands that it sells that are not its own. For example, it could establish a prequalification process for brands that the enterprise sells that includes a review of their due diligence practices.</p>
Licensor	<p>If an enterprise licenses its trademark to other enterprises for their use, it still has a responsibility to conduct due diligence on the products on which its trademark is used, although the specific steps that it takes may vary. For example, the licensor may require that licensees conduct due diligence in accordance with this Guidance. If licensees are small and medium-sized companies, the enterprise is encouraged to help to build the capacity of their licensees where necessary and appropriate to conduct due diligence. The enterprise may also directly assist its licensees in conducting due diligence in accordance with this Guidance.</p> <p>Over time, the enterprise is encouraged to establish systematic measures to mitigate the risk of harm linked to the products on which its trademark is used. For example, it could establish a prequalification process for licensees that includes a review of their due diligence practices.</p>

## 2.2 Conduct a self-assessment of the enterprise's own operations

If the enterprise has identified a risk of harm within its own operations, it should conduct an internal assessment to determine the extent of the risk and actual impacts on the ground.

### *Methodology*

Where available, the enterprise is encouraged to follow existing credible guidance for employers.<sup>17</sup> Modules in Section II include supplemental recommendations for sector risks and a non-exhaustive list of resources from governments and international organisations.

The enterprise should engage with potentially affected stakeholders – including its employees, workers and trade unions and representative organisations of the workers' own choosing – when identifying potential and actual harms in its own operations. This is a critical step. In addition to engaging stakeholders, the enterprise should review its policies and systems to assess the extent to which risks are being prevented or mitigated. The following is a non-exhaustive list of example policies, systems and measures that the enterprise may review as part of its self-assessment.

- Policies and messaging from the top-level management on identified risks.
- Purchasing practices and price setting. See Box 4.
- Rules and procedures regarding risks.

<sup>17.</sup> For example, the ILO has developed extensive guidance for employers on how to identify and mitigate labour risks.

- Programmes in place to support compliance.
- Employee training, skills and knowledge of risks in the enterprise's operations.
- Financial controls, such as policies and procedures to track, manage and report financial resources and transactions. See Module 11 on Bribery and corruption.
- Monitoring procedures including red-flag systems to identify risks of harm before they occur.
- Whistleblower channels and protections from retaliation for those who report wrongdoing.
- Processes to enable remediation for human rights and labour impacts (e.g. operational-level grievance mechanisms).

The enterprise is encouraged to seek external support in conducting a self-assessment when:

- the impact may cause severe harm if not adequately prevented (e.g. disposal of hazardous chemicals)
- prevention measures require technical expertise that is not available in-house (e.g. fire, building, electrical safety).

## **2.3 Assess suppliers associated with higher risk for harms at the site level**

### ***Supplier selection (risk-based approach)***

The enterprise should assess suppliers who are associated with higher risks for harms prioritised during the enterprise's scoping exercise. Suppliers should be selected based on the risk of harm rather than where they are positioned in the enterprise's supply chain (i.e. assessing for impacts at tier-one factories should not necessarily be prioritised over assessing more significant risks of harm at tier three).<sup>18</sup> However, some factors – such as the enterprise's leverage with its suppliers, the size of the enterprise or the number of suppliers – may affect the specific steps that the enterprise may take to assess its suppliers. See factors that may affect the nature and extent of due diligence below.

Some considerations in determining suppliers that are higher-risk include:

- The supplier operates in a country that holds higher risk.
- The supplier is involved in a production process that is higher-risk (e.g. wet processing is high-risk for hazardous chemicals).
- Harms or risks of harm were identified in a previous supplier assessment.

### ***Content***

For most risks of harm, the enterprise should seek to assess the following during the supplier assessment:

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<sup>18</sup>. This approach is intended to move the industry away from focusing exclusively on tier-one suppliers to focusing on the enterprise's most severe risks, wherever those risks may lie.

- the measures that the supplier has implemented to prevent harm (e.g. policy, training, facility upgrading)
- Actual harm on the ground or risks of harm (e.g. unsafe handling of chemicals)
- the extent to which workers are aware of their rights in relation to human rights and labour rights.

Whether the supplier has established an operational-level grievance mechanism and, if it has, the extent to which it meets the recommendations in Table 8. Core criteria of operational-level grievance mechanisms and recommendations.

### ***Assessment approach & methodology***

- *The nature of the assessment (e.g. inspection, interviews, focus groups) should correspond to the risk.* There is no single form of assessment that is suitable for all risks. For example, a technical inspection is necessary to inspect the structural integrity and fire and building safety of a site, whereas off-site focus groups may be appropriate when assessing the risk of sexual harassment in the workplace. For labour and human rights issues, assessments should rely heavily on worker interviews and workers should be involved in the design of assessments – either directly or through their trade unions and representative organisations of their own choosing. In some cases, traditional interviews may not be effective at gleaning sensitive information due to fear of reprisal or workers being trained to provide set answers. In these cases, participatory methods of assessment may be considered.<sup>19</sup>
- *Assessment should be built on a strong understanding of the local context.* A good understanding of the local operating context is a critical step in designing assessments that are able to capture necessary information. While a standard assessment may be used as a starting point, it should be tailored to the local circumstances. Assessment teams should consider power dynamics and cultural norms in the design and implementation of assessments. See “Understand the operating context” below.
- *Corroboration of information:* For risks of harm which require subjective determinations – such as most human rights and labour risks – multiple data points should be used to assess the situation. Triangulation, which involves the convergence of data from multiple data collection sources, helps to ensure that findings are credible and defensible.
- *The enterprise should adjust its assessment methodology when actual findings do not correspond to expected findings.* For example, if a supplier is operating in a high-risk context for excessive working hours and excessive working hours are not found, the enterprise should reconsider the assessment methodology.

### ***Assessment team***

Those conducting assessments should be qualified, meaning that they demonstrate the following competencies:

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<sup>19.</sup> Participatory methods of assessment are facilitation techniques that involve the active participation of the stakeholder, such as role play, showing a picture, diagram or map and asking questions about it, asking for a narrative, etc. See SIMPOC (2005), *Manual on Child Labour Rapid Assessment Methodology*, ILO/UNICEF, Geneva.

- expertise including extensive knowledge of the relevant risks for which the enterprise is assessing (e.g. child labour, forced labour, etc.), including an understanding of the best methodology for identifying actual and potential harms related to the risk within the local context
- knowledge of international and national standards related to the adverse impact
- capability to conduct the assessment within the local context (e.g. language skills).

It is not likely that those conducting the assessment will have all of the above competencies across all risk areas and across all contexts. In light of this challenge, those conducting the assessment may include teams that have, together, all of the above competencies.

In addition to the above competencies, given the predominance of women in the sector and sensitivity surrounding some of the issues (e.g. sexual harassment, forced labour, etc.) the enterprise should be conscientious as to whether the gender of the person conducting the assessment is important.

### ***Frequency of assessment***

Assessment fatigue is a concern in the garment and footwear sector. Supplier assessments should be conducted when there are gaps in information or when the context is likely to have changed. In other words, supplier assessments should provide added value. Within this context, enterprises are encouraged to observe the following guidance.

- New suppliers should be assessed prior to the placement of orders. The results of the supplier assessment should inform whether the enterprise is able to engage with the supplier responsibly. See section 3.2.2 on prequalification.
- Supplier assessments can be conducted by the enterprise or by relying on existing credible assessments if such assessments have been conducted within a reasonable period of time (e.g. past year). “Credible assessment” refers to assessments conducted by legitimate assessment teams that meet the recommendations of this Guidance with regard to processes for identifying real and potential harm. If a credible assessment already exists, the enterprise is encouraged to review the findings and then focus its due diligence activities on preventing or mitigating identified harm and monitoring the situation on the ground.<sup>20</sup>
- In relation to existing suppliers, while enterprises should assess their suppliers (or use existing assessments), assessment should not take the place of ongoing monitoring. Monitoring includes the ongoing tracking of the situation on the ground in relation to specific risks with input from stakeholders. When effective, monitoring is ongoing and can therefore provide a more complete picture than individual assessments. Accordingly, for existing suppliers, where possible, ongoing monitoring should be used to trigger where and when further assessment is needed. A balance between monitoring and assessment should be maintained. For example, through ongoing monitoring, workers may raise a red flag concerning child labour. This could then trigger a supplier assessment. This is particularly relevant for human rights and labour risks that may change quickly and are not easily assessed using quantifiable metrics such as: child labour, forced labour, discrimination, some aspects of occupational health and safety, the right to

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<sup>20</sup>.

There may be instances in which another assessment is necessary, for example due to significant changes in the context since the last assessment. In general, however, enterprises are encouraged to avoid duplicating assessments and to prioritise resources for prevention and mitigation.

establish and join a trade union and the right to bargain collectively. See section 4 for more information on monitoring.

- In some cases, risks of harm are so prevalent in a particular jurisdiction that assessing individual suppliers will not produce any new information. For example, an enterprise may learn that sexual harassment is prevalent in an export processing zone (EPZ) through its stakeholder engagements. Recognising how difficult it is to identify specific incidents of sexual harassment (i.e. without effective grievance mechanisms already established and without an initial investment in increasing the awareness of workers), the enterprise may choose not to assess suppliers first but rather to immediately partner with its suppliers to prevent sexual harassment through training and establishing an effective operational-level grievance mechanism. See Module 2 on Sexual harassment and sexual and gender-based violence.

### **Collaboration**

As stated in section 1.1, in order to facilitate collaboration, the sector is encouraged to work towards a common approach to identifying suppliers (e.g. common supplier ID codes) in order to facilitate the sharing of information on common suppliers with due regard for competition law.

Enterprises are encouraged to collaborate to harmonise assessment methodology and support recognition, provided assessments conform to high standards. Enterprises are likewise encouraged to collaborate on the assessment of suppliers when sourcing from the same region and supplier base, to the extent feasible. However, the rigour of assessments should not be compromised to support increased uptake. For example, throughout Section II of this Guidance, enterprises are encouraged to rely heavily on worker interviews, focus-group discussions and at times participatory methods of assessment for human rights and labour risks. It is therefore important that a common assessment that can be shared amongst enterprises include important qualitative information.

### **Collaboration**

Enterprises are encouraged to collaborate, for example, through industry initiatives or multi-stakeholder initiatives, to implement the above. This is particularly important for the engagement of small and medium-sized enterprises (SMEs). The following are example steps that an enterprise or initiative may take to assess enterprises operating at choke points in the supply chain:

- identification of actual or likely choke points in the supply chain
- traceability to enterprises operating at choke points
- verification (e.g. through management audits and random site checks) that enterprises operating at choke points are applying due diligence on their upstream suppliers in accordance with the recommendations in this Guidance
- directing sourcing towards enterprises operating at choke points in the supply chain that are applying due diligence in accordance with this Guidance.

**Box 3. Mechanisms to assess and address risks of harm beyond tier 2 (e.g. raw materials)**

It may be difficult for an enterprise to identify and assess individual suppliers operating upstream – for example at raw materials – due to a lack of visibility and leverage. This does not diminish the enterprise’s responsibility to identify harmful impacts upstream. Enterprises are encouraged to establish mechanisms that are fit-for-purpose. Establishing traceability and assessing “choke points” are two example mechanisms that may be used to evaluate whether risks linked to harms upstream in an enterprise’s supply chain are being identified, prevented or mitigated. This is an area where collaborative approaches may be appropriate and are increasingly being used.

**Traceability**

Traceability is the process by which enterprises track materials and products and the conditions under which they were produced (in relation to matters covered by the OECD Guidelines) through the supply chain. It is important to note that traceability as a tool may help an enterprise gain information on upstream actors, however, an enterprise cannot stop at traceability. The following subsequent steps in this Guidance – notably preventing and mitigating harm – are critical.

**Engagement with “choke points”**

“Choke points” may be identified using a number of considerations, such as:

- key points of transformation in the supply chain
- stages in the supply chain that generally include relatively few actors that process a majority of the commodity
- stages in the supply chain with visibility and control over the circumstances of production and trade upstream.

By definition, an enterprise shares some of the same upstream suppliers as the enterprise operating at a choke point in its supply chain. However, the enterprise operating at the choke point likely holds greater visibility or leverage over those upstream suppliers. If an enterprise can reasonably determine that enterprises operating at choke points in its supply chain are conducting due diligence on their upstream suppliers, then the enterprise can likewise reasonably determine that risks of adverse impact linked to its own upstream suppliers have been identified, prevented and mitigated.

The enterprise may:

- identify suppliers operating at choke points in its supply chain for products that are linked to severe impacts upstream (i.e. beyond where the enterprise has visibility)
- verify that enterprises operating at choke points are identifying, preventing and mitigating harms linked to their suppliers.

Example choke points in the garment and footwear supply chain may include:

- global commodities merchandisers (e.g. for cotton and rubber)
- exporters, processors, wholesalers (e.g. for fragmented supply chains)
- chemical plants (e.g. for synthetic fibres)
- smelters and refiners (e.g. for metals)

**Box 3. Mechanisms to assess and address risks of harm beyond tier 2 (e.g. raw materials) (cont.)**

**Cost sharing**

Implementing traceability and engagement with choke points requires financial resources. This Guidance recommends that enterprises build into supplier contracts an obligation to support supply chain due diligence of risks linked to upstream production where appropriate (e.g. obligation to direct sourcing towards choke points that have demonstrated effective due diligence mechanisms). However, this Guidance does not recommend that enterprises mandate that suppliers engage in specific initiatives unless the enterprise is willing to support the cost of the supplier's participation and any associated premiums. Rather, enterprises should recognise a range of collaborative due diligence initiatives, tools, etc. that conform with this Guidance.

***Understand the operating context***

The enterprise should seek to understand the context in which it is operating in order to tailor supplier assessments appropriately – to ask the right questions in the right manner – and to have sufficient information to prevent or mitigate harm in the long term. Specifically, the enterprise is encouraged to:

- Understand which population groups are most affected by the harm, local risk factors that could worsen harms, the underlying causes of harm, and the actors that are involved in the harm. When determining which population groups may be most affected by harms, the enterprise may consider the following dynamics:
  - Inequalities between women and men (The different roles assigned by society to women and men can lead to exclusion from decision-making opportunities and place women and girls in particular at a disadvantage in the family and community.).
  - Age (In certain societies, young and older people can be considered as having little to contribute and can be overlooked.).
  - Ethnicity (in relation to more dominant groups or in relation to host communities).
  - Social classification in relation to other workers or supervisors.
  - Religion (especially when a minority).
  - Health status (pregnant women, chronic illness, etc.).
  - Percentage of the workforce that are migrant workers.
  - Extent of home-based workers employed.
  - Educational level (literacy, skills, including language skills, non-school attendance).
- Identify the availability of judicial and non-judicial grievance mechanisms, to the extent possible.
- Identify and assess local and national initiatives focused on preventing and mitigating harm. Mapping existing initiatives, their objectives and their general impact (where information is available) will help an enterprise to understand whether these initiatives can help it to identify, prevent, mitigate and account for harm in its supply chain.

The enterprise may rely on existing research where it is available. It may also seek information from international and local non-governmental organisations (NGOs) (e.g. through interviews) and international organisations<sup>21</sup>, or engage with international trade unions that can provide such context.

The above guidance may be most relevant for risks of human rights and labour impacts, which are often complex, and the nature of which may vary widely from one context to the next. However, the above guidance is also relevant for some environmental risks, such as water use. New information should continually feed into the enterprise's understanding of the context that it is operating in or sourcing from.

### Collaboration

Enterprises sourcing from the same sourcing country and production clusters within countries are encouraged to collaborate on identifying the above information and share any new information widely amongst the industry.

### Factors that may affect the nature of due diligence

In some cases it may be difficult for an enterprise to assess higher-risk suppliers, for example due to a lack of visibility and leverage. This does not diminish the enterprise's responsibility to identify harmful impacts in its supply chain, but it does affect what an enterprise can reasonably do. See Table 4 for recommendations.

Table 4. **Factors that may affect the nature and extent of due diligence in relation to supplier assessments**

Context	Recommendations
Many high-risk suppliers	With a view of working towards assessing all existing higher-risk suppliers, the enterprise may prioritise the assessment of higher-risk suppliers that are most significant in terms of the size of the enterprise, percentage of product that the enterprise sources (or countries in terms of the percentage of sourcing); where the gravity of impact is expected to be the most severe; or where harms may be irremediable. <sup>1</sup> The enterprise should be prepared to justify its prioritisation.
Enterprise lacks leverage with a direct supplier	<p>There are many instances in which an enterprise may lack leverage with its direct supplier, for example (a) the enterprise is smaller than its supplier; or (b) the quantity the enterprise sources from the supplier is limited. In such cases, the enterprise has difficulty gathering information from the supplier, accessing the facilities of the supplier or convincing its supplier to participate in a facility assessment. Nonetheless, the enterprise holds a responsibility to conduct due diligence. In this case, the enterprise may:</p> <ul style="list-style-type: none"> <li>• increase its leverage with its supplier, such as increasing orders, moving towards longer-term contracts, publicising the supplier's corrective action plans, etc. (where feasible)</li> <li>• pool leverage with other buyers sourcing from the same supplier, for example by aligning on activities, timelines and follow-up measures included in the supplier's corrective action plan</li> <li>• over time, only prequalify and engage with suppliers that are willing to undergo assessments. See section 3.2.2 on prequalification. The enterprise may also direct sourcing towards suppliers that have been assessed by credible sector or multi-stakeholder initiatives.</li> </ul> <p>If a high-risk supplier for severe harm is unwilling to undergo an assessment, the enterprise should consider disengaging from the supplier. See section 3.2.</p>

<sup>21</sup>. For example, the OECD, the United Nations, the ILO and the World Bank.



Context	Recommendations
Enterprise sources through an intermediary (e.g. buying agent)	<p>The enterprise has a responsibility to conduct due diligence even if it is sourcing through an intermediary.</p> <p>The enterprise may conduct due diligence in accordance with this Guidance, or the enterprise may require that its buying agents assess the suppliers from which they source. In this case, the intermediary may include the cost of assessing suppliers in its pricing framework.</p> <p>The enterprise may provide its support to its buying agents to assess suppliers; for example, by facilitating introduction to sector-wide or multi-stakeholder initiatives that assess suppliers.</p> <p>See Box 5 for information on engaging with intermediaries.</p>
Enterprise seeks to assess a tier-2 supplier	<p>The enterprise may lack leverage with suppliers with which it does not have a contractual relationship. In such cases, the enterprise may experience difficulty gathering information from the supplier, accessing the supplier's facilities or convincing the supplier to participate in a facility assessment.</p> <p>The enterprise may require its direct supplier (e.g. tier 1) to assess its suppliers (e.g. tier 2) and disclose the findings. The enterprise is encouraged to support this process. For example, a brand may partner with its cut-make-trim (CMT) supplier to assess spinning mills.</p> <p>The sector may also pool its leverage within a sourcing region (e.g. export processing zone or production cluster) to assess suppliers.</p>
Suppliers situated upstream beyond tier-2 sourcing (e.g. raw materials)	<p>The enterprise may lack visibility into its suppliers operating upstream. The enterprise is encouraged to establish mechanisms that are fit-for-purpose to determine whether upstream suppliers are high-risk for severe harms. See Box 3 for example mechanisms.</p>

- 1 In both of these examples, prioritisation is conducted through the lens of severity of harm. Prioritising suppliers that are most significant in terms of percentage of product sourced or size of the enterprise can address the "scope" of harm, i.e. larger suppliers may indicate a larger scope of impact.

**Table 5. Factors that may affect the nature and extent of due diligence in relation to understanding the operating context**

Context	Recommendations
The enterprise has limited resources	<p>In most cases, existing information is available through public sources.</p> <p>Where information does not exist, the enterprise is encouraged to collaborate with other enterprises sourcing from the same region to conduct an assessment. The enterprise may also encourage its industry association to commission an assessment. If the enterprise is unable to gather information through any of the above means, it is encouraged to either reduce its cost of due diligence (e.g. by consolidating its suppliers) or direct sourcing to countries that hold lower risk until it is able to gather adequate information to source responsibly.</p>
The enterprise seeks to expand into a new market	<p>The enterprise may: commission or conduct an on-the-ground assessment or collaborate with other enterprises sourcing from the same region to conduct an assessment. The enterprise may also encourage its industry association to commission an assessment.</p> <p>If the enterprise is seeking to source from a new market with known severe human rights, labour or environmental issues but where insufficient information exists on the local operating context and the enterprise is unable to determine such information, the enterprise is not advised to enter into the market.</p>

## 2.4 Assess the enterprise's relationship to impacts

Through the above processes, the enterprise has identified impacts in its operations and in its supply chain. As a component of its due diligence, the enterprise should make good faith efforts to understand whether it has caused, contributed to or is linked to the impacts that it has identified. Identifying the enterprise's relationship to impacts is a difficult and sometimes conceptual task. However, it is important in terms of the expectations of its response (i.e. whether the enterprise is expected to provide remedy).

Table 6. **Relationship to harm and appropriate action**

Relationship	Appropriate Action
Enterprise <b>caused</b> the harm	<ul style="list-style-type: none"> <li>• Stop action causing or contributing to the harm and mitigate remaining harm. See section 3.</li> <li>• Remedy the harm. See section 6.</li> <li>• Prevent or mitigate future harm. See section 3.</li> </ul>
Enterprise <b>contributed</b> to the harm (relevant for the enterprise's own operations and its supply chain)	<ul style="list-style-type: none"> <li>• Stop action contributing to the harm. See section 3.</li> <li>• Remedy the harm. See section 6.</li> <li>• Prevent or mitigate the risk of contributing to the harm in the future. See section 3.</li> <li>• Use leverage to influence the entity causing the impact to prevent or mitigate harm. See section 3.</li> </ul>
Enterprise is <b>linked</b> to the harm (i.e. harm is in the enterprise's supply chain)	Prevent or mitigate harm in the enterprise's supply chain, for example, through internal measures and the use of leverage to influence suppliers. See section 3.

### **How can an enterprise assess its relationship to impacts (cause, contribute, directly linked)?**

An enterprise should seek to determine its relationship to the impacts that it has identified through its due diligence process. This relationship will determine the action that the enterprise should take in response. In the garment and footwear sector, an enterprise is mostly likely to cause harm in its own operations and contribute to harm in its supply chain. Furthermore, an enterprise is most likely to be linked to harms that are caused by suppliers in its supply chain.

**Cause** An enterprise “causes” an adverse impact if there is causality between the operations, products or services of the enterprise and the adverse impact.

Questions to consider

**Q.** Is an action of the enterprise directly responsible for an adverse impact?

**Q.** Is the enterprise’s failure to act directly responsible for an adverse impact?

**Contribute** An enterprise “contributes to” an impact if the actions of the enterprise cause, facilitate or incentivise another entity to cause an adverse impact. Contribution must be substantial.<sup>1</sup>

Questions to consider

**Q.** “But for” the action or omission of the enterprise, would the entity have caused the harm?

**Q.** Has an action (or omission) of the enterprise enabled, made it possible or easier for the supplier to cause an adverse impact?

**Q.** Has the action (or omission) of the enterprise encouraged or motivated the enterprise to cause an adverse impact?

**Q.** If yes to any of the above, is there a reasonable causal link between the action of the enterprise and the action taken resulting in the adverse impact (e.g. by the supplier)?

**Directly linked** “Linkage” is defined by the relationship between the harm and the company’s products, services or operations through another company (i.e. business relationship). “Directly linked” is not defined by “direct sourcing”.

Question to consider

**Q.** Is there a harm in the enterprise’s supply chain that the enterprise itself did not cause or contribute to?

1. As such, a consideration of the degree or scale to which the enterprises causes, facilitates or incentivises the other entity to cause adverse impacts is also relevant.

**3. CEASE, PREVENT OR MITIGATE HARM  
IN THE ENTERPRISE’S OWN OPERATIONS  
AND IN ITS SUPPLY CHAIN**

**Expectations under the OECD Guidelines**

“When an enterprise causes or may cause an adverse human rights impact, it should take the necessary steps to cease or prevent the impact.” (OECD Guidelines, IV, Commentary 42)

“In the context of its supply chain, if the enterprise identifies a risk of causing an adverse impact, then it should take the necessary steps to cease or prevent that impact.” (OECD Guidelines, II, Commentary 18)

“Enterprises should 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. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.” (OECD Guidelines, II, A12)

### 3.1 Cease, prevent or mitigate harm in the enterprise's own operations

The enterprise should stop any actions that are causing or contributing to harm in its own operations. The enterprise should develop and implement a plan – often called a **corrective action plan (CAP)** in the garment and footwear sector – to prevent or mitigate future harm in its own operations. This plan should detail what actions will be taken with clear timelines for follow-up. The measures pursued should be proportionate to the severity of the harm.

#### *Short-term objectives of the CAP*

In the short term, measures should be taken immediately to stop existing impacts and prevent any immediate and critical danger. In cases in which there is immediate and critical danger to the health and lives of employees, the enterprise should ensure that workers are removed from danger immediately, for example, see Module 5, Occupational health and safety. Similarly, if there is immediate and critical danger to the environment, the enterprise should stop its activities causing (or at risk of causing) the harm until the danger can be addressed.

#### *Longer-term and outcome outcome-oriented solutions of a CAP*

In the longer term, the enterprise should seek to develop outcome-oriented solutions, meaning that the response leads to the prevention of harm. In most cases, outcome-oriented responses meet the following criteria: resources are prioritised where most effective, responses are proportionate to risk of harm, responses are sustainable, and responses build on existing evidence. See Figure 1.

#### **IMPORTANT TERMS**

**Prevention** - This Guidance uses the term “prevent” broadly to include any action that is intended to stop a harm from occurring. In other words, “prevent” does not necessarily equate to risk avoidance. Furthermore, prevention may refer to actions an enterprise takes to prevent harm in its own operations or the actions it takes to prevent harms linked to its supply chain (e.g. supplier capacity building, etc.).

**Mitigation** – “Mitigation” refers to actions taken to diminish or eliminate the harm if a negative event occurs. Mitigation measures may be taken before, during or after an event with the aim of reducing the degree of harm. For example, a textile mill adopts best available technologies to reduce water pollution.

Figure 1. **Criteria for outcome-oriented solutions**

<b>Recommendations</b>	<b>Examples</b>
<b>Prioritise resources where most effective</b> Resources should be first allocated to where the intervention will have the greatest effect.	<i>Risk:</i> Fire <i>Example:</i> The enterprise should first prioritise making the workplace safe and then focus on providing training for workers on fire safety.
<b>Proportionate to risk of harm</b> Most risks in the garment and footwear sector are complex, meaning that multiple interventions are necessary to adequately prevent or mitigate harm.	<i>Risk:</i> Non-compliance with wage legislation <i>Example:</i> The enterprise may provide automated payments to workers. This may be accompanied by training for workers on their legal rights in relation to wages and benefits and how to read a payslip.
<b>Be sustainable</b> Long-term solutions should lead to long-term outcomes. In many cases this means that processes should be embedded into management systems.	<i>Risk:</i> Handling and disposal of hazardous chemicals <i>Example:</i> Training for workers on how to handle and dispose of chemicals safely is incorporated into worker orientation and ongoing refresher courses.

<b>Build on existing evidence</b> Where solutions exist, the enterprise should consider adopting or building on those solutions.	<i>Risk:</i> Water use <i>Example:</i> The enterprise adopts best available techniques as defined for the sector.
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### ***Components of a CAP for the enterprise's own operations***

Corrective action plans should have clear timelines for implementation and follow-up. They generally include a combination of policy, training, facility upgrading and strengthening of management systems.

- *Policy:* The policy lays out the enterprise's commitment to uphold international standards and is the foundation for further action, such as training, facility upgrades, etc.
- *Training:* While the objectives, audience and content of training should be fit-for-purpose, training is a critical component of most corrective action plans. In most cases training should cover information on the risk, the rights of the worker and the role of the trainee on preventing or mitigating harms.
- *Facility upgrading:* Some harm may only be prevented by investing in facility and equipment improvements. Such investments may include: lighting, ventilation, access to fire exits, new machinery, etc.
- *Management systems:* Management systems may be strengthened to (i) better track information and flag risks before harm occurs or (ii) establish systematic measures to mitigate risk of harm in the first place. For example, a spinning mill may strengthen its prequalification of private labour recruiters in order to prevent forced labour and child labour. For example, a factory may move towards automated payments to prevent unfair deductions in wages.
- *Rights of workers:* In relation to labour impacts, the enterprise should incorporate due diligence on the rights of workers to form and join a trade union and to bargain collectively into the corrective action plan. Trade unions and representative organisations of the workers' own choosing play an important role in preventing harmful impacts on site through collective bargaining agreements, ongoing monitoring and helping workers to access grievance mechanisms, or providing a form of grievance mechanisms themselves. For this reason, these rights are considered enabling rights.

### ***Stakeholder engagement and expert consultation***

Workers and trade unions and representative organisations of the workers' own choosing should be engaged during the development of the corrective action plan, including the design of policies and programmes. Workers should be provided with complete and accurate information and given the opportunity to raise concerns and provide input. Enterprises may also partner directly with trade unions to facilitate worker input, see Introduction. The enterprise should consider whether expert advice is needed in developing the corrective action plan. The more complex the risk, the stronger the case for the enterprise to draw on expert advice in designing a response.

### **Factors that may affect the nature of due diligence**

All enterprises, regardless of their size, subsector, position in the supply chain and operating context should cease, prevent or mitigate harmful impacts that may result from their activities. However, the enterprise may take a staged approach by which it addresses the most severe impacts first.

## **3.2 Seek to prevent or mitigate harm in the enterprise's supply chain**

The enterprise should develop and implement its own plan to seek to prevent or mitigate future harm in its supply chain. This plan should detail what actions the enterprise itself will take with clear timelines for follow-up. The measures pursued should be proportionate to the severity of the harm.

The enterprise's plan may include the following measures, which are expanded upon below:

- Prevent contributing to harm in the enterprise's supply chain. See section 3.2.
- Implement internal measures to mitigate risks in the enterprise's supply chain. See section 3.2.
- Use leverage to influence the supplier to prevent or mitigate the harm. See section 3.2.
- Support the supplier in the prevention or mitigation of harm. See section 3.2.
- Disengage from the supplier. See section 3.2.
- Engage government. See section 3.2.

### **3.2.1 Prevent contributing to harm in the enterprise's supply chain**

If the enterprise identifies that it has contributed to harm, it should provide for or co-operate in the remediation of harm. See section 6.

If the enterprise identifies a risk of contributing to harm in its supply chain, it should develop and implement a plan to prevent its contribution. See Enterprise's Relationship to Impacts for guidance in determining whether the enterprise has contributed to impacts in its supply chain. The measures pursued should be proportionate to the severity of the harm. In most cases, the plan should include the following elements:

- *Supplier engagement:* Seek supplier input on how the enterprise contributed to harm and potential solutions.
- *Control measures:* Implement measures that mitigate the risk of harm. An effective policy, training of workers and management are example control measures that the enterprise might take.

- *Red-flag systems*: Identify red flags, or indicators for risks, and include procedures for the enterprise to follow if risks of contributing to harm are identified.



#### Box 4. Prevent contribution to harm through responsible purchasing practices

##### Recommendations for retailers, brands and their buying intermediaries

The purchasing practices of retailers, brands and their buying intermediaries have been demonstrated to contribute to harmful impacts – such as excessive and forced overtime and low wages – in some cases. This is most notably the case when orders are changed, cancelled, placed late, rushed (particularly during peak times or holidays) or when lead times are set shorter than feasible. Late or delayed payment for products may also contribute to suppliers delaying payment of wages to their workers. An enterprise's price negotiations may contribute to cost-cutting and therefore labour, human rights or environmental impacts. The enterprise should strengthen its management systems to prevent contributing to harm through its purchasing practices. Specifically, the enterprise is encouraged to assess whether its purchasing practices are contributing to harm, implement control measures and track red flags for risk of harm.

##### Assess whether purchasing practices are contributing to harm

- The enterprise is encouraged to engage with its supplier to understand if and how its purchasing practices may be contributing to harm. Recognising that suppliers may be reluctant to provide such feedback candidly, the enterprise may seek to collect information from its suppliers anonymously (e.g. annual survey) or partner with a third party that aggregates the data and presents findings.
- The enterprise should track relevant indicators of actions that lead to harm. Examples include: percentage of orders placed late, percentage of orders changed after order is placed; number of days between the last change and shipment. Systems should be established to track such information on an ongoing basis.<sup>1</sup>
- If the enterprise identifies through its tracking that the above practices (e.g. changes in orders) are common, it should seek to identify why. Team members responsible for the placement of orders should be included in the analysis.

##### Control measures to prevent contribution to harm

- The enterprise is encouraged to implement control measures to prevent contributing to harm through its purchasing practices regardless of whether it has identified specific contributions to harm.
- The enterprise should develop pricing models that account for the cost of wages, benefits and investments in decent work. The above considerations should be reflected in freight on board (FOB) prices together with traditional pricing considerations, such as quantities being purchased, cost of materials, skill requirements, etc.
- Additional control measures may include:
  - Set final order placement dates with the supplier.
  - Communicate the deadlines to everyone in the purchasing teams.
  - Share the purchasing plan with suppliers and communicate updates in a timely manner.
  - Improve forecasting alignment, which involves coordination across geographies, categories and product designs to get the right information and decisions made at the right time.
  - Optimise the sourcing base to handle fluctuations in capacity and to adopt and implement the technologies needed to respond to the demand for emerging styles and products.<sup>1</sup>

##### Red-flag systems

The enterprise should develop procedures for purchasing teams to follow in instances in which practices could contribute to harm. For example, in instances in which orders are changed after order placement or orders are placed late, the enterprise may mitigate risks by a) paying for rushed order delivery b) changing the delivery date or c) providing a list of prequalified subcontracts to fill a portion of the order.

1. Recommendations are adapted from (2014) "Suppliers Speak Up, How Responsible Purchasing Practices Can Improve Working Conditions in Global Supply Chains", IEH - Ethical Trading Initiative Norway and Sustainable Trade

### ***3.2.2 Implement internal measures to mitigate risks in the enterprise's supply chain***

Enterprises may implement internal measures to either avoid adverse impacts (e.g. by engaging with suppliers that already have measures in place to prevent impacts) or to prevent actual and potential impacts (e.g. by supporting suppliers in their prevention and mitigation measures). Examples of internal measures are listed below. Additional guidance is also provided in Box 5 for enterprises that are sourcing through intermediaries.

#### ***Prequalify suppliers***

The enterprise assesses a supplier prior to the placement of orders. The purpose of the assessment is to determine whether the enterprise can source from the supplier while also preventing impacts in its supply chain. The enterprise should only place orders if it can reasonably determine that either the risk of harm is low (e.g. due to the supplier's own measures to prevent or mitigate harm) and/or the enterprise is willing to adequately engage with the supplier in the prevention of harm (e.g. through capacity building, etc.). The extent of the assessment may be risk-based, meaning that the depth of the assessment should be proportionate to the risk.

#### ***Consolidate suppliers***

An enterprise with a very large number of suppliers may find it difficult to prevent impacts across such a wide range of actors. Consolidating the total number of suppliers can help increase an enterprise's control over its supply chain and therefore concentrate its resources to prevent impacts with a limited number of suppliers. This measure is particularly relevant for small and medium-sized enterprises with limited resources.

#### ***Know your suppliers***

Enterprises that have longer-term relationships with their suppliers and understand the local operating context are more likely to understand the risks in their supply chain and be able to support their suppliers in pursuing outcome-oriented solutions. Having local sourcing offices and visiting suppliers in person contribute to the above.

#### ***Establish business incentives***

It is recommended that the control measures implemented by the enterprise incentivise suppliers to comply with the enterprise RBC policy. For example, the enterprise may:

- integrate expectations of suppliers in line with the enterprise RBC policy into supplier contracts
- build leverage with direct suppliers by increasing orders or giving prospective orders to suppliers that perform well in relation to quality of production and responsible business conduct.

### **Box 5. Implement control measures when sourcing indirectly**

The following recommendations are relevant in instances in which the enterprise relies on a buying intermediary to assess and prevent impacts linked to suppliers. For example, a brand may rely on a buying intermediary to conduct due diligence on the manufacturers from which it sources on behalf of the brand. In such cases, the enterprise should evaluate the capability of the intermediary to apply due diligence in accordance with this Guidance.

#### **Prequalification of buying agents**

The enterprise is encouraged to establish or implement a prequalification process for its buying agents. The prequalification process may assess the intermediary's capability to conduct due diligence on its suppliers. The enterprise may seek to understand the following during the prequalification process:

- that the intermediary is a legitimate company with a proper licence
- whether or not the intermediary fulfils the contract or whether it outsources to another company
- the total number of suppliers that the intermediary sources from and the geographic location of its suppliers
- frequency with which the intermediary visits suppliers and the functions of staff members that visit suppliers
- the average length of time the intermediary holds a relationship with its suppliers
- measures that the intermediary has in place to prequalify the suppliers that it sources from
- the intermediary's track record for performance related to risk management, including client references
- disclosure of family relations with any suppliers.

Additional control measures. The following control measures may be applied to prequalified intermediaries.

- Integrate expectations of intermediaries in line with the enterprise RBC policy into supplier contracts. Intermediaries should apply a prequalification process to their direct suppliers and intermediaries.<sup>1</sup>
- The enterprise should be able to know at any time where its orders are currently located. Intermediaries should be prepared to disclose the following:
  - selection of pre-approved suppliers
  - up-to-date information on suppliers
  - results of most recent supplier assessment and corresponding prevention measures.

Most importantly,

- Intermediaries should alert the enterprise immediately when actual or potential severe harms are identified.
- Where feasible, intermediaries should establish long-term relationships with their direct suppliers to support the ongoing identification and effective prevention or mitigation of harm.
- The enterprise conducts assessments on a random sampling of pre-approved suppliers.

1. The enterprise may prequalify a supplier through the same processes it employs for its direct suppliers, or the intermediary may prequalify suppliers. In instances in which the intermediary itself conducts the prequalification process for its suppliers, the enterprises should ensure that the prequalification process of the supplier aligns with this Guidance and the expectations of the enterprise.

### ***3.2.3. Use leverage to influence the supplier to prevent or mitigate the harm***

The enterprise may use its leverage to influence its supplier to prevent or mitigate the impact. Leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of the entity that has caused the harm. The enterprise may use its leverage to encourage its supplier to implement its corrective action plan.

In the garment and footwear sector, enterprises do often hold leverage with their direct suppliers. For example, a brand will often have leverage with a garment manufacturer and in turn the garment manufacturer with its spinners and weavers. The extent of that leverage is affected by a number of factors – such as the proportion of business the enterprise represents for the supplier; whether the enterprise is directly sourcing from the supplier or sourcing through a buying agent; and whether sourcing agreements are short-term or long-term. The enterprise’s reputation and the harm to the supplier’s reputation if the enterprise were to disengage may also be a point of leverage. An enterprise’s leverage is strengthened when it commits to directing sourcing towards suppliers that demonstrate responsible business conduct and follows through with its commitment.

If an enterprise does not hold leverage with its supplier, it should seek to increase that leverage. However, there may be instances in which the enterprise will not be able to increase its leverage with a supplier on its own. Examples of this include:

- The enterprise is considerably smaller than its supplier and therefore cannot increase orders to the extent that it would impact the decision of the supplier.
- The enterprise is many tiers downstream from the enterprise and therefore lacks any form of direct commercial leverage over the upstream supplier. For example, an individual garment manufacturer is not likely to have influence over a cotton grower.

In the above cases, enterprises are encouraged to pool their leverage. For example, a group of enterprises sourcing from the same supplier may use their combined leverage to encourage the supplier to prevent impacts. Enterprises may pool their leverage by setting joint timelines for corrective action in partnership with shared suppliers. Enterprises may also choose to jointly publish supplier assessments, corrective action plans and progress against those plans, which can likewise increase leverage. The sector may also work on a broader sector-wide scale at either a global or regional level to place pressure on suppliers that are larger than any individual supplier and/or to place pressure on suppliers that operate at common choke points in the sector supply chain. For example, the sector may pool its leverage to place pressure on global commodities traders to address risks linked to upstream raw material production.

### ***3.2.4. Support the supplier in the prevention or mitigation of harm***

The enterprise is encouraged to support its suppliers in preventing or mitigating impacts when feasible. Support may take a number of forms and examples include:

- Partner with suppliers to develop corrective action plans that are outcome-oriented.
- Provide technical guidance – for example, in the form of training, management systems upgrading, etc.
- Facilitate participation in broader sector-wide initiatives or regional initiatives to prevent impacts.
- Facilitate linkages with local service providers.
- Facilitate access to financing, for example, through direct financing, low-interest loans, guarantees of continued sourcing, and assistance in securing financing.

### ***3.2.5. Disengage from the supplier***

Responsible disengagement is an option. Enterprises may disengage:

- After failed attempts at preventing or mitigating impacts through the above measures, for example, when suppliers have not taken corrective action within agreed-upon timeframes.
- Where the enterprise deems preventing or mitigating impacts not feasible.
- When the enterprise has identified severe harm. For example, in relation to occupational health and safety risks, when immediate and critical danger has been identified, the enterprise should ensure that production does not take place at the affected production site until the immediate and critical danger has been adequately addressed. See Module 5, Occupational health and safety.

If an enterprise determines the need to disengage, it should seek to do so responsibly. Specifically, the enterprise should:

- comply with national laws, international labour standards and the terms of collective bargaining agreements
- provide detailed information supporting the business decision to management and to the union, where one exists
- give the supplier sufficient notice of the ending of the business relationship.

### ***3.2.6. Engage government***

It is the duty of government to protect against abuses by third parties, including business enterprises, through regulation, policy making, investigation, and enforcement. In contexts in which the government is not fulfilling its duty to protect and risks cannot be effectively or sustainably managed through supplier engagement alone, enterprises may use their leverage with government (local or national) to encourage the government to affect change. Example sector risks which may necessitate government engagement for their effective prevention and mitigation include inadequate wages to meet the needs of the workers and their families, child labour, forced labour, discrimination, and water stress and pollution. Enterprises

should consider the following when determining whether to use their leverage with governments to mitigate risks:

- Is the adverse impact systemic to the country or region?
- Could the adverse impact be mitigated through better government regulations or controls?
- Have international standards (e.g. fundamental or other ILO Conventions) related to the risk been ratified?
- Does the government demonstrate political will to establish controls over the adverse impact?
- Does the enterprise have leverage with the government, either alone or in collaboration with other businesses and stakeholders?
- Does the government participate in any relevant initiative or forum (e.g. intergovernmental or multi-stakeholder) where these issues can be raised and possibly addressed?

Government engagement may include a number of measures, such as open letters to the government, sharing of information, engagement through multi-stakeholder initiatives, participation in dialogues, etc. Engagement often takes extensive time before the enterprise sees tangible results, such as changes to regulation or increased enforcement of regulations. While enterprises are encouraged to engage with government, enterprises are still expected to account for how they are preventing being linked to impacts. In most cases this will mean taking steps to prevent or mitigate harm in the medium term – for example, in collaboration with the enterprise's suppliers – until government assumes its responsibility. In cases of severe harms, however, enterprises should suspend sourcing until harms can be prevented.

**Table 7. Factors that may affect the nature and extent of due diligence in relation to preventing and mitigating harm in the enterprise's supply chain**

Context	Recommendations
Small and medium-sized enterprises (SMEs)	SMEs, like all enterprises, have a responsibility to conduct due diligence. However, unlike larger enterprises, SMEs may have limited resources to support their suppliers in implementing CAPs and may lack leverage with suppliers. Nonetheless, SMEs have a number of possibilities open to them. For example, an SME may focus primarily on a robust prequalification process for suppliers so that fewer resources are necessary in preventing impacts once a supplier has been engaged. Over time, the SME may also choose to consolidate the number of suppliers with which it engages.
Indirect sourcing	See Box 5 for information on engaging with intermediaries.
Leverage	An enterprise's leverage with its suppliers will impact the approach that the enterprise takes. See Box 6.
Impacts are severe	The more severe the adverse impact, the more quickly the enterprise will need to see change before it takes a decision on whether it should end the relationship. (UN Guiding Principles, Guiding Principle 19, Commentary)
Capacity of the supplier to implement a Corrective Action Plan	The enterprise and supplier should consider the cost and resources necessary to effectively prevent or mitigate future harms. In cases in which the supplier does not have the resources to adequately prevent or mitigate harm, the enterprise should consider whether it will contribute financing. If funding is not available, the enterprise should consider the severity of the harm and whether to continue the relationship. However, for as long as the adverse impact continues and the enterprise remains in the relationship, it should be able to demonstrate its own ongoing efforts to mitigate the impact and be prepared to accept any consequences – reputational, financial or legal – of continuing the connection.

### Box 6. Nature of due diligence in light of leverage

All enterprises have a responsibility to conduct due diligence regardless of their degree of leverage with their suppliers. However, the specific steps that an enterprise may take to implement due diligence may vary based on its leverage.

#### Enterprise's leverage with supplier

	High	Medium-low	Low-none
<b>Examples</b>	<p>The enterprise:</p> <ul style="list-style-type: none"> <li>• has direct control over the business relationship (e.g. partial ownership)</li> <li>• has a long-term business relationship with the supplier</li> <li>• represents a significant portion of the supplier's business</li> </ul>	<p>The enterprise:</p> <ul style="list-style-type: none"> <li>• does not have a direct contract with the supplier</li> <li>• has a short-term business relationship with the supplier</li> <li>• does not represent a significant portion of the supplier's business</li> </ul>	<p>The supplier is removed from the enterprise's own activities or operations (e.g. suppliers operating beyond tier 2)</p>
<b>Due diligence</b>	<p><b>Prevent &amp; Mitigate</b></p> <p>Enterprises may:</p> <ul style="list-style-type: none"> <li>• Build RBC expectations into contracts.</li> <li>• Use leverage with business relationships to prevent &amp; mitigate adverse impacts.</li> <li>• Support training and capacity building, facility upgrading, and strengthening of management systems, as appropriate.</li> <li>• Use leverage with government where appropriate to address systemic risks.</li> <li>• Enter into partnerships to prevent or mitigate adverse impacts at a sector level where feasible and effective.</li> <li>• Work towards continuous improvement on the above and account for progress.</li> </ul>	<p><b>Prevent &amp; Mitigate</b></p> <p>Enterprises may:</p> <ul style="list-style-type: none"> <li>• Increase leverage with suppliers and other business relationships.</li> <li>• In the case of indirect sourcing, build due diligence expectations into direct supplier contracts (e.g. intermediaries). In this case, ensure that intermediaries are conducting due diligence.</li> <li>• Support training and capacity building, facility upgrading, and strengthening of management systems, as appropriate.</li> <li>• Enter partnerships to prevent or mitigate adverse impacts where leverage is insufficient.</li> <li>• Use leverage with government where appropriate to address systemic risks.</li> <li>• Work towards continuous improvement on the above and account for progress.</li> <li>• Consider disengagement.</li> </ul>	<p><b>Prevent &amp; Mitigate</b></p> <p>Enterprises may:</p> <ul style="list-style-type: none"> <li>• Use leverage with choke points in the supply chain to encourage them to conduct due diligence on upstream suppliers.</li> <li>• Establish traceability.</li> <li>• Work towards continuous improvement and account for progress.</li> <li>• Consider disengagement.</li> </ul>



#### **4. TRACK**

##### **Expectations under the OECD Guidelines**

The OECD Guidelines call for enterprises to account for how impacts are addressed (OECD Guidelines, II, A10). Accounting for impacts means both ensuring that the measures taken have been effective and communicating what steps an enterprise has taken and why.

#### 4.1 Verify, monitor and validate progress on due diligence and its effectiveness in the enterprise's own operations

To the extent possible and reasonable, the enterprise should seek assurances that the actions that it has taken or is taking are preventing and mitigating harm in its own operations.<sup>22</sup>

The enterprise should:

- Verify internally that the enterprise has carried out the actions to which it has committed (for example, under the corrective action plan) within the agreed-upon time period.
- Monitor qualitative and/or quantitative indicators to track progress against goals.
  - Indicators may be direct (e.g. the percentage of migrant workers whose passports are confiscated; water consumed; number of hours worked) or indirect (e.g. the percentage of migrant workers who understand their rights).

##### IMPORTANT TERMS

**Verification** - Confirmation that requirements have been filled. "Requirements" may be agreed-upon actions under a corrective action plan and/or legal regulations.

For example, a building inspector may verify that fire exits align with fire safety codes.

**Monitoring** - The ongoing tracking of the situation on the ground in relation to specific risks and the measurement and tracking of indicators of success. Indicators may be direct or indirect. Monitoring generally provides a more comprehensive picture of the situation at the site level than a one-time assessment.

For example, a factory may track the number of hours worked by workers in its sewing and finishing departments during peak periods.

**Validation** - Determination of whether the actions taken to prevent impacts are indeed effective in preventing impacts. Verification and monitoring data feed into validation. For example, an enterprise may seek to validate that its current training of employees is preventing sexual harassment in the longer term.

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<sup>22.</sup> The more severe the risk, the greater the level of assurance the enterprise will need that impacts have been or are being prevented.

- While outputs, such as number of people trained, may be the simplest indicator to monitor, enterprises are likewise encouraged to monitor: knowledge levels of workers (e.g. human resources manager knows how to calculate wages), attitude (e.g. workers feel that grievance mechanisms are legitimate and accessible), conditions of the workplace (e.g. availability of drinking water), and implementation of systems (e.g. policy, prequalification of suppliers) in order to get a more complete picture of whether harms are being prevented.
- The enterprise is also encouraged to monitor red flags that may indicate a higher risk of impact (e.g. changes in orders during peak season).
- Workers should play an integral role in monitoring progress against goals. This is particularly true for human rights and labour impacts but is also relevant for environmental impacts and integrity risks in many cases.
- Draw on all known information, including data from ongoing monitoring, internal periodic assessments, issues raised through grievance mechanisms, etc., to validate that the steps taken by the enterprise are preventing and mitigating impacts.<sup>23</sup>

The enterprise may conduct all of the above internally. However, the enterprise is encouraged to seek external support in validating that impacts have been prevented when:

- the impact may cause severe harm if not adequately prevented, (e.g. handling and disposal of hazardous chemicals, fire safety, electrical safety, building integrity, etc.)
- prevention measures require technical expertise that is not available in-house.

The enterprise may choose to communicate publicly on its progress against corrective action plans.

In addition to the above, enterprises are encouraged to monitor the effectiveness of processes to enable remediation (e.g. operational-level grievance mechanisms). See section 6 for more information on processes to enable remediation.

### ***Responding to negative findings***

In instances in which harmful impacts have not been effectively prevented or mitigated, the enterprise should seek to understand why this is the case. There are a number of reasons why a harm may not have been effectively prevented or mitigated, including that the measures taken to prevent the harm were not in of themselves effective, insufficient time was provided to see progress or inadequate resources were allocated to implement the corrective action plan. The enterprise should update and implement its corrective action plan. If the enterprise is unable to determine why an impact has not been prevented or mitigated, it should seek external guidance.

## **4.2 Verify, monitor and validate progress on due diligence and its effectiveness in the enterprise's supply chain**

Enterprises should monitor and assess their own progress as well as that of their suppliers. Enterprises should also assess whether the actions they have taken are effective in preventing or mitigating harm.

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<sup>23</sup>. See United Nations Guiding Principle 20.

Auditing fatigue is a challenge in the garment and footwear sector. At the same time, some form of validation is necessary to give the enterprise confidence that it is preventing harms in its supply chain. Enterprises should therefore seek to balance between assessing suppliers and supporting ongoing monitoring. Enterprises can hold to the general principle that the more severe the impact, the greater the level of assurance the enterprise will need that impacts have been or are being prevented. The following includes high-level guidance on the level of assurance to be applied – verification, monitoring or validation – in various contexts.

- The timing of verification, monitoring or validation should correspond to the severity and nature of the harm. Enterprises should also consider the length of time necessary to implement corrective action plans.
- As above (5.1), where international or domestic standards exist on how to prevent or mitigate harm, verification that such standards are being followed is sufficient to assume that harm has also been prevented.<sup>24</sup>
- Whenever possible, the enterprise should monitor indicators – either direct or indirect – over time to validate that impacts have been or are being prevented. Where the risk of harm affects more than one sector within a particular region, the enterprise is encouraged to coordinate and collaborate across sectors to harmonise indicators tracked. The sharing of data will provide those operating in the region with a more complete picture and therefore enable the enterprise to better target its prevention measures.
- Workers or their representatives should feed into ongoing monitoring. This is particularly relevant for labour and human rights impacts but is also relevant for environmental and integrity risks.
- If, through monitoring, the enterprise determines that impacts are not being addressed, the enterprise is encouraged to verify that the actions were taken in the first place.
- As above (5.1), the enterprise is encouraged to engage external experts to verify that corrective action measures were pursued or to validate that harms have been prevented when:
  - the impact may cause severe harm if not adequately prevented, (e.g. handling and disposal of hazardous chemicals, fire safety, electrical safety, building integrity, etc.)
  - prevention measures require technical expertise that is not available in-house.
- If the enterprise relies on mid-stream suppliers operating at choke points to conduct due diligence on risks of severe harm upstream, the enterprise is encouraged to conduct an audit on the mid-stream suppliers' due diligence practices against this Guidance. Enterprises are encouraged to collaborate at a sector level on the auditing control points.

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<sup>24</sup>. See Section II, Modules on sector risks for a selection of international standards on sector risks.

### Collaboration

Enterprises are encouraged to collaborate to support recognition of verification, monitoring and validation, provided assessments conform to high standards. Enterprises are likewise encouraged to collaborate on the verification, monitoring and validation of suppliers when sourcing from the same region and supplier base, to the extent feasible.

When collaborating to conduct due diligence (for example, through an industry association or multi-stakeholder initiative), the collaborative initiative should ensure that its due diligence processes and results are reviewed for conformity with this Guidance.

### Factors that may affect the nature of due diligence

**Context** - Many high-risk suppliers

**Recommendations** - In cases in which the enterprise identifies risks across a large number of suppliers (i.e. during the supplier assessment), it should prioritise its follow-up engagement with suppliers – whether verification, monitoring or validation – where the risk of harm is the most severe.

## 5. COMMUNICATE

### Expectations under the OECD Guidelines

Enterprises should apply the specific recommendations on disclosure and communication under each chapter of the OECD Guidelines, in addition to the general recommendations contained in this section.

Enterprises are encouraged to communicate additional information that could include:

- a. value statements or statements of business conduct intended for public disclosure including, depending on its relevance for the enterprise's activities, information on the enterprise's policies relating to matters covered by the Guidelines;

- b. policies and other codes of conduct to which the enterprise subscribes, their date of adoption and the countries and entities to which such statements apply;

- c. its performance in relation to these statements and codes;

- d. information on internal audit, risk management and legal compliance systems;

- e. information on relationships with workers and other stakeholders.

Enterprises are recommended to "carry out human rights due diligence. The process entails assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses as well as communicating how impacts are addressed."

Source: OECD Guidelines, III, 3 and IV, 45.

### 5.1 Communicate publicly on the enterprise's due diligence process, including how the enterprise has addressed potential and actual harms

#### Content

The enterprise should publicly communicate the following:<sup>25</sup>

- The enterprise's RBC policy or policies. The enterprise should likewise communicate any additional value statements to which the company subscribes (e.g. through participation in sector initiatives, agreements with trade unions or multi-stakeholder initiatives).
- The enterprise's due diligence management systems, including how due diligence is incorporated into decision-making processes and information management systems to support due diligence.
- The most significant risks of harm in the enterprise's own operations and in its supply chain. The enterprise should likewise explain its processes for assessing those risks. Where the enterprise

<sup>25</sup>. Enterprises should communicate with due regard for commercial confidentiality and other competitive concerns. See Box 1 for more information.

has prioritised some risks of harm for immediate attention, it should justify its prioritisation process.

- The components of the enterprise's plan to prevent or mitigate harm in its own operations and in its supply chain and the effectiveness of those measures.<sup>26</sup>
- Where relevant, the enterprise's intent in policy engagement as well as the outcomes of the engagement itself.
- The enterprise's systems to provide access to remediation in its own operations and its supply chain. Enterprises may also choose to disclose cases that are brought against the enterprise and how they were resolved.
- How the enterprise engages meaningfully with its stakeholders.
- If the enterprise is engaging with a sector or multi-stakeholder initiative for the purposes of collaborating on due diligence and which specific components the enterprise is collaborating on (e.g. collaboration on identification of risks, supplier assessments, etc.).

The enterprise should publicly communicate information annually at a minimum. Communication may take a number of forms. However, in all cases, information should be maintained and communicated in a way that is relevant, accurate, current, clear and user-friendly and enables intended users to access information. The enterprise is also encouraged to make information available in plain language.

Increasingly, enterprises – particularly those participating in collaborative initiatives – are choosing to disclose:

- a list of their direct suppliers
- the assessment findings for their suppliers
- the corrective action plans of their suppliers
- the grievances raised against them and how those grievances were addressed.

### ***Expectations of non-financial disclosure in law***

The enterprise may also have to respond to non-financial disclosure obligations in law. For example, RBC reporting through regulatory requirements are increasingly common (e.g. EU Directive 2014/95/EU on Non-financial Reporting; UK Modern Slavery Act 2016; Article 173 of the French Law for the Energy Transition and Green Growth).

### ***Instances of non-disclosure***

There may be legitimate reasons for non-disclosure of information, notably potential risks to affected stakeholders or staff (including arising from the disclosure of personal information). In some cases, where it may not be appropriate to communicate information immediately, an enterprise may be able to communicate information after a period of time, for example after a grievance or risk has been addressed.

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<sup>26.</sup> The effectiveness of due diligence is measured by the extent to which actual and potential harm is prevented and mitigated in the enterprise's own operations and in its supply chain.

Considerations of commercial confidentiality may also be a reason for non-disclosure. See Box 1 for more information. Where an enterprise judges it difficult to share information, it may provide assurance through other methods, such as inviting an independent third party to review the enterprise's due diligence processes and disclose their findings publicly or to a relevant collaborative initiative.

## 5.2 Communicate with affected stakeholders

In relation to human rights impacts, the UN Guiding Principles elaborate, “in order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders. Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them. In all instances, communications should:

- be of a form and frequency that reflect an enterprise's human rights impacts and that are accessible to its intended audiences
- provide information that is sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact involved
- in turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality.”<sup>27</sup>

In relation to labour rights, the enterprise should communicate with its workers and trade unions and representative organisations of the workers' own choosing. The enterprise should engage with the stakeholders to understand what they deem to be material information.

### **Factors that may affect the nature and extent of due diligence**

All enterprises, regardless of size, sourcing context or position in the supply chain, should communicate on their due diligence practices. However, the extent and nature of an enterprise's communication will be proportionate to the risks of harm within its own operations and in its supply chain. For example, the communication of an enterprise that sources from higher-risk countries for a severe human rights harm will be more extensive than the communication of an enterprise that does not.

<sup>27</sup>. See UN Guiding Principle 21.



**6. PROVIDE FOR OR CO-OPERATE  
IN REMEDIATION WHEN APPROPRIATE**

**Expectations under the OECD Guidelines**

As highlighted throughout this Guidance, a core purpose of conducting due diligence is to avoid harm. However, enterprises should “provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts”. (OECD Guidelines, IV, A6)

While some situations do require co-operation with judicial or state-based non-judicial mechanisms, the concepts in this section should be used in the spirit of promoting responsible business conduct beyond legal obligations.<sup>28</sup>

### 6.1 Establish processes to enable remediation in the enterprise's own operations

The OECD Guidelines state that enterprises should have processes in place to enable remediation in relation to human rights impacts. It is recommended that the enterprise also establish processes to enable remediation for labour and environmental impacts. Operational-level grievance mechanisms that meet the core criteria of legitimacy, accessibility, predictability, equitability, compatibility with the OECD Guidelines and transparency can be an effective means for providing for such processes.<sup>29</sup>

#### Box 7. The role of the State to ensure access to effective remedy

As part of their duty to protect against business-related human rights abuses, States must take appropriate steps to ensure, through judicial administrative, legislative or other appropriate means, that when such abuses occur within their territory and jurisdiction, those affected have access to effective remedy.<sup>1</sup> However, if enterprises choose to operate in countries where the State does not fulfil its Duty to Protect, this does not absolve the enterprise of its responsibility to provide remedy.

1. Neither the OECD Guidelines nor the UN Guiding Principles are meant to establish legal concepts around liability, including among enterprises. Domestic courts will use their own concepts and tests in considering accountability for harm and appropriate remedy.

#### *Operational-level grievance mechanisms*

An operational-level grievance mechanism is a formalised means through which individuals or groups can raise concerns about the impact an enterprise has on them – including, but not exclusively, on their human rights – and can seek remedy. Operational-level grievance mechanisms operate at the firm or site level and are therefore often the first entry point for a worker or community member to raise a concern. In addition to providing processes for workers and community members to seek remedy if they have been harmed, operational-level grievance mechanisms act as an early warning system to raise concerns and thereby may prevent the escalation of issues.

Operational-level grievance mechanisms may take many forms, including in-house worker complaint mechanisms, industrial relations, and third-party complaint systems, amongst others. In all cases, the core criteria of legitimacy, accessibility, predictability, equitability, compatibility with the OECD Guidelines, transparency and being dialogue-based with a view to seeking agreed solutions should be met.<sup>30</sup> Table 8 provides examples of how these criteria may be met in the garment and footwear sector. However, factors such as the audience of the mechanism and context may affect the specific implementation procedures and therefore these examples are intended to be neither prescriptive nor exhaustive.

Enterprises should facilitate but not interfere with civil or criminal investigations or human rights examinations, and legal waivers that preclude access to judicial recourse for victims of gross human rights

<sup>28.</sup> Neither the OECD Guidelines nor the UN Guiding Principles are meant to establish legal concepts around liability, including among enterprises. Domestic courts will use their own concepts and tests in considering accountability for harm and appropriate remedy.

<sup>29.</sup> OECD Guidelines, IV, 46.

<sup>30.</sup> OECD Guidelines, IV, Commentary 46.

violations should not be used in the context of enterprise grievance mechanisms. Enterprises are encouraged to publish complaints and incorporate lessons learned into policies and monitoring systems. Enterprises are encouraged to consult the extensive guidance that exists on establishing operational-level grievance mechanisms in accordance with the OECD Guidelines and the UN Guiding Principles.

**Table 8. Core criteria of operational-level grievance mechanisms and example components**

Criteria	Example components
<b>Legitimate</b> Enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes.	<ul style="list-style-type: none"> <li>• Retaliation is prevented against complainants by guaranteeing freedom from reprisals.</li> <li>• Affected stakeholders are involved in the design of the mechanism. In the garment and footwear sector, this generally means that workers and trade unions and representative organisations of the workers' own choosing are involved in the design of the mechanism.</li> <li>• The individual serving as the access point for the grievance mechanism is trustworthy, trained, knowledgeable and approachable regardless of the complainant's gender, religion, etc. <i>This is particularly important in the garment and footwear sector, where up to 85% of the workforce is female and international and domestic migrant workers make up a significant proportion of workers in many contexts. Migrant workers are particularly vulnerable to threats and reprisals.</i></li> <li>• The mechanism may allow for complainants to remain anonymous, for example by engaging with legitimate representatives. <i>This is particularly true in the garment and footwear sector, where the victim may fear reprisal (e.g. sexual harassment cases).</i></li> <li>• The mechanism provides for some form of escalation (i.e. in cases where complainants are not satisfied). Escalation to local mechanisms, where they exist and are trustworthy, may be most appropriate. Where this is not effective or available, multi-stakeholder initiatives or National Contact Points for the OECD Guidelines may act as points of escalation. See section 6.2 for information on National Contact Points.</li> </ul>
<b>Accessible</b> Known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access.	<ul style="list-style-type: none"> <li>• Existence of the mechanism is well publicised.</li> <li>• Forms of registering a complaint are clear and simple.</li> <li>• Assistance in reporting a grievance is provided locally.</li> <li>• Due regard is given to education levels, notably literacy levels. This is particularly true in the garment and footwear sector in contexts where literacy rates are low.</li> <li>• Language barriers are accounted for. <i>This is particularly relevant in the garment and footwear sector when migrant workers are employed or workers representing minority groups speak a different language.</i></li> <li>• Several points of access to the mechanism are provided. Company representatives are not the sole point of contact and at least one independent point of access is available to complainants. If a trade union is a point of access, the process is open to non-members or additional points of access are provided. <i>This is particularly relevant in the garment and footwear sector, where large power imbalances exist between workers and management.</i></li> </ul>

Criteria	Example components
<b>Predictable</b> Providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation.	<ul style="list-style-type: none"> <li>Set out an indicative timeframe upfront.</li> <li>Keep complainants informed at each stage of the process.</li> <li>Treat every complaint seriously.</li> <li>Agree on provision for implementing agreed outcomes.</li> </ul>
<b>Equitable</b> Seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms.	Ensures that those involved have access to relevant information and is mindful of any imbalance in accessing information or expertise between the parties. <i>This is particularly relevant in the garment and footwear sector, where large power imbalances exist between workers and management.</i>
<b>Transparent</b> Keeping parties to a grievance informed about its progress and providing sufficient information about the mechanism's performance to build confidence in its effectiveness.	<ul style="list-style-type: none"> <li>Keep complainants informed at each stage of the process.</li> <li>Treat every complaint seriously.</li> <li>Agree on provision for implementing agreed outcomes.</li> </ul>
<b>Dialogue-based</b>	Seeks to resolve grievance through dialogue between the enterprise and the affected party or their representatives.

## 6.2 Commit to hearing and addressing complaints raised through legitimate processes

Enterprises are expected to provide for or co-operate in the remediation of adverse impacts where they have caused or contributed to that adverse impact.<sup>31</sup>

To facilitate this process in relation to its supply chain, the enterprise is encouraged to commit to hearing and addressing complaints that are raised through legitimate processes – including through the provision of remedy – that it has caused or contributed to harm in its supply chain. Complaints should be material and substantiated and assert that the enterprise caused or contributed to an impact in its supply chain (as distinguished from complaints that the enterprise is linked to harm in its supply chain).

“Legitimate processes” include processes that:

- allow for the affected stakeholders or stakeholder representatives to raise a complaint against an enterprise
- do not undermine the role of local grievance mechanisms, including judicial and non-judicial mechanisms and the role of trade unions in addressing labour disputes
- are managed by trusted parties.

The following provide some examples of how an enterprise may do this in practice:

- Establishing an enterprise grievance mechanism by which trade unions, civil society and impacted parties can raise a complaint with the enterprise itself regarding its actions in its supply chain.

<sup>31</sup>.

OECD Guidelines, IV, 6.

- Engaging in multi-stakeholder initiatives (MSIs) that provide supply chain grievance mechanisms (e.g. as a member) or agreeing to enter into mediation with any MSI that raises a legitimate complaint against the enterprise (see below for more information on MSIs).
- Entering into agreements with trade unions, for example through global framework agreements, to establish a process by which trade unions can raise complaints to the enterprise that its practices have caused or contributed to harm in its supply chain, for the purpose of providing remedy.
- Agreeing to enter into mediation with the OECD National Contact Points (NCPs) when the NCP has determined that the issue is bona fide under the procedures of the OECD Guidelines. See below for more information.

**Box 8. Distinguishing between early warning systems and processes to enable remediation**

It is important to differentiate between early warning systems and processes to enable remediation.

- The objective of an early warning system is to identify risks (or actual impacts) in an enterprise's own operations or in its supply chain. For example, an enterprise might establish a worker hotline to provide an opportunity for workers to raise concerns about building safety.
- The objective of a process to enable remediation is to provide remedy to people who have been harmed. For example, a worker may raise a complaint against management for unfair firing. The worker and the enterprise are brought together to determine an adequate remedy (e.g. reinstatement, compensation, etc.).

A single system – such as a grievance mechanism – can both operate as an early warning system and provide processes to enable remediation. When determining whether a system acts only as an early warning system or is also a process to enable remediation, the enterprise should consider whether the party that is harmed is brought together with the party that caused or contributed to the harm for the purposes of providing remedy.

### ***Mediation***

The role of mediation is to assist the enterprise and the stakeholder in resolving a dispute. The mediator plays an active but neutral role in helping the parties identify and evaluate options for resolution and settlement. Mediation may be triggered on an ad hoc basis, for example when both parties request mediation, or it may act as a form of escalation when parties cannot reach an agreement or where complainants are not satisfied with the resolution of their grievances. Mediation should be mutually acceptable by both parties, legitimate, independent and confidential. It is important that the members of the bodies entrusted with such functions are impartial and are seen as impartial.

### ***Multi-stakeholder grievance mechanisms***

The enterprise may engage with multi-stakeholder grievance mechanisms as a way of fulfilling its responsibility to hear and address complaints that it has caused or contributed to impacts in its supply chain, and provide remedy.

Multi-stakeholder initiatives that establish supply chain grievance mechanisms are increasingly common in the garment and footwear sector. Such initiatives are often membership-based, with members being enterprises, trade unions and/or civil society. Multi-stakeholder grievance mechanisms may offer

mediation between the stakeholder that has raised the complaint and the enterprise. Multi-stakeholder grievance mechanisms should likewise meet the criteria of legitimacy, accessibility, equitability, predictability, transparency and being dialogue-based.

It is important to note that some multi-stakeholder initiatives provide early warning systems. While early warning systems can be beneficial as monitoring mechanisms to identify impacts in an enterprise's supply chain, such systems should not be confused with grievance mechanisms. See Box 8 for more information.

#### **Box 9. Organisation of multi-stakeholder grievance mechanisms**

The organisation of a multi-stakeholder grievance mechanism can limit how it is able to meet the core criteria of legitimacy, accessibility, predictability, equitability, transparency and being dialogue-based. Enterprises and multi-stakeholder grievance mechanisms should be aware of these potential limitations and account for them to the extent possible.

- Accessibility to the grievance mechanism may be restricted in cases in which only stakeholders who are members of the MSI are able to raise a complaint against a member enterprise. Such restrictions may exist to ensure that the MSI has adequate resources to hear and address complaints. Enterprises can account for this limitation by being willing to engage (or hear complaints from) a range of complaints mechanisms.
- Accessibility may be restricted in cases in which only directly impacted stakeholders (i.e. workers, community members, etc.) can raise a complaint and not their representatives. Affected stakeholders may be too far removed from the initiative to both know that the mechanism exists and understand how to use it. Local contact points can help to increase accessibility.
- The effectiveness of a grievance mechanism may be restricted in cases in which it is open to all complainants on any risk and against any enterprise. Given the wide scope of the mechanism, resources may be constrained in communicating information, making the grievance mechanism known and following up on complaints.

### *National Contact Points for the OECD Guidelines*

The OECD Guidelines have a built-in non-judicial grievance mechanism through the National Contact Points (NCPs). NCPs are established by Adherents to the OECD Investment Declaration. They have the mandate of furthering the effectiveness of the Guidelines by:

- undertaking promotional activities and handling enquiries
- contributing to the resolution of issues that arise relating to the implementation of the Guidelines in specific instances.<sup>32</sup>

Pursuant to the Decision of the Council on the OECD Guidelines for Multinational Enterprises, Adherents are required to set up an NCP.<sup>33</sup> The Procedural Guidance to the OECD Guidelines states that NCPs will operate in accordance with the core criteria of visibility, accessibility, transparency and accountability. In addition, “specific instances” (cases) should be dealt with in a manner that is impartial, predictable, equitable and compatible with the OECD Guidelines. Any individual or organisation can bring a specific instance against an enterprise to an NCP regarding the company’s operations anywhere in the world.

NCPs are required to issue final statements upon concluding the specific instance processes. NCPs can also make recommendations based on the circumstances of the case and follow up on those recommendations. The practice of making recommendations can have reputational impacts for enterprises and can encourage engagement of enterprises in the process.<sup>34</sup>

### **6.3 Determine the appropriate form of remedy**

Remedy can take a variety of forms and it is important to understand what those affected would view as effective remedy, in addition to the enterprise’s own view. This may be an apology, rehabilitation, restitution, provisions to ensure the harm cannot recur, compensation (financial or other) for the harm, punitive sanctions, cessation of a particular activity or relationship, or some other form of remedy agreed by the parties.<sup>35</sup> The following are general principles for determining appropriate remedy:

- The remedy should seek to restore the affected person or persons to the situation they would be in had the harm not occurred (where possible) and be proportionate to the significance and scale of the adverse impact.
- The remedy should meet national laws and international guidelines on remediation where available; where such standards are not available, the remedy provided is consistent with that provided through similar cases.

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<sup>32.</sup> Specific instances is the term used in the Guidelines to describe practical issues that may arise with the implementation of the Guidelines.

<sup>33.</sup> Decision of the Council on the Guidelines for Multinational Enterprises, as amended in 2011.

<sup>34.</sup> For more information see OECD (2016), *Implementing the OECD Guidelines for Multinational Enterprises: The National Contact Points from 2000 to 2015*, Organisation for Economic Co-operation and Development, Paris.

<sup>35.</sup> UN Human Rights Office of the High Commissioner (2012), *The Corporate Responsibility to Respect Human Rights, An Interpretive Guide*, United Nations, New York and Geneva.

- The enterprise should engage with affected stakeholders in the determination of the remedy.
- The enterprise should assess the level of satisfaction of those who have raised complaints with the process provided and its outcome(s).

#### **Collaboration**

In instances in which there are numerous parties that have caused or contributed to an adverse impact, the enterprise should seek to collaborate with other parties. Collaboration with others does not absolve the enterprise of any responsibility and the enterprise should provide, enable or support remediation itself, to the extent of its contribution to the impacts.



*SECTION II.*

**MODULES ON SECTOR RISKS**

Module 1. Child labour

Module 2. Sexual harassment and sexual and gender-based violence in the workplace

Module 3. Forced labour

Module 4. Working time

Module 5. Occupational health & safety

Module 6. Trade unions and collective bargaining

Module 7. Wages

Introduction to environmental modules

Module 8. Hazardous chemicals

Module 9. Water

Module 10. Greenhouse gas emissions

Module 11. Bribery & corruption

Module 12. Responsible sourcing from homeworkers

The recommendations in these modules are not intended to act as stand-alone guidance but should supplement the Core Guidance and provide enterprises with information on how to tailor their due diligence approach when addressing specific sector risks. Furthermore, the following modules are not intended to provide technical guidance. Enterprises are encouraged to rely on existing guidance from credible organisations where such guidance aligns with the recommendations in these modules.

## MODULE 1. CHILD LABOUR

### Embed responsible business conduct in enterprise policy and management systems

#### *Policy*

When adopting a policy commitment regarding child labour, the enterprise should articulate its commitment not to tolerate child labour, based on ILO Conventions 138 and 182, in its own operations and that of its suppliers. The enterprise should state that the policy on child labour is valid throughout the entire supply chain including at raw materials.

- Policies on child labour should align with domestic and international laws and contain descriptions of types of work considered to be hazardous.<sup>36</sup>
- In cases in which national legislation is less stringent than international standards, the enterprise should uphold international standards (for example on hazardous child labour, worst forms of child labour and the minimum age).<sup>37</sup>
- In cases in which national law sets a higher standard than international conventions, enterprises should defer to national law.
- All standards should be equally applicable to girls and boys.<sup>38</sup>

### Identify potential and actual harms in the enterprise's own operations and in its supply chain

#### *Scoping exercise*

See Table 9 for example risk factors for child labour and their pertinence to the sector.

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<sup>36.</sup> In many countries, hazardous child labour will be defined in national legislation or through social dialogue involving workers' and employers' organisations and government. Where a list of hazardous activities does not exist, the enterprise is encouraged to consult the ILO, medical personnel or health and safety experts.

<sup>37.</sup> In countries where domestic laws and regulations conflict with the principles and standards of the Guidelines, companies should seek ways to honour such principles and standards to the fullest extent which does not place them in violation of domestic law. It is very unlikely that companies will be in a position of facing conflicting requirements when observing minimum age standards that go beyond national legal requirements.

<sup>38.</sup> For example, in instances in which national legislation is lower than international standards, enterprises should uphold international minimum age standards. In cases in which national law sets a higher minimum age than international standards, enterprises should defer to national law.

Table 9. **Risk factors for child labour in the garment and footwear sector\***

Risk Factors	Explanation	Sector considerations
Governance The laws of a country do not conform with the ILO's standards regarding minimum age and worst forms of child labour.	The government indicates its intent to uphold ILO standards on child labour by conforming domestic laws with ILO conventions. This is a minimum assurance that the government intends to protect children from child labour.	
Governance The government does not enforce child labour laws.	Child labour legislation is only as effective as it is implemented. Indicators on enforcement of child labour laws are perhaps the most important in determining whether child labour is a high risk within a jurisdiction. Indicators of the resources spent on enforcement of child labour laws and investigations of violations, legal cases against violators, and enforcement of legal decisions can be helpful in determining the above. <sup>1</sup> Reports from civil society, trade unions and international organisations can likewise be a useful resource.	There continue to be significant gaps in legal frameworks and law enforcement capacity to combat child labour in many garment and footwear production and exporting countries.
Governance Poor access to and/or poor quality of education	The risk of child labour is increased when children are not able to attend school. This may be due to a lack of schools nearby or other barriers, such as school fees that are prohibitive or administrative hurdles such as the requirement of birth certificates. School systems may also lack a policy to reintegrate children who were previously working into school. Children of migrant workers may face unique obstacles to accessing education. For example, they may not speak the local language. When the quality of education is poor, parents may place greater value on sending a child to work than sending a child to school. <sup>2</sup>	Many of the countries where garment and footwear manufacturing, finishing and raw material production are based continue to face significant obstacles in achieving universal education. In some countries where garment supply chains exist, the compulsory education age is below the minimal age for work.
Governance The government does not have adequate anti-discrimination in education laws and/or does not properly enforce them.	Discrimination and exclusion of certain (minority) groups, e.g. from access to education, may increase the risk of child labour.	In the garment and footwear sector, children from minority groups or workers, for example migrants, are less likely to go to school, and end up in child labour in some contexts.
Sector Informal employment	Child labour is most prevalent in informal sectors of the economy and formal sectors might subcontract to informal unregulated units with child labour.	Informal employment is common at most stages of the garment and footwear sector supply chain. Cotton harvesting often employs high rates of informal seasonal workers. Informal employment is particularly prevalent in leather stitching and intricate handwork, such as embroidery and beading.
Sector Tasks are considered to be better performed by children.	In some sectors, there is a myth that children are more highly skilled at performing certain tasks.	In some contexts, there is a myth that children are better skilled at intricate sewing, stitching leather, beading, embroidery, etc.
Sector Migrant labour	Children of seasonal migrants often migrate with their parents, and they are particularly vulnerable to child labour. Seasonal work sites are often far away from schools and other services, and school admission on a seasonal basis may be problematic. Child migrants often experience maltreatment – including suffering from isolation, violence, substandard working conditions, non-payment of wages, and the threat of being reported to the authorities. <sup>3</sup>	Cotton harvesting often employs high rates of informal seasonal migrant workers. In some contexts, international migrant workers account for 75% of the workforce. Rural-urban migration is likewise common in most exporting countries.
Sector Wages do not satisfy the basic needs of workers and their families.	Low wages and lack of access to decent work for other family members reduces household income and provides economic incentives for children to work.	Wage non-compliance is a risk at all stages of the garment and footwear supply chain that are labour-intensive and employ low-income workers.

Risk Factors	Explanation	Sector considerations
Sector Use of apprenticeship schemes	Children who are considered to be apprentices may not receive adequate compensation and may be subjected to long hours of work which interfere with their education.	Apprenticeship schemes are used in many contexts in the sector.
Sector Subcontracting	Use of subcontracting reduces visibility into labour standards, thus increasing the risk of child labour.	<i>Manufacturing (including Spinning)</i> Subcontracting is a common practice in cut-make-trim and finishing (e.g. outsourcing to printers) globally.
Sector Use of private recruitment or employment agencies	The use of labour recruiters and their agents can create layers of separation between the employer and the worker. Employers may be unaware of the hiring practices of their operations, leaving workers exposed to exploitation. <sup>4</sup>	<i>Manufacturing (including Spinning)</i> Private recruitment and employment agencies are often employed to hire both domestic and international migrant workers.
Sector Existence of credit arrangements and debt	The use of credit schemes or schemes to advance money when applied to children puts children at higher risk of forced labour, debt bondage, precarious work and lack of adequate pay.	Credit schemes are at times built into apprenticeship schemes.  Use of credit may exist amongst migrant workers hired through a private recruitment or employment agency.

1. Adapted from Committee on Monitoring International Labor Standards National Research Council of the National Academies (2004), *Monitoring International Standards: Techniques and Sources of Information*, the National Academies Press, Washington, D.C.

See Jensen (2000), *Development of Indicators on Child Labor*, A Report to the International Program on the Elimination of Child Labor, ILO, Geneva.

International Programme on the Elimination of Child Labour, Migration and Child Labour website.

See US Department of State (2015).

### ***Supplier assessment***

- Supplier assessments should rely heavily on interviews with workers (without management present), management and other stakeholders.
- Enterprises are encouraged to consult with workers and other stakeholders as to whether assessments should take place only within the workplace setting or also off site.
- In recognition that traditional interviews are not always effective in engaging children and that children may be coached on their responses, enterprises are encouraged to incorporate participatory methods of assessment where high risks of child labour are flagged.<sup>39</sup>
- Where risks of worst forms of child labour are flagged, qualified experts should be engaged in the on-site assessment to ensure the child's protection.

### ***Understanding the local context***

The elimination of child labour within a particular region requires collaboration across a range of stakeholders including government, industry and civil society. Significant attention and resources have been dedicated to addressing child labour globally (both at the national and international level), for

<sup>39</sup>. Example participatory methods of assessment include role play; asking the child to draw a picture and describe it; showing the child photographs to elicit comments; asking a child who knows how to write to share a narrative or account; and showing the child a diagram or map and asking questions about it (always remembering that diagram and map reading are also learned abilities). See SIMPOC (2005).

example, in the formation of programmes to transition children to formal education, or the development of community monitoring of child labour. In light of this context, the enterprise is encouraged to link its corrective action plan with existing strategies on the ground to prevent child labour where relevant and feasible. Furthermore, in recognition that child labour is often prevalent across a number of sectors in a region (i.e. it is not unique to the garment and footwear supply chain), the enterprise is encouraged to identify other sectors which are likewise at risk of child labour in the region in order to facilitate collaboration where appropriate.

***Cease, prevent or mitigate child labour in the enterprise's own operations***

If a child is engaged in hazardous work, the child should be immediately removed from hazardous tasks. Enterprises are encouraged to implement existing guidance on how to stop and prevent child labour in their own operations. Example components of a corrective action plan include:

- Increase worker and management awareness – for example, through training, resources (e.g. booklets), workshops and ongoing support. Training and information provided to workers may cover:
  - enterprise policy against child labour
  - definitions of child labour
  - definitions of hazardous work (only relevant for children over the legal minimum working age; children below this age should not be working at all)
  - international and national norms and legislation
  - the negative impacts of child labour on the child
  - where and how workers can report instances of child labour (e.g. to a child labour monitoring committee or other operational-level grievance mechanism)
  - the enterprise's systems to prevent child labour and the role workers, supervisors and management can play to prevent child labour.
- Establish management systems to mitigate the risk of non-compliance, for example by formalising worker contracts and establishing a prequalification process for private recruitment and employment agencies.<sup>40</sup> Provide training to those overseeing recruitment and hiring on the enterprise's policy against child labour and systems for reducing the risk of child labour.
- Eliminate hazardous child labour by identifying, preventing and mitigating occupational health and safety risks in the workplace, preferably as part of comprehensive efforts to eliminate all child labour.<sup>41</sup> See Module 5.
- In recognition that the most effective prevention measures often require addressing systemic and root causes of child labour (e.g. lack of access to education), enterprises are encouraged to partner with existing initiatives which have demonstrated impact in addressing child labour (e.g.

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<sup>40.</sup> See Shift and IHRB (2012), *Employment and Recruitment Agencies Sector Guide on Implementing the United Nations Guiding Principles on Business and Human Rights*, European Commission, Brussels.

<sup>41.</sup> See Preamble iii in Netherlands Ministry of Social Affairs and Employment (2016).

government initiatives, multi-stakeholder initiatives, civil society initiatives). Such initiatives may provide training, access to off-site grievance mechanisms, etc.<sup>42</sup>

### **Prevent the enterprise's contribution to harm (for retailers, brands and their buying intermediaries)**

- The enterprise should assess and prevent its contribution to harm through its price negotiations and purchasing practices.
- The enterprise is encouraged to support its suppliers to prevent child labour, where feasible, for example, by increasing supplier awareness on what constitutes child labour (where appropriate) and facilitating linkages to local service providers.
- Regardless of whether specific incidents of child labour have been identified, the enterprise should use its leverage to encourage its suppliers to implement measures to prevent child labour if risk factors for child labour have been identified in the sourcing region and the supplier has not implemented adequate controls to mitigate the risk.
- In recognition of the links between wages and child labour, the enterprise is encouraged to conduct due diligence on wages. See Module 7.
- In recognition that child labour is rarely unique to a particular supplier, the enterprise is encouraged to support a sector-wide approach within a particular geographic location (e.g. production cluster) and co-operate with other regionally operating community-based anti-child labour initiatives. In practice, this means that the enterprise operating in the sector has a harmonised strategy for training, capacity building, tracking of results and stakeholder engagement across suppliers.
- In recognition that child labour is rarely unique to one sector within a particular geographic region, but is often found across a range of sectors, and that the removal of children from one sector may increase the risk of the child simply finding employment in another, the enterprise is encouraged to co-ordinate and collaborate with other sectors operating in the same geographic region. For example, in practice, this may mean that cross-sector regional dialogues are established to address specific risks of child labour within a particular geographic region. It may also mean sharing training resources, indicators and results across sectors.<sup>43</sup>

### **Tracking**

#### ***Verify, monitor and validate progress on due diligence and its effectiveness in own operations***

Workplace-based child-monitoring committees may be an effective method of monitoring child labour. Such committees can play a role in training workers on child labour risks; acting as a first point of access for an on-site grievance mechanism; and monitoring to ensure that children are not engaged in hazardous work.

Where appropriate and feasible, workplace-based child-monitoring committees may co-ordinate with community-level child-monitoring programmes and processes to enable remediation (where such programmes are active and effective).

<sup>42</sup>. See "Hard Question 5" in ILO-IOE (2015) for practical questions to consider when evaluating the role that an MSI is intended and able to play in preventing and mitigating adverse child labour.

<sup>43</sup>. See IOE and ITUC Child Labour Platform website.

## **Provide for or co-operate in remediation where appropriate**

### ***Operational-level grievance mechanisms***

Children may not be able to access grievance mechanisms themselves. Grievance mechanisms should therefore also be accessible to those who can raise concerns on behalf of the child, such as committees tasked with monitoring child labour, trade unions, community members, procurement staff, local civil society and government officials.<sup>44</sup> Outreach on the use of grievance mechanisms should include training to local civil society.

Enterprises should identify (or put in place) a mechanism to report crimes of the worst forms of child labour to relevant authorities.

### ***Determining the appropriate form of remedy***

- When a child is below the legal working age, the goal of remediation should be to remove the child from the workplace and ensure that alternatives, preferably formal full-time schooling, are in place. The process of remediation should include dialogue with the caregivers of the child and, where feasible, seek to enrol the child in school without damaging the child's welfare or that of his/her family. Examples include:
  - The child is removed from the workplace and the employer pays the school fees of the child while the child is enrolled in school (until the minimum age of schooling).
  - The child is removed from the workplace and a member of the child's family is hired in his/her stead and is paid a wage that meets the basic needs of the worker and his/her family.
  - The child is removed from the workplace and enrolled in a transitional school for children who have fallen behind their peer group.
  - The child is removed from the workplace and the child's family is enrolled in an existing programme to help to address root causes of child labour (e.g. income gaps).
- Where they exist, the enterprise is encouraged to engage with credible initiatives in the community to help children to make the transition from work to school.
- If a child is engaged in hazardous work, the child should be immediately removed from hazardous tasks. Worst forms of child labour situations may be a crime that needs to be reported to relevant authorities. The employer should consult external experts (e.g. doctors) to identify any physical harm (e.g. health impacts) due to the child's employment in hazardous tasks and harm should be appropriately remedied.
- In instances in which the child is at or above the legal working age according to national law or international standards (whichever is higher), the child should have the option to continue his or her employment on appropriate tasks (i.e. the child may continue to work but should be removed from hazardous work immediately).

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<sup>44</sup>. See IDH (2012); Stop Child Labour (2015)

- The enterprise is encouraged to monitor that the former child labourer is adequately protected and has not returned to work or been placed in a more precarious situation.<sup>45</sup>

#### **Selected international instruments and standards**

- OECD Guidelines for Multinational Enterprises, Chapter IV, Human Rights and Chapter V, Employment and Industrial Relations
- ILO Convention concerning Minimum Age for Admission to Employment 1973 (No. 138)
- ILO Worst Forms of Child Labour Convention, 1999 (No. 182)
- UN Convention on the Rights of the Child, 1989

#### **Resources**

- Annual United States Department of State, *Trafficking in Persons Report*, Washington, D.C.
- United States Department of Labor, *List of Goods Produced by Child Labor or Forced Labor*, Washington, D.C.
- SIMPOC (2005), Manual on Child Labour Rapid Assessment Methodology, ILO/UNICEF, Geneva,
- Shift and IHRBC (2012), Employment and Recruitment Agencies Sector Guide on Implementing the United Nations Guiding Principles on Business and Human Rights, European Commission, Brussels
- IDH (2012), Report 2010-2011 Business practices and lessons learned on addressing child labour, UN Global Compact Labour Working Group
- ILO (2007), Guide Two: How Employers Can Eliminate Child Labour, International Labour Organization, Geneva
- ILO-IOE (2015), Child Labour Guidance Tool for Business, ILO, Geneva
- ILO-IPEC (2005), Guidelines for Developing Child Labour Monitoring Processes, ILO, Geneva
- IOE and ITUC Child Labour Platform website
- Netherlands Ministry of Social Affairs and Employment (2016), "Roadmap for Achieving the Elimination of the Worst Forms of Child Labour by 2016", Outcome document from The Hague Global Child Labour Conference 2010 Towards a World without Child Labour Mapping the Road to 2016, Hague
- For information on relevant ILO standards see the ILO Helpdesk
- UNICEF, Children's Rights and Business Principles
- United States Department of State (2015), *Trafficking in Persons Report 2015*, Washington, D.C.

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<sup>45</sup>. See *5x5 Stepping Stones for Creating Child Labour Free Zones*, Stop Child Labour, Amsterdam.



## **MODULE 2. SEXUAL HARASSMENT AND SEXUAL AND GENDER-BASED VIOLENCE (SGBV) IN THE WORKPLACE**

### **Embed responsible business conduct in enterprise policy and management systems**

#### **KEY TERMS**

**Sexual harassment** - Sexual harassment includes such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demand, whether by words or actions. It is discriminatory when the victim has reasonable grounds to believe that his or her objection would disadvantage him or her in connection with employment, including recruitment or promotion, or when it creates a hostile working environment. Men, women, boy and girls may be victims of sexual harassment.

**Violence against women** - Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women and girls, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

#### ***Policy***

The enterprise is encouraged to adopt a zero-tolerance policy on sexual and gender-based violence and strict measures against sexual harassment in its own operations. The enterprise's RBC policy should articulate its expectations of suppliers and other business partners to likewise adopt a policy on sexual harassment and sexual and gender-based violence (as appropriate).

Enterprises are encouraged to include the following in their internal policies

- a commitment to foster an environment at work free from harassment, bullying and violence
- clear consequences for breaking the enterprise's standards
- a commitment to hear grievances, to provide a "reprisal-free" complaints mechanism (e.g. operational-level grievance mechanism) and to maintain the confidentiality of workers or employees who raise complaints.

### **Identify potential and actual harms in the enterprise's own operations and in its supply chain**

#### ***Scoping exercise***

Women account for a majority of the labour force across many of the stages of the garment and footwear supply chain. Women who are low-income workers, migrant workers, and/or are employed

informally are particularly exposed to risks of sexual harassment and sexual and gender-based violence in the workplace.<sup>46</sup>

During the scoping exercise, the enterprise is encouraged to seek to understand the extent to which sexual harassment and sexual and gender-based violence exists in the countries that it operates in or sources from broadly (i.e. beyond the workplace). However, sexual harassment and sexual and gender-based violence can be particularly difficult to identify due to a lack of reliable country-level and sector-level data. Within this context, document reviews may not be sufficient. The enterprise is therefore encouraged to make good faith efforts to identify high-risk sourcing countries for sexual harassment and sexual and gender-based violence. Where gaps in information exist, the enterprise is encouraged to consult stakeholders and/or experts on the ground. For example, enterprises may work with civil society or trade unions to conduct a series of focus-group discussions with workers and consultations with trade unions and representative organisations of the workers' own choosing, civil society, government, etc. Enterprises should be aware that in many contexts cultural norms may restrict women and men from discussing or reporting their experiences related to sexual harassment and sexual and gender-based violence. Therefore, enterprises are encouraged to partner with trained experts to engage with workers and/or community members in discussion on these issues.

In the context of sexual harassment, enterprises should make the assumption that if sexual harassment is a high risk in a particular sourcing location, it is a high risk within the workplace.

Table 10. **Sexual harassment and sexual and gender-based violence**

Risk Factor	Sector considerations
Low-income employment Workers in low-income employment are more vulnerable to sexual favours in exchange for employment opportunities.	Workers at many stages of the garment and footwear sector are predominantly low-income women and girls.
Precarious employment Workers in precarious employment are more vulnerable to demands for sexual favours in exchange for employment opportunities.	Short-term employment contracts are common practice in many sourcing regions. This is particularly true for manufacturing and agriculture (i.e. raw materials).
Children and adolescents in the workplace Children and adolescents in the workplace are more vulnerable to sexual harassment and sexual and gender-based violence.	Children and adolescents are often employed in the garment and footwear sector.
Limited upward mobility <b>Women are more vulnerable to sexual harassment in workplaces where women make up the majority of workers but hold very few jobs with actual decision-making power.</b>  Similarly, workers are more vulnerable in contexts where line supervisors are predominantly men, and are responsible for reporting each worker's productivity numbers and are also the ones who report a worker's excused or unexcused absences, tardiness and conduct. Within this context, supervisors have leverage to demand sexual favours.	It is common for women to comprise the majority of low-skilled labour in garment and footwear factories and hold very few management or supervisor-level jobs.

<sup>46</sup>.

Cruz, A. and Klinger, A. (2011)

Risk Factor	Sector considerations
<p>High turnover of workers</p> <p>Workplaces with high turnover of young women workers may be at higher risk given that workers do not have a network of co-workers whom they know and trust.</p>	<p>Garment and footwear factories often face very high rates of turnover of workers.</p>
<p>Location of workplace in relation to homes</p> <p>Workplaces that are located far away from where workers live can increase the risk to workers of sexual harassment and violence on their return home from work.</p>	<p>Export processing zones are often located far away from where workers live.</p>
<p>On-site housing</p> <p>Young non-married women workers often live in on-site dormitories that are overseen by male management. Young workers are particularly exposed to sexual harassment and violence within this context.</p>	<p>The use of dormitories to house workers is common practice in textile and garment manufacturing across a number of countries.</p>
<p>Vulnerable minorities, including migrant workers</p> <p>Minorities, including ethnic, religious and caste minorities, are often much more vulnerable to harassment and violence due to their "lower status". Minorities may also have more difficulty accessing grievance mechanisms.</p> <p>Migrant workers often lack networks of people whom they trust and can seek help from. They likewise often lack information on where to turn in instances of harassment or violence.</p>	<p>Minority women are vulnerable at all stages of garment and footwear production.</p> <p>Migrant workers are often employed in cotton production and harvesting.</p> <p>In many countries, garment and footwear manufacturing is highly dependent on internal and international migrant workers. In a few contexts, international migrant workers make up to 75% of the workforce.</p>

### ***Supplier assessments***

It can be difficult for an assessment to identify specific incidents of sexual harassment in the workplace. Workers may fear reprisal or may not understand what constitutes sexual harassment and sexual and gender-based violence. The enterprise should seek to understand the following during the supplier assessment:

- The extent to which workers understand what constitutes harassment and violence.
- The measures that the supplier has implemented to prevent sexual harassment in the workplace.
- Whether the supplier has established an operational-level grievance mechanism and, if it has, the extent to which it meets core requirements. See Table 8. The possibility of remaining anonymous, the possibility of submitting complaints through multiple access points, at least one of which is non-management, and the principle of confidentiality are particularly relevant in relation to sexual harassment and sexual and gender-based violence where fear of reprisal may be high.<sup>47</sup>

Worker interviews and focus-group discussions are critical components of a supplier assessment. Enterprises are encouraged to seek input from trade unions and representative worker organisations.

<sup>47</sup>. Those responsible for protecting workers are sometimes the ones initiating harassment. Aggressors may be supervisors, colleagues or even trade unionists.

In many cultures, women and men do not feel comfortable discussing sexual harassment or sexual and gender-based violence. Enterprises are therefore encouraged to engage with local experts (e.g. civil society organisations) to tailor assessments so that they are appropriate within the context. Enterprises should likewise consider whether it is most appropriate for those conducting the assessment to be women. In cases in which there is a high risk that children have been sexually harassed or abused, those conducting the assessment should be trained in engaging with children in a way that does no harm.

### ***Understand the operating context***

As part of its efforts to understand the operating context under section 3.3, the enterprise is encouraged to identify judicial and non-judicial grievance mechanisms that are external to an enterprise's operational-level grievance mechanism and available to workers.

### **Prevent or mitigate harm in the enterprise's own operations and in its supply chain**

#### ***Cease, prevent or mitigate harm in the enterprise's own operations***

Training and the establishment of operational-level grievance mechanisms are core components of any corrective action plan (CAP). Workers are often unaware of what constitutes sexual harassment and sexual and gender-based violence.<sup>48</sup> Training should therefore raise awareness amongst workers on what constitutes harassment and violence and should inform workers on processes that are available to them to raise complaints both within and outside of the workplace (where such channels exist). Training should target women and men, workers, supervisors, management, and others who are in positions of authority. The participation of workers and trade unions and representative organisations of the workers' own choosing is important in implementing solutions that are tailored to the local context.

Additional components of a CAP may include, but are not limited to, the following:

- the establishment of peer groups within the workplace to help women access appropriate resources and/or grievance mechanisms
- the provision of transportation to and from the workplace in contexts where women experience abuse on their way to and from work
- partnership with local organisations working to prevent sexual harassment and sexual and gender-based violence in the community to provide training, resources, etc.
- the incorporation of training into new-hire orientation for workers and supervisors.

Enterprises are encouraged to support their suppliers in establishing measures to prevent sexual harassment and sexual and gender-based violence in the workplace in high-risk contexts.

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<sup>48</sup>.

In a study conducted in the Dominican Republic, respondents were surprised to learn that some behaviours they had always encountered in their places of work were considered harassment, and that they could take action against it. Even those who are familiar with the term have different connotations of what it entails and what they are legally protected against. See Pantaleón, L. and Laboral Dominicana, F. (2003), "Rights for Working Women Campaign, Sexual Harassment in the Export Processing Zones of the Dominican Republic", International Labor Rights Fund.

**Track*****Verify, monitor and validate progress on due diligence and its effectiveness in the enterprise's own operations***

While maintaining confidentiality, the enterprise should collate records about the type, pattern and incidence of all forms of workplace harassment and violence in its own operations. It is recommended that data is collected on all incidents, including both minor and potential incidents and that data is disaggregated by age and sex.

To the extent possible, the enterprise should seek assurances that the actions that it has or is taking are preventing sexual harassment in its operations. The enterprise may seek to monitor, for example through simple surveys, peer discussions or other forms of worker engagement, the following:

- the extent to which workers know what constitutes sexual harassment and sexual and gender-based violence and the consequences for breaking the enterprise's policy against such conduct
- the extent to which workers know how and where to report sexual harassment, violence or threats of violence, and feel they may do so without fear of reprisal (i.e. including alternative avenues for filing a complaint)
- the extent to which workers believe that management will or did respond appropriately if they report an incident.

***Verify, monitor and validate progress on due diligence and its effectiveness in the enterprise's supply chain***

Validating that sexual harassment is being prevented in an enterprise's supply chain is a challenging task. The enterprise should follow up with its suppliers to verify that corrective action plans are being implemented and that they are embedded into ongoing systems. Beyond such verification, the enterprise is encouraged to partner with its suppliers, workers and trade unions and representative organisations of the workers' choosing to assess whether corrective action measures are effective. For example, the enterprise may review the aggregate results of worker surveys with its suppliers, or it may conduct focus-group discussions at periodic intervals amongst workers across different suppliers within a sourcing hub to determine whether prevention measures (e.g. training) are preventing harassment in the workplace or whether further efforts are needed.

**Provide for or co-operate in remediation where appropriate**

Sexual harassment and sexual and gender-based violence are crimes in some contexts that need to be reported to relevant authorities.

As mentioned above, it is important that operational-level grievance mechanisms enable a worker to report harassment, violence or threats of violence:

- without fear of reprisal or criticism
- to points of contact beyond company and union representatives
- anonymously and confidentially.

Recognising that children may be victims of sexual harassment or sexual and gender-based violence, grievance mechanisms should also be accessible to those who can raise concerns on behalf of the child in contexts in which children are employed in the workplace.

#### Box 10. Discrimination and gender-based discrimination

**Discrimination** is defined under ILO Convention No. 111 as any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin (among other characteristics), “which has the effect of nullifying or impairing equality of opportunity and treatment in employment or occupation”.

**Gender-Based Discrimination** is defined by the Convention on the Elimination of all Forms of Discrimination against Women as any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms. This would apply to scenarios even where discrimination was not intended. Identical or neutral treatment of women and men might constitute discrimination against women if such treatment resulted in or had the effect of women being denied the exercise of a right because there was no recognition of the pre-existing gender-based disadvantage and inequality that women face.

This module includes recommendations on carrying out due diligence on sexual harassment and sexual and gender-based violence in the workplace, both of which are forms of discrimination. However, discrimination reaches far beyond harassment and violence. This Guidance does not provide comprehensive recommendations on how to carry out due diligence on discriminatory policies or practices. However, recognising that discrimination is often linked to wages, occupational health and safety, and working time, some considerations on how to identify, prevent and mitigate discrimination in these contexts is incorporated into the relevant modules. Recognising the prevalence of discrimination in the sector, enterprises should commit to not discriminate on the basis of race, colour, sex, religion, political opinion, national extraction or social origin (among other characteristics) in their own operations and activities. Enterprises should likewise seek to identify, prevent and mitigate against discriminatory policies or practices in their own operations and in their supply chains.

Examples of discriminatory policies and practices include:

- Pregnant workers are given short-term contracts which are terminated before they become entitled to maternity benefits under local laws.
- Pregnancy tests are a condition of employment.
- Migrant workers are paid different wage rates than domestic workers.
- Workers are asked directly or indirectly about their HIV status.

#### *Determine the appropriate form of remedy*

In general, employers should provide for or contribute towards the provision of remediation to victims of sexual harassment and sexual and gender-based violence.<sup>49</sup> In some contexts, employers may also be mandated by law through vicarious liability to provide for such remediation.

<sup>49</sup>. In some cases, if an employer can demonstrate that it has taken reasonable steps to prevent sexual harassment and gender-based violence, its contribution to remedy may be diminished.

For incidents of sexual harassment and sexual and gender-based violence, it is generally recommended that counselling be incorporated as an option into post-incident responses. Some victims, especially in the case of violent incidents, may need longer-term support. Depending on the specific situation, such support may include extended professional counselling.<sup>50</sup>

#### **Selected international instruments and standards**

- Equal Remuneration Convention, 1951 (No. 100)
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- 1998 Declaration on Fundamental Rights and Principles at Work (ILO)
- Declaration on the Elimination of Violence against Women, adopted by the United Nations General Assembly (A/ RES/48/104), New York, 20 December 1993
- Committee on the Elimination of Discrimination against Women, General Recommendation 19, Violence against women (Eleventh session, 1992), U.N. Doc. A/47/38 at 1 (1993), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 243 (2003).
- Convention on the Elimination of All Forms of Discrimination against Women, New York, 18 December 1979, United Nations
- Equal Remuneration Convention, 1951 (No. 100)
- Maternity Protection Convention, 2000 (No. 183) and its Recommendation, 2000 (No. 191).

#### **Resources**

- Chappell, D. and Di Martino, V. (2006), *Violence at Work*, 3<sup>rd</sup> edition, ILO, Geneva.
- Cruz, A. and Klinger, A. (2011), “Gender-based violence in the world of work: Overview and selected annotated bibliography”, Working Paper 3, ILO, Geneva.
- For information on relevant ILO standards see the ILO Helpdesk.

<sup>50</sup>. See Chappell, D. and Di Martino, V. (2006).

## MODULE 3. FORCED LABOUR

### Embed responsible business conduct in the enterprise policy and management systems

#### *Policy*

Enterprises are encouraged to adopt a zero-tolerance policy for forced labour in their own operations and their supply chain. Enterprises are encouraged to establish additional policies relevant to the nature of the risk, for example, the enterprise may adopt a policy on the use of private recruitment agencies and subcontracting as relevant. See Box 2 for information regarding policies on subcontracting.

#### KEY TERM

**Forced labour** - The internationally recognised definition of forced labour is defined in ILO Convention 139 (No. 29) as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”.

#### Identify potential and actual harms in the enterprise’s own operations and in its supply chain

#### *Scoping exercise*

Forced labour is complex, takes many forms and by nature is hidden. Within this context, enterprises should consider the following guidance when conducting their scoping exercise.

- Employees tasked with scoping risks of forced labour in the enterprise’s operations and in its supply chain should have an understanding of what constitutes forced labour, common forms of forced labour, vulnerable workers and international standards.<sup>51</sup>
- Enterprises are encouraged to consult existing reports by governments, international organisations and credible institutions, including civil society organisations, to identify materials and production processes associated with forced labour as well as sourcing areas which have been flagged as higher-risk for forced labour.
- Enterprises are encouraged to seek information from stakeholders, international organisations, civil society organisations and experts on higher-risk countries for forced labour.
- Enterprises are likewise encouraged to cooperate at a sector-wide level with governments, workers, international organisations, stakeholders and civil society organisations operating on the ground (as relevant) to identify higher-risk activities and areas for forced labour.
- A lack of sufficient and accurate data remains a challenge in understanding the nature, scale and scope of forced labour in the sector. Enterprises across the sector are encouraged to identify gaps in data collection and work towards improved coordination and collection of information.

See Table 11 for example risk factors for forced labour in the garment and footwear supply chain.

<sup>51</sup>. See ILO (2015).



Table 11. Risk factors for forced labour in the garment and footwear sector

Risk Factor	Relevance to the sector
<b>State-orchestrated forced labour</b>  State-orchestrated forced labour is when the government itself forces citizens to work in a particular sector.	<i>Cotton</i> In some countries, forced labour in cotton production is state-orchestrated. In these contexts, local authorities send government and private business employees to pick cotton in order to meet cotton production quotas.
<b>Private recruitment &amp; employment agencies</b>  The use of labour recruiters and their agents can create layers of separation between the employer and the worker. Employers may be unaware of the hiring practices of their operations, leaving workers exposed to exploitation. <sup>1</sup>	Private recruitment and employment agencies are often employed to hire both domestic and international migrant workers in garment, footwear and textile manufacturing.  <i>Transportation</i> Workers are often employed through labour brokers or employment agencies (e.g. seafaring transport). Within some contexts, these jobs are viewed as favourable, leading to high recruitment fees and indebtedness.
<b>Existence of credit arrangements and debt</b>  A person provides labour to pay off his or her debt. Interest rates often diminish the person's ability to pay the debt and the terms of payment are often indefinite.	<i>Cotton</i> In some sourcing contexts it is common for farmers to finish a crop cycle without enough money to purchase inputs for the following year, leading them to take on increasing loans with high interest rates.  <i>Manufacturing</i> Credit schemes are at times built into apprenticeship schemes. Use of credit may also exist amongst migrant workers hired through a private recruitment or employment agency. Children and adolescents are also more likely to be employed and exploited through apprenticeship schemes.
<b>Children and adolescents in the workplace</b> Children and adolescents in the workplace are more vulnerable to forced labour.	Children and adolescents are often employed at all stages of the garment and footwear sector.
<b>Employment of migrant workers</b>  Migrant workers are more exposed to certain forms of forced labour, particularly those with an irregular status, whose vulnerability can be exploited through coercion. For example, migrant workers may be vulnerable to coercion through the withholding of documents (e.g. passports). The retention of these documents or other valuable personal possessions can be considered an indicator of forced labour if workers are unable to access them at their discretion and if they feel they cannot leave employment without risking the loss of the document. <sup>2</sup> Migrant workers may also be more vulnerable to debt-induced forced labour due to recruitment fees owed to labour brokers. <sup>3</sup>	<i>Cotton</i> In some cases children migrate with their family to work in cotton plantations. However, although children may migrate voluntarily, they may be exploited upon arrival.  <i>Manufacturing</i> In many countries, the garment and footwear sectors are highly dependent on internal and international migrant workers. In some contexts, international migrant workers make up to 75% of the workforce.
<b>On-site housing of workers</b>  Workers who live on site are more at risk of being physically confined to the workplace or to employer-operated residences outside of working hours. <sup>4</sup>	The use of dormitories to house workers is very common across many garment and footwear exporting economies.

Risk Factor	Relevance to the sector
<b>Prison labour</b> Involuntary work performed by prisoners who have not been convicted in a court of law and whose work is not supervised by a public authority is considered forced labour. Similarly, involuntary work performed by a prisoner for the benefit of a private undertaking is also considered forced labour. <sup>5</sup>	In some countries, prison labour is used to produce garments including federal contracts for military uniforms, thus increasing the risk of forced prison labour.
<b>Subcontracting</b> When not accounted for, the use of subcontracting reduces visibility into the labour standards of the supplier, thus increasing the risk of forced labour.	Subcontracting is a common practice in cut-make-trim and finishing (e.g. outsourcing to printers) globally.
<b>Informal workers</b> Workers employed in informal enterprises, including home-based workers and those in geographically remote rural regions, are considered to be particularly vulnerable to forced labour, notably debt-induced forced labour. <sup>6</sup>	Informal employment is common at most stages of the garment and footwear sector supply chain. Cotton harvesting often employs high rates of informal seasonal workers. Informal employment is particularly prevalent in leather stitching and intricate handwork, such as embroidery and beading.
<b>Production pressures</b> Workers that are working in labour-intensive industries with set production quotas and fluctuating orders may be more exposed to forced overtime.	Excessive overtime is common throughout garment and footwear cut-make-trim. While not all overtime is considered forced labour, forced labour does occur if overtime is compulsory and exceeds the weekly or monthly limits allowed by law, irrespective of the reasons for such overtime. <sup>6</sup>

1. See US Department of State (2015).

See ILO (2015).

Debt-induced forced labour is also commonly referred to as debt bondage.

Workers should not be confined, imprisoned or in any way detained in the workplace or employer-operated residences, either during or outside working hours.

Illegal restrictions on workers' freedom of movement are prohibited. See ILO (2015).

Labour exacted from prison workers is not generally considered forced labour under international law. However, the cases referenced in Table 11 are considered forced labour. Therefore, prison labour should always be considered a risk for forced labour. The laws and enforcement of a specific jurisdiction will either increase or decrease this risk. See (2015), *Combating Forced Labour: A Handbook for Employers and Business*, ILO for more information.

6. See ILO (2015).

Source: Primarily adapted from: Verité (2015), "Strengthening Protections Against Trafficking in Persons in Federal and Corporate Supply Chains", Amherst; Clean Clothes Campaign (2009), "False Promises, Migrant Workers in the Global Garment Industry Discussion Paper", Amsterdam.

### Supplier assessments

Enterprises are encouraged to rely on existing guidance by credible organisations on how to assess forced labour, where such assessments take the below into account.

- In recognition that forced labour takes many forms, assessments should be tailored to the sourcing context or production cluster and to the particular forced labour risks. For example:
  - In contexts in which apprenticeship schemes are common, the supplier assessment should take into account the unique forced labour risks (e.g. freedom of movement) associated with such schemes in that region.
  - In cases in which private recruitment agencies are used, enterprises should extend assessments to cover them and/or should incorporate assessments of the supplier's due diligence of the agencies, as appropriate.

- In cases in which suppliers employ migrant workers, the supplier assessment should cover the unique forms of forced labour which may face migrant workers, such as document retention for foreign migrants.
- In recognition that traditional document assessments are generally insufficient in assessing forced labour, supplier assessments should rely heavily on interviews with workers, management and other stakeholders.
- Enterprises should take into consideration that some workers may fear responding honestly to questions regarding forced labour and take appropriate measures, such as conducting assessments off site or using non-traditional methods of assessment such as focus-group discussions and participatory assessment methods.
- In cases in which forced labour is linked to upstream production processes (e.g. cotton growing), enterprises should be able to demonstrate that upstream suppliers have been assessed. See Box 3.

### ***Cease, prevent or mitigate harm in the enterprise's own operations***

Extensive stakeholder engagement is likely necessary to determine the most appropriate methods to prevent forced labour. This module does not provide technical guidance on how to prevent forced labour once a risk has been identified. However, enterprises are encouraged to apply the recommendations and practices put forth in guidance published by credible organisations such as the ILO. In some contexts, international, federal and local government and civil society organisations may already have plans in place to tackle forced labour. Enterprises are therefore encouraged to align their strategies with existing strategies on the ground, where relevant.

Example components of a corrective action plan include:

- Support trade unions and representative worker organisations to build awareness amongst workers on their rights in relation to contracts, working hours, freedom of movement, etc.
- Establish tailored training for management and staff involved in the hiring of workers on national and international standards regarding forced labour and, importantly, the company's policies and processes to prevent forced labour.
- Establish a prequalification process for private recruitment agencies for employment (where relevant).
- Support the right to establish or join a trade union for the purpose of collective bargaining within their workplace and supply chain. Trade unions play a central role in monitoring and preventing forced labour. See Module 6.

### ***Seek to prevent or mitigate harm in the enterprise's supply chain***

The enterprise should adopt measures that are tailored to local circumstances. Recommended measures include the following.

- Enterprises are encouraged to suspend orders (even in the context of State-sponsored forced labour) if forced labour has been identified until action has been taken to prevent forced labour.
- Enterprises are encouraged to prevent forced labour in their supply chain by building the capacity of their suppliers by:

- building the awareness of suppliers on forced labour, including what constitutes forced labour
- supporting suppliers to implement a corrective action plan
- supporting suppliers in improving production efficiency and, in doing so, addressing the business driver for cheap labour.
- The enterprise should develop pricing models that account for the cost of wages, benefits and investments in decent work. The above considerations should be reflected in freight on board (FOB) prices together with traditional pricing considerations, such as quantities being purchased, cost of materials, skill requirements, etc. See Box 4.
- If the enterprise identifies that forced labour may in some way be linked to their final product (and may or may not know how to prevent it), the enterprise is encouraged to raise awareness at a sector level and invite enterprises within the sector to jointly work towards preventing forced labour.
- Industry associations may seek to form organised consultations with trade unions and stakeholders to ensure a coordinated and holistic approach to tackling forced labour at a sector level.
- In recognition that forced labour, in some contexts, is prevalent across sectors, enterprises are encouraged to co-operate with other sectors operating in the same country or region to support a co-ordinated strategy. This also reduces the risk that forced labour is simply transferred from one sector to another.
- In recognition that, in some cases, forced labour requires a multi-stakeholder approach to adequately address impacts, the enterprise is encouraged to make aggregate data and high-level findings available to local and international human rights organisations and international organisations (as relevant). Enterprises should likewise seek to feed into existing effective initiatives to reduce the risk of duplication.
- In contexts in which forced labour is State-sponsored, for example through regulatory frameworks, and/or in instances in which the state is not effectively upholding its duty to protect against forced labour, the enterprise should consider engaging with government either directly or through collaborative initiatives to communicate the enterprise's commitment to prevent forced labour in its supply chain. See section 3.2.6 for information on engaging government.

## **Track**

### ***Verify, monitor and validate progress on due diligence and its effectiveness in the enterprise's supply chain.***

Forced labour is often hidden and therefore difficult to identify. A single on-site assessment is unlikely to provide adequate information for the enterprise to determine whether forced labour is being prevented. Effective ongoing monitoring is a crucial component of due diligence in high-risk areas for forced labour, for example through early warning systems. Enterprises should partner with trade unions, suppliers and civil society to design an effective monitoring mechanism. Trade unions themselves can act as effective monitors of forced labour. Civil society and community members can likewise act as important informants of forced labour. However, community awareness is necessary for community-level monitoring to be effective.

### **Provide for or co-operate in remediation where appropriate**

Many forms of forced labour are crimes. Enterprises should identify (or put in place) a mechanism to report crimes of forced labour to relevant authorities. Where enterprises have caused or contributed to forced labour, they should cooperate with relevant authorities to help provide appropriate forms of remedy.

#### **Selected international instruments and standards**

- ILO, Forced Labour Convention, 1930 (No. 29)
- ILO, Abolition of Forced Labour Convention, 1957 (No. 105)
- ILO, Protocol of 2014 to the Forced Labour Convention, 1930 and Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203)

#### **Resources**

- United States Department of State (2015), *Trafficking in Persons Report 2015*, Washington, D.C.
- List of Goods Produced by Child Labor or Forced Labor, Department of Labor, United States of America.
- Verité (2015), “Strengthening Protections Against Trafficking in Persons in Federal and Corporate Supply Chains”, Amherst.
- ILO (2015), *Combatting Forced Labour: A Handbook for Employers and Business*, International Labour Organization, Geneva.
- For information on relevant ILO standards see the ILO Helpdesk.

## MODULE 4. WORKING TIME

### **Identify actual and potential harms in the enterprise's own operations and in its supply chain**

#### *Scoping exercise*

For many enterprises operating in the garment and footwear supply chain, the highest risk of excessive overtime is found at garment and footwear manufacturing. While some countries may hold higher risks than others, excessive overtime is prevalent across most sourcing countries. Excessive overtime may be increased where there are high rates of migrant workers employed in the sector, however, this indicator should not be used alone to determine high-risk contexts for excessive overtime.

#### *Supplier assessments*

Enterprises are encouraged to rely on existing guidance by credible organisations on how to assess working time where such assessments incorporate the below.

The enterprise should assess supplier compliance with national legislation and international standards. Specifically, the enterprise is encouraged to assess for:

- compliance with legal or collective bargaining agreements regarding overtime conditions and limits
- compliance with legislation or collective bargaining agreements concerning personal leave, including sick leave, and annual leave
- compliance with legislation or collective bargaining agreements on maternity leave, breastfeeding breaks and paternity leave.<sup>52</sup> Pregnant workers can also be at higher risk of being on shorter-term contracts which are eventually terminated before the workers become entitled to maternity benefits under local laws.

In addition to the above, the enterprise is encouraged to seek to understand the drivers of excessive working hours. See Box 11 for examples.

Worker interviews should be a core component of supplier assessments. Those conducting the assessment should mitigate the risk that workers provide preprompted answers, for example through participatory interview methods.<sup>53</sup>

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<sup>52.</sup> See Better Work, “Guidance Sheet 8, Working Time”, Better Work website.

<sup>53.</sup> For example, workers may be asked to talk through their schedule over the course of an entire day.

### Box 11. **Factors that may drive excessive working hours at manufacturing**

There are a number of factors which may contribute to excessive working hours at the manufacturing stage of the garment and footwear supply chain. Three of the most common factors are low wages, inefficient production planning and poor purchasing practices.

- **Low wages:** in contexts in which workers earn very low wages, they may prefer to work overtime in order to earn an extra income. This is often the case for migrant workers who are responsible for sending money home to their families.
- **Poor purchasing practices:** In some instances the actions of retailers or brands may contribute to excessive overtime. Examples of this include last-minute style changes and the setting of unreasonable lead times, notably for re-orders. See Box 4.
- **Inefficiencies in production planning:** Overbooking, poor production planning and inefficiencies in production may also result in excessive overtime. Overbooking remains a challenge in the sector often due to the lack of consistency in orders. Suppliers may be reluctant to expand their production capacity without confidence that demand will remain high. To account for this uncertainty, in some cases, suppliers hire a limited number of skilled workers as regular workers, and then rely on overtime hours, temporary contract workers and subcontracting to manage the shifts in demand.

### **Cease, prevent or mitigate harm in the enterprise's own operations**

Excessive overtime is a prevalent risk across the sector. Enterprises are encouraged to collaborate to identify practical solutions. Example components of a corrective action plan (CAP) are included below.

- As a first step, the enterprise is encouraged to track the number of working hours per worker. Human resource representatives may then be given the responsibility to flag risks of excessive overtime.
- In instances in which low wages are driving demand for excessive working hours, enterprises should conduct internal due diligence on wages. See Module 7.
- Workers should be trained on their rights in relation to working hours, overtime, maternity leave and related compensation. Enterprises are encouraged to incorporate training into orientation and periodic training. Trade unions and representative worker organisations can play a key role in training workers.
- The enterprise should establish a policy against any form of discrimination. Discriminatory practices against pregnant women, migrant women, ethnic minorities and other populations can lead to inadequate compensation for overtime, maternity leave, etc.
- More efficient processes, such as changing the setup and engineering of the production system, may reduce overtime.

### **Prevent the enterprise's contribution to harm in its supply chain**

- The enterprise is encouraged to support its suppliers, for example, through technical guidance on the improvement of production processes, where appropriate.

- In instances in which low wages are driving demand for excessive working hours, the enterprise may focus its attention on carrying out wage due diligence, see Module 7.
- See Box 4 on responsible purchasing practices.

**Provide for or co-operate in remediation where appropriate**

***Determine the appropriate form of remedy***

Compensation is often the most appropriate form of remedy; however, the process of providing remediation should meet the guidance in section 6.3. Enterprises are encouraged to review existing guidance on compensation and back pay for workers who have not been fairly compensated for their hours worked. The form of remedy in cases in which a worker has been denied leave may be more difficult to determine but should be agreed upon through dialogue between the enterprise and the worker.

**Selected international instruments and standards**

- Hours of Work (Industry) Convention, 1919 (No. 1)
- Weekly Rest (Industry) Convention, 1921 (No. 14)
- Forty-Hour Week Convention, 1935 (No. 47)
- Holidays with Pay Convention (Revised), 1970 (No. 132)
- Reduction of Hours of Work Recommendation, 1962 (No. 116)
- Night Work Convention, 1990 (No. 171) and its Recommendation, 1990 (No. 178)
- Maternity Protection Convention, 2000 (No. 183) and its Recommendation, 2000 (No. 191).



## MODULE 5. OCCUPATIONAL HEALTH AND SAFETY

### Identify potential and actual harms in the enterprise's own operations and in its supply chain

#### *Scoping exercise*

Each stage of the supply chain in the garment and footwear sector holds unique and well-documented health and safety risks. Enterprises are therefore encouraged to review existing reports on known health and safety risks for the sector and their subsector.

Unique country risk factors are particularly relevant when scoping occupational health and safety risks. For example, quality of inspections, building height, the extent of urban planning, the quality of the air, etc. greatly affect the health and safety risk characterisation. Questions that an enterprise may consider when determining country risk factors include:

- Are regulations and codes related to occupational health and safety adequately enforced?
- Are inspections conducted by state inspectors and/or by third parties?
- If inspections are conducted by third parties, what are the checks and balances placed on third parties?
- What are the qualification requirements of inspectors (either State-based or third parties)? How do these qualifications compare with international benchmarks?
- What are the consequences to inspectors in cases of known violations (e.g. acceptance of bribes) and are these requirements enforced?
- Are there reasonable risks of bribery in the country related to government inspections?

#### *Supplier assessments*

Enterprises are encouraged to collaborate within a sourcing area (e.g. country, production cluster) to assess suppliers in order to promote a high-quality standard for inspections across the industry and reduce the burden on suppliers.<sup>54</sup>

The risks assessed on site should correspond with known risks within the country and at the specific stage in the supply chain. Assessments should likewise cover occupational health and safety risks that may affect some workers disproportionately, such as children, pregnant women or lactating mothers. For example, in cases in which chemicals are used, assessments should likewise ensure that children are not employed in hazardous labour. See Module 1, Child labour for more information.

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<sup>54</sup>. For example, see the Bangladesh Accord on Fire and Building Safety and the Alliance for Bangladesh Worker Safety.

For risks of severe harm:

- The enterprise should ensure that the supplier has undergone a qualified inspection against national and international standards. In some contexts, a government inspection is sufficient; however, in contexts in which government inspections are inadequate or non-existent, enterprises should verify that the supplier has been assessed by a qualified professional (e.g. structural engineers, fire protection specialists, electrical engineers, safety, health and environment specialists for handling chemicals) with relevant qualifications.
- Supplier assessments should determine whether workers feel that they have the right to refuse unsafe work and are not discouraged from reporting accidents. This requires worker interviews in an environment where the worker feels safe to respond honestly.
- Assessment teams should also include participation from workers and trade unions and representative organisations of the workers' own choosing.

For risks that do not pose severe harm to persons, communities or the environment:

- Assessments may be conducted by trained professionals, but assessments do not have to be independent. Assessments should include participation from workers and/or their representatives, including women.
- Enterprises may rely on existing guidance put forth by credible organisations on how to conduct supplier assessments.

### **Cease, prevent or mitigate harm in the enterprise's own operations**

The enterprise should respect all relevant ILO Health and Safety instruments, even in countries that have not ratified them.

The enterprise should develop a corrective action plan (CAP) that details actions to be taken with clear timelines and a financial plan following site inspections that is signed off by upper management of the site and developed with input from an expert.

- In the short term, where there is severe and imminent danger, action should be taken immediately to protect workers. In cases in which impacts or risks of impact cannot be isolated, this may mean that the site is evacuated and that production is suspended until the building is determined to be safe for re-occupancy.
- In the long term, ongoing prevention and mitigation is reliant upon an occupational and environmental health and safety programme with documented procedures to protect workers which are monitored by workers and trade unions and representative organisations of the workers' own choosing and management. Such programmes should be aligned with international standards and guidance.
- Both immediate measures and long-term programmes should be supported by training of staff (including technical staff) and worker safety committees with democratically elected worker representatives at the site. Extensive guidance for employers exists on the above.
- For risks of severe harm (e.g. structural integrity or electrical safety and fire hazards, hazardous chemicals, etc.), CAPs should be developed in collaboration with qualified professionals (e.g.

structural engineers, fire protection specialists, electrical engineers, safety, health and environment specialists for handling chemicals etc.).

- Where children are employed on site, CAPs should be designed to address the specific health and safety risks for children and should take account of their level of technical understanding (e.g. in relation to worker training).

### ***Worker engagement***

Worker engagement is critical to the prevention of occupational health and safety harms. Enterprises should therefore establish worker management committees. Such committees can facilitate the following worker engagement.

- Workers should have a complete understanding of work hazards, including hazards that may affect children, pregnant women, lactating women and other populations disproportionately. Workers should receive the necessary education and training on how to work safely and evacuate in case of dangerous situations (e.g. fire).
- Workers should participate in the risk assessment and the design and implementation of all occupational health and safety policies, programmes, procedures and CAPs.
- Workers should understand that they have a right to refuse unsafe work or shut down all work believed to be unsafe without fear of reprisals if exercised in good faith. Furthermore, workers should not feel discouraged from reporting accidents due to fear of reprisal.
- Workers should have a role in ongoing monitoring (where appropriate) of risks of harm and should have recourse through grievance mechanisms to address instances in which risks of severe harm arise and require external qualified professional attention.

### ***Collaboration***

- Enterprises are encouraged to collaborate – for example, within a production cluster – to exchange information among workers and management overseeing ongoing corrective action measures. For example, this could include joint visits or regional safety committees.

### **Seek to prevent or mitigate harm in the enterprise's supply chain**

- When immediate and critical danger has been identified, the enterprise should ensure that production for them does not take place at the affected production site until the immediate and critical danger has been adequately addressed.
- The enterprise is encouraged to support its suppliers in the implementation of CAPs.
- The enterprise should develop pricing models that account for the cost of wages, benefits and investments in decent work. The above considerations should be reflected in freight on board (FOB) prices together with traditional pricing considerations, such as quantities being purchased, cost of materials, skill requirements, etc. See Box 4 on responsible purchasing practices.
- In cases in which factory upgrades are necessary:

- The enterprise is encouraged to facilitate access to financing, including but not limited to joint investments, provision of loans, facilitation of access to donor or government support, and by offering business incentives, where feasible.
- In cases in which neither the enterprise nor the supplier can secure adequate financing to prevent or mitigate the adverse impact and/or in cases in which prevention is not feasible, the enterprise should weigh the risk of continuing to engage and disengage if necessary.
- Disengagement is an option if a supplier refuses to prevent impacts after a notice and warning process. See section 3.2.5.

## **Track**

For risks of severe harm:

- Qualified independent professionals (e.g. structural engineers, fire protection specialists, electrical engineers, safety, health and environment specialists for handling chemicals) should monitor and evaluate the implementation of the CAP and verify corrective actions have been taken within the agreed-upon timeframe.
- Workers should participate in ongoing monitoring (as feasible) of risks of harm. In cases in which workers, or other stakeholders, raise allegations through a grievance mechanism, the supplier and enterprise should ensure that the grievance is inspected in a timely manner by a qualified professional.

For risks that do not pose severe harm to persons, communities or the environment:

- The approach to monitoring should be systematic and should correspond with the level of risk. In this regard, a monitoring plan should be developed at each site that is primarily implemented by management and workers.
- Workers should be trained to participate in conducting ongoing monitoring as appropriate. Enterprises are encouraged to implement existing technical guidance on how to establish occupational health and safety monitoring.

## **Provide for or co-operate in remediation where appropriate**

Where appropriate, enterprises should provide for remediation in line with the ILO Employment Injury Benefits Convention. Compensation is often the most appropriate form of remedy for occupational health and safety impacts. Examples include compensation for:

- medical care and related expenses
- missed work time or other lost income
- pain and other physical suffering
- permanent physical disability or disfigurement
- loss of family, social and educational experiences
- emotional damages resulting from the above.

Enterprises may also collaborate to establish effective insurance schemes for workers.

#### **Box 12. Recommendations for small and medium-sized enterprises (SMEs)**

All sites should comply with the same overall expectation of health and safety irrespective of size, location or other factors.

SMEs generally share a number of characteristics that raise concerns about the risks of accidents. For example: they generally have a less formal operating structure than larger enterprises; they tend to employ few engineers and safety specialists; and they tend to rely on business partners and other outside sources for information related to occupational health and safety.

SMEs may also have strengths which enable them to enact recommendations. For example, they may be in a position to implement procedural changes more quickly than larger companies, and they are more likely to have open communication channels.

##### **Recommendations for SME manufacturers and producers**

A multifaceted approach is needed to address the various concerns and limitations of SMEs. SMEs should undertake to:

- Recognise the importance of safety as an integral part of their business operation and commit themselves to safe operations.
- Actively seek information on safety.
- Enter into partnerships with public authorities and/or other enterprises with the objective of improving safety.
- Create “mutual aid” response groups with other enterprises.
- Join professional organisations.

Buying enterprises and suppliers (where suppliers are not SMEs themselves) should make an effort to assist SMEs in reducing risks of accidents, as may be needed, through provision of information, guidance and assistance.

##### **Recommendations for SME buyers**

SMEs are encouraged to engage in sector initiatives, agreements with trade unions and multi-stakeholder initiatives to implement this Guidance which facilitate both a regional and sector-wide approach.

*Source:* Adapted from OECD (2003), *Guiding Principles for Chemical Accident Prevention, Preparedness and Response*, Organisation for Economic Co-operation and Development, Paris.

**Selected international instruments and standards**

- Occupational Safety and Health Convention, 1981 (No. 155)
- Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)
- Chemicals Convention, 1990 (No. 170)

**Resources**

- OECD (2003), Guiding Principles for Chemical Accident Prevention, Preparedness and Response, Organisation for Economic Co-operation and Development, Paris.
- World Health Organization (WHO) Human Health Risk Assessment Toolkit.
- IFC (2007), Environmental, Health, and Safety Guidelines for Textile Manufacturing, International Finance Corporation, Washington, D.C.

## **MODULE 6. TRADE UNIONS AND COLLECTIVE BARGAINING**

### **Embed responsible business conduct in enterprise policy and management systems**

#### ***Policy***

The enterprise should establish a clear policy that it will not tolerate anti-worker policies and actions in its own operations and in its supply chain. This message should reflect an understanding of the context and be explicit concerning the nature of the abuses of workers' rights that are likely.

### **Identify potential and actual harms in the enterprise's own operations and in its supply chain**

#### ***Scoping exercise***

Unlike other risks in the supply chain, risks related to the workers' right to establish or join a trade union and bargain collectively are generally not linked to specific product lines or stages of the supply chain.<sup>55</sup> Rather the institutional and legal framework is likely to be the most important risk factor when assessing the likelihood and severity of impacts. The primary purpose of understanding the extent to which the state places restrictions on the rights of workers to establish or join trade unions for the purpose of collective bargaining is to understand what the enterprise is able to do legally to respect these rights.

In light of this, enterprises are encouraged to understand the following:

- the extent to which civil and political liberties are protected and exercised
- the legal and institutional framework for industrial relations and the extent to which trade unions function and collective bargaining takes place
- the extent to which legal protections for workers are enforced and that judicial and non-judicial remedies for these workers' human rights are available and effective
- the principal trade union organisations representing workers in the sector and other organisations that may be able to provide information concerning the exercise of these rights.

When seeking to understand the above, national laws that may restrict the right to establish or join a trade union and representative organisations of the workers' own choosing can be considered a red flag.

- Laws that require workers to become members of government-run federations, that place extensive prohibitions on bargaining, or that ban strikes altogether or in "essential" industries so as to support a particular national economic policy are red flags for a lack of commitment to freedom of association and the right to collective bargaining.

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<sup>55</sup>. Note that some subsectors may be better protected than others within a given country.

- Laws that permit government interference, for example by allowing the government to dissolve unions without legal recourse, to impose burdensome union registration procedures, limit the formation of national unions, prohibit or limit multiple unions within a single plant (including minority unions), or restrict who may serve as a union member, official or advisor.
- Laws that restrict freedom of association for certain workers, e.g. migrant workers.
- National laws and constitutions that restrict unions' political activities, for example by establishing close relationships between unions and political parties.

Additional indicators, or red flags, for higher-risk countries may include:

- lack of adjudication bodies to support freedom of association rights and provide effective remedy
- the extent to which union organisers are jailed or exiled by the government, or fired, injured or murdered without prompt and effective prosecution on the part of the government
- the extent to which strikers suffer retaliation without prompt and effective prosecution on the part of the government
- whether there are defects in the government's complaint process, such as excessive delays or expenses, light penalties, or non-punishment of offenders
- government actions to combat labour-related corruption (such as control of unions by criminal figures for use as a protection racket or for financial skimming) without prompt and effective prosecution.

Special attention should be given to free trade zones where other labour laws may apply.

### ***Supplier assessment***

The purpose of the supplier assessment is to identify whether anti-worker policies and practices are being promoted by the supplier. Supplier assessments should rely predominantly on interviews of workers, management and trade unions; traditional document assessments are insufficient.

Enterprises should take into account that some workers may fear responding honestly to questions regarding anti-union policies and take appropriate measures. Among possible techniques developed to address this fear include conducting interviews away from the workplace and using non-traditional methods of assessment such as focus-group discussions.

Supplier assessments should include assessments of the following (see Table 12 for examples of each):

- intimidation of workers and anti-union behaviour
- the promotion of employer-dominated structures, worker involvement mechanisms and corrupt labour relations practices
- the refusal to bargain in good faith



- the effect of short-term contracts and other forms of casual contracts and informal employment on the ability of workers to organise
- systemic or organised employer opposition and hostility to trade unions.

**Table 12.** Description of anti-union policies and practices

Anti-union policies and practices	Description
Intimidation of workers and anti-union behaviour	Examples may include: physical intimidation; intimidation of workers by threatening the loss of their livelihood; screening for trade union supporters during recruitment; creating and using "black lists" of union supporters; dismissal of union supporters; discrimination of union supporters through demotions, less favourable assignments, less favourable conditions of work; reduction in wages, benefits, training opportunities, transfers and relocation; non-extension of employment contracts to union supporters on fixed-term and temporary employment; interference in the process by which workers choose whether to be represented by trade unions; actively pursuing legal and administrative delays in the process by which trade unions obtain legal recognition; anti-trade union campaigns including campaigns by employer organisations and community leaders; isolation of workers from trade union representatives including where workers live on premises controlled by the company or where work is performed in places where access is restricted, such as private business complexes or export process zones.
The promotion of employer-dominated structures, worker involvement mechanisms and corrupt labour relations practices	Where employers create workers committees or other structures for the involvement of workers, there is a risk that they are creating barriers to exercising the right to establish or join trade unions and to bargain collectively. This is especially true for situations where genuine trade unions exist even if their activities are restricted. Such structures should not be treated as substitutes for trade unions and representative organisations of the workers' own choosing.
<b>The refusal to bargain in good faith</b>	Situations where enterprises refuse a genuine opportunity to bargain collectively or where they refuse to bargain should be identified. The right to bargain collectively encompasses a wide range of activity – it includes all negotiations that take place between a trade union and a business enterprise to determine working conditions (including health and safety), terms of employment and procedural matters. Collective bargaining can involve multiple employers or employer organisations. The outcome of collective bargaining is usually a written agreement intended to be binding on both parties, whether or not it is enforceable in courts. The failure to implement an agreement can mean that there is also a failure to respect the human rights of workers. Although the outcome of collective bargaining is voluntary for both parties, the right to bargain collectively limited to workers and not enterprises.
The effect of short-term contracts and other forms of casual contracts and informal employment on the ability of workers to organise	The excessive use of short-term contracts can prevent workers from organising due to their precarious employment status.

### Seek to prevent or mitigate harm in the enterprise's supply chain

- The enterprise should use its leverage with a supplier to prevent anti-union practices in its supply chain. However, if the supplier does not show measureable improvement after a reasonable amount of time (e.g. 6-9 months), the enterprise is encouraged to suspend orders until the supplier has demonstrated improvement.
- The enterprise should address any of its own activities which may contribute to or increase the risk of anti-union activities, such as its purchasing practices. See Box 4 on responsible purchasing practices.
- Enterprises may collaborate at a sector level to increase leverage with suppliers. Enterprises may also enter into direct agreements with trade unions, such as through global framework agreements or freedom of association protocol agreements to implement standards on trade union rights in the supply chain. See Introduction and Box 13.
- In cases in which severe human rights impacts have been identified, such as violence against trade unionists, the enterprise should disengage. See section 3.2.5 for information on responsible disengagement.

#### Box 13. Protocol agreements

Freedom of association protocol agreements establish a joint understanding and commitment between trade unions and enterprises regarding the implementation of freedom of association within industrial relations within a specific context. They may be established locally between a single brand, supplier and trade union or at a regional and sector-wide level between a group of buyers, suppliers and trade unions. Protocol agreements may be legally binding.

If choosing to establish a protocol agreement, it is recommended that:

- all parties enter the negotiation of the protocol agreements with best faith efforts
- the protocol agreement take into consideration the local context
- brands and buyers provide business incentives for suppliers to comply in the form of longer-term sourcing contracts.

The effectiveness of the protocol relies partially on the establishment of an operational and effective dispute resolution mechanism. Protocols are therefore encouraged to establish mutually acceptable protocols for resolving disputes through, for instance, the appointment of private conciliators, mediators or arbitrators.

#### Selected international instruments and standards

- OECD Guidelines for Multinational Enterprises, Chapter IV. Human Rights
- OECD Guidelines for Multinational Enterprises, Chapter V. Employment and Industrial Relations
- ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

- ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
- ILO Workers' Representatives Convention, 1971 (No. 135); Recommendation 1972 (no 143)
- Universal Declaration of Human Rights, Article 23
- International Covenant on Civil and Political Rights, Article 22
- International Covenant on Economic, Social and Cultural Rights, Article 8

**Resources**

- Freedom House (2010), *The Global State of Worker's Rights*, includes an assessment of the Freedom of Association in 165 countries.
- NAFTA Labor Secretariat has produced substantive analysis of workers' freedom of association in member countries.
- Committee on Monitoring International Labor Standards, National Research Council of the National Academies (2004), *Monitoring International Standards: Techniques and Sources of Information*, the National Academies Press.
- ILO Committee on Freedom of Association and Committee of Experts on the Application of Conventions and Recommendations.
- For information on relevant ILO standards see the ILO Helpdesk.

## MODULE 7. WAGES

The scope of due diligence on wages should include both wage compliance with national law and alignment with the OECD Guidelines that wages satisfy the basic needs of workers and their families.<sup>56</sup> This module is therefore divided into two sections: Wage Compliance with National Law and Wages satisfy the basic needs of workers and their families.

### Wage Compliance with National Law

#### Embed responsible business conduct in enterprise policy and management systems

##### *Policy*

In addition to adopting a policy commitment on wages, enterprises are encouraged to adopt policies on risk factors for non-compliance with wages (where appropriate), such as the recruitment and hiring of migrant workers, subcontracting, etc. See Box 14.

#### Identify potential and actual harms in the enterprise's own operations and in its supply chain

##### *Scoping exercise*

Wage non-compliance is a risk at all stages of the garment and footwear supply chain that are labour-intensive and employ low-income workers. Enterprises are therefore encouraged to focus their scoping exercise on country risk factors. All countries that do not have strong regulatory enforcement of wages or lack effective collective bargaining mechanisms may be considered higher-risk for wage non-compliance.

Additional example risk factors include:

- Multiple rates for minimum wages.
- Workers are paid piece-rate.
- The sector employs high rates of migrant workers.<sup>57</sup>
- The sector employs high rates of informal workers.

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<sup>56.</sup> The OECD Guidelines, V.4b state that “When multinational enterprises operate in developing countries, where comparable employers may not exist, provide the best possible wages, benefits and conditions of work, within the framework of government policies. These should be related to the economic position of the enterprise, but should be at least adequate to satisfy the basic needs of the workers and their families.” Reference should also be made to Chapter V of the Guidelines, which recommends that enterprises respect human rights as expressed in the International Bill of Human Rights, including ICESCR.

<sup>57.</sup> Migrant workers may lack knowledge of domestic laws and recourse to raise grievances. Migrant workers are also vulnerable to wage discrimination.

- Workers live on site.<sup>58</sup>
- Employers employ high rates of young workers and/or apprentices.
- Workers are paid in cash rather than electronically (or by other traceable means).
- Workers have high illiteracy rates and/or low levels of education.

### ***Supplier assessments***

Enterprises may prioritise supplier assessments in sourcing countries that hold a higher risk of non-compliance with minimum wage laws.

The supplier assessment should provide assurance of compliance with national minimum wage. This may be difficult to ascertain in practice as suppliers are often reluctant to share the breakdown of their expenses. Independent third parties that are trusted by both parties and are not engaged in price negotiations may help to alleviate fears that transparency in costs will lead to changes in pricing. Enterprises are encouraged to rely on existing guidance on how to assess suppliers for wage compliance. Those conducting assessments should have a strong understanding of national labour laws.<sup>59</sup>

In addition to wage compliance with national laws, assessments should also cover: whether workers are adequately informed of their wages; payments are made on time; workers are provided with clear wage statements that they can read; workers are free to choose how they spend their wages; deductions are reasonable and in accordance with national law and collective agreements; compulsory bonuses and/or allowances are provided; legally required leave is paid including maternity leave, see Module 7, Working time; and all relevant social security contributions are paid, collected and submitted.<sup>60</sup> To the extent feasible, supplier assessments should likewise cover wage discrimination and seek to assess whether workers are paid different wage levels due to factors such as gender, race, nationality, etc.

Supplier assessments should include engagement with workers and trade unions and representative organisations of the workers' own choosing.

### **Cease, prevent or mitigate harm in the enterprise's own operations**

The enterprise should develop a corrective action plan (CAP) to prevent non-compliance with wage legislation. Example components of a CAP include:

- Increase worker awareness – for example, through training, resources (e.g. booklets), workshops, and ongoing support. Example training and information provided to workers may cover:
  - minimum wage requirements
  - how to read a payslip
  - how to calculate wages, benefits and other forms of compensation

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<sup>58.</sup> Deductions in payments for on-site housing may increase the risk that workers are not paid legal wage limits.

<sup>59.</sup> See also the French NCP Report on Implementation of the OECD Guidelines in the Textile and Clothing Sector.

<sup>60.</sup> See Better Work, Guidance Sheet 5: Compensation.

- procedures for wage adjustments (as relevant).
- Establish management systems to mitigate the risk of non-compliance:
  - Provide training to human resources or other relevant staff responsible for the payment of wages. Example topics include: national laws and relevant collective agreements; rates for regular and overtime hours; calculation of benefits; how to calculate deductions and ensure that deductions are reasonable and compliant with national law; record keeping.
  - Provide clear wage statements to workers.
  - Establish clear, complete and accurate payroll records.
  - Establish payment mechanisms which reduce the risk of fraud in payments (e.g. automated payments).
- Mitigate the risk of insufficient resources to provide minimum wages by improving systems to plan production and establishing effective financial management and planning systems.

#### **Seek to prevent or mitigate harm in the enterprise's supply chain**

- The enterprise should assess and prevent its contribution to harm through its price negotiations and purchasing practices. See Box 4 on responsible purchasing practices.
- The enterprise is encouraged to direct sourcing towards suppliers that comply with national minimum wages and negotiated wages.
- The enterprise is encouraged to support its suppliers to prevent or mitigate harm, where feasible, by providing technical guidance – for example, on record keeping and financial management systems – and facilitating linkages to local service providers where available and appropriate (e.g. to provide automated payments to workers).
- In recognition of the links between wages, collective bargaining and working time, the enterprise is also encouraged to conduct due diligence on these sector risks See Module 4 and Module 6.

#### **Provide for or co-operate in remediation where appropriate**

##### ***Determine the appropriate form of remedy***

Compensation is often the most appropriate form of remedy; however, remedy should meet the Guidance in section 6.4.

### **Wages satisfy the basic needs of workers and their families**

#### **Identify potential and actual harms in the enterprise's own operations and in its supply chain**

##### ***Scoping exercise***

The enterprise is encouraged to identify countries from which it sources in its supply chain where wages do not meet the basic needs of workers and their families. See Box 14 below for recommendations on how to do this. Enterprises should be aware of categories of workers who may be excluded from

minimum or negotiated wages and therefore vulnerable to wages that do not satisfy basic needs. Examples of vulnerable workers include:

- workers employed in the informal economy
- international migrant workers<sup>61</sup>
- workers paid through piece-rate versus hourly wages

Where feasible and reasonable, enterprises should prioritise further due diligence in countries with the greatest discrepancy between the actual wages and the wages necessary to satisfy basic needs.

### *Supplier assessments*

In light of the fact that risk is prevalent across a sourcing country, individual supplier assessments may not provide any new information. Enterprises are encouraged to consult with stakeholders, most importantly workers and trade unions and representative organisations of the workers' own choosing, to understand the severity of the discrepancy between real wages and wages that satisfy the basic needs of workers and their families.

#### **Box 14. Identification of higher-risk sourcing countries**

Identifying countries that are higher-risk for wages that do not meet the basic needs of workers and their families can be challenging in practice. Countries often have several rates for minimum wages, which can vary by region, age of worker, economic activity or professional occupation. This can make it difficult to estimate one minimum wage level per country per sector. Furthermore, whether the applicable wage rate satisfies the basic needs of workers and their families is dependent on the local cost of a basket of basic goods and services in the local context and on the number of dependent family members.

The cost of living may be used to compute the cost for basic needs and then compared with minimum wage levels in the sector. Enterprises may also compare minimum wages to wages in the middle of the country wage spectrum (the so-called "median wage"). Median rather than mean earnings provide a better basis for international comparisons as this accounts for differences in earnings dispersion across countries. Another approach is to calculate a threshold wage (e.g. 60% of the median wage in the country) and compare it with the minimum or negotiated wage in the sector. Enterprises may consider the most relevant minimum wage, which is defined as the rate applicable to the largest number of workers within the sector in a given country.

The prevalence of excessive overtime in many cases is an indicator that wages that do not meet the basic needs of workers and their families.

Given the complexity, enterprises are encouraged to collaborate at an industry level with workers, trade unions and experts to identify high-risk countries.

### **Seek to prevent or mitigate harm in the enterprise's supply chain**

Bilateral engagement with suppliers may not be sufficient to increase access to wages that meet the basic needs of workers and their families. Within this context, enterprises in consultation (and

<sup>61</sup>. Wage rates may differ for international migrant workers and domestic workers.

collaboration where appropriate) with trade unions and other enterprises, may consider engaging at a national or sector-wide level to demonstrate support for effective wage fixing and enforcement mechanisms.

Enterprises should consider the following factors in making this determination:

- the severity of risk of wage discrepancy between actual wages and wages necessary to satisfy basic needs
- the political will of the government
- the current effectiveness of existing wage-setting mechanisms
- the leverage of the industry broadly with government (e.g. percentage of economy's total merchandise exports).

Broader engagement may take a number of forms and the nature of engagement should reflect the specific context. Example forms of engagement include:

- Collaborate with other enterprises to jointly indicate support for wages that satisfies the basic needs of workers and their families; and/or industry-wide collective agreements to be registered and legally enforceable under national laws.
- Encourage suppliers to negotiate towards a wage that meets basic needs.
- Commit to continued sourcing in high-risk countries if wages are negotiated and incorporated into national law to support wages that meet basic needs.

Enterprises are encouraged to develop strategies for joint action in relation to the above. However, engagement with government can be a long process. Enterprises should focus on compliance with national law and the right to establish or join a trade union and representative organisations of the workers' own choosing and the right to collective bargaining while continuing to engage government on the above.

#### **Selected international instruments and standards**

- OECD Guidelines for Multinational Enterprises, Chapter V, Paragraph 4.b.
- ILO Protection of Wages Convention, 1949 (No. 95) and Recommendation, 1949 (No. 85).
- ILO Minimum Wage Fixing Convention, 1970 (No. 131) and Recommendation, 1970 (No. 135).
- ILO Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173) and Recommendation, 1992 (No. 180).
- UN Charter on Social, Economic and Cultural Rights, Article 7.
- Universal Human Rights Declaration, Article 23.



## INTRODUCTION TO ENVIRONMENTAL MODULES

The garment and footwear sector is highly diverse with end products ranging from ready-made garments to protective footwear to luxury goods. Each stage of the supply chain has an impact on the environment. However, due to the wide variance in processes, inputs and outputs, the extent and nature of that environmental impact varies greatly from one stage to the next.

Modules 8-11 provide guidance on how to conduct due diligence on environmental issues primarily found in the raw material production and manufacturing stages of the garment and footwear supply chain. Issues covered in these modules have been selected based on known environmental risks in the sector; however, they are not comprehensive. When scoping risks in its supply chain, an enterprise may identify different environmental risks from those included in modules 8-11.

A significant portion of product-related environmental impacts can be influenced during the product design phase. Therefore, as a component of due diligence, enterprises should take steps to understand the environmental risks linked to their products and adopt controls during the product design phase to reduce the environmental risk of their product lines.<sup>62</sup> In this regard, enterprises should consider the environmental characteristics of a product alongside other features, such as feasibility, cost and demand, when assessing products for development. When determining whether to take a product from design to development, considerations may include:

- *Material choice*: Over the full extent of production, some materials hold greater risks of adverse impacts than others. This is likewise true for the packaging of a product.
- *Use phase* (e.g. wearing, washing, drying, ironing and repairing): Many environmental impacts – notably water use and energy consumption – occur during the use of a product, specifically its laundering.
- *End of life*: The overall impacts of a product on the environment are also affected by whether the product goes to landfill or whether it can be re-used or recycled and the ease of re-use and recycling. Additionally, products with very short use phases (e.g. worn for only 3-6 months) may contribute more to resource depletion than longer-lasting products.

Generally, enterprises are encouraged to consider the environmental impacts of a product across its full life cycle to the extent possible; however, the enterprise may take a risk-based approach and prioritise the most severe risks.

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<sup>62</sup> The number of an enterprise's product lines may affect the nature and extent of due diligence.

## MODULE 8. HAZARDOUS CHEMICALS

This module focuses on the environmental impacts of hazardous chemicals. For information related to health and safety risks, see Module 5, Occupational health and safety.

### **Identify potential and actual harms in the enterprise's own operations and in its supply chain**

#### *Scoping*

The enterprise should:

- Scope the chemicals commonly used in the production of goods within its subsector, with an emphasis on identifying harmful and hazardous chemicals and restricted chemicals. Enterprises are encouraged to rely on existing resources.
- Identify higher-risk stages in its own operations and in its supply chain for the use of harmful and hazardous chemicals and restricted chemicals. For most enterprises operating in the garment and footwear supply chain, the highest risk is found at textile production and tanneries.
- Identify higher-risk countries for the use of hazardous chemicals, which include those that do not adequately regulate the use of chemicals or enforce existing regulations.
- Establish an inventory of chemicals being used in the production and manufacturing of the enterprise's products (taking a risk-based approach).
  - As a starting point, the enterprise may identify the most common chemical groups used in the production of its products and systematically work towards a more comprehensive inventory of chemicals.
  - An enterprise with numerous and diverse product lines may prioritise the assessment of products that are associated with higher risk for hazardous chemicals first and systematically work towards establishing a more comprehensive inventory of chemicals.

#### *Supplier assessments*

- Enterprises should work towards identifying suppliers operating in higher-risk countries at higher-risk stages (e.g. textile production and tanneries) of the supply chain for harmful and hazardous chemicals.
- Enterprises may rely on existing guidance and may engage in existing credible industry initiatives to assess suppliers.
- Supplier assessments should include on-site visits, chemical tests and quality certificates.

- Where relevant, enterprises are encouraged to determine whether printing or other processes that are higher-risk for use of hazardous and harmful chemicals are conducted in-house by the supplier or subcontracted.

### **Cease, prevent or mitigate harm in the enterprise's own operations**

As part of its corrective action plan (CAP), the enterprise is encouraged to:

- Support the development of and adopt a common industry-wide Manufacturing Restricted Substances List (MRSL) for the sector based on a credible scientifically based assessment of hazards (environmental risk assessment and health risk assessment).<sup>63</sup>
- Support the development of and adopt a common industry-wide Research List for known harmful or hazardous chemicals that have not yet been restricted through regulation and for which no viable substitute has yet been found. Enterprises should not use harmful or hazardous chemicals on the Research List indefinitely but should aim to phase out chemical use as viable alternatives are identified within a reasonable amount of time. Research Lists should be communicated with chemical suppliers.

As part of its corrective action plan, the enterprise should:

- Stop using banned chemicals on the MRSL immediately.
- Identify and use substitutes for chemicals on the MRSL based on scientific data and internationally accepted methodology for assessing hazards. The enterprise may use existing credible substitution lists. The enterprise should seek to ensure that trade-offs with other potential impacts (e.g. water or energy) are evaluated before adopting substitutes.
- Implement best available techniques (BAT) as defined by Best Available Techniques Reference Documents for the sector or subsector.<sup>64</sup>
- Implement a robust chemical management plan at the site level, including safe chemical storage, labelling of chemicals, use of personal protective equipment and the availability of safety data sheets to anyone that handles chemicals. For example, where an exposure pathway exists between the hazard and worker, prevent harm first by elimination, substitution or complete isolation through engineering controls; secondly, if this is not possible, by control of the hazards through barriers, isolation, guards, shielding or effective local ventilation; and, as a last resort, through personal protective equipment. The enterprise is encouraged to rely on existing guidance and standards for chemical management.

<sup>63.</sup> An environmental risk assessment includes hazard identification, hazard characterisation, exposure assessment and risk characterisation. The first two steps are regarded as the process of hazard assessment. The methodology of the environmental risk assessment should align with OECD guidance. See OECD Environmental Risk Assessment Toolkit.

A human health risk assessment also includes hazard identification, hazard characterisation, exposure assessment and risk characterisation. The methodology of the health risk assessment should align with the World Health Organization guidance. See International Programme on Chemical Safety, WHO Human Health Risk Assessment Toolkit: Chemical Hazards. Health risks are also addressed in Module 5, Occupational health and safety.

<sup>64.</sup> See Integrated Pollution Prevention and Control, Best Available Techniques Reference Document for the Textiles Industry, (2003).

- Provide adequate training to management and workers on chemical use, storage, etc.

The enterprise may assess if the business model in place provides incentives for know-how exchange and resource efficiency, or rather stimulates resource overconsumption and chemicals' misuse. The enterprise may choose to implement innovative business models (e.g. chemical leasing) where appropriate to reduce the use of harmful chemicals.

### **Seek to prevent or mitigate harm in the enterprise's supply chain**

The enterprise is encouraged to:

- Support the development of and adopt a common MRS� for the sector based on a credible scientifically based assessment of hazards (environmental risk assessment and health risk assessment).
- Communicate the MRS� (and any additional expectations regarding chemical use) to all suppliers operating at higher-risk stages of the supply chain, regardless of where they are located.
- Identify substitutes for chemicals on the MRS� based on scientific data and internationally accepted methodology for assessing hazard and risk. The enterprise may use existing credible substitution lists. The enterprise should seek to ensure that trade-offs with other potential impacts (e.g. water or energy) are evaluated before adopting substitutes.
- Support its suppliers in the implementation of corrective action plans. While engaging with suppliers on chemical management, enterprises are encouraged to designate a point of contact for chemical management and communicate it to the supplier. In return, the supplier should establish a point of contact for chemical management with the enterprise.
- Establish a policy on subcontracting, if common practice, to mitigate the risk of harm linked with subcontracted suppliers. See Box 2 on subcontracting.

The enterprise is encouraged to continue to engage with its supplier during the implementation of the CAP. However, if the supplier continues to not comply with limits or usage bans for hazardous chemicals on the MRS�, the enterprise should suspend orders or disengage until the supplier has stopped using those chemicals.

#### **Selected international instruments and standards**

- OECD Guidelines for the Testing of Chemicals
- OECD Principles of Good Laboratory Practice (GLP)
- OECD Recommendation of the Council on Implementing Pollutant Release and Transfer Registers (PRTRs)
- OECD Guidelines for Multinational Enterprises, Chapter VI. Environment.

#### **Resources**

- Environmental Risk Assessment Toolkit, OECD.
- Enterprise-level indicators for resource productivity and pollution intensity, UNIDO / UNEP RECP Programme.

- World Health Organization (WHO) Human Health Risk Assessment Toolkit.
- OECD (2011), "Chapter 2: SIDS, The SIDS Plan and the SIDS Dossier" in the *Manual for Investigation of HPV Chemicals*, Organisation for Economic Co-operation and Development.
- UN (2011), *The Globally Harmonized System of Classification and Labelling of Chemicals* (GHS), Fourth revised edition, United Nations, New York and Geneva.
- OECD eChem Portal
- OECD Pollutant Release and Transfer Register
- OECD Portal on Perfluorinated Chemicals
- OECD, "OECD Substitution and Alternatives Assessment Toolbox (OECD SAAToolbox)," Organisation for Economic Co-operation and Development, Paris.
- European Chemical Substances Information System (ESIS)
- Environment and Climate Change Canada, Clearing House, Textile Mills and Clothing Manufacturing
- OECD, Emission Scenario Documents (ESD)
- OECD Substitution and Alternatives Assessment Toolbox (OECD SAAToolbox)
- OECD, Frameworks and Guides for Substitution of Chemicals, OECD Meta-Review (OECD)
- Chemical Leasing Programme (UNIDO)

## MODULE 9. WATER

### Water consumption

#### Identify potential and actual harms in the enterprise's own operations and in its supply chain

##### *Scoping exercise*

- In the garment and footwear supply chain, the most water-intensive processes are cotton growing, tanneries and textile production (e.g. pretreatment, dyeing/printing and finishing).
- The enterprise should determine whether cotton growing, leather tanneries and textile production (and all other water-intensive processes) in its supply chain are occurring in water-stressed areas, to the extent feasible.<sup>65</sup> Enterprises are encouraged to use existing resources to identify water-stressed areas.<sup>66</sup>

##### *Supplier assessment*

- Enterprises should prioritise suppliers operating at higher-risk stages and higher-risk countries or water-stressed areas. For many operating in the garment and footwear sector, this means assessing at cotton production, tanneries and textile production in higher-risk countries or in water-stressed areas.
- It may be difficult to identify individual suppliers operating upstream from the enterprise. Enterprises are encouraged to apply the recommendations in Box 3.

#### Cease, prevent or mitigate harm in the enterprise's own operations

- The enterprise is encouraged to implement best available techniques (BAT) as defined by Best Available Techniques Reference Documents for the sector or subsector.<sup>67</sup>
- Where there is a risk of harm to the environment, the enterprise is encouraged to avoid reference to the lack of full scientific evidence as a reason for postponing cost-effective measures to prevent or minimise such damage, consistent with the scientific and technical understanding of the risks, taking into account risks to human health and safety.
- Enterprises may also rely on existing guidance on how to promote water efficiency and/or reduce dependence on fresh water at textile production, tanneries and cotton growing. Example methods

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<sup>65.</sup> Water stress occurs when the demand for water exceeds the available amount during a certain period or when poor quality restricts its use. Water scarcity, water quality, environmental flows and the accessibility of water impact water stress.

<sup>66.</sup> See OECD (2015).

<sup>67.</sup> See IPPC (2003).

are likely to include: investment in water-saving equipment; water re-use and reduction in water usage (for example in dyeing). Policy and training should support any water management plan.

### **Seek to prevent or mitigate harm in the enterprise's supply chain**

- The enterprise should determine whether it can source from water-stressed areas responsibly – for example, by promoting water efficiency and/or reducing process dependence on fresh water amongst its suppliers. When considering expansions, enterprises should also consider ways of addressing net increase in water demand.
- In cases in which the enterprise cannot source from water-stressed areas responsibly, it should direct its sourcing to regions that are not water-stressed.
- In cases in which the enterprise determines that it can source from water-stressed areas responsibly, it is encouraged to support its suppliers in the development and implementation of water efficiency plans and/or reduce process dependence on fresh water.
- Enterprises should communicate with their suppliers on why water efficiency is important to the community and to their business.

## **Pollution and wastewater management**

### **Identify potential and actual harms in the enterprise's own operations and in its supply chain**

#### *Scoping exercise*

- The enterprise should identify stages in its supply chain that are associated with higher risk for water pollution and the need for adequate wastewater management. In the garment and footwear sector, these are likely to be cotton growing and wet processing (textile and leather).
- The enterprises should determine whether wet processing is located in higher-risk countries. Elements to consider include:
  - Does the country (or production cluster) have adequate wastewater infrastructure?
  - Does the country adequately enforce its wastewater regulations (i.e. are there credible inspections)?
- Country-level data may not be sufficient in determining the above. Local-level conditions should be taken into account (e.g. risk of leakage to soils and aquifers; the dilution capacity and the sensitivity of the receiving waters).
- In relation to cotton, the enterprise should determine whether cotton is grown in upper catchment areas and therefore poses higher risks of contaminating the water basin.<sup>68</sup>
- Enterprises should determine if cotton growing is occurring in countries with poor regulation and enforcement of chemical use (e.g. fertilisers and pesticides) in cotton growing.

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<sup>68</sup>. UNEP (2010), “Sick Water, The Central Role of Wastewater Management in Sustainable Development; A Rapid Response Assessment”, United Nations Environment Programme, Geneva.

### ***Supplier assessment***

- Enterprises should prioritise suppliers operating at higher-risk stages and higher-risk countries or higher-risk locations (e.g. upper catchment areas). For many enterprises operating in the garment and footwear sector, this means assessing at cotton production, tanneries and textile production in higher-risk countries or higher-risk locations.
- It may be difficult to identify individual suppliers operating upstream from the enterprise. Enterprises are encouraged to apply the recommendations in Box 3.

### **Cease, prevent or mitigate harm in the enterprise's own operations**

- The enterprise is encouraged to implement best available techniques (BAT) as defined by Best Available Techniques Reference Documents for the sector or subsector.<sup>69</sup>
- Where there is a risk of harm to the environment, the enterprise is encouraged to avoid reference to the lack of full scientific evidence as a reason for postponing cost-effective measures to prevent or minimise such damage, consistent with the scientific and technical understanding of the risks, taking into account risks to human health and safety.
- Enterprises may also rely on existing guidance, some of which are included below. Common components of a corrective action plan (CAP) are likely to include:

#### *Cotton Growing*

- responsible chemical management of fertilisers and pesticides
- optimisation of water use and irrigation practices
- implementation of best available techniques (where feasible)
- farmer training and capacity building

#### *Wet processing (Textile and Tanneries)*

- responsible chemical use, see Module 8. Hazardous chemicals
- effective wastewater management – effective operation and maintenance of effluent treatment plant (ETP)
- technical training for operation and maintenance of ETP on basic water flow within the factory, function of wastewater treatment steps, measurement of wastewater and sample collection and analysis
- support of water management that results in zero liquid discharge or water recycling (where feasible).

#### **Selected international instruments and standards**

- OECD Guidelines for Multinational Enterprises, Chapter VI. Environment.
- OECD Principles on Water Governance

<sup>69</sup>. See integrated IPPC (2003).



**Resources**

- OECD (2015), Stakeholder Engagement for Inclusive Water Governance, OECD Studies on Water, OECD Publishing, Paris.
- OECD (2015), “Securing Water, Sustaining Growth”, Report of the GWP/OECD Task Force on Water Security and Sustainable Growth, Organisation for Economic Co-operation and Development, Paris.
- IPPC (2003), Best Available Techniques Reference Document for the Textiles Industry, European Commission, Brussels.
- IPPC (2013), Best Available Techniques Reference Document on the Tanning of Hides and Skins, European Commission, Brussels.
- UNGC (2010), The CEO Water Mandate, Guide to Responsible Business Engagement with Water Policy, United Nations Global Compact, Geneva.

## MODULE 10. GREENHOUSE GAS EMISSIONS

Climate change is an overarching challenge that concerns society as a whole. As important users of energy and large sources of emissions, enterprises in the garment and footwear sector have a role to play in transitioning to a low-carbon economy.

This module does not provide comprehensive guidance on how to measure and reduce an enterprise's greenhouse gas (GHG) emissions. Rather, this module is intended to highlight the issues related to greenhouse gases in the sector within the due diligence framework. Enterprises are encouraged to refer to existing guidance on how to measure, reduce, monitor and report GHG emissions in their own operations and in their supply chains.

### KEY TERMS

**CO<sub>2</sub>-e (or CO<sub>2</sub> equivalent)** - The universal unit of measurement to indicate the global warming potential (GWP) of each of the six greenhouse gases expressed in terms of the GWP of one unit of carbon dioxide. It is used to evaluate releasing (or avoiding releasing) different GHGs against a common basis.

**Greenhouse Gases (GHG)** - The atmospheric gases responsible for causing global warming and climate change. The major GHGs are carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>) and nitrous oxide (N<sub>2</sub>O). Less prevalent – but very powerful – greenhouse gases are hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulphur hexafluoride (SF<sub>6</sub>). GHG emissions refers to the release of GHGs into the atmosphere.

Source: OECD, Transition to a Low-carbon Economy: Public Goals and Corporate Practices, 2010

### Measure greenhouse gas emissions

Measuring GHG emissions is a critical first step to reducing the carbon footprint of an enterprise's activities. It helps an enterprise to assess its impact on the climate and to design cost-effective emission reduction plans. Enterprises can measure GHG emissions at a number of different levels.

- **Own operations:** Enterprises are encouraged to work towards measuring the GHG emissions that are a result of their own activities – these may include activities owned or controlled by the enterprise that release emissions straight into the atmosphere (i.e. direct emissions), or the enterprise's consumption of purchased electricity, heat, steam and cooling (i.e. energy indirect emissions).
- **Supply Chain:** Enterprises can measure their full supply chain emissions impact in order to focus their efforts on the greatest GHG reduction opportunities, leading to more sustainable decisions about the enterprise's activities and the products they buy, sell and produce.
- **Product:** Enterprises can measure the GHG emissions and removals associated with a specific product. GHG product life cycle analysis enables an enterprise to make informed choices to reduce GHG emissions from the products they design, manufacture, sell, purchase or use.

Enterprises with limited resources are encouraged to start by measuring the GHG emissions that are a result of their own operations and activities. Enterprises are likewise encouraged to share data on GHG emissions linked with common materials and processes with other industry actors.

## Reduce emissions

As with other issues in the enterprise's supply chain, the enterprise may take a risk-based approach to addressing its GHG emissions by focusing its resources where GHG emissions are greatest. When seeking to reduce emissions in their supply chain, enterprises are encouraged to use their leverage with suppliers to encourage suppliers to reduce emissions and/or to support suppliers directly in implementing measures to reduce GHG emissions.

Enterprises are encouraged to avoid reference to the lack of full scientific evidence as a reason for postponing cost-effective measures to prevent or minimise GHG emissions, consistent with the scientific and technical understanding of the risks.

Table 13. **Example measures to reduce GHG emissions and monitor improvements at different stages of a product's life cycle**

Risk Factor	Example measures to reduce GHG emissions and monitor improvements
<b>Fibre selection</b>	Consider the potential GHG emissions of a material alongside other features, such as feasibility, cost and demand when designing a product. <sup>1</sup> For example, synthetic fibres often have comparatively high GHG emissions as a result of energy required for raw material production. Conversely, plant fibres, such as cotton or linen, have comparatively low GHG emissions from production, with linen having substantially lower production-phase emissions, because of its comparatively low need for pesticides and fertilisers and irrigation. <sup>2</sup>
<b>Textile finishing</b>	<ul style="list-style-type: none"> <li>• Establish an energy management plan at the site level that includes company-wide coordinated measures for energy management.</li> <li>• Implement best available techniques (BAT) as defined by Best Available Techniques Reference Documents for the sector or subsector.<sup>3</sup></li> <li>• Implement energy efficiency measures (e.g. energy conservation technology, optimisation of steam generation and pressurised air, waste heat recovery from wastewater and waste gas, process optimisation, etc.).</li> <li>• Implement energy conservation measures (e.g. implementation of energy saving through improvements in the process and reaction conditions).<sup>4</sup></li> <li>• Increase efficiencies and quality so as to reduce the need for reprocessing due to failures.</li> <li>• Install and operate accurate meters and/or measuring software as a fundamental step to benchmarking performance and initiating efficiency improvement.</li> </ul>
<b>Transportation</b>	<ul style="list-style-type: none"> <li>• Reduce the need for urgent air freight by implementing responsible purchasing practices as outlined in Box 4.2. Consider the location of warehouses and distribution centres in relation to where products are sourced and sold so as to reduce transportation needs.</li> <li>• Require freight transporters to track and communicate CO2 emissions data.<sup>5</sup></li> <li>• Track emissions (in relation to transport) quarterly across business units (e.g. manufacturing and assembly units, distribution centres and customer centres).</li> </ul>
<b>Packaging</b>	<ul style="list-style-type: none"> <li>• Reduce size of packaging.</li> <li>• Use resources which can be re-used or recycled.</li> </ul>
<b>Use phase</b> The use phase is often the largest contributor to GHG	<ul style="list-style-type: none"> <li>• Use materials which can be re-used or recycled.<sup>6</sup></li> <li>• Design durable products that have a longer use phase.</li> </ul>

Risk Factor	Example measures to reduce GHG emissions and monitor improvements
emissions.	<ul style="list-style-type: none"> <li>• Increase customer awareness on behaviour that reduces carbon emissions such as: washing clothing less frequently (i.e. not after every use); washing clothing in cool water; using concentrated laundry detergents with less packaging; air-drying clothing; adjust drying processes based on fabric type.<sup>7</sup></li> <li>• Consider the potential GHG emissions of a product alongside other features, such as feasibility, cost and demand when assessing which materials to use in a product.<sup>8</sup></li> </ul>

## Notes.

1. The specific fibre type may also affect the use phase. For example, some fibres, such as linen, are more likely to be ironed. Other fibres, such as polyester, may need less energy to dry.
2. BSR (2009), Apparel Industry Life Cycle Carbon Mapping.
3. See Integrated Pollution Prevention and Control (IPPC) (2003), Best Available Techniques Reference Document for the Textiles Industry, European Commission.
4. In some cases, it has been found effective to separately consider general management techniques for reducing energy consumption and process-specific techniques to be developed in each specialised technical field. UNIDO and Ministry of International Trade and Industry (MITI) Japan (1992), Output of a Seminar on Energy Conservation in the Textile Industry,.
5. While freight forwarders are increasingly tracking CO2 data, there remains a wide variance in the extent of data tracked and communicated with customers.
6. However, Life Cycle Assessments (LCAs) demonstrate that GHG emissions related to garment disposal are very small, and generally result from small amounts of methane created during decomposition of natural fibres. See BSR (2009), Apparel Industry Life Cycle Carbon Mapping,.
7. The OECD Guidelines reflect the expectation that companies "promot[e] higher levels of awareness among customers of the environmental implications of using the products and services of the enterprise". OECD Guidelines, VI, 6c.

## Communicate

The Greenhouse Gas (GHG) Protocol is the internationally recognised standard for the corporate accounting and reporting of GHG emissions.<sup>70</sup>

### Collaboration

Enterprises are encouraged to collaborate in measuring, reducing, monitoring and reporting GHG emissions. Example forms of collaboration include:

- developing sector-wide tools for measuring and tracking GHG emissions on particular fibres, products and production processes
- sharing good practices for reducing GHG emissions
- requesting a clear road map from governments on climate change.

Collaboration is particularly relevant for small and medium-sized enterprises (SMEs) who may lack the resources to adequately measure GHG emissions across the full length of their products or supply chain.

### Resources

- Greenhouse Gas Protocol Corporate Value Chain (Scope 3) Accounting and Reporting Standard
- Greenhouse Gas Protocol Product Life Cycle Accounting and Reporting Standard
- (2003), Integrated Pollution Prevention and Control, Best Available Techniques Reference Document for the Textiles Industry, European Commission.
- (2010), “NRDC’s Ten Best Practices for Textile Mills to Save Money and Reduce Pollution”, Clean by Design, National Resource Defence Council.
- Industrial Assessment Center as part of the US Department of Energy.
- Hasanbeigi, A. (2010), Energy-Efficiency Improvement Opportunities for the Textile Industry

<sup>70.</sup>

The GHG Protocol is a multi-stakeholder partnership convened by the WRI and the WBCSD. The GHG Protocol develops internationally accepted GHG accounting and reporting standards and tools, and promotes their adoption in order to achieve a low-emissions economy world wide.

## MODULE 11. BRIBERY AND CORRUPTION

This Module recognises that bribery and corruption are gateway crimes for many other forms of wrongdoing addressed in this Guidance, including: child labour, forced labour, discrimination, violation of health and safety standards and environmental standards. The OECD Anti-Bribery Convention and 2009 Recommendation establishes legally binding standards on States Parties to criminalise the bribery of foreign public officials in international business transactions and provides for a host of related measures that make this effective. It is the first and only international anti-corruption instrument focused on the “supply side” of the bribery transaction.

### **Embed responsible business conduct in enterprise policy and management systems**

Enterprises should consider the good practices put forth in the OECD Good Practice Guidance on Internal Controls, Ethics, and Compliance, which include:

- Strong, explicit and visible support and commitment from senior management to the company's internal controls, ethics and compliance programmes or measures for preventing and detecting bribery, including the bribery of foreign public officials.
- A clearly articulated and visible corporate policy prohibiting bribery, including the bribery of foreign public officials.
- Oversight of ethics and compliance programmes or measures regarding bribery, including the bribery of foreign public officials, including the authority to report matters directly to independent monitoring bodies such as internal audit committees of boards of directors or of supervisory boards, is the duty of one or more senior corporate officers, with an adequate level of autonomy from management, resources, and authority.

### **Identify potential and actual harms in the enterprise's own operations and in its supply chain**

#### *Scoping exercise*

When identifying bribery and corruption risks, the enterprise should consider five broad groups of risk – country, sectorial,<sup>71</sup> transaction, business opportunity and business partnership.<sup>72</sup> It is also important that

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<sup>71.</sup> The OECD Foreign Bribery Report (Dec 2014), which analyses completed cases of the bribery of foreign public officials from 1999 to mid-2014, shows that the Manufacturing Sector accounted for 8% of foreign bribery cases during that period, and the Agriculture Sector accounted for 4% of cases. In addition, wholesale and retail trade accounted for 4% of such cases. Other service activities, such as leasing, accounted for 1% of cases.

<sup>72.</sup> See “Principle 3, Risk Assessment” of the UK Ministry of Justice (2010).

this exercise look at the nature and frequency of interactions with domestic or foreign public officials, and, perhaps most importantly, the enterprise's existing and potential types of business relationships.<sup>73</sup>

Risk assessment should likewise look internally to examine the extent to which internal structures or procedures may themselves add to the level of risk. Commonly encountered risk factors are included in Table 15. As part of this process, enterprises may assess the extent to which internal controls are implemented in accordance with the OECD Good Practice Guidance on Internal Controls, Ethics, and Compliance.

**Table 14.** External integrity risk factors

Risk Factor	Examples
<b>Country factors</b>	<p>The enterprise is operating in high-risk jurisdiction for bribery and corruption:</p> <ul style="list-style-type: none"> <li>perceived high levels of corruption in the public and/or private sector</li> <li>absence of effectively implemented anti-bribery legislation, including bribery offences in criminal law, and absence of corporate liability for such offences</li> <li>failure of foreign government, media, local business community and civil society to effectively promote transparent procurement and investment policies</li> </ul>
<b>Sector risks</b>	<p>The enterprise is linked to high-risk sectors. Relevant examples for the garment and footwear sector include:</p> <ul style="list-style-type: none"> <li>transportation and storage<sup>1</sup></li> <li>wholesale and retail trade<sup>2</sup></li> <li>manufacturing: inspections by local agencies in high-risk countries may pose increased risk</li> </ul>
<b>Transaction risks</b>	<p>When operating in a high-risk jurisdiction, certain transactions involving public officials can give rise to higher risks of bribery:</p> <ul style="list-style-type: none"> <li>public procurement, customs clearance, favourable tax treatment, licences and authorisations<sup>3</sup></li> <li>interaction with state-owned enterprise (SOE) officials, law enforcement, customs, transportation, local government, environment and procurement officials, and tax authorities</li> </ul>

Notes.

1. See Transparency International "Corruption Perceptions Index" and the Transparency International "Bribe Payers Index".
2. Wholesale and retail trade accounted for 4% of concluded cases of foreign bribery between 1999 and mid-2014. OECD Foreign Bribery Report.
3. Transportation and storage accounted for 15% of concluded cases of foreign bribery between 1999 and mid-2014. OECD Foreign Bribery Report. Public procurement was involved in 57% of concluded cases of foreign bribery between 1999 and mid-2014. OECD Foreign Bribery Report.

<sup>73.</sup> The OECD Foreign Bribery Report (2014) shows that between 1999 and mid-2014, 71% of completed foreign bribery cases involved bribery using intermediaries, including agents, legal advisors, corporate vehicles, associates and accountants.

**Table 15.** Internal enterprise integrity risk factors

Risk Factor	Examples
<b>Policy &amp; training</b>	<ul style="list-style-type: none"> <li>• Lack of clear anti-bribery message from the top-level management.</li> <li>• Lack of clear message that bribery of foreign public officials is prohibited, and not just bribery at home.</li> <li>• Limited policies and programmes are in place to support compliance with anti-bribery laws.</li> <li>• Deficiencies in relevant employee training, skills and knowledge of bribery risks in the enterprise's operations.</li> <li>• Lack of rules and procedures regarding requests for facilitation payments from public officials.</li> <li>• Lack of clarity in the organisation's policies on, and procedures for, gifts, meals and entertainment provided to those with whom the enterprise does business in foreign markets.</li> <li>• Lack of clear rules on political and charitable donations.</li> <li>• Lack of clear financial controls (e.g. How are the enterprise's bank accounts, petty cash fund and inventory monitored in foreign markets, particularly high-risk countries? What controls are in place with respect to these assets?)</li> <li>• Lack of clear controls for monitoring contract compliance.</li> <li>• Lack of whistleblower channels and protection from retaliation for those who report wrongdoing.</li> <li>• Lack of training and awareness-raising for business partners.</li> </ul>
<b>Transaction risks</b>	<ul style="list-style-type: none"> <li>• Limited monitoring and associated controls of enterprise's bank accounts, petty cash funds and inventory in foreign markets.</li> <li>• Limited monitoring of contract compliance.</li> <li>• Categories of expenses in the company's books and records that could be used to hide bribe payments.</li> <li>• Lack of an independent external audit.</li> </ul>
<b>Business risks</b>	<ul style="list-style-type: none"> <li>• Lack of control over business partners.</li> <li>• Retail outlets are maintained overseas.</li> <li>• Enterprise has limited control over foreign operations.</li> <li>• Apparent lack of qualifications or resources on the part of a joint venture partner or representative to perform the service offered.</li> <li>• Gifts, meals and entertainment are provided to those with whom the enterprise does business in foreign markets.</li> <li>• Unusual payment patterns, unusually high commission structures or special financial arrangements involving the enterprise or its foreign subsidiaries and related third parties.</li> <li>• Business relationships with state-owned business enterprises, foreign governments (e.g. public-private partnerships), foreign municipalities, foreign legislative bodies, foreign political parties and/or royal families or families with close connections to the political elite.</li> <li>• Employment of foreign officials.</li> </ul>



## Cease, prevent or mitigate adverse impacts in the enterprise's own operations and in its supply chain

Due diligence procedures to prevent or mitigate the risk of bribery should be proportionate to the identified risk. Anti-bribery due diligence measures to prevent or mitigate risk should incorporate good practices as set forth by the OECD Good Practice Guidance on Internal Controls, Ethics, and Compliance.<sup>74</sup> Good practices include the following:

- ethics and compliance programmes or measures designed to prevent or detect bribery, including the bribery of foreign public officials, should be applicable directors, officers, and employees, and applicable to all entities over which a company has effective control, including subsidiaries and should cover the following areas:
  - gifts, hospitality, entertainment and expenses<sup>75</sup>
  - customer travel
  - political contributions
  - charitable donations and sponsorships
  - facilitation payments<sup>76</sup>
  - solicitation and extortion
  - acceptance of goods<sup>77</sup>
  - personal investments and employment and related activities, including but not limited to obtaining a seat on the board of directors and employment for spouses or other relatives.
- ethics and compliance programmes or measures designed to prevent or detect bribery, including the bribery of foreign public officials, applicable – where appropriate and subject to contractual arrangements – to third parties, such as agents and other intermediaries, consultants, representatives, distributors, contractors and suppliers, consortia, and joint venture partners (hereinafter “business partners”), including, *inter alia*, the following essential elements:
  - properly documented risk-based due diligence pertaining to the hiring as well as the appropriate and regular oversight of business partners
  - informing business partners of the company's commitment to abiding by laws on the prohibitions against foreign bribery, and of the company's ethics and compliance programme or measures for preventing and detecting such bribery
  - seeking a reciprocal commitment from business partners.<sup>78</sup>

<sup>74.</sup> Although the measures in the OECD Good Practice Guidance apply specifically for the purpose of detecting and preventing the bribery of foreign public officials, they can be applied equally to detect and prevent all forms of bribery. However, it is important to explicitly state in relevant documentation and in awareness-raising and training programmes that bribery includes the bribery of foreign public officials, as this is not necessarily self-evident.

<sup>75.</sup> Enterprises are encouraged to establish thresholds appropriate to the local environment.

<sup>76.</sup> OECD 2009 Anti-Bribery Recommendation

<sup>77.</sup> See UNGC (2010).

<sup>78.</sup> For example, enterprises may incorporate anti-bribery or anti-corruption compliance language in all third-party contracts and require that high-risk suppliers have in place adequate procedures to prevent bribery.

- a system of financial and accounting procedures, including a system of internal controls, reasonably designed to ensure the maintenance of fair and accurate books, records and accounts, to ensure that they cannot be used for the purpose of bribery, including the bribery of foreign public officials, or hiding such bribery<sup>79</sup>
- measures designed to ensure periodic communication, and documented training for all levels of the company, on the company's ethics and compliance programme or measures regarding bribery, including the bribery of foreign public officials, as well as, where appropriate, for subsidiaries<sup>80</sup>
- appropriate measures to encourage and provide positive support for the observance of ethics and compliance programmes or measures against bribery, including the bribery of foreign public officials, at all levels of the company
- appropriate disciplinary procedures to address, among other things, violations, at all levels of the company, of laws against foreign bribery, and the company's ethics and compliance programme or measures regarding bribery, including the bribery of foreign public officials.<sup>81</sup>

In addition to the above, the enterprise is encouraged to:

- Implement a process to evaluate corruption risk prior to entering into a customer supplier relationship (e.g. prequalification) when operating in high-risk countries. The enterprise should establish clear rules and procedures for choosing a supplier and for establishing "preferred supplier" relationships.
- Join and actively participate in collective anti-bribery initiatives and multi-stakeholder processes at the sector level where relevant.<sup>82</sup>

## Track

Enterprises may use a range of mechanisms to provide insights into the effectiveness of procedures designed to prevent bribery and corruption in their own operations and in their supply chain.

- Staff surveys, questionnaires and feedback from training can provide an important source of information on effectiveness and a means by which employees and other associated persons can inform continuing improvement of anti-bribery policies.<sup>83</sup>
- Enterprises may also consider formal periodic reviews and reports for top-level management.<sup>84</sup>

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<sup>79.</sup> OECD 2009 Anti-Bribery Recommendation

<sup>80.</sup> Face-to-face interaction, which provides opportunity for supplier personnel to ask questions and provide feedback, is preferable, but when in-person training is not cost-effective or practical, web-based training is a useful alternative. See UNGC (2010), p. 21.

<sup>81.</sup> OECD 2009 Anti-Bribery Recommendation

<sup>82.</sup> For example, the Maritime Anti-Corruption Network is a network of maritime companies and their clients that promote good corporate practice in the maritime industry for tackling bribes, facilitation payments and other forms of corruption.

<sup>83.</sup> See "Principle 6, Monitoring and Review" in UK Ministry of Justice (2011).

<sup>84.</sup> Ibid. 83

- Enterprises may seek some form of external verification or assurance of the effectiveness of anti-bribery procedures.<sup>85</sup>

#### **Selected international instruments and standards**

- The OECD Guidelines for Multinational Enterprises, VII. Combating Bribery, Bribe Solicitation and Extortion.
- The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the Anti-Bribery Convention)
- The OECD 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (the 2009 Anti-Bribery Recommendation)
- 2009 Recommendation on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions
- 2006 Recommendation on Bribery and Officially Supported Export Credits
- United Nations Convention against Corruption (2000)

#### **Resources**

- OECD, Country Reports on the Implementation of the OECD Anti-Bribery Convention [www.oecd.org/corruption/countryreports/implementationoftheoecdanti-briberyconvention.htm](http://www.oecd.org/corruption/countryreports/implementationoftheoecdanti-briberyconvention.htm)
- OECD, Regional anti-corruption programmes [www.oecd.org/corruption/regionalanti-corruptionprogrammes.htm](http://www.oecd.org/corruption/regionalanti-corruptionprogrammes.htm)
- OECD (2006), OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones, Organisation for Economic Co-operation and Development, Paris.
- OECD (2014), OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials, Organisation for Economic Co-operation and Development, Paris.
- OECD (2010), OECD Good Practice Guidance on Internal Controls, Ethics, and Compliance, Organisation for Economic Co-operation and Development, Paris.
- UK Ministry of Justice (2011), *The Bribery Action 2010 Guidance*, UK Ministry of Justice, London.
- UNGC (2010), *Fighting Corruption in the Supply Chain, A Guide for Customers and Suppliers*, United Nations Global Compact, Geneva.

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<sup>85</sup>.

Ibid. 83

## **MODULE 12. RESPONSIBLE SOURCING FROM HOMEWORKERS**

This module is primarily targeted towards brands, garment and footwear manufacturers and their buying intermediaries.

This module aims to minimise the risk of the marginalisation of homeworkers, particularly the victims of extortion, including through formalisation and legalisation efforts with the objective of promoting responsible supply chains while creating economic and development opportunities for homeworkers. This Guidance recognises that there are no quick fixes and one-size-fits-all solutions. Governments, international organisations, donors, enterprises in the supply chain and civil society organisations may consider the opportunity to explore collaborative ways to make use of these suggested options or other complementary approaches as they deem appropriate in accordance with national laws.

### **Box 15. Framework for preventing and mitigating human rights and labour abuses when engaging homeworkers**

The following provides information on the broader framework necessary for the prevention and mitigation of human rights and labour abuses linked to homework. Enterprises should feed into the below framework when designing their due diligence processes; however, enterprises are not responsible for implementing all of the below recommendations on their own. Rather, the following may serve as a reference to all stakeholders involved in the prevention of human rights abuses and labour abuses when engaging homeworkers.

Homeworkers should be viewed as an intrinsic part of the workforce entitled to receive equal treatment and therefore should be formalised in order to achieve good terms and conditions of employment. In the context of this Guidance, formalisation is the process by which workers are transitioned from informal to formal jobs. The causes of informality are many and are generally unrelated to legality. For example, “self-employment status” can at times be used as a means of neglecting the responsibility to provide more formalised contracts. In other cases, homeworkers may be coerced into homeworking in order to lower the financial cost to the employer. Migrant workers may be particularly vulnerable due to employment restrictions. It may be ineffective to pursue formalisation through legislative reform alone; formalisation should be considered a process rather than a single step.<sup>1</sup> This formalisation process can be facilitated by:

- knowing the reasons for the lack of formalisation in existing homeworker production systems in order to identify the best strategies for incentivising and enabling formalisation<sup>2</sup>
- acknowledging the diversity in the types and sizes of homeworker activity
- providing technical assistance to help formalise homeworkers and other informal workers
- creating and participating in collaborative initiatives to establish the modalities and financing of support funds to assist with the formalisation process
- promoting the legalisation of workers.

### **Legalisation of operations**

Legal identity and recognition of “worker status” and/or “entrepreneur status” are often necessary first steps for the formalisation of workers; however this status should not be used to exploit workers as described above.<sup>1</sup> Enterprises, civil society organisations and the government can assist homeworkers to obtain contracts and other related authorisations through legitimate processes and consider other regulatory measures to legalise operations of homeworkers. The legalisation of homeworkers should not impose expectations for homeworkers that cannot be met and therefore marginalise homeworkers further (e.g. the obligation to work in a particular centre may marginalise homeworkers who can only work from home).

### **Organisation, representation and social dialogue**

The organisation of homeworkers is an important step that provides them with visibility and recognition and enables social dialogue in order to achieve good terms and conditions of employment.<sup>1</sup> Given the unique needs and circumstances of homeworkers, the organisation of homeworkers may look different from other organised workforces. The first steps in organising are often taken by community or women’s groups who are in a position to organise local groups which can later come together as a federation or trade union. Given the predominance of women homeworkers in the sector, in many contexts organisers should be women.

Example forms of assistance that could be provided by trade unions and other actors for homeworkers include awareness-raising and training on their legal rights, legal aid, medical insurance, credit and loan schemes and the establishment of co-operatives. There is also a need to develop positive strategies to combat all forms of discrimination, to which workers in the informal economy are particularly vulnerable.<sup>1</sup>

1. ILO (2008)

2. It is crucial that any formalisation scheme take the local context into consideration. See ETI, Homeworker Guidelines (2010).

## **Recommendations for enterprises**

### **Identify potential and actual harms in the enterprise’s own operations and in its supply chain**

- Homeworkers are found in many different supply chains in the sector. While some are employed in traditional handicraft work, such as embroidery and weaving, others are involved in more labour-intensive processes such as machining garments. The enterprise is encouraged to identify product lines and production processes which may include the involvement of homeworkers.
- The enterprise should identify sourcing countries where home work is more prevalent and where homeworkers are at higher risk of being exploited.
- The enterprise should assess prioritised suppliers to determine whether they have measures in place to source responsibly from workers. See example measures below.

### **Seek to prevent or mitigate harm in the enterprise’s own operations and in its supply chain**

The following includes example measures that an enterprise may take to promote responsible sourcing from homeworkers. Enterprises are encouraged to either implement the below measures themselves or to encourage and build the capacity of their suppliers to do so.

- Establish a prequalification system for intermediaries/agents that are involved in the contracting of work to homeworkers. Intermediaries should be compliant with national law.
- Establish internal protocols for the outsourcing of work to homeworkers (e.g. verification that agents handling the contract have been prequalified).
- Move towards contractual relationships with intermediaries that directly contract work to homeworkers and establish transparency requirements. For example, intermediaries may be required to:
  - Keep a record of all those receiving work. All working members of a family should be recorded as homeworkers. For example, in some contexts, it is common for only the father or husband to be recorded as a homeworker.
  - Keep a record of the quantity of work distributed and payments made. As homeworkers are usually paid on a piece-rate basis, intermediaries should record proper timings to ensure that the piece rate is set on the basis that it is possible to earn minimum wages.
  - Keep a record of any social security or health insurance benefits being provided to homeworkers.
- Provide training to intermediary agents on their legal obligations and the enterprise RBC policy.
- Where appropriate, identify and partner with local initiatives promoting the formalisation of homeworkers and their protection against exploitation. Local initiatives may focus on a number of areas including, but not limited to: rights training, skills training, legalisation and service provision.
- Engage with the local or national government to promote the rights of homeworkers to access equal treatment under the law. Examples include:
  - Indicate the enterprise's support (or the industry's support) for the coverage of the law to extend to workers in the informal economy.
  - Draw attention to the underlying causes of informality and encourage the government to remove underlying barriers to entry into mainstream economic and social activities.
  - Indicate the enterprise's support (or the industry's support when operation in collaboration) for the extension of social security coverage – by promoting access to health care and education – to informal workers, including homeworkers where not already provided for.

**Selected international instruments and standards**

- ILO Home Work Convention, 1996 (No. 177) and ILO Recommendation No. 204 Concerning the Transition from the Informal to the Formal Economy

**Resources**

- OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, Annex
- ILO (2008), *The Informal Economy: Enabling Transition to Formalization*, Background document to the Tripartite Interregional Symposium on the Informal economy: Enabling Transition to Formalization, International Labour Organization, Geneva