Implementing Business Responsibility across Sectors

Report of the Consultation and Feedback on the Draft National Voluntary Guidelines for the Social, Environmental and Ethical Responsibilities of Business

New Delhi

10 March 2010

CONTENTS

BACKGROUND

The IICA-GTZ CSR Initiative (the "Project") is a bilateral project between the Indian Institute of Corporate Affairs (IICA) and the Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH. IICA is a society established by the Ministry of Corporate Affairs (MCA) as a think-tank and capacity building institute on issues of corporate affairs. GTZ is a federally-owned international cooperation enterprise for sustainable development which operates worldwide, on a public benefit basis, in order to support the German Government in achieving its development-policy objectives.

The Project's expanded Expert Group consists of experts from the government, business, chambers of commerce, civil society and other international development agencies. One of the objectives of the Project is the provision of support to the MCA in developing guidelines on responsible business for India. In pursuance of this objective, a Guidelines Drafting Committee (GDC) was constituted by IICA in November 2009, consisting of members of the Project's Expert Group. The GDC met several times during November and December 2009, and developed "National Voluntary Guidelines for the Social, Environmental and Ethical Responsibilities of Business" (the "GDC Draft Guidelines"). The Guidelines are attached here as **Annex A**. The Guidelines were presented to the MCA as input to the Voluntary CSR Guidelines (the MCA CSR Guidelines) released by the MCA in December 2009. The MCA CSR Guidelines state that "*after considering the experience of adoption of these guidelines by Indian Corporate Sector and consideration of relevant feedback and other related issues, the Government may initiate the exercise for review of these Guidelines for further improvement after one year*."

The Project's strategy for providing feedback into the MCA CSR Guidelines is to take the more detailed GDC Draft Guidelines as the starting point, collect feedback on this draft from stakeholders and present these to IICA by August 2010. The first such consultation and feedback session (the Special Interaction on CSR Guidelines) was held in New Delhi on 10 March 2010, with the Expert Group and other practitioners who have been closely connected with the Project. The agenda of the consultation and feedback session is attached here as **Annex B.** In addition, written comments were received from several stakeholders. For a list of the participants of the consultation and feedback session, as well as list of stakeholders from whom written comments have been received, please see **Annex C**.

The comments fall in the following broad categories:

- ➢ Comments relating to the introduction and context of the GDC Draft Guidelines
- ➢ Comments as to specific Principles and Core Elements
- ➢ Comments as to implementation or operationalisation guidance

A summary of the comments received in these areas is contained in this report. In addition, the written comments received, as well as a summary of the verbal comments received at the consultation are attached here as **Annex D**.

THE GDC'S DRAFTING PROCESS: A BRIEF OVERVIEW

Bharat Wakhlu, the Convenor of the GDC gave participants of the Consultation and Feedback a brief overview of the mandate, drafting process and experience of the Project's Guidelines Drafting Committee.

Members

The original members of the GDC are as follows:

Bharat Wakhlu	Tata Sons	Convenor
Dinesh Agrawal	NTPC	Member
Manoj Arora	MCA	Member
Neha Kumar	GTZ	Member
Shankar Venkateswaran	SustainAbility	Member
Vikas Goswami	Microsoft	Member
Viraf Mehta	Partners in Change	Member

Therefore, the members of the GDC represented a broad stakeholder group including the public sector, civil society and the private sector.

The GDC is to be expanded for Phase II.

Objective and Mandate of the GDC

The main objective with which the GDC had been constituted was:

- To formulate a draft framework guideline on the Social, Environmental and Ethical responsibilities of business, which would be offered to enterprises for voluntary adoption.
- Create conditions to achieve a consensus on the draft from the diverse stakeholders
- Ensure applicability to the unique Indian context, while drawing insights from best practices and international norms and frameworks such as ISO 26000, UNGC, GRI, OECD Guidelines in as much as they help to resolve our concerns. Also refer to BIS standard 16000, PSU CSR guidelines, and other sources.
- Specifically ensure that the framework addresses the concerns of Inclusive Development and Sustainability.

In fulfilling this mandate, the GDC was guided by several considerations. Firstly, the applicability of the guidelines across enterprise size – the guidelines had to be acceptable to the entire organized corporate sector: MSMEs as well as large enterprises. At the same time, the GDC had to frame the guidelines in a way such that competitive advantage of Indian business would not be compromised by their adoption. Finally, "public interest" was to be defined in ways that included the unique concerns of the Indian situation.

Underlying these considerations was that of practicability – if the guidelines were to be broadly adopted, the emphasis had to be on the measurable and visible outcomes of sustainable business.

Based on these, the GDC identified more than 70 ideas, which were clustered in a relationship matrix, based on which the GDC Draft Guidelines were drafted, eventually covering eight principles. The eight principles capture the unique Indian context and draw from existing national and international frameworks guiding CSR issues. These draft guidelines were submitted by the GDC to the IICA, and by the IICA, in its policy advisory capacity, to the MCA. The MCA issued its Voluntary CSR Guidelines in December 2009, which acknowledge and contain many of the inputs provided by the GDC.

CONTEXT OF THE CONSULTATIONS

Mr. Jitesh Khosla, OSD IICA and Mr. Manoj Arora, Director, Ministry of Corporate Affairs and Director (Administration and Finance) IICA set the context for the consultation and feedback session.

As the Indian economy grows, there are continuing concerns of poverty and resource use. As

Policy considerations for MSMEs should be drafted with a sensitivity to the requirements of the MSMEs.

     -- Jitesh Khosla

Indian business grows and spreads in different directions, the core question is what will be the spirit in which we do business in the future. This will have to be dealt with in the future and is within the domain of the Ministry of Corporate Affairs.

In coming out with guidelines, the MCA considered several matters, including whether the guidelines should be mandatory; however, it was not considered to be the right time for this. Another consideration for the MCA was the special interest of MSMEs – voluntary guidelines should not render smaller businesses non-competitive.

The objective of the consultation and feedback session was identified as follows:

➤ Update the Expert Group as a key advisor and sounding board of the Project on the developments of the past months relating to the Guidelines;

➤ Seek the feedback of the Expert Group and other invited experts on the GDC Draft Guidelines, especially in light of key subsequent developments like the issuance of the MCA's Voluntary CSR Guidelines and the draft of the ISO 26000 Social Responsibility Standard; and

➤ Seek the views of the participants on implementation guidance under the GDC Draft Guidelines.

A matter to be resolved is how the GDC Draft Guidelines will converge with the MCA CSR Guidelines. Manoj Arora clarified that it was discussed within the GDC whether the starting point for the feedback collection phase should be the GDC Draft Guidelines or the MCA CSR Guidelines.

The challenge for the next phase is to develop implementation guidance, especially suited to the Indian context.

     -- Manoj Arora

The GDC's draft can be placed somewhere between the MCA's draft, and the very detailed ISO 26000. The GDC therefore decided that the GDC draft should be taken as the base document, with the background of the MCA's guidelines and the ISO 26000. Thereafter, the extent to which the GDC's contributions are utilised by the MCA

are dependent on the MCA. Bharat Wakhlu added that developments at chambers and other associations are continuing simultaneously and this process should continue so that at the end of the year, the MCA has a broad range inputs when it revisits the MCA CSR Guidelines in December 2010.

FEEDBACK RECEIVED

Starting with an Introduction that sets the context, the GDC Draft Guidelines contain eight principles, in the following areas:

Principle 1: Governance and Accountability

Principle 2: Product Safety

Principle 3: Workers' Rights

Principle 4: Responsiveness towards Stakeholders

Principle 5: Human Rights

Principle 6: Protection of the environment

Principle 7: Public advocacy and lobbying

Principle 8: Contribution to country's inclusive development agenda

Each of these principles contains a brief description of the principle, along with Core Elements constituting the principle.

Along with technical and editorial comment on the various principles and core elements, feedback was received on the introduction to and context of the Guidelines, as well as operational guidance as to their implementation.

The broad categories of feedback discussed below are:

- ➢ Introduction and Context
- ➢ Principles and Core Elements
- ➢ Implementation

The highlights of the discussion in each of these areas are summarized below. For a gist of the entire comments received, please see **Annex D**.

Introduction and Context

Although not specifically on the introduction to the Guidelines, several comments were received that related to the basic context of the Guidelines.

Definition of CSR

One of the first questions to be warmly discussed was whether there is a need to define CSR. It was rightly pointed out that there is a lack of clarity and uniformity as to what constitutes CSR, with companies sometimes using the lack of clarity to further their own ends. Some stakeholders therefore felt the need for a minimum definition of CSR. One stakeholder suggested describing CSR as the entire eco-system in which a company does business – environment, surrounding communities and those from which it draws its workforce.

The Guidelines can't do everything for everyone, but businesses can be nudged to contribute to the agenda of inclusive growth through innovative solutions.
      -- Seema Arora

However, others felt that the term was dynamic and should not be curtailed in a definition. The Guidelines themselves, in identifying the topics, to some extent define CSR. There is also an issue with the term itself – many companies associate the terms "CSR" with community development or philanthropic initiatives and do not consider minimising their negative social and environmental impacts as part of CSR.

Nature of Guidelines

Since the Guidelines are for voluntary adoption, one of the commentators suggested that they should be **affirmative** rather than prescriptive, e.g., "we commit to," rather than "businesses should." However, in response, another participant pointed out that making the Guidelines affirmative will require companies to sign on to the Guidelines, whereas they should be applicable regardless of whether a company adopts them. Further, as a guideline emanating from the government, it is appropriate to use the "should" language.

Participants also questioned why the Guidelines should be called "**voluntary**" guidelines, therefore emphasising their voluntary nature. A commentator also hinted that voluntary

guidelines are likely to only remain on paper. However, considering the poor level of enforcement of laws in India, mandatory guidelines would be impossible to enforce.

Convergence with the Corporate Governance Discourse

Two streams of thought on corporate governance (or responsible corporate governance) and CSR are currently developing simultaneously, including within the MCA. There is a need to bring the two streams closer and build bridges and to examine the GDC Draft Guidelines in light of the MCA's Corporate Governance Guidelines and identify linkages.

Assumptions as to MSMEs

Another animated discussion related to whether the Guidelines should at all be applicable to MSMEs. A study has shown that if minimum wages were to be paid, half of all MSMEs would go out of business. With this level of margins, is it possible for MSMEs to adopt social, environmental and ethical guidelines without going out of business? Further, while talking of worker rights, the situation of many temporary migratory workers needs to be considered, who work in businesses until harvest season and then return to their villages. Such workers are likely to prefer flexibility and not want to be tied down through annual requirements like employee state insurance, bonus and other requirements of social welfare legislation.

There is an assumption that a company would understand who is in a "disadvantaged" position [Principle 4]. Because the company is also operating in the same society, it is blinded towards discrimination on the basis of caste, gender...

-- Amit Vatsyayan

It was suggested that an MSME owner, although unable to follow the law or guidelines, has sufficient understanding to know that he or she is exploiting the workers or causing pollution. However, in some contexts, an MSME owner may not even have the time or bandwidth to inform himself or herself on understanding the current thinking as to business responsibilities.

Principles and Core Elements

The discussion around the principles and core elements also remained at a high (macro) level, addressing several basic assumptions and themes that cut across all of the principles. In addition, some comments on specific principles were also received, but in many cases they also highlighted concerns that would be equally applicable to other specific principles.

Concept of Dignity

A participant pertinently pointed out that the Guidelines are missing a crucial element – it carries great weight with a supplier that he or she is treated with dignity. A study done on artisanal suppliers in Moradabad has highlighted this issue. This intangible but crucial concept should be reflected in the Guidelines.

For a supplier, what is important is that the buyer treats him with dignity…that the buyer does not ask him to come on a Friday when he has to go for namaaz makes him sit for five hours before he hands him a check.

-- Mukesh Gulati

Specificity

More than one commentator felt that the Guidelines should be more specific and concrete and set common expectations. Especially, terms such as "underpinned by ethics" should not be used without explanation. Need was also felt for more explanation as to processes such as stakeholder identification and engagement. In line with this, stakeholders emphasised brevity and concepts that companies understand and can identify with – namely, policies and reporting.

In this vein, it was also felt that separate specific guidelines may be needed for MSMEs.

Language Consistency

The use of "must," "should" or "may" in different sections was felt to be confusing – are different standards being prescribed?

Neutral Terminology

A valid concern by a stakeholder from the knowledge industry was that the terms as currently used, especially under certain principles, point a reader straight to the manufacturing sector. E.g., the use of the word "workers" leads a company to think immediately of labour. Terminology should be made more neutral so that companies across sectors can identify with the terms. E.g., in the above example, a broader "workforce" or "people" would encompass white collar workers, as well as contractors and even the supply chain.

CSR is not how you spend your profit, but how you make it.

-- Vikas Goswami

Principles distinguished from Guidance

A commentator pointed out that the eight principles club together "principles" and "elements" or "issues" and to some extent implementation guidance. For instance, principle 1 (governance underpinned by ethics, transparency and accountability), principle 4 (respect for stakeholders) are truly principles. Others such as respect

for workers rights, respect for the environment, etc. are actually issues. Further, certain of the core elements are actually implementation guidance. The commentator pointed to the GRI framework which distinguishes between principles and issues.

There was also a suggestion that the Guidelines should identify key leadership areas under each of the principles where the government sees the private sector take a role in solving problems along with the government and other stakeholders.

Assumption about the Value Chain

There is an assumption in the wording of the principles that the dominant point of the value chain is always the lead firm and therefore it is the lead firm that should be made responsible for the rest of the value chain. However, this is not necessarily true – in different product's value chains, the dominant point can be the consumer, or the supplier, or can lie at different points of the value chain.

Coverage

Some areas were thought to have been left out which should be addressed in greater detail:

- *Consumer as separate stakeholder*: Whereas ISO 26000 devotes an entire core subject on consumer, the GDC Draft Guidelines do not contain such a focus on consumers
- *Land acquisition and displacement*: Recent issues of land that have come up are critical. Companies should put in place measures to address displacement. The GDC Draft Guidelines do not specifically address the issue of displacement
- *Small suppliers*: More emphasis on small suppliers and ethical treatment of the value chain is needed – they are the first to be squeezed in a crunch

Comments on Specific Principles

Comments on specific principles are summarised below:

Principle 2	Concepts such as "life cycle" of the product are irrelevant for many of the MSMEs who are only suppliers and never get to see the product through its life cycle
Principle 3	One commentator thought that respect for workers' rights is a legal principle and should be a pre-requisite and not part of a set of CSR guidelines. However, a contrary view received was also that in view of the poor enforcement of the labour laws, it seems utopian to include such principles in Guidelines One commentator felt that termination of workers is not

	sufficiently addressed. However, another commentator questioned whether the prescription of the Guidelines would fulfil the best interests of workers as perceived by themselves. E.g., a piece of paper formalising an employment relationship with the maid-servant may actually reduce her flexibility in terms of leaving for another employment
Principle 4	The value-loaded term "disadvantaged" should be replaced with a more politically correct term. Especially in the context of gender, it is a negative connotation to call women a "disadvantaged" group Another valid comment related to the concept of "disadvantaged" was that the meaning of the term is likely to differ depending on the context. It would mean something very different in a backward rural area
Principle 5	There is a need to define the groups to which "human rights" are owed – employees, supply chain, neighbouring community…?
Principle 6	Climate change opportunities, i.e., climate change adaptation, should also be considered
Principle 8	Companies are partial to addressing problems such as "poverty" and "hunger" and these should be included There needs to be a focus on using innovative solutions to meet the challenge of inclusive growth, e.g., e-choupal, Project Shakti.

Implementation

As requested by the GDC, the participants directed much of their attention to discussing ways of implementing the Guidelines. The discussion around implementation related primarily to whether implementation should be part of the Guidelines and if so, at what level of detail.

On the one hand, moving the management systems provisions out of the Guidelines to a separate toolkit will allow the Guidelines to be broad overarching principles, and the toolkits

can be personalized for different industries, sectors, a separate toolkit for the service sector, or for MSMEs. The Guidelines can then focus on the "what" and the toolkits on the "how." A toolkit or guidance document can do what the Guidelines cannot, which is **strike a balance between being prescriptive and being context-specific**. For instance, it is for the level of the Guidelines to say that companies should foster

diversity. But what constitutes diversity can be very context-specific. E.g., borrowing the definition of diversity from the policy of a US parent company can result in making a reference in India to hiring of persons of colour, which does not make sense in India.

However, an argument for the other side of the question is that businesses may not be able to follow to the letter any detailed guidance which will engender an atmosphere of non-compliance. Instead, implementation guidance at a very broad level would be useful, rather than detailed guidance documents.

Whereas two different levels at which the implementation guidance can be given were highlighted by the participants, there was no contention that guidance is *not* required. In fact, it was stressed that whether through the Guidelines or through separate implementation guidance in whatever form, it is essential to put management processes in place for each of the principles, and for companies to be able to transparently disclose to stakeholders that they are serious about the Guidelines by putting these management processes in place.

Viraf Mehta explained that process as well as performance indicators could be built into the Guidelines. What could be addressed in the Guidelines is not a "how to" which would be a toolkit, but rather some management steps as to integrating the Guidelines within the organisation. The idea was that the Guidelines should be kept at a very high level, applicable to all businesses; distinction for large companies and MSMEs could then be made in the level of indicators, or reporting burden or level of commitment.

Leadership buy-in

Stakeholders have emphasized that it will be crucial to get leading businesses to sign on to the Guidelines quickly as this will give the impetus for other businesses to sign on. Buy-in among the leadership within the organisation is also crucial to successful implementation of the Guidelines. If the attention of the Board is caught, the rest of the company will follow. This can be done by emphasising the "comply or explain" nature of the Guidelines. Leadership buy-in, along with process orientation, within an organisation will also, to some extent, address a key concern of the Guidelines, i.e., the need to

cut across company verticals.

Financial Institutions as Drivers
A pertinent question posed by a participant was whether a small business, whose project cost is 10 crores, could apply for a loan of 15 crores in order to be able to perform the project in a responsible manner? Although one of the participants pointed to the marginal increase in ESG factors being considered by financial institutions the world over, as well as the written comments of Mr. R. K. Das highlighted great strides that SIDBI is making in fostering responsible business among MSMEs, the fact remains that such examples are few and far between.

Existing International Standards
Another suggestion related to the leveraging off existing standards and guidelines, such as the GRI, UN Global Compact and ISO, generally, as well as especially for implementation. In this respect it was suggested that the Guidelines could provide high-level guidance, with other, more detailed standards like the ISO 26000 being utilised for implementation guidance.

Quantifying CSR
Several comments pointed to the need for evaluation of achievements against targets or quantifying CSR, e.g., SMERA's green ratings for MSMEs. The need for indices to measure performance was highlighted by several commentators. The question is whether existing indices be used, or new ones developed specifically in the context of the Guidelines.

Responsibility for Implementation
An important question is apportioning responsibility for implementation of the Guidelines. Multiple stakeholders will have to pull together for effective implementation of the Guidelines across organisations of different sizes.

Clarity on the process of implementing the Guidelines could be given through programs and workshops by chambers and other associations. Further, the role of the government and international development agencies should not be ignored in supporting and capacity building for smaller companies to be able to comply with the Guidelines.

Reporting
The need for "reporting guidelines" was highlighted. It was suggested that if an Indian reporting framework is developed simultaneously, issues of implementation can be addressed through the path of reporting guidelines, whereas the Guidelines could then remain high-level principles broadly applicable to all sizes of companies.

NEXT STEPS AND THE WAY FORWARD

The presentation of the GDC's draft Guidelines to the MCA in December 2009 marked the end of the first phase, i.e., drafting. Although some stakeholder comments were sought during this phase, however, the consultation held on 10 March with the expanded Expert Group marks the commencement of the second phase, i.e., broad stakeholder consultations. At this time, the GDC will also be expanded by inviting additional stakeholders as members.

The first round of feedback will continue with other such events, including one regional consultation to be held in Chennai. In the interests of complete transparency and seeking even broader commentary through the internet, comments received will be placed on the internet. Comments received during this round will be reviewed and incorporated while revising and elaborating the Guidelines. Thereafter, a second round of comments will be sought, including regionally through feedback sessions organised in Mumbai, Bangalore and Calcutta. In this, the assistance of the chambers and other multi-stakeholder initiatives will also be sought.

A key element of the sessions in Phase II will be to seek guidance from practitioners on the ground on operational guidance. In this, special focus will be on seeking operational guidance for groups with specific needs, such as MSMEs.

Calendar for Phase II of Guidelines Drafting

The calendar for Phase II is expected to look as follows:

Mid-May 2010	Complete drafting based on the first round of comments
June 2010	Consultations with a wider group, including regionally
July 2010	Incorporation of comments
August 2010	Complete process and present comments to IICA

Next Steps for IICA-GTZ CSR Initiative

For the next months, the Project will focus on providing support for the consultations, including the regional consultations. Simultaneously, demonstration projects, initiatives in partnership with private partners, chambers and other associations are continuing, in order to pilot some of the principles identified in the Guidelines, such as stakeholder engagement. These demonstration projects focus on a few key upscaling strategies, such as using the cluster approach within SMEs, exploring the role of banks and financial institutions as agents of responsible business, and the role of sustainability reporting as a driver.

Finally, public events, meetings and fora will be organised in order to raise awareness and build linkages on the issues of CSR.

Various studies conducted or commissioned by the Project will be presented to IICA in the coming weeks to take forward through its CSR forum discussions or through publication. These studies, reports and other material will be shared with the MCA from time to time in the form of IICA's policy advisory input to MCA.

Within IICA and MCA, supported by the Project, there will also be work done in order to bring the streams of thought on CSR and corporate governance closer together, including examining linkages of the Guidelines with the MCA's Voluntary Corporate Governance Guidelines released simultaneously with its Voluntary CSR Guidelines.

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Annex A

National Voluntary Guidelines for the Social, Environmental and Ethical Responsibilities of Business

(See attached)

Annex B
Agenda of Consultation on 10 March 2010

(See attached)

Annex C
List of Participants and Commentators

List of participants at the Special Interaction on the Guidelines, 10 March 2010

Participant	Organisation
Aditi Haldar	GRI Focal Point in India
Amit Vatsyayan	Oxfam
Ashish Srivastava	Jindal Steel
Bharat Wakhlu	Tata
Dinesh Agrawal	NTPC
Jitesh Khosla	IICA
Jyotsana Bhatnagar	Monsanto
Kate Ives	AccountAbility
Khurram Naayaab	PiC
Manfred Haebig	GTZ
Manoj Arora	IICA
Mark Hodge	Global Business Initiative
Mukesh Gulati	FMC
Neha Kumar	GTZ
Nidhi Sharma	SIDBI
Niti Sharma	IGEP Foundation
Pratik Ghosh	TERI
Richa Tyagi	BCF India
Rita Nanda	IICA
Seema Arora	CII-CESD
Sophia Lonappan	TERI-BCSD
Smita Singh	PiC
Sudhir Sinha	Arcelor Mittal
Sumantra Sen	Bank of America
V.N. Sastry	FISME
Vikas Goswami	Microsoft
Viraf Mehta	PiC

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List of Persons who provided Written Comments to the GDC Draft Guidelines

List of Commentators	Organisation
Aditi Haldar	GRI Focal Point in India
Aqueel Khan	Association for Stimulating Know How
Coen Kompier	ILO
Jyotsna Bhatnagar	Monsanto
Mukesh Gulati	Foundation for MSME Clusters
Patrick Braunmuehl	GTZ
R.K. Das	SIDBI
Rajesh Kumar	Ericsson
Rita Nanda	IICA
Sachin Joshi	CII-CESD
Savita Hanspal	University of Delhi
Seema Arora	CII-CESD
Srimathi Shivashankar	Infosys (via telephone)
Vijay Kranti	Essar Foundation

Annex D
Written Comments and Summary of Verbal Comments

(See attached)