Brotherhood of St Laurence
Working for an Australia free of poverty

Draft OECD Principles of Corporate Governance

Submission to the Steering Committee

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Introduction

This submission to the OECD Steering Group on Corporate Governance is prepared by Serena Lillywhite, Manager, Ethical Business, Brotherhood of St Laurence, Australia. The Brotherhood of St Laurence (BSL) is an Australian welfare organisation that provides a range of services, research and advocacy to low income and vulnerable Australians. The BSL is actively involved in ethical business and corporate social responsibility, with an emphasis on responsible supply chain management in China. The BSL works closely with the Australian National Contact point to promote the OECD Guidelines for Multinational Enterprises and has presented at the OECD Roundtable on Corporate Social Responsibility in Paris, June, 2002 and the OECD Global Forum on International Investment in Shanghai, December 2002. Serena Lillywhite is a member of the OECD WATCH Consultative Committee.

This submission is prepared by Serena Lillywhite with initial contributions from Tricia Feeney, RAID, Rights and Accountability in Development, UK.

General Comments

The opportunity to revise the OECD Principles of Corporate Governance (the Principles), provides an opportunity to ensure the Principles have the broadest coverage and ensure synergy, where appropriate, with complimentary internationally recognised instruments. In particular, *The OECD Guidelines for Multinational Enterprises*, the *ILO Declaration on Fundamental Rights at Work* the *UN Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights* and the *Rio Declaration on Environment and Development*.

Currently, the draft text is focused on the core governance requirements concerning the Board of Directors and shareholders. This narrow focus limits the longevity of the Principles and is not consistent with current international thinking which places the corporate governance framework as part of a broader corporate social responsibility framework. The Principles would be enhanced by ensuring the broader responsibilities and obligations of directors and enterprises are listed. This would include:

- Responsibilities to local communities in both OECD and non OECD countries
- The human rights implications of business decisions
- The social and environmental implications of business decisions
- Responsibilities to stakeholders
- Role and responsibilities of financial intermediaries
- Greater disclosure on cross-boarder activities

The principles acknowledge that these issues are covered in other instruments. However, as a minimum these issues should at least be identified and documented in these Principles.

Revising the Principles provides an opportunity to acknowledge the vital role that the board of directors plays in strategic thinking and planning the enterprises operations. The Principles would be enhanced by encouraging proactive, innovative practices that go beyond the stated legislative requirements, and contribute to wealth creation benefits in the broadest sense. This can be seen as responding to ‘aspirational’ as well as ‘community’ expectations of the obligations of directors and shareholders. The principles should list the benefits that can be achieved, which include:

- Sustainable development
- Efficient use of capital, technology, human and natural resources
- Transfer of technology
- Development of human capital

- Greater coherence between the social, economic and environmental objectives
- Promotion of human rights

Documenting these benefits will encourage and promote the positive contributions that enterprises can make to economic, environmental and social progress, and minimise the difficulties to which activities may give rise.

The draft Principles do make reference to ethical practice. The Principles would be enhanced by strengthening the obligations to developing internal programmes, guidance and management systems that underpin a corporate culture that is committed to good corporate citizenship, ethical practices and good business and employee conduct. To support this, the Principles should go further with obligations concerning understanding, documenting and disclosing all cross-border activities and their impact. This is particularly important in non OECD countries and developing countries that may not have a strong institutional or regulatory framework.

The Preamble

Currently the Preamble in the draft text has a narrow focus and would be enhanced by documenting the broader obligations and responsibilities of directors and enterprises that promote responsible social and environmental practices that minimise any adverse impact on the natural environment, local communities and employees, including those in Non-OECD countries. The Principle does make reference to ‘business ethics and corporate awareness’ and the long term reputation of the firm (paragraph 3 of the preamble). However, this needs to be seen as an integral part of the governance framework and not an additional or secondary responsibility.

Paragraph 2 would be more complete with a final sentence on governance incentives. Suggested wording could be:

‘Such incentives must promote business practices that minimise adverse impacts on the natural environment and local communities’.

Paragraph 4 would be improved by further documentation of the complimentary mechanisms. Suggested wording is:

‘In addition, the Principles recognise that transnational corporations and other business enterprises, their offices and persons working for them are also obligated to respect the generally recognised responsibilities and norms contained in the UN treaties and other international instruments and mechanisms such as:

- UN Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights
- ILO Declaration on Fundamental Rights at Work
- Rio Declaration on Environment and Development

Paragraph 6 focuses on relationships among participants. It is recommended that an additional sentence is included to acknowledge the increasing influence of stakeholders, including trade unions, non-government organisations, representatives of civil society and consumers, on the corporate governance framework.

Paragraph 8 would be enhanced by reference to the OECD Guidelines for Multinational Enterprises in terms of their non-binding nature. In addition, a final sentence could be added, such as:

‘More importantly, in conjunction with other recognised international instruments, the Principles can be used to meet director’s broader social responsibility obligations’.

The final sentence in **Paragraph 9**, 'It is up to governments and market participants to decide how to apply the Principles…' should be removed as this effectively undermines the entire text.

An additional paragraph should be included which makes the links between sustainable foreign direct investment (sound macroeconomic policies and a stable regulatory environment) and corporate governance. In particular, additional reference should be made to cross border responsibilities with regard to transparent investment and capital flows and related trade and services, including supply chain management. This is applicable in both OECD and non-OECD countries.

Ensuring an effective corporate governance framework

This section briefly outlines the governance framework and as such needs an additional sentence:

'The corporate governance framework should be developed with a view to its overall impact on local communities, and must encompass social and environmental principles in accordance with recognised international mechanisms that promote corporate social responsibility and ethical business practices.'

Chapter 3, The role of stakeholders in corporate governance

This chapter is considered to be extremely important and can be improved by a greater recognition of the contribution of stakeholders to wealth creation and sustainable business practices. It is essential that this section be given further consideration by the Steering Group, and in particular, ensure the Principles look beyond the 'rights of stakeholders as established and protected by law'. All such references need to be removed. In its current form it does not recognise the responsibilities and obligations of directors and enterprises acting in both domestic and international environments where adequate laws may not exist, particularly developing countries.

In its current form it reduces the Principles capacity to go beyond the legislative requirements and be innovative, proactive and 'aspirational' in contributing to corporate social responsibility. The existing narrow view encourages a claims/compensation based approach to governance.

The existing principle should be redrafted to read:

'The corporate governance framework should recognise the rights of stakeholders and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound and socially responsible enterprises'.

An additional point should be added:
'Mechanisms and incentives should be developed that encourage the Bord to go beyond their legal requirements'.

Additional commentary could capture the strategic capacity of directors to work with, and be considerate of, all stakeholders. In addition, it is appropriate to make reference here to the OECD Guidelines for Multinational Enterprises. These Guidelines have an implementation mechanism that provides opportunities for stakeholders to raise specific instances that may be at odds with the Guidelines for investigation and comment by the appropriate National Contact Point. Both the principles and annotations should make reference to these implementation mechanisms.

Stakeholders need to be recognised as potential whistleblowers and as such need consideration as part of a governance framework that ensures appropriate protection and scope for concerns to be raised.

Chapter 4, Disclosure and transparency

This chapter would be enhanced by stronger references to stakeholders, and not just limited to shareholders.

The principle could be altered slightly to read:

'The corporate governance framework should ensure that timely and accurate disclosure is made to all shareholders and stakeholders on all matters regarding the corporation, including the financial situation, performance, ownership, social, environmental and human rights governance of the company'.

Disclosure should be consistent with the OECD Guidelines for Multinational Enterprises. Under section A, three additional points should be included as part of the minimum disclosure requirements:

- Environmental, social and human rights impact of Board decisions and enterprise activity
- Cross border financial and trade related activities, including intermediary 'chains' and production and supply networks.
- Industrial disputes, grievances and dispute resolution processes and complaints.

Chapter 5, Responsibilities of the board

This chapter can be enhanced by again adopting a broader view that goes beyond the legal requirements. In particular, greater reference can be made to the responsibilities of the board in creating an ethical business culture.

Commentary is required on the board's accountability beyond the company's auditors and shareholders, but to stakeholders and communities affected by the company's activities in which it operates.

The principle could be altered to read:

'The corporate governance framework should ensure the social responsibility and strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability and loyalty to the company, the shareholders, stakeholders and communities affected by the companies activities in which it operates'.

Section C could be enhanced:

'The board should apply high ethical standards and act with due diligence and care. It should take into account the interests of stakeholders, communities and individuals upon which business decisions impact'.

Section D requires two additional points:

Developing a corporate culture that goes beyond legal and fiduciary duties and promotes corporate social responsibility, ethical business practices and corporate citizenship.

Ensuring the activities of the enterprise is consistent with international instruments and mechanisms that promote corporate social responsibility.