

# Final Statement on the Request for Review regarding the Operations of China Gold International Resources Corp. Ltd., at the Copper Polymetallic Mine at the Gyama Valley, Tibet Autonomous Region

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## Executive Summary

On January 28, 2014, the Canada Tibet Committee (hereinafter referred to as “CTC” or “the Notifier”), on behalf of a group of affected communities, submitted to the National Contact Point (NCP) the Request for Review regarding the mining activities of China Gold International Resources Corp. Ltd. (hereinafter referred to as “China Gold” or “the Company”) in the Gyama Valley of China’s Autonomous Region of Tibet.

The Notifiers raised issues with regards to the 2000 and 2011 OECD Guidelines for Multinational Enterprises, specifically the Chapters relating to General Policies, Human Rights, the Environment, Employment and Industrial Relations, and Disclosure (a full list is included in Annex 1). The Notifiers indicated that they were seeking dialogue with China Gold to have the company align with the OECD Guidelines for Multinational Enterprises. The Notifiers put forward several recommendations to achieve this goal.

The Company declined to respond to the Request for Review or the information contained therein.

Based on the materials presented in the Request for Review and further background research, the NCP’s Initial Assessment was that the issues raised were in part substantiated, and that the Specific Instance merited further examination. The review of the Specific Instance was conducted using the 2011 edition of the OECD Guidelines for Multinational Enterprises. Pursuant to the process outlined in the OECD Guidelines for Multinational Enterprises, the Canadian NCP offered its “good offices” to facilitate dialogue between the Parties, giving the deadline of November 28th, 2014, for a response, thus allowing three months for the Parties to accept the NCP’s good offices. The Initial Assessment can be found in Annex 2.

An overview of the Chronology of the NCP process can also be found in the section Request for Review Process for the Specific Instance, pages 4 to 5

The Notifiers agreed to the Canadian NCP’s offer of its good offices. The Company did not engage or respond to the Canadian NCP’s correspondence and follow-up outreach. As the dialogue facilitation requires the consent and participation of both Parties, the NCP is unable to conduct dialogue facilitation for the Parties and must close the Specific Instance. With the issuance of this Final Statement on April 8, 2015, the NCP concludes the Request for Review regarding the mining activities of China Gold International Resources Corp. Ltd. (hereinafter referred to as “China Gold” or “the Company”) in the Gyama Valley of China’s Autonomous Region of Tibet.

It is hereby reiterated that the Government of Canada expects that Canadian companies will promote Canadian values and operate abroad with the highest ethical standards. They are expected to respect human rights and all applicable laws, and to meet or exceed widely recognized international standards for responsible business conduct, including and in particular the OECD Guidelines for Multinational Enterprises. On November 14th, 2014, the Government of Canada launched its enhanced CSR Strategy Doing Business the Canadian Way: A Strategy to Advance Corporate Social Responsibility (CSR) in Canada's Extractive Sector Abroad (Annex 4) which included new measures to be applied in case of non-participation in the NCP process. As the Company did not respond to the NCP's offer of its good offices, the Company's non-participation in the NCP process will be taken into consideration in any applications by the Company for enhanced advocacy support from the Trade Commissioner Service and/or Export Development Canada (EDC) financial services, should they be made. As the goal of both the NCP and the CSR Strategy is to encourage improvement in terms of a company's use and integration of CSR standards and best practices, should the Company wish to be able to access future support of this type, it will need to submit a Request for Review to the NCP, or show the Government of Canada it has engaged in good-faith dialogue with the Notifier.

In the absence of receipt of information from the Company on its operations and their alignment with the OECD Guidelines, and based on the information provided by the Notifier, it is the prima facie assessment of the NCP that the Company has not demonstrated that it is operating in a manner that can be considered to be consistent with the voluntary OECD Guidelines for Multinational Enterprises. In this context, the NCP recommends:

- That the Company familiarise itself with the OECD Guidelines for Multinational Enterprises and promptly take steps to incorporate them into company operations. Canada, as an adherent to the OECD Guidelines expects all Canadian companies working abroad, and all multinational companies working in Canada, to respect and implement the OECD Guidelines as well as other CSR standards, as outlined in Doing Business the Canadian Way: A Strategy to Advance Corporate Social Responsibility (CSR) in Canada's Extractive Sector Abroad.
- That the Company engage in dialogue with the Notifier, the individuals the Notifier represents, and stakeholders, including its workers and local communities that are affected by the issues raised in the Request for Review.
- That the Notifier continue its efforts to reach out to the Company to engage in dialogue.
- That the Company conduct due diligence through a review of its environmental, human rights, labour, and health and safety activities through audits of past and current activities, and assessments of the potential impacts of anticipated activities on the environment, human rights, labour, and health and safety.
- Where it is within its control, that the Company take steps to address the environmental, human rights, labour, and health and safety issues raised in the Request for Review. Where there are differences between international and local practices, that the Company work with stakeholders and the local government in an effort to align its operations with local and international CSR standards. The Company should follow through on recommendations stemming from the reviews and audits mentioned in Recommendation IV, in collaboration with stakeholder groups including its workers and local communities affected by its operations

- Where and when possible, that the Company improve its efforts to engage transparently with stakeholders, including its workers and local communities, about its policies and practices and their implementation. That the Company disclose any past reports and/or audits that were conducted, and, that the company commit to, and follow-through on, disclosing any future reports or audits it produces or commissions with relation to its activities. That the company engage meaningfully with stakeholders, including its workers and local communities, throughout these reporting and auditing processes, and share the results with stakeholders, including recommendations.

The NCP's is of the view that dialogue between the Company, the Notifier, and the individuals the Notifier represents would be of great benefit in moving towards resolution of the issues raised in the Request for Review. Should the Company and Notifier be able to engage in good faith dialogue following the issuance of this Final Statement, the NCP requests that the Parties keep it informed. This will help the NCP better respond to clients' needs in the future.

The NCP considers this Specific Instance to be closed.

## **Introduction to the OECD Guidelines for Multinational Enterprises**

The OECD Guidelines for Multinational Enterprises are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. They provide voluntary principles and standards for responsible business conduct in areas such as employment and industrial relations, human rights, environment, information disclosure, combating bribery, consumer interests, science and technology, competition, and taxation.

Each OECD Member State is obliged to establish an NCP for purposes of promoting the Guidelines and contributing to the resolution of issues that arise relating to the implementation of the OECD Guidelines in specific instances. The NCP will review specific instances of alleged non-observance of the OECD Guidelines by a multinational enterprise in Canada, or by a Canadian multinational enterprise operating in a country without an NCP.

Upon receiving a Request for Review in relation to a specific instance and allegations of non-observance of the Guidelines, an NCP will conduct an initial assessment with a view to determining whether the issues raised merit further examination. If the NCP's conclusion is that the issues raised merit further examination, the NCP will then offer its "good offices" as a platform for facilitated discussion between the Parties in an attempt to resolve the issues. If the Parties involved do not reach agreement on the issues raised, the NCP issues a statement, and makes recommendations as appropriate, on the implementation of the Guidelines.

It is important to note that the Guidelines are not laws. Similarly, NCPs are not law enforcement agencies or courts. The primary value-added of NCPs is the facilitation of dialogue for purposes of resolving disputes.

Additional information on the OECD Guidelines can be found in Annex 3. The Procedures Guide for Canada's National Contact Point for the Organisation of Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises can be found in Annex 5. The Terms of Reference Canada's National Contact Point for the OECD Guidelines for Multinational Enterprises are attached in Annex 6.

## **Location and Parties to the Specific Instance**

The Request for Review was submitted by the Canada Tibet Committee, a Canadian non-governmental organisation based out of Montreal, QC. It was submitted on behalf of members of the affected communities, who are not named for reasons of personal security.

The Request for Review is addressed to China Gold, a mining company registered and headquartered in British Columbia, and listed on the Toronto Stock Exchange (TSX). China Gold is the flagship, and only overseas listing vehicle, of the largest gold producer in China, China National Gold Group Corporation (China National Gold), which is a state-owned enterprise. In 2010, China Gold acquired the Gyama mine from China National Gold (which owned 51%) and Rapid Results Investments of the British Virgin Islands (which owned 49%).

The Request for Review centers on the Gyama Copper Polymetallic Mine located in the Siphub Village in the Gyama Valley, in China's Autonomous Region of Tibet.

## **Specific Instance**

The NCP was asked by the Notifier, on behalf of a group of affected communities, to review the specific instance regarding the mining activities of China Gold on the basis that China Gold is registered in Canada. China is not an adherent to the OECD Guidelines. The CTC has asked the NCP to facilitate dialogue between representatives of the CTC and China Gold for the purposes of resolving the issues of concern raised within the Request for Review.

Documents received from the Notifier indicate that the Request for Review was largely prompted by a March 29, 2013, landslide that hit part of the Gyama Valley, resulting in the death of 83 mine workers living in a mining camp. The workers were reportedly asleep in their tents when they were buried by a mass of mud, rocks and debris that was three kilometres wide and thirty metres deep. The camp belongs to Tibet Huatailong Mining Development Ltd., a wholly owned subsidiary of China Gold. The Notifier alleges that the landslide was a manmade disaster related to mining operations and that the Company had ignored previous warnings and local protests. The Request for Review also alleges other adverse environmental impacts resulting from the mine, human rights issues such as discriminatory hiring and forced evictions, and inadequate disclosure by the company, claiming those are indicators of a lack of adherence to OECD Guidelines for Multinational Enterprises (OECD Guidelines). This prompted the Notifier's attention in terms of hiring practices, environmental and human rights issues, and disclosure of information, as outlined below:

A) Environment: With respect to the environment, the Request for Review alleged that the Company: 1) failed to undertake sufficient environmental due diligence; 2) failed to design

and implement adequate environmental and health and safety mitigation measures; and 3) contributed to the loss of life and prevented access to compensation for families.

B) Human Rights: With respect to human rights, the Request for Review alleged that the Company: 1) engaged in discriminative hiring practices; 2) forced evictions and resettlement of land; 3) violated freedom of religious issues through denial of access to religious sites; 4) violated the freedom of expression and to project-related information disclosure; and 5) by contributing to negative environmental factors, violated the rights of local communities to water and to health.

C) Disclosure: With respect to information disclosure, the Request for Review alleged that the Company: 1) failed to disclose accurate information about the environmental risks associated with the project; 2) failed to disclose the full impact of the project to local communities; and 3) failed to allow independent inspectors to ascertain the causes of the aforementioned landslide disaster.

In the Request for Review, the Notifier cited sections from several chapters of the OECD Guidelines on Multinational Enterprises: **General Policies, Disclosure, Human Rights, Employment and Industrial Relations, and Environment**. Some of the OECD Guidelines that were cited were derived from the 2000 Edition, and the NCP based its assessment on the 2011 Guidelines, and determined the corresponding paragraphs within the 2011 Edition. The full list of sections cited, and the cross references between the 2000 and 2011, can be found in Annex 1.

## Request for Review Process for the Specific Instance

On January 29, 2014, the Canadian NCP received the Request for Review entitled: The Operations of China Gold International Resources Corp. Ltd., at the Copper Polymetallic Mine at the Gyama Valley, Tibet Autonomous Region.

Given that the Request for Review included end notes that linked to several websites and PDF documents, the NCP requested that the Notifier submit the supporting documentation directly to the NCP. This procedure has been established to ensure clarity with respect to the reference documentation cited and to mitigate against the possibility that information on websites may be changed or removed while the review is underway. The Notifier submitted the supplementary documentation between February 7-14, 2014. The NCP conducted research to determine the operational status of the Company, and to determine the appropriate contact for the Company. The NCP conducted outreach to the Company, and on March 28, 2014, emailed a letter to the Company requesting a reply in relation to the content of the Request for Review that was submitted by the Notifier. The Company responded on April 11, 2014 indicating that they would not engage or provide information, and the NCP confirmed this position in follow-up outreach calls.

The NCP reviewed all the information presented in the initial submission of the Request for Review, as well as the supplementary materials presented by the Notifier at the request of the NCP, conducted additional research on the Specific Instance, and assessed the Request for Review against the criteria listed in the Procedures Guide for Canada's NCP for the OECD Guidelines (see section OECD Guidelines and the NCP Mandate), upon which the NCP made its determination that the issues raised in the Request for Review merited further examination by the Canadian NCP.

As per the Procedures Guide for Canada's National Contact Point for the OECD Guidelines for Multinational Enterprises, on July 25, 2014, the NCP shared a draft of the Initial Assessment with the Parties to receive their input for fact-checking, and requested a response by August 21, 2014. The Notifiers responded on August 7, 2014, that they were in agreement with the representation of the specific instance in the draft Initial Assessment. The Company responded on August 14, 2014, stating that they would not comment on the draft Initial Assessment.

Given the NCP's determination that the issues raised in the Request for Review merited further examination, the NCP offered its good offices to the Parties, and submitted the finalised Initial Assessment to the Parties on August 29th, 2014. In order to allow the Parties time to communicate with their representatives and/stakeholders, and make an informed decision on participating in the NCP's offer for dialogue facilitation, the NCP requested the Parties respond within three months to its offer of its good offices, giving November 28th as the deadline for the Parties to confirm their willingness to engage in the dialogue facilitation process. In this communication, the NCP noted that should the NCP's good offices be accepted, it would work with the Parties to structure a dialogue facilitation process that would best meet the needs of the Parties to the Request for Review. It was also reiterated that as per the NCP's procedures, the end of the Request for Review process includes the release of the NCP's Final Statement that outlines the process and outcomes of the Request for Review process. The NCP reiterated its priority for helping parties to resolve differences through dialogue facilitation.

The Notifiers responded on September 23rd, 2014, noting their willingness to engage in dialogue facilitation. The Notifier also outlined what it felt were key elements for a dialogue facilitation process to meet their needs.

The Government of Canada expects that Canadian companies will promote Canadian values and operate abroad with the highest ethical standards. They are expected to respect human rights and all applicable laws, and to meet or exceed widely recognized international standards for responsible business conduct, including and in particular the OECD Guidelines for Multinational Enterprises. On November 14th, 2014, the Government of Canada launched its enhanced CSR Strategy Doing Business the Canadian Way: A Strategy to Advance Corporate Social Responsibility in Canada's Extractive Sector Abroad (Annex 4), in which new measures were put in place for companies that do not participate in the NCP's process:

*"While participation remains voluntary, a decision by either party not to participate in the CSR Counsellor Office's or NCP's review process will be made public.*

*Companies will also face withdrawal of TCS and other Government of Canada advocacy support abroad for non-participation in the dialogue facilitation processes of Canada's NCP and Office of the Extractive Sector CSR Counsellor.*

*In addition, in line with the Government's 'economic diplomacy' approach, Government of Canada services include the issuance of letters of support, advocacy efforts in foreign markets and participation in Government of Canada trade missions. Canadian companies found not to be embodying CSR best practices and who refuse to participate in*

*dispute resolution processes contained in the CSR Strategy, will no longer benefit from economic diplomacy of this nature. Furthermore, such a designation will be taken into account in the CSR-related evaluation and due diligence conducted by the Government of Canada's financing crown corporation, Export Development Canada (EDC), in its consideration of the availability of financing or other support."*

On November 28th, the NCP wrote to the Company to remind them of the deadline for accepting the offer of the NCP's good offices, to encourage them to participate in the dialogue facilitation process offered by the NCP, and to communicate the expectations of the recently released enhanced CSR Strategy. The Company did not, however, respond further to the NCP's correspondence following the NCP sharing the finalised Initial Assessment with the Parties and its offer of its good offices, as well as subsequent attempts by the NCP to engage with the Company. In sum, the Company failed to respond to the request to engage in dialogue facilitation.

To ensure that the Company was well informed of the potential implications of not participating in the dialogue facilitation process offered by the NCP, and to offer them the opportunity to engage, upon completion of the draft of the Final Statement, the NCP wrote to the Company on February 18, 2015, in order to: 1) inform them of the new provision in the enhanced CSR Strategy and again offer its good offices; and, 2) if the good offices are not accepted, to review the draft Final Statement for factual errors. The Notifier was also requested to review the draft Final Statement for factual errors. The Company did not respond to the NCP by the March 9th deadline, nor at the time of issuance of the Final Statement.

## **Analysis and Considerations**

**Operational Status of the Company:** The NCP undertook legal research and analysis to identify the legal and operational status of the Company. As noted in the Summary section above, China Gold is a TSX listed mining company trading under the symbol CGG that is focused on gold production and acquisitions. Based in Vancouver, this company is China National Gold's overseas flagship vehicle. The Canadian NCP found that these ties to Canada substantiated the Canadian NCP's jurisdiction over this specific instance.

**Initial Assessment of Materiality and Substantiation:** Many of the themes presented in the Request for Review were of a cross-cutting nature, and the Canadian NCP reviewed them in that context. The Request for Review rests on allegations relating to environmental, human rights and disclosure issues, which are identified in further detail in the Issues Raised and OECD Guidelines Cited section above. Based on the NCP's assessment, some of the issues raised surrounding labour practices and resettlement, freedom of association and assembly appear to be Government of China policies, and would thus be beyond the mandate of the Canadian NCP. However, the NCP believed that should dialogue facilitation be accepted by both Parties, this might not preclude discussions aimed at establishing a better understanding of these issues. Furthermore, the Canadian NCP determined that the issues that pertain to the Company's alleged actions in terms of environmental due diligence, health and safety issues, stakeholder engagement, and adequate disclosure on these issues appear material, and substantiated at least in part. Based on the NCP's review of the documentation provided by the Notifier, and subsequent analysis of the factors

outlined above, the NCP found in its Initial Assessment that some of the issues presented in the Request for Review were partially substantiated, and there was merit for further examination.

**Offer of the NCP's Good Offices:** The NCP offered its good offices to the Parties in order help facilitate dialogue between the parties, in an effort to assist them in resolving the issues outlined in the Request for Review that were within the Parties' purview. The NCP also noted that should the NCP's good offices be accepted, it would work with the Parties to structure a dialogue facilitation process that would best meet the needs of the Parties to the Request for Review. The NCP reiterated the importance of communication and dialogue towards the resolution of the issues raised in this Request for Review and the overall advancement of the community and stakeholder interests.

The Notifier responded to the NCP, accepting the offer of its good offices. The Notifier outlined several structural elements of dialogue facilitation that it felt would assist in productive dialogue process, given the dynamics of the Specific Instance and the potential implications for the individuals they represent. The Company did not respond to the NCP's outreach and communications following the NCP's Initial Assessment.

The fundamental principle underlying dialogue facilitation is that both parties to an issue must be engaged. As the Company has refused to engage in the NCP process, both in writing preceding the Initial Assessment, and by not responding to the NCP's further communications, the NCP is not able to facilitate dialogue between the Parties of this Specific Instance. Given this, the NCP must now close the Specific Instance.

As the purpose of the NCP is to encourage better implementation of the OECD Guidelines, and that the Request for Review was deemed to be merited by the NCP and dialogue between the Parties was considered to be helpful in this Specific Instance, it is reiterated that should the Company change its view and wish to participate in good faith dialogue facilitation with the Notifier, it may itself submit a Request for Review requesting dialogue facilitation. The NCP notes that should this occur, a new Request for Review process would be launched and the full process would be followed.

**Launch of Doing Business the Canadian Way: A Strategy to Advance Corporate Social Responsibility in Canada's Extractive Sector Abroad:** As was noted in paragraph 29, the enhanced CSR Strategy stated that "Companies will also face withdrawal of TCS and other Government of Canada advocacy support abroad for non-participation in the dialogue facilitation processes of Canada's NCP and Office of the Extractive Sector CSR Counsellor." Given this new feature in Canada's CSR Strategy which would impact a company's access to Government of Canada support from the Trade Commissioner Service and/or Export Development Canada (EDC) financial support, and that the NCP informed the Company of the launch of the CSR Strategy, the Company's non-participation in the NCP process will be taken into consideration in any applications by the Company for such services, should they be made. As the goal of both the NCP and the CSR Strategy is to encourage improvement in terms of a company's use and integration of CSR best practices, should the Company wish to be able to access future support of this type, they will need to submit a Request for Review to the NCP, or show good-faith dialogue with the Notifiers.

## **Recommendations**



In the absence of receipt of information from the Company on its operations and their alignment with the OECD Guidelines, and based on the information provided by the Notifier, it is the prima facie assessment of the NCP that the Company has not demonstrated that it is operating in a manner that can be considered to be consistent with the voluntary OECD Guidelines for Multinational Enterprises. In this context, the NCP recommends:

- That the Company familiarise itself with the OECD Guidelines for Multinational Enterprises and promptly take steps to incorporate them into company operations. Canada, as an adherent to the OECD Guidelines expects all Canadian companies working abroad, and all multinational companies working in Canada, to respect and implement the OECD Guidelines as well as other CSR standards, as outlined in *Doing Business the Canadian Way: A Strategy to Advance Corporate Social Responsibility (CSR) in Canada's Extractive Sector Abroad*.
- That the Company engage in dialogue with the Notifier, the individuals the Notifier represents, and stakeholders, including its workers and local communities that are affected by the issues raised in the Request for Review.
- That the Notifier continue its efforts to reach out to the Company to engage in dialogue.
- That the Company conduct due diligence through a review of its environmental, human rights, labour, and health and safety activities through audits of past and current activities, and assessments of the potential impacts of anticipated activities on the environment, human rights, labour, and health and safety.
- Where it is within its control, that the Company take steps to address the environmental, human rights, labour, and health and safety issues raised in the Request for Review. Where there are differences between international and local practices, that the Company work with stakeholders and the local government in an effort to align its operations with local and international CSR standards. The Company should follow through on recommendations stemming from the reviews and audits mentioned in Recommendation IV, in collaboration with stakeholder groups including its workers and local communities affected by its operations.
- Where and when possible, that the Company improve its efforts to engage transparently with stakeholders, including its workers and local communities, about its policies and practices and their implementation. That the Company disclose any past reports and/or audits that were conducted, and that the Company commit to, and follow-through on, disclosing any future reports or audits it produces or commissions with relation to its activities. That the company engage meaningfully with stakeholders, including its workers and local communities, throughout these reporting and auditing processes, and share the results with stakeholders, including recommendations.

The NCP is of the view that the dialogue between the Company, the Notifier, and the individuals the Notifier represents would be of great benefit in moving towards resolution of the issues raised in the Request for Review. Should the Company and Notifier be able to engage in good faith dialogue following the issuance of this Final Statement, the NCP requests that the Parties keep it informed. This will help the NCP better respond to clients' needs in the future.

## Conclusion

With the publication of this Final Statement, the NCP considers this Specific Instance to be closed.

## Annex 1

### References to the 2000 Edition of the OECD Guidelines for Multinational Enterprises in the Request for Review

#### A) General Policies: Chapter II

Paragraph A.1: "Enterprises should: Contribute to economic, social and environmental progress with a view to achieving sustainable development."

Paragraph A.2: "Enterprises should: Respect the internationally recognised human rights of those affected by their activities." [The Notifier referred to paragraph A.2 in the 2000 Edition of the OECD Guidelines]

Paragraph A.10: "Enterprises should: Carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation."

Paragraph A.11: "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."

Paragraph A.14: "Enterprises should: Engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision making for projects or other activities that may significantly impact local communities."

Paragraph B.1: "Enterprises are encouraged to: Support, as appropriate to their circumstances, cooperative efforts in the appropriate fora to promote Internet Freedom through respect of freedom of expression, assembly and association online."

#### B) Disclosure: Chapter III

Paragraph 1: "Enterprises should ensure that timely and accurate information is disclosed on all material matters regarding their activities, structure, financial situation, performance, ownership and governance." [The Notifier referred to paragraph 1 of the 2000 Edition of the OECD Guidelines]

Paragraph 2 f): "Disclosure policies of enterprises should include, but not be limited to ... foreseeable risk factors."

Paragraph 2 g): "Disclosure policies of enterprises should include, but not be limited to ... issues regarding workers and other stakeholders."

Paragraph 3 b): "Enterprises are encouraged to communicate additional information that could include .... 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."

Paragraph 3 c): "Enterprises are encouraged to communicate additional information that could include .... its performance in relation to these statements and codes."

Commentary on Disclosure, Paragraph 33: The Guidelines also encourage a second set of disclosure or communication practices in areas where reporting standards are still evolving such as, for example, social, environmental and risk reporting. This is particularly the case with greenhouse gas emissions, as the scope of their monitoring is expanding to cover direct and indirect, current and future, corporate and product emissions; biodiversity is another example. Many enterprises provide information on a broader set of topics than financial performance and consider disclosure of such information a method by which they can demonstrate a commitment to socially acceptable practices. In some cases, this second type of disclosure – or communication with the public and with other parties directly affected by the enterprise's activities – may pertain to entities that extend beyond those covered in the enterprise's financial accounts. For example, it may also cover information on the activities of subcontractors and suppliers or of joint venture partners. This is particularly appropriate to monitor the transfer of environmentally harmful activities to partners. [The Notifier referred to paragraph 5 in the 2000 Edition of the OECD Guidelines. In the 2011 version, this language was reflected in Commentary paragraph above].

## **C) Human Rights: Chapter IV**

Paragraph 1: "Enterprises should: Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved."

Paragraph 2: "Enterprises should: ... avoid causing or contributing to adverse human rights impacts and address such impacts when they occur."

Paragraph 3: "Enterprises should: Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts."

Paragraph 5: "Enterprises should: Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impact."

Paragraph 6: "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."

## **D) Employment and Industrial Relations: Chapter V**

Paragraph 1 e): "Enterprises should: Be guided throughout their operations by the principle of equality of opportunity and treatment in employment and not discriminate against their workers with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, or other status, unless selectivity concerning worker characteristics furthers established governmental

policies which specifically promote greater equality of employment opportunity or relates to the inherent requirements of a job.”

Paragraph 5: “Enterprises should: In their operations, to the greatest extent practicable, employ local workers and provide training with a view to improving skill levels, in co-operation with worker representatives and, where appropriate, relevant governmental authorities.”

## **E) Environment: Chapter VI**

Preamble Paragraph: “Enterprises should ... protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development.”

Paragraph 1 a): “Enterprises should: Establish and maintain a system of environmental management appropriate to the enterprise, including ... collection and evaluation of adequate and timely information regarding the environmental, health and safety impacts of their activities.”

Paragraph 2 a): “Enterprises should: ... provide the public and employees with adequate and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance.”

Paragraph 4: “Enterprises should: Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage.”

## **Annex 2**

### **Initial Assessment of the Request for Review regarding the Operations of China Gold International Resources Corp. Ltd., at the Copper Polymetallic Mine at the Gyama Valley, Tibet Autonomous Region**

#### **Summary**

1. The Request for Review regarding the mining activities of China Gold International Resources Corp. Ltd. (hereinafter referred to as “China Gold” or “the Company”) in the Gyama Valley of China’s Autonomous Region of Tibet, was submitted on January 28, 2014 by the Canada Tibet Committee (hereinafter referred to as “CTC” or “the Notifier”) on behalf of a group of affected communities.

2. The Request for Review centers on the Gyama Copper Polymetallic Mine located in the Siphub Village in China’s Autonomous Region of Tibet, and the Request for Review is addressed to China Gold. China Gold is registered and headquartered in British Columbia, and is listed on the Toronto Stock Exchange (TSX). China Gold is the flagship, and only overseas listing vehicle, of the largest gold producer in China, China National Gold Group

Corporation (China National Gold), which is a state-owned enterprise. In 2010, China Gold acquired the Gyama mine from China National Gold (which owned 51%) and Rapid Results Investments of the British Virgin Islands (which owned 49%).

3. Documents received from the Notifier indicate that the Request for Review was largely prompted by a March 29, 2013, landslide that hit part of the Gyama Valley, resulting in the death of 83 mine workers living in a mining camp. The camp belongs to Tibet Huatailong Mining Development Ltd., a wholly owned subsidiary of China Gold. The Notifier alleges that the landslide was a manmade disaster related to mining operations and that the Company had ignored previous warnings and local protests. The Request for Review also alleges other adverse environmental impacts resulting from the mine, human rights issues such as discriminatory hiring and forced evictions, and inadequate disclosure by the company, claiming those are indicators of a lack of adherence to OECD Guidelines for Multinational Enterprises (OECD Guidelines).

4. The Canadian National Contact Point (NCP) was asked by the Notifier to review the specific instance on the basis that China Gold is registered in Canada. China is not an adherent to the OECD Guidelines. The CTC has asked the NCP to facilitate dialogue between representatives of the CTC and China Gold for the purposes of resolving the issues of concern raised within the Request for Review.

5. The Canadian NCP has reviewed all the information presented in the initial submission of the Request for Review, as well as the supplementary materials presented by the Notifier, and assessed against the criteria listed in the Procedures Guide for Canada's NCP for the OECD Guidelines (see section OECD Guidelines and the NCP Mandate), upon which the NCP made its determination. The Company declined to engage with the NCP and thus did not provide any information.

6. The operational status of the Company was taken into consideration by the Canadian NCP, as it determined whether the Canadian NCP had a mandate with regards to the specific instance. In examining the issues raised in the Request for Review, the NCP found that the issues raised were material and that they merited further consideration, and that based on the information provided by the Notifier, the claims had been sufficiently substantiated, as outlined in the Initial Assessment Analysis and Considerations section below.

7. Based on the Canadian NCP's considerations of the materials submitted against the OECD Guidelines and the Canadian NCP's Procedures, the NCP's Initial Assessment relating to the Gyama Copper Polymetallic Mine is that the issues raised merit further examination by the Canadian NCP.

8. The Procedures Guide for Canada's NCP for the OECD Guidelines provides that where the issues raised are considered to merit further examination, the NCP shall respond to the Parties and offer the services of its good offices to help resolve the issues. Consequently, the NCP now offers the Notifier and the Company access to consensual and non-adversarial dialogue facilitation to assist in exploring and developing options to help find resolution for the identified issues. The NCP requests the Parties respond no later than November 28, 2014, indicating their willingness to engage in this dialogue facilitation process. Should the NCP not have the agreement of both Parties to engage, the Canadian NCP will issue a final statement, which will be made public on the Canadian NCP website.

Please note that this Initial Assessment will also be included in the Final Statement published on the NCP website at the closure of the process.

## **Issues Raised and OECD Guidelines Provisions Cited**

9. The Request for Review alleged that China Gold was not observing the OECD Guidelines with respect to issues relating to the environment, human rights and information disclosure. The Request for Review was prompted by a March 29, 2013 landslide disaster that resulted in the death of 83 mine workers. The workers were reportedly asleep in their tents when they were buried by a mass of mud, rocks and debris that was three kilometres wide and thirty metres deep. This prompted attention in terms of hiring practices, environmental and human rights issues, and disclosure of information, as outlined below:

A) Environment: With respect to the environment, the Request for Review alleged that the Company: 1) failed to undertake sufficient environmental due diligence; 2) failed to design and implement adequate environmental and health and safety mitigation measures; and 3) contributed to the loss of life and prevented access to compensation for families.

B) Human Rights: With respect to human rights, the Request for Review alleged that the Company: 1) engaged in discriminative hiring practices; 2) forced evictions and resettlement of land; 3) violated freedom of religious issues through denial of access to religious sites; and 4) violated the freedom of expression and to project-related information disclosure; and 5) by contributing to negative environmental factors, violated the rights of local communities to water and to health.

C) Disclosure: With respect to information disclosure, the Request for Review alleged that the Company: 1) failed to disclose accurate information about the environmental risks associated with the project; 2) failed to disclose the full impact of the project to local communities; and 3) failed to allow independent inspectors to ascertain the causes of the aforementioned landslide disaster.

10. In the Request for Review, the Notifier cited the following sections of the OECD Guidelines. Some of the OECD Guidelines that were cited were derived from the 2000 Edition. Given that the NCP's work with the most recent version of the OECD Guidelines, Canada's NCP determined their corresponding paragraphs within the 2011 Edition, which are noted in parentheses below.

### **A) General Policies: Chapter II**

Paragraph A.1: "Enterprises should: Contribute to economic, social and environmental progress with a view to achieving sustainable development."

Paragraph A.2: "Enterprises should: Respect the internationally recognised human rights of those affected by their activities." [The Notifier referred to paragraph A.2 in the 2000 Edition of the OECD Guidelines]

Paragraph A.11: "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."

Paragraph A.14: "Enterprises should: Engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to

planning and decision making for projects or other activities that may significantly impact local communities.”

Paragraph B.1: “Enterprises are encouraged to: Support, as appropriate to their circumstances, cooperative efforts in the appropriate fora to promote Internet Freedom through respect of freedom of expression, assembly and association online.”

## **B) Disclosure: Chapter III**

Paragraph 1: “Enterprises should ensure that timely and accurate information is disclosed on all material matters regarding their activities, structure, financial situation, performance, ownership and governance.” [The Notifier referred to paragraph 1 of the 2000 Edition of the OECD Guidelines]

Paragraph 2 f): “Disclosure policies of enterprises should include, but not be limited to ... foreseeable risk factors.”

Paragraph 2 g): “Disclosure policies of enterprises should include, but not be limited to ... issues regarding workers and other stakeholders.”

Paragraph 3 b): “Enterprises are encouraged to communicate additional information that could include .... 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.”

Paragraph 3 c): “Enterprises are encouraged to communicate additional information that could include .... its performance in relation to these statements and codes.”

Commentary on Disclosure, Paragraph 33: The Guidelines also encourage a second set of disclosure or communication practices in areas where reporting standards are still evolving such as, for example, social, environmental and risk reporting. This is particularly the case with greenhouse gas emissions, as the scope of their monitoring is expanding to cover direct and indirect, current and future, corporate and product emissions; biodiversity is another example. Many enterprises provide information on a broader set of topics than financial performance and consider disclosure of such information a method by which they can demonstrate a commitment to socially acceptable practices. In some cases, this second type of disclosure – or communication with the public and with other parties directly affected by the enterprise’s activities – may pertain to entities that extend beyond those covered in the enterprise’s financial accounts. For example, it may also cover information on the activities of subcontractors and suppliers or of joint venture partners. This is particularly appropriate to monitor the transfer of environmentally harmful activities to partners. [The Notifier referred to paragraph 5 in the 2000 Edition of the OECD Guidelines. In the 2011 version, this language was reflected in Commentary paragraph above].

## **C) Human Rights: Chapter IV**

Paragraph 1: “Enterprises should: Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.”

Paragraph 2: “Enterprises should: ... avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.”

Paragraph 3: "Enterprises should: Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts."

Paragraph 5: "Enterprises should: Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impact."

Paragraph 6: "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."

#### **D) Employment and Industrial Relations: Chapter V**

Paragraph 1 e): "Enterprises should: Be guided throughout their operations by the principle of equality of opportunity and treatment in employment and not discriminate against their workers with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, or other status, unless selectivity concerning worker characteristics furthers established governmental policies which specifically promote greater equality of employment opportunity or relates to the inherent requirements of a job."

Paragraph 5: "Enterprises should: In their operations, to the greatest extent practicable, employ local workers and provide training with a view to improving skill levels, in co-operation with worker representatives and, where appropriate, relevant governmental authorities."

#### **E) Environment: Chapter VI**

Preamble Paragraph: "Enterprises should ... protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development."

Paragraph 1 a): "Enterprises should: Establish and maintain a system of environmental management appropriate to the enterprise, including ... collection and evaluation of adequate and timely information regarding the environmental, health and safety impacts of their activities."

Paragraph 2 a): "Enterprises should: ... provide the public and employees with adequate and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance."

Paragraph 4: "Enterprises should: Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage."

#### **Work of the Canadian NCP**

11. On January 29, 2014, the Canadian NCP received the Request for Review entitled: The Operations of China Gold International Resources Corp. Ltd., at the Copper Polymetallic



Mine at the Gyama Valley, Tibet Autonomous Region. Given that the Request for Review included end notes that linked to several websites and PDF documents, the NCP requested that the Notifier submit the supporting documentation directly to the NCP. This procedure has been established to ensure clarity with respect to the reference documentation cited and to mitigate against the possibility that information on websites may be changed or removed while the review is underway. The Notifier submitted the supplementary documentation between February 7-14, 2014. The NCP conducted research to determine the operational status of the Company, and to determine the appropriate contact for the Company. The NCP conducted outreach to the Company, and on March 28, 2014, emailed a letter to the Company requesting a reply in relation to the content of the Request for Review that was submitted by the Notifier. The Company responded on April 11, 2014 indicating that they would not engage or provide information, and the NCP undertook to confirm this position in follow-up outreach.

## **OECD Guidelines and the NCP Mandate**

12. The Procedural Guidance chapter of the OECD Guidelines provides that NCPs shall make an initial assessment by considering “whether the issues raised merit further examination”. In the Canadian NCP’s Procedures Guide for Canada’s National Contact Point for the Organisation of Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises, the Initial Assessment process outlined therein notes that in determining whether the issues raised merit further examination, the NCP will determine whether the issues are bona fide and relevant to the implementation of the Guidelines. In this context, the NCP will take into account a number of factors, as outlined below:

- the identity of the party concerned and its interest in the matter;
- whether the issues are material and substantiated;
- whether there seems to be a link between the enterprise’s activities and the issue raised in the specific instance;
- the relevance of applicable law and procedures, including court rulings;
- how similar issues have been, or are being, treated in other domestic or international proceedings;
- whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines;
- the request(s) and solution(s) that the notifier(s) is seeking and whether these are possible within the mandate of the NCP; and
- what the notifier(s) have indicated about their willingness or unwillingness to participate in a facilitated dialogue with a view to resolving the matter.

13. As per the Procedures, the NCP may also review other open source information and consult relevant government departments with knowledge of the issues raised.

14. The mandate and procedures of NCPs are outlined in the procedural guidance chapter of the OECD Guidelines, and the associated commentaries. These documents may be obtained through the links on the Canadian NCP’s website at: [www.ncp-pcn.gc.ca](http://www.ncp-pcn.gc.ca).

## **Initial Assessment Analysis and Considerations**

15. The NCP reviewed all valid material presented by the Notifier between February 2014 and April 2014.

16. Operational Status of the Company: The NCP undertook legal research and analysis to identify the legal and operational status of the Company. As noted in the Summary section above, China Gold is a TSX listed mining company trading under the symbol CGG that is focused on gold production and acquisitions. Based in Vancouver, this company is China National Gold's overseas flagship vehicle. The Canadian NCP found that these ties to Canada substantiated the Canadian NCP's jurisdiction over this specific instance.

17. Materiality and Substantiation: Many of the themes presented in the Request for Review were of a cross-cutting nature, and the Canadian NCP reviewed them in that context. The Request for Review rests on allegations relating to environmental, human rights and disclosure issues, which are identified in further detail in the Issues Raised and OECD Guidelines Cited section above. Based on the NCP's assessment, some of the issues raised surrounding labour practices and resettlement, freedom of association and assembly appear to be Government of China policies, and would thus be beyond the mandate of the Canadian NCP. However, this might not preclude discussions aimed at establishing a better understanding of these issues, should dialogue facilitation be accepted by both Parties. Furthermore, the Canadian NCP has determined that the issues that pertain to the Company's alleged actions in terms of environmental due diligence, health and safety issues, stakeholder engagement, and adequate disclosure on these issues appear material, and substantiated at least in part.

18. Based on the NCP's review of the documentation provided by the Notifier, and subsequent analysis of the factors outlined above, the NCP finds that some of the issues presented in the Request for Review are partially substantiated, and there is merit for further examination.

## **Conclusion**

20. The NCP requests that the Notifier and the Company respond in writing no later than November 28, 2014, advising the NCP of whether they are willing to participate in a facilitated dialogue. If both Parties agree to participate, the NCP will follow up with the Parties to coordinate the next steps in a dialogue facilitation process. If either or both of the Parties are unwilling to participate in this process, the NCP will proceed to prepare a Final Statement which will note: a) that the issues raised in the Request for Review appear material, partially substantiated, and merit further discussion and examination with both Parties; b) the offer by the NCP of its good offices for the purposes of dialogue facilitation; and c) the unwillingness to participate in the process by the concerned Party or Parties. Final Statements may make recommendations as appropriate, are made public on the Canadian NCP website, and may be included or referred to in the Canadian NCP's annual report to the OECD Investment Committee. This Initial Assessment will be included in the Final Statement published on the Canadian NCP website at the closure of this process.

21. Pursuant to section 3.5 of the Procedures Guide for Canada's NCP for the OECD Guidelines, the NCP will offer its good offices to help the parties involved enter into a dialogue facilitation process in order to resolve the issues raised in the Request for Review. The NCP believes that communication and dialogue may be useful in working towards the

resolution of the issues raised in this Request for Review and the overall advancement of the community and stakeholder interests.

## **Annex 3**

### **Information on the OECD Guidelines for Multinational Enterprises**

The Guidelines constitute a set of voluntary recommendations to multinational enterprises in all the major areas of business ethics, including employment and industrial relations, human rights, environment, information disclosure, combating bribery, consumer interests, science and technology, competition, and taxation. Adhering governments have committed to promote them among multinational enterprises operating in or from their territories.

Although many business codes of conduct are now publicly available, the Guidelines are the only multilaterally endorsed and comprehensive code that governments are committed to promoting. The Guidelines' recommendations express the shared values of governments of countries that are the source of most of the world's direct investment flows and home to most multinational enterprises. They aim to promote the positive contributions multinationals can make to economic, environmental and social progress.

Adhering countries comprise all 34 OECD member countries, and 12 non-member countries (Argentina, Brazil, Colombia, Costa Rica, Egypt, Jordan, Latvia, Lithuania, Morocco, Peru, Romania, and Tunisia). The Investment Committee has oversight responsibility for the Guidelines which are one part of a broader OECD investment instrument - the Declaration on International Investment and Multinational Enterprises. The instrument's distinctive implementation mechanisms include the operations of National Contact Points (NCP), which are government offices charged with promoting the Guidelines and handling enquiries in the national context.

Because of the central role it plays, the effectiveness of the National Contact Point is a crucial factor in determining how influential the Guidelines are in each national context. While it is recognised that governments should be accorded flexibility in the way they organise National Contact Points, it is nevertheless expected that all National Contact Points should function in a visible, accessible, transparent and accountable manner. These four criteria should guide National Contact Points in carrying out their activities.

## **Annex 4**

### **Doing Business the Canadian Way: A Strategy to Advance Corporate Social Responsibility in Canada's Extractive Sector Abroad**

- [Canada's Enhanced Corporate Social Responsibility Strategy to Strengthen Canada's Extractive Sector Abroad](#)

The Government would like to thank the many extractive sector stakeholders and Civil Society Groups, particularly the Executive Committee of the Centre for Excellence in CSR,

and members of the public for their valuable contributions to the review of the CSR Strategy. These helped craft a stronger Strategy for 2014.

### **Canada: A Strong Player in the Global Mining Industry**

In 2013, Canadian-headquartered mining and exploration companies accounted for nearly 31% of global exploration expenditures. In 2013, over 50% of the world's publically listed exploration and mining companies were headquartered in Canada. These 1500 companies had an interest in some 8000 properties in over 100 countries around the world.

## **Introduction**

Canada's history demonstrates that the extractive sector can help build a country. Our extractive companies in the mining, oil and natural gas industries make a major contribution to Canadian prosperity, and are making substantial contributions to economic development in other countries in which they operate. Canadian extractive sector activity abroad can result in a win-win outcome both for the Canadian economy and that of host countries.

In 2009, the Government of Canada launched its first Corporate Social Responsibility (CSR) Strategy, "[Building the Canadian Advantage: Canada's Corporate Social Responsibility Strategy for the Canadian International Extractive Sector.](#)" It outlined Canada's commitment to promoting CSR, defined as the voluntary activities undertaken by a company, over and above legal requirements, to operate in an economically, socially and environmentally sustainable manner.

Canada is strengthening its commitment to enhance the ability of Canadian extractive sector companies to integrate CSR into their practices through a renewed Strategy, building on experience gained since 2009. The updated Strategy makes clear the Government's expectation that Canadian extractive sector companies reflect Canadian values in all their activities abroad. While its primary audience is intended to be Canadian extractive sector companies, the Strategy is also meant to provide a more general audience with an overview of Canada's approach to promoting and advancing CSR abroad. For Government of Canada representatives, the Strategy provides a framework to guide their efforts to promote CSR policies, tools and guidance

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## **CSR Strategy Review**

The CSR Strategy launched in 2009 included a commitment that it be reviewed after five years. The review was conducted over several months by Canada's Department of Foreign Affairs, Trade and Development (DFATD) and Natural Resources Canada (NRCan), with partners across government. Review activities included an internal evaluation, based on Treasury Board guidelines; behavioural surveys of Canadian extractive sector companies on CSR awareness; an NRCan research project on inclusion by mining companies of CSR and related issues in their reporting to securities exchanges; consultations on the CSR Strategy with industry and civil society representatives; and an online public consultation. The 2013 consultations on the Government's Extractive Sector Strategy also fed into the CSR Strategy review, as many submissions related to the CSR Strategy.

Review findings indicated that the CSR Strategy has played a valuable role in focusing the Government's efforts related to encouraging CSR among Canadian extractive sector companies operating abroad. Provision and promotion of CSR tools, guidance and advice were identified as core activities that should be carried forward to assist Canadian companies in enhancing their CSR efforts.

The review also highlighted increased recognition by companies of the need to consider CSR in planning and operations, and heightened awareness of CSR guidelines and standards. However, managing environmental and social risks of operations abroad remains complex. These ever-present challenges demonstrate the ongoing need for a CSR Strategy focused on the extractive sector.

## **Driving Improved Company CSR Performance**

The global presence of Canadian extractive companies represents a potential force for responsible resource development around the world. Many Canadian companies are committed to high ethical, environmental and social standards - indeed, Canadian industry associations and extractive companies have been recognized domestically and internationally for their leadership on these issues. These companies embody the Canada brand. As companies continue to expand and seek more opportunities in remote areas, including those with weak governance, the social and environmental challenges they face become more complex, and the need to act responsibly more important. The Government recognizes that positive impacts from extractive sector activity in host countries are not automatically realized. Companies must operate responsibly in a conscious and consistent way to mitigate environmental and social risks, including those related to human rights.

The Government's goal in strengthening the CSR Strategy is to enhance the ability of Canadian extractive sector companies to manage social and environmental risks in a manner that aligns with international CSR guidelines and best practices and also brings lasting benefits for those affected by their projects. It is a way of doing business that not only contributes to success abroad but also reflects Canadian values and reinforces Canadian leadership in responsible business practices. That is what it means to do business the Canadian way.

Furthermore, the Government expects Canadian companies to integrate CSR throughout their management structures so that they operate abroad in an economic, social and environmentally sustainable manner. This means that companies should understand the impact of each of their functions on the surrounding economy, community and

environment, and adjust their activities and operations to create value for themselves and for other stakeholders.

### **Effective CSR Right from the Start**

To get more fulsome risk assessments for managers and investors, and improve the chances of far-reaching benefits from Canadian investments, the Government of Canada encourages companies to:

- Respectfully engage relevant stakeholders, early on and regularly;
- Understand local customs, culture and expectations, and how they affect, and are affected by, the project;
- Work with stakeholders to determine and communicate environmental, social and economic impact solutions;
- Explore opportunities to build local capabilities;
- Work with locals to develop a joint plan to contribute to local development; and
- Strategically incorporate this information throughout their planning and management structures

The Government of Canada expects Canadian companies operating abroad to respect human rights and all applicable laws, and to meet or exceed widely-recognized international standards for responsible business conduct. For those companies working or exploring opportunities in jurisdictions where local laws are not aligned with Canadian values, the Government of Canada encourages them to find ways to reflect Canadian values that also respect local laws. If this is not possible, companies may wish to reconsider their investment.

### **CSR Benefits Extend Beyond Doing the Right Thing**

Experience has shown that, particularly for extractive sector companies operating in challenging environments, those that go above and beyond basic legal requirements to adapt their planning and operations along CSR lines are better positioned to succeed in the long term, and to contribute to a more stable and prosperous environment for all affected parties. This is best done as early as possible, taking into consideration the project's life cycle from initial exploration to closure and beyond. As exploration firms are often the first point of contact with communities, they have an important role in setting the tone for stakeholder relations over the life of a project. Having these firms recognize the need to integrate CSR into their activities will help them establish good stakeholder relations and will make their projects more attractive to investors.

Many Canadian extractive sector companies, particularly those in the mining industry, understand that incorporating CSR practices into their operations contributes to their success. By doing so, companies can manage risks more efficiently and effectively; foster good relations with investment partners, employees, and surrounding communities; increase access to capital; and improve their reputation. Managing social risks, including through conscious efforts to respect human rights, is increasingly important to companies' success abroad. As more becomes known about the costs of poor stakeholder relations, both in terms of share price and the bottom line, the more investors will want to see evidence of effective CSR.

## **Canada's Comprehensive Approach to CSR**

Canada has a multifaceted approach to help Canadian extractive companies mitigate social and environmental risks and improve their CSR performance, as well as their contribution to host country benefits. The wide range of the Government's efforts aimed at helping Canadian extractive sector companies improve their awareness and integration of CSR guidance into their practices can be grouped into the following sets of activities:

1. Promoting and advancing CSR guidance;
2. Fostering networks and partnerships; and
3. Facilitating dialogue towards dispute resolution.

In addition, Canada undertakes or participates in a broad range of activities whose direct purpose is not to improve private sector CSR practices but which nonetheless affect how well a company's CSR efforts achieve desired positive outcomes, both internally and for the surrounding area. Such activities include negotiating CSR-related language in Free Trade Agreements, helping build the capacity of local government officials in responsible resource management, and reducing corruption globally. This fourth set of activities can be grouped under the heading of:

4. Strengthening the Environment Affecting Responsible Business Practices

Taken together, these activities represent a comprehensive approach to advancing CSR, to help companies succeed in a manner that creates value for them and for those affected by their activities. Canada seeks a well-regarded and globally competitive extractive sector, and also works to broaden the local development benefits that extractive sector investment can bring to a community and country.

Implementation of the updated Strategy will be led by DFATD, working closely with other government departments including NRCan and Industry Canada, and the Canadian National Contact Point (NCP) for the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises. Results will be achieved through continued work with the Office of the CSR Counsellor, the Centre for Excellence in CSR, and Canada's network of missions around the world.

### **Sharing Effective Practices**

Canadian companies have significant experience related to what works, and what doesn't, in implementing CSR in the extractive sector. The Government will help share this experience with other extractive sector companies – and those in other sectors – to improve CSR performance across the board.

### **The Office of the Extractive Sector CSR Counsellor**

The Office of the CSR Counsellor was established under the CSR Strategy in 2009. The mandate of the Office will continue to relate exclusively to the activities of Canadian extractive sector companies operating abroad. This mandate is dual in nature. First, it offers advice and guidance for all stakeholders on implementing CSR performance guidelines. This role will be strengthened, particularly to provide guidance on developing meaningful, effective dialogue between companies and communities, and will be brought

to bear in situations where such guidance can be used for early detection and resolution of issues. The second part of the CSR Counsellor's Office mandate is to review the CSR practices of Canadian extractive sector companies operating outside Canada. The Office's non-judicial Review Process, designed to bring companies and project-affected stakeholders together to resolve differences, will be offered to parties at early stages of a dispute, as part of the Government's efforts to help companies and communities resolve issues before they escalate. The Review Process will operate more closely with Canada's NCP for the OECD Guidelines for Multinational Enterprises to ensure coherence. Specifically, as outlined later in this document, in cases where formal mediation is required, the Parties will be referred to the National Contact Point.

### **The Centre for Excellence in CSR**

The Government contributed to the creation of the Centre for Excellence in CSR (the CfE) as a key element of its CSR Strategy in 2009. Housed within the Canadian Institute of Mining, Metallurgy and Petroleum (CIM), the CfE was envisaged as a focal point for the development and dissemination of practical tools and information to a broad range of extractive sector stakeholders. Through its Executive Committee, the CfE has provided an important venue for regular dialogue among key actors in the extractive sector, and has helped to identify extractive sector needs, understand diverse stakeholder views, and forge a common way forward on guidance for responsible resource and community development. Recognizing the potential of the CfE to effect improvement in companies' CSR performance on the ground, the Government of Canada values its role as an observer on the CfE Executive Committee and will continue to participate in CfE activities.

### **Canada's Network of Missions Abroad**

With regional offices across Canada and diplomatic missions in more than 100 countries around the world, the Government is well positioned to assist Canadian companies abroad. The Canadian Trade Commissioner Service (TCS) provides on-the-ground intelligence and practical advice on foreign markets to help companies make better, timely, and cost-effective decisions. The TCS can assist extractive sector companies that are part of the Canadian business community, are actively contributing to Canada's economic growth, have a demonstrated capacity for internationalization, and have strong potential to add value to the Canadian economy.

Canada's representatives around the world are a crucial delivery mechanism for advice and guidance to help raise CSR performance among Canadian extractive sector companies on the ground. Canadian Trade Commissioners can provide contacts and advice related to identifying, managing and mitigating environmental and social risks, including those related to human rights. Trade Commissioners are well-placed to share information on what works and what doesn't in a given country. Going forward, stronger support will be provided for CSR initiatives at Canada's missions abroad, aimed at ensuring a consistently high level of CSR-related service globally.

### **Promoting and Advancing CSR Guidance**

#### **Do Better Than the Minimum**



Where host country requirements differ from the international standards listed below, the Government of Canada expects Canadian companies to meet the higher, more rigorous standard.

Canadian extractive sector firms are at the leading edge of innovative CSR practices and reporting. Still, the Government recognizes that practical guidance is needed to help companies integrate CSR practices into all aspects of their extractive sector operations, and to report credibly on their efforts. It also recognizes that the guidance needed by exploration, mining, and oil and gas firms may differ. To meet these needs, Canada will continue to create, advance, promote and share practical guidelines, standards, tools and other resources on CSR.

### **Advancing International CSR Guidelines**

Internationally recognized CSR guidelines and standards are important for companies operating abroad. They provide information on all the considerations that can improve companies' economic, environmental and social performance, including respecting human rights. By establishing common expectations internationally, they help companies and stakeholders benchmark performance, levelling the playing field and facilitating continuous improvement across the extractive sector as a whole. For these reasons, the Government of Canada has been engaged in the development and advancement of key international CSR standards, and has also been working with international partners to encourage standardized CSR reporting.

Building on Canada's steadfast engagement, the Government will continue to be involved in the development, promotion and dissemination of widely-recognized international CSR performance and reporting guidelines, with the expectation that Canadian companies will align their practices as applicable. Canada will promote the following international guidance to Canadian extractive companies operating abroad, including two fundamental documents introduced since 2009:

- **OECD Guidelines for Multinational Enterprises (MNEs):** The [OECD Guidelines for MNEs](#) provide recommendations for responsible conduct on a broad range of business activities and are applicable to all sectors. Canada was one of the original signatories to the 1976 [OECD](#) Declaration on International Investment and Multinational Enterprises, and the associated Guidelines. Canada continues to be an active supporter and promoter of the Guidelines, having participated in their periodic updates and contributed to the development of implementation guidelines of particular interest to the extractive sector. Updates in 2011 brought in chapters related to human rights and due diligence, areas pertinent to the extractive sector.
- **United Nations (UN) Guiding Principles on Business and Human Rights (GPs)** (new to the Strategy in 2014): [The Guiding Principles](#) (GPs) operationalize the Protect, Respect and Remedy Framework first presented to the UN Human Rights Council in 2008 by the Special Representative on Business and Human Rights, Dr. John Ruggie. The GPs identify distinct but complementary responsibilities of companies and governments regarding human rights, resting on three pillars: 1) the state duty to protect against human rights abuses by third parties, including business; 2) the corporate responsibility to respect human rights through due diligence; and 3) ensuring greater access to effective remedies for victims. Co-sponsored by Canada, the GPs were unanimously endorsed by the Human Rights Council in June 2011, and

have since been referenced in a number of international standards, including the OECD Guidelines for MNEs. Canada has supported work to develop the GPs since 2005 and continues to promote and align its efforts with them.

- **Voluntary Principles on Security and Human Rights (VPs):** The [Voluntary Principles on Security and Human Rights](#) were designed to help extractive sector corporate actors anticipate and mitigate risks related to the deployment of public and private security, such that operations can be protected without excessive force or human rights abuses. This guidance has proven helpful to corporations operating around the world, including in high-risk zones. Canada joined the VPs in March 2009 and served as Chair of the initiative in 2011-2012.
- **International Finance Corporation's (IFC's) Performance Standards on Social & Environmental Sustainability:** The IFC's eight [Performance Standards](#) set expectations for conduct that companies receiving IFC support are to meet throughout the life of a project, including on stakeholder engagement and human rights. Updated in 2012, the Performance Standards form a basis for the [Equator Principles \(EPs\)](#). Signatories to the EPs are financial institutions (80 in 35 countries, including all five of Canada's major banks) which collectively provide more than 70 percent of project financing in emerging markets, where many extractive sector opportunities are located. These financial institutions use the EPs as their benchmark for assessing environmental and social risk in projects. Export Development Canada (EDC), the official export credit agency of Canada, signed on to the EPs in October 2007 and became a member of its Steering Committee in 2011 (to which it was re-elected in 2014). EDC's annual reporting on its implementation of the Eps is available on its [website](#).
- **OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas**(new to the Strategy in 2014): The 2011 [Guidance](#) was developed in response to the problems posed by conflict minerals, whereby minerals and metals are illegally mined and their illicit proceeds used to finance armed conflict. The core guidance document and two mineral-specific supplements explain how multinational companies sourcing gold, tin, tantalum, and tungsten can avoid fuelling conflict and responsibly source and trade minerals. While the Guidance is voluntary in nature, it has strong industry support, and has contributed to peace-building and stabilization efforts in mineral-rich fragile states, particularly in the Great Lakes Region of Africa. Canada chairs the OECD forum on responsible mineral supply chains as well as the Multi-stakeholder Steering Group which oversees the initiative, and played a leading role in negotiating the Guidance document.
- **Global Reporting Initiative (GRI):** The [GRI](#) is a broadly recognized international reporting standard which includes reporting principles, guidance and indicators for organizations of all sizes and sectors. Canada worked with the GRI and stakeholders to develop supplements for reporting by oil and gas and by exploration companies. Canada promotes the use of the GRI standard for CSR reporting by the extractive sector to enhance transparency and encourage market-based rewards for good CSR performance.

Canada's promotional activities are not limited to the guidelines and standards described above. The Government will continue to support other international CSR efforts and

initiatives that prove helpful to extractive firms in improving their performance, and that align with Canada's foreign policy objectives.

### **Sharing CSR Guidance Developed in Canada**

Following its 2014 update, the Strategy now includes flexibility for the Government to develop and share, in Canada and abroad, additional CSR guidelines that are found to be of practical use by the industry, including those made in Canada and those that specifically target responsible resource development. For example, several of our embassies abroad have adapted and promoted NRCan's [Exploration and Mining Guide for Aboriginal Communities](#) to their specific local or regional contexts. Also, Industry Canada has the [CSR Implementation Guide for Canadian Business](#). Practical guidance developed by Canadian industry associations will also be highlighted, such as [e3 Plus](#), developed for exploration companies by the Prospectors and Developers Association of Canada, and [Towards Sustainable Mining](#), created by the Mining Association of Canada.

### **Recognizing the Importance of CSR to Investors**

Many investors are already taking CSR considerations into account in their investment choices. A number of pension funds have formed coalitions around issues such as climate change in order to pressure companies, including those in the extractive sector, to report on related risks to their operations and performance.

### **Value of Credible CSR Practices and Reporting**

Some corporate leaders understand the intrinsic value of contributing to society over and above job creation and investment wealth. Others will continue to subscribe to more traditional notions of profit and success. Both will find it useful to have credible reporting on the financial impact of social risk mitigation.

As the costs to business, including impacts on share price, of poor corporate behaviour become better known, the higher the demand will be from a broad spectrum of investors for credible reporting of CSR-related efforts, and the stronger the incentive for companies to improve their CSR performance. However, firms that cannot demonstrate the alignment of their practices with widely-accepted CSR-related standards and guidance will find access to capital increasingly limited. Financing considerations can drive corporate behavioural change. The Government already actively promotes awareness and understanding of the importance of responsible business practices and human rights, but will increase its efforts to communicate the financial benefits of responsible behaviour that meets and exceeds widely-accepted international guidelines and standards, including those related to reporting.

### **Adapting to Evolving Best Practices**

The range of issues connected to responsible corporate behaviour is broad. Private sector operations can impact, and be impacted by, security and conflict, human rights issues (including those affecting women and children), the environment, corruption, indigenous rights, local economic conditions, and more. The importance of each of these issues to the risk analysis of a particular project will vary depending on the local context. As more Canadian companies integrate CSR into their operations, a wealth of experience and knowledge grows on what works and what does not.

As global knowledge about CSR evolves, the Government will continue to develop and share material that captures best practices resulting from practical experience in areas such as stakeholder engagement, human rights due diligence, conflict-sensitive business practices, and transparent, non-corrupt practices. With this in mind, Canada remains committed to working with international partners and a variety of organisations, including the Centre for Excellence in CSR, industry associations, educational institutions, civil society groups, and sector-relevant initiatives, to promote information-sharing on best practices and the development and dissemination of practical, innovative guidance to improve CSR performance.

### **Building on What Works**

Beyond the typical business contacts, Canadian Trade Commissioners in South America and West Africa have helped build networks and engagement between extractive sector companies and civil society groups. In recognition of this innovative and effective work, the Government is strengthening its CSR-related support to missions to build extractive sector-related networks, dialogue and partnerships on the ground, around the globe.

### **Fostering Networks and Partnerships**

The first five years of the CSR Strategy demonstrated the importance of the Government's convenor role to the extractive sector. This role includes helping connect companies with practitioners in the areas of social, environmental and economic performance, as well as creating dialogue spaces and venues for bridge-building between companies, communities, and other interest groups. This helps create a positive climate for responsible investment, and improves the potential for the success of, and lasting local benefits from, Canadian extractive sector investments abroad.

### **Stakeholder Engagement: Key for Juniors Too**

Including a full stakeholder mapping, an established community engagement strategy, and a community development plan can make a project more attractive to investors

Recognizing that the greatest mutual benefits arise from the constructive engagement of all relevant stakeholders, the Government is stepping up efforts to support engagement between companies and communities, including at the exploration stage. Meaningful and regular dialogue between companies, local communities, civil society and host country governments at all levels can be of critical importance to addressing potential conflicts and managing expectations associated with the development of extractive sector projects. It is also important to determine what each party will contribute to local development. The Government will increase its efforts to prepare Canadian Trade Commissioners in Canada and at missions abroad to provide country-specific guidance in this area.

### **The Role of Canada's Trade Commissioner Service**

#### **Canada's Offices around the World can Connect Extractive Companies with Existing Initiatives**

One initiative that has already been of interest to extractive companies is the International Model Forest Network (IMFN). Developed by Canada, with its Secretariat housed in NRCan, the IMFN comprises more than 55 Model Forests in nearly 30

countries. Participation in a Model Forest offers extractive companies an opportunity to become part of transparent and lasting relationships with local communities and governments, and to contribute to sustainable local economic development and conservation efforts.

Canada's Trade Commissioner Service (TCS) is an important resource for Canadian extractive companies operating abroad. TCS officers at Canadian missions around the world promote Canadian industry, and can [help Canadian client companies](#) by providing local contacts, helping to solve problems, and assisting with market preparation and assessment. As part of the [enhanced CSR Strategy](#), Trade Commissioners will increasingly be able to provide contacts beyond the typical business services, to include those that could enable companies to conduct social risk analyses, or conflict analyses, as appropriate. Contacts such as these can provide companies with more fulsome market assessments on which to base their decisions and mitigation measures. Missions will also increasingly be able to provide contacts to assist in establishing partnerships between companies and development organizations, enabling companies to gain valuable expertise and information in areas such as community relations and building local capabilities. Trade Commissioners will play a proactive role in this regard as an integral part of their service to Canadian companies.

TCS officers will be asked to play an important role in identifying other projects or programs which may welcome extractive sector participation, through their work with diplomatic and development colleagues, and with colleagues in other government departments. In any given country there may be initiatives in health, education, local economic growth, or others (such as the IMFN, highlighted in the text box), which can benefit from extractive sector support, and which offer opportunities for extractive sector companies to add social value through their operations.

One such example is through local procurement, whereby Canadian companies operating in foreign countries choose to buy appropriate products from host country sources. Under the enhanced Strategy, trade commissioners will bolster their capacity to identify local procurement opportunities and help Canadian companies work with communities to take advantage of them. This process will ensure that local communities reap the benefits of responsible resource development, both directly and indirectly.

### **CSR-related Activities at Missions**

Canada's diplomatic missions abroad actively promote awareness and understanding of the importance of responsible business practices. They create opportunities for Canadian companies to engage in relationship-building through conferences, workshops and other activities involving companies, representatives of host governments, and civil society. Over the first five years of the CSR Strategy, Canadian officers abroad organized or contributed to over 250 CSR-related initiatives. Such activities provide evidence of the value of integrating CSR into business functions, and of building local networks towards long-term relationships. They have also been instrumental in bringing together companies, communities, and other local groups to facilitate dialogue and partnerships, dispelling misconceptions, and contributing to the breakdown of barriers between stakeholders. Partnerships across stakeholder groups increase knowledge and awareness and help all actors make informed decisions. As part of its updated Strategy, Canada will mobilize resources to provide more specific guidance on CSR-related topics of particular relevance to each country or region.

The strengthened Strategy ensures that missions are given increased CSR-related training and materials to provide support to companies that are looking for opportunities to integrate corporate social responsibility into their practices. This includes training on how to help companies build networks and partnerships with local communities, encourage dialogue between Canadian companies and local stakeholders, and use their on the ground experience to help maximize the effectiveness of CSR efforts.

## **Facilitating Dialogue Towards Dispute Resolution**

Canada's efforts to share practical CSR information and help foster partnerships and effective, respectful engagement can be viewed as proactive prevention. They encourage early, deliberate action by companies to adjust the way they do their day-to-day activities to prevent harmful impacts from projects.

Nonetheless, given the challenging environments in which the extractive sector operates, disputes can and do arise. Disagreements can divide communities, keep them from obtaining resolutions to their concerns, and can create a negative cycle of disputes, limiting the community's access to the benefits of natural resource development. Unresolved disagreements with communities can also affect businesses through expensive project delays, damaged reputations, high conflict management costs, investor uncertainty, and in some cases, the loss of investment capital.

Canada understands that dialogue facilitation and non-judicial dispute resolution mechanisms, which bring parties together to find mutually-beneficial solutions, are crucial to the long-term success of extractive projects abroad and the sustainability of benefits to host communities. The UN Guiding Principles on Business and Human Rights recognize the importance of making a range of dispute resolution mechanisms available, in particular non-judicial grievance mechanisms, to bring parties together to find mutually-beneficial solutions. Canada has two dialogue facilitation mechanisms for helping communities and Canadian extractive sector companies resolve differences. These are the [Office of the Extractive Sector CSR Counsellor](#), and the [Canadian National Contact Point](#) for the OECD Guidelines for MNEs (NCP).

Together, the CSR Counsellor and the Canadian NCP form key elements of the Government of Canada's efforts to foster constructive relationships between Canadian extractive sector companies and project-affected stakeholders. Both these mechanisms are designed to facilitate dialogue between companies and communities, and Canada will further align their dialogue facilitation functions. It should be noted that these Canadian mechanisms are not meant to replace local processes, nor do they preclude the use of court systems, either locally or in Canada, to seek legal restitution.

## **Early Detection and Resolution of Problems**

Reducing barriers to community engagement is an important role for the Government of Canada. The Government will take steps to provide improved guidance related to stakeholder engagement, with a view to prevention of disputes and their early detection and resolution. This will include information on local processes, the use of which will be encouraged in the first instance. If local processes are unavailable or have not succeeded, guidance on Canadian and international mechanisms will be made available to relevant parties.

## **Credible Mechanisms to Establish or Restore Trust and Dialogue**

Both the Extractive Sector CSR Counsellor and the Canadian NCP are key to Canada's efforts to foster constructive relationships between Canadian extractive sector companies and project-affected stakeholders. The Government will introduce consequences for companies that are not willing to participate in the dialogue facilitation processes of either the CSR Counsellor or the NCP.

Helping companies and communities rebuild relationships where trust has been lost or never truly established is important to secure the benefits of extractive sector investment in the host country. Canada will bolster support to early detection and resolution of problems before they escalate into more serious situations. This will include marshalling the expertise of the CSR Counsellor.

The Office of the CSR Counsellor is a valuable, extractive sector-specific resource, and will serve on the "front end" of the dispute resolution process. Its mandate is twofold: firstly it offers advice and guidance for all stakeholders on implementing CSR performance guidelines. Going forward, this role will include strengthened guidance on developing meaningful, effective dialogue between companies and communities. The advisory mandate of the Office of the CSR Counsellor can be used by companies and communities to help detect, address and resolve misunderstandings or disagreements at an early stage and in accordance with international guidance.

The second part of the CSR Counsellor's mandate is to review the CSR practices of Canadian extractive sector companies operating outside Canada. The Office's Review Process can be initiated by companies or project-affected individuals or communities. It is designed to bring disputing parties together to help them resolve their differences for a mutually beneficial result. When these efforts have not succeeded or are not appropriate or if the CSR Counsellor determines that a situation would benefit from formal mediation, the Counsellor will encourage and help parties to refer issues to the NCP. This mandate makes the Counsellor well placed to assist companies and communities to establish dialogue and resolve early-stage disagreements and disputes, before concerns have escalated.

### **Accessible Non-judicial Dispute Resolution**

The review process of Canada's NCP for the OECD Guidelines for MNEs has a proven track record in bringing parties together to work towards mutually satisfactory dispute resolution. Created in 2000, Canada's NCP is available to facilitate access to consensual and non-adversarial procedures, such as conciliation and mediation, to help companies and communities resolve issues related to the implementation of the OECD Guidelines for MNEs. Canada's NCP includes the expertise of seven Government of Canada departments, including the extractive sector knowledge of NRCan. While the OECD Guidelines apply to all Canadian companies operating abroad in all sectors, as well as all multinational companies operating in Canada, the 2011 update of the Guidelines expanded the scope of guidance around issues of particular interest to the extractive sector, such as human rights and due diligence. It is now difficult to find an aspect of responsible corporate practice that is not included in the expanded scope of the OECD Guidelines.

### **Encouraging Alignment with CSR Guidance and Participation in Dialogue**

The Counsellor's Office and the NCP have both helped bring disputing parties together for ongoing dialogue. Both mechanisms are based upon international best practice, and

bolster alignment of company activities with international guidance. Canada strongly encourages participation by companies and project-affected stakeholders in the most relevant mechanism as the situation merits. While participation remains voluntary, a decision by either party not to participate in the CSR Counsellor Office's or NCP's or review process will be made public.

Companies are expected to align with widely recognized CSR-related guidance and will be recognized by the CSR Counsellor's Office as eligible for enhanced Government of Canada economic diplomacy. Companies will also face withdrawal of TCS and other Government of Canada advocacy support abroad for non-participation in the dialogue facilitation processes of Canada's NCP and Office of the Extractive Sector CSR Counsellor.

In addition, in line with the Government's 'economic diplomacy' approach, Government of Canada services include the issuance of letters of support, advocacy efforts in foreign markets and participation in Government of Canada trade missions. Canadian companies found not to be embodying CSR best practices and who refuse to participate in dispute resolution processes contained in the CSR Strategy, will no longer benefit from economic diplomacy of this nature. Furthermore, such a designation will be taken into

account in the CSR-related evaluation and due diligence conducted by the Government of Canada's financing crown corporation, Export Development Canada (EDC), in its consideration of the availability of financing or other support.

### **Regular Review for Continual Improvement**

Experience has demonstrated that the effectiveness and credibility of these mechanisms requires a commitment by all parties to engage in constructive dialogue aimed at a mutually satisfactory resolution of the issues involved. In addition to strengthening the incentives for parties to participate, Canada will continue to explore how to make these mechanisms more accessible to those affected by extractive sector projects. Both mechanisms will be reviewed on a regular basis to incorporate lessons learned, as well as from the growing body of knowledge on effective dialogue facilitation mechanisms.

## **Strengthening the Environment Affecting Responsible Business Practices**

A stable, open, transparent, and predictable investment environment is important to internationally active Canadian extractive sector companies and also to local governments and stakeholders. An environment that also encourages the creation of value for the communities and countries within which extractive sector companies operate helps transform business opportunities into success.

Canada recognizes that action by industry may not bring about sustainable positive change in the absence of broader, coordinated efforts at the national and regional levels. The Government of Canada works with interlocutors at international, bilateral and organizational levels, on a range of activities which strengthen the environment affecting business activities abroad in a way that is conducive to advancing CSR performance and benefits on the ground. Viewed together, the Government's actions provide a foundation for extractive sector companies, including developers, to go above and beyond legal requirements and reflect Canadian values in their work abroad through their implementation of CSR.



Many of the activities listed below, such as trade agreements, are not undertaken for the express purpose of enhancing company CSR performance, yet impact companies' motivation and ability to integrate CSR into all components of their work. Other activities, such as capacity-building, are not undertaken for the benefit of companies, but have an impact on how much host countries can benefit from the activities of responsible extractive sector companies. These activities are described below, to provide an overview of Canada's efforts that contribute to enhanced CSR performance by companies which results in broadly enjoyed benefits

### **International Level**

One example of Canada's efforts at the international level is its significant support to the **Extractive Industries Transparency Initiative (EITI)**. The EITI was established in 2002 to support improved governance in resource-rich countries through the verification, reconciliation and full publication of extractive company payments made to host country governments and the corresponding government revenues received from oil, gas, and mining. This initiative aims to strengthen governance by improving transparency and accountability in the extractives sector. It can also assist in fostering debate about how government revenues are spent and in helping build the capacity of communities to hold their government to account. Canada has participated in the EITI as a supporting country since 2007, and is an EITI Board member for the 2013-2015 cycle. Our work with the EITI forms part of Canada's support to the global fight against corruption.

Another important contribution by Canada to fight corruption globally is its **strengthened Corruption of Foreign Public Officials Act (CFPOA)**. The CFPOA implements Canada's international obligations under the OECD on Combatting Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention) and makes it a criminal offence in Canada for persons or companies to bribe foreign public officials in the course of international business. Based on recommendations from business stakeholders, civil society and the OECD Working Group on Bribery, the government introduced amendments to the CFPOA which received Royal Assent on June 19, 2013. These amendments strengthen the Act, demonstrating Canada's commitment to the fight against bribery globally.

Canada also **promotes CSR in multilateral fora** including the OECD, the G7, the Asia-Pacific Economic Co-operation, the Organization of American States, the Francophonie, and the Commonwealth. This engagement provides Canada not only with opportunities to share knowledge, but also to work with other stakeholders to promote and strengthen international CSR guidelines to the benefit of all.

### **Bilateral Level**

Canada's efforts to promote CSR are advanced at the bilateral level by the inclusion of voluntary **provisions for CSR in all Foreign Investment Promotion and Protection Agreements and Free Trade Agreements signed since 2010**. These provisions suggest that signatory countries encourage enterprises operating within their territories to voluntarily incorporate internationally recognized CSR standards into their practices and internal policies, in areas such as labour, the environment, human rights, community relations, and anti-corruption.

That is why the Government of Canada **works with host governments to enhance their capacity** to manage their own natural resources for economic, social and environmental sustainability through various bilateral and multilateral initiatives. NRCan's ability to provide knowledge and expertise in this area is crucial to these efforts, which enhance the capacities of countries to manage both natural resource development and the benefits the sector generates. It includes building and modernizing governance regimes to ensure that natural resources are managed in a technically and environmentally sound manner. Canada recognizes that improving countries' resource governance is not only critical to ensuring that the extractive sector contributes to poverty reduction, it also creates a business and investment environment conducive to responsible corporate conduct in countries where Canadian companies operate.

### **Organizational Level**

To meet Canada's 2013 G8 commitments, on October 23, 2014, the Government introduced the Extractive Sector Transparency Measures Act (ESTMA) into Parliament. The Act seeks to establish mandatory reporting standards designed to deter corruption through reporting and transparency measures. The ESTMA will require extractive entities that are engaged in the commercial development of minerals, oil or natural gas, and subject to Canadian law, to report annually, publically, on specific payments of \$100,000 or more made to any level of government in Canada or abroad. This will include payments made by industry to Aboriginal governments. The proposed standards are broadly aligned with emerging international reporting requirements in the United States and the European Union. They have also been developed with a view to ensuring a level playing field for companies operating domestically and abroad, helping reinforce the integrity of Canadian extractive companies by making the extent of their local contributions more visible, and helping to ensure that citizens in resource-rich countries around the world are better informed and benefit from the natural resources in their country.

### **Complementarity with Canada's Development Assistance Programming**

Many of the Government's current capacity-building efforts in the area of natural resource management are guided by Canada's existing approach on extractives and sustainable development. Under the approach, Canada's development assistance supports developing countries to enhance their capacity to manage their extractive sectors, focusing on building resource governance capacity, growing businesses to improve local economic development, and enabling communities to maximize the benefits of the sector. It also supports implementation of leading international standards and guidelines, for both firms and countries, emphasizing transparency.

While the approach is distinct from the CSR Strategy, the two are well aligned. Several associated initiatives are complementary. For example, initiatives such as the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF), and the Canadian International Resources and Development Institute (CIRDI), which is operated by the University of British Columbia in a coalition with Simon Fraser University and École Polytechnique de Montréal, will continue to foster dialogue, training and research, and promote best practices to support developing countries to enhance their capacity to manage their natural resource sector. These results also help address the uncertainties and scope of demands placed upon companies working in

resource-rich developing countries, and to avoid situations where companies take on the responsibilities of host governments in the areas in which they operate.

## **Conclusion**

It is important to Canada that our extractive sector operate abroad in a manner that brings lasting prosperity for Canadians, and for those living in the areas in which our companies are active. To address this, Canada's enhanced CSR Strategy identifies a number of areas where the Government of Canada will strengthen its efforts to assist Canadian extractive sector companies operating abroad in integrating CSR into their operations.

Through its strengthened CSR Strategy, the Government will build on what works by enhancing companies' ability to align their activities with widely-accepted CSR guidelines and standards; strengthening CSR-related service to TCS client companies across the globe; increasing support to mission efforts to create networks and partnerships and local procurement opportunities; providing new incentives for participation by affected parties in Canada's dialogue facilitation processes; and working with partner countries and initiatives to promote and advance a range of CSR guidance pertinent to the extractive sector. Cooperation with stakeholders will continue to be important for the successful implementation of Canada's CSR Strategy.

The CSR Strategy will be reviewed again in 2019, to examine the degree to which it continues to enhance the ability of Canadian extractive sector companies to improve their CSR performance and secure the benefits their presence can provide for host countries and local communities.

## **Annex 5**

### **Procedures Guide for Canada's National Contact Point for the Organisation of Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises**

#### **1. Introduction**

1.1. The purpose of this document is to outline the process that Canada's National Contact Point will follow when receiving a Request for Review of a specific instance under the OECD Guidelines for Multinational Enterprises.

1.2. This text is based on the "Procedural Guidance" chapter of the OECD Guidelines for Multinational Enterprises and the related "Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises" (create hyperlink to the Guidelines here).

1.3. The OECD Guidelines for Multinational Enterprises were initially created in 1976 and are subject to occasional revisions. The most recent revision to the Guidelines was adopted on May 25, 2011. Prior to this, the Guidelines were last updated in 2000. Requests for review received by the National Contact Point are processed in accordance with the applicable version of the Guidelines in existence at the time of the filing of the request for review.

## 2. Definitions

2.1. The following definitions apply in this document.

- “Guidelines” means OECD Guidelines for Multinational Enterprises.
- “MNE” means multinational enterprise.
- “NCP” means Canada’s National Contact Point for the OECD Guidelines for Multinational Enterprises.
- “Notifier” means any individual, organization, or community that believes that a multinational enterprise’s actions or activities have not observed the OECD Guidelines for Multinational Enterprises and who files a Request for Review of a specific instance with the NCP.
- “Specific Instance” means an instance of alleged non-observance of the Guidelines by a multinational enterprise .
- “Website” means Canada’s NCP website accessible at [www.ncp.gc.ca](http://www.ncp.gc.ca).

## 3. Overview

3.1. The role of the NCP is to further the effectiveness of the Guidelines. The NCP operates in accordance with the core criteria of visibility, accessibility, transparency and accountability.

3.2. The NCP contributes to the resolution of issues that arise relating to implementation of the Guidelines in specific instances in a manner that is impartial, predictable, equitable and compatible with the principles and standards of the Guidelines.

3.3. The NCP may provide a forum for discussion and assist the business community, worker organizations, other non-governmental organizations, and other interested parties to deal with the issue(s) raised in an efficient and timely manner and in accordance with applicable law.

3.4. When Canada’s NCP receives a Request for Review of a specific instance, it will review the documentation and supporting material received and make an initial assessment of whether the issue(s) raised merit further examination and will respond to the parties involved. If the NCP determines that the issue(s) raised do not merit further consideration, the NCP will issue a public statement and the case will be closed.

3.5. Where the issue(s) raised is/are considered to merit further examination, the NCP will offer its good offices to help the parties involved to resolve the issue(s). In doing so, the NCP will offer, with the agreement of the parties involved, to facilitate a dialogue to assist the parties in dealing with the issues. This may include access to consensual and non-adversarial means, such as conciliation or mediation.

3.6. Where the parties do not reach an agreement on the issue(s) raised or when a party is unwilling to engage in the procedures or participate in good faith, the NCP will issue a public statement. The statement will at a minimum describe the issue(s) raised, the reasons why the NCP decided that the issue(s) raised merit further examination and the procedures the NCP initiated in assisting the parties.

3.7. Where the parties reach an agreement on the issue(s) raised, the NCP will issue a report. The report will at a minimum describe the issue(s) raised, the procedures the NCP initiated in assisting the parties and when agreement was reached.

3.8. As part of the development of any report or statement, the NCP will circulate a draft to the parties involved for comments. The report or statement will then be made public by posting on the NCP website and possible inclusion in the annual NCP report to the OECD. It should be noted that the need to protect sensitive business and other stakeholder information is taken into account when finalizing the content of any report or statement that is made public.

3.9. The Canadian NCP's languages of operation are English and French.

## **4. Stages Involved in Processing Requests for Review**

4.1. There are several stages involved in handling the receipt of a Request for Review by the NCP.

- Stage 1 – From Receipt of the Request for Review to the Initial Assessment.
- Stage 2 – From the Initial Assessment to the conclusion of Facilitated Dialogue.
- Stage 3 – Drafting and publication of the Statement or Report.

## **5. Timelines**

5.1. The NCP's objective is to complete each stage of the processing of a specific instance within the timeframes indicated below. However, due to unforeseen circumstances beyond the control of the NCP, flexibility may be required on a case by case basis and various stages may take longer than anticipated.

- Stage 1: 3 months.
- Stage 2: 6 months.
- Stage 3: 3 months.

## **6. Parties Who May File a Request for Review Regarding a Specific Instance**

6.1. A party that believes that an MNE's actions or activities constitute non-observance of the OECD Guidelines for Multinational Enterprises may file a Request for Review of a specific instance with the NCP.

6.2. The notifying party, or notifier, may be an individual, an organization, a community affected by a company's activities, employees or their trade union, or an NGO. A notifier may act on behalf of other parties who are identified. The notifier should have an interest in the matter and the nature and extent of the interest is a factor that will be considered by the NCP in its treatment of the Request for Review.

6.3. When a Request for Review is jointly submitted by more than one notifier, the notifiers should indicate whether they have agreed that one of them will act as the lead for purposes of liaison and communication with the NCP. The notifiers should further indicate whether correspondence from the NCP should be sent only to the one entity acting as the lead (and whether the others should be copied) or whether correspondence should also be

addressed to all the notifiers. When several Canadian MNEs are listed in a Request for Review the NCP will consult with the MNEs to determine the most appropriate way to communicate with them depending on the circumstances. When dealing with situations involving MNEs from other countries, to determine how to best liaise with the MNE(s) in question, the NCP may communicate with the corresponding NCP in the home country of the foreign MNE(s) (if it is an adhering country).

## **7. Appropriate NCP for filing a Request for Review**

7.1. Generally, issue(s) will be dealt with by the NCP in whose country the issue(s) have arisen.

7.2. Should the country where the issue(s) has/have arisen not adhere to the Guidelines and not have an NCP, then the Request for Review may be submitted to the NCP in the MNE's home country if the home country adheres to the Guidelines.

7.3. Thus, the Canadian NCP may deal with all issue(s) that arise in Canada relating to the activities of any MNE operating in Canada, as well as the operations of Canadian MNEs operating in countries that do not have an NCP.

7.4. Cases of multi-jurisdictional specific instances that involve cooperation with the NCP of another country will be dealt with on a case by case basis. In such cases, normally one of the NCPs will assume the lead with respect to the processing of the specific instance.

7.5. Notifiers who wish to submit a Request for Review of specific instances to the NCP may do so by forwarding the request by mail, email or fax to the following addresses:  
Mail:

Canada's National Contact Point for the OECD Guidelines for Multinational Enterprises  
Foreign Affairs and International Trade Canada  
125 Sussex Drive  
Ottawa ON  
Canada  
K1A 0G2  
Email: [ncp.pcn@international.gc.ca](mailto:ncp.pcn@international.gc.ca)  
Telephone: (343) 203-2341  
Facsimile: (613) 944-7153  
\*Attention –BTA Division

## **8. Information to Include in the Request for Review**

8.1. Notifiers who wish to file a Request for Review of a specific instance with Canada's NCP should provide the following information in either English or French with their request:

1. The notifier's identity, including contact person, name of organization and contact details. Where a notifier is raising a matter on behalf of a number of organizations, they should list all the organizations.
2. The notifier's interest in the matter. For example, if a Request for Review of a specific instance is being lodged on behalf of others (e.g., a union or local community), the notifier lodging the request should outline their interest in this case and mandate or reason for lodging the request.

3. The identity (name) and location of the MNE (e.g., location of the MNE's headquarters) whose actions or activities are the subject of the Request for Review. If the MNE is a subsidiary of another company, the names of the corporate entities involved should be provided with a description of their affiliation.
4. A description of the action or activity which the notifier lodging the Request for Review believes constitutes non-observance of the Guidelines. The stakeholder must provide any supporting evidence they may have (e.g., documents, reports, studies, articles, witness statements, etc.). Please note that unsubstantiated allegations are not sufficient for the NCP to make an initial assessment.
5. The location(s) of the action or activity to which the specific instance relates.
6. The parts of the Guidelines (i.e., chapter(s) and paragraph(s)) which are considered to be most relevant.
7. A list of any applicable or relevant law and whether there is an issue relating to compliance with this (these) law(s).
8. Background on whether the action or activity has been discussed with the MNE and the results of such discussions.
9. A list of other fora where the same matter has been raised (e.g., other government offices, agencies, NGOs, legal action in the court system, etc.) and the status of any corresponding action that such offices may be taking.
10. A description of the action(s) the notifier lodging the Request for Review considers the MNE should take to resolve the issues.
11. Any additional details that the entity lodging the Request for Review wishes to bring to the attention of the NCP and/or the MNE.
12. In addition to the above information, the Request for Review should also clearly indicate that the entity submitting the request for review is aware/and consent that all information provided to the NCP may be shared with the MNE or other parties.

8.2. The Canadian NCP's languages of operation are English and French. Documents that are submitted in other languages will not be considered by the NCP. All communications from the NCP to the notifiers or to MNEs will be in either French or English, and all public information on the Website will be in both languages.

## **9. Stage 1: From Receipt to Initial Assessment**

9.1. Notifiers who wish to raise a specific instance with the NCP should do so by submitting a Request for Review in writing with supporting documentation. Notifiers should include all of the information listed above (as applicable) in their submissions. The NCP may request additional information at any stage in the process.

9.2. Notifiers may request a meeting with the NCP when making their submission.

9.3. All parties to a specific instance are requested to make it clear in all of their correspondence with the NCP that the information and documentation provided may be shared with the other party(ies).

## **10. Acknowledging Receipt of the Request for Review**

10.1. Within five working days of the receipt of a Request for Review the NCP will issue a letter to the Notifiers acknowledging receipt. (Note: notifiers must ensure that their submission includes a return address for such communication.)

10.2 Parties to a specific instance are encouraged to forward all relevant and supporting documentation to the NCP in one or several messages within a reasonable time frame rather than submitting separate documents over an extended period of time. The NCP may fix a deadline beyond which any additional documentation in relation to the specific instance will not be taken into consideration.

## **11. Initial Assessment**

11.1. Following the receipt of a Request for Review the NCP will proceed to carry out an initial assessment.

11.2. As part of the initial assessment, the NCP will endeavour to forward the Request for Review to the MNE in question with an invitation to reply, taking into consideration the need to protect sensitive and confidential information (e.g. to safeguard the identity and/or safety of the parties). The reply will be taken into account by the NCP in performing its initial assessment. For purposes of assisting with the timeliness and transparency of the process, the parties should indicate their provision of consent to share the material submitted with the other party(ies).

11.3. The NCP will carry out an initial assessment with a view to determining whether the issues raised merit further examination.

11.4. In determining whether the issues raised merit further examination, the NCP will determine whether the issues are bona fide and relevant to the implementation of the Guidelines. In this context, the NCP will take into account:

- the identity of the party concerned and its interest in the matter;
- whether the issues are material and substantiated;
- whether there seems to be a link between the enterprise's activities and the issue raised in the specific instance;
- the relevance of applicable law and procedures, including court rulings;
- how similar issues have been, or are being, treated in other domestic or international proceedings; and
- whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines.

11.5. The NCP may also consider a number of other issues, including:

- the request(s) and solution(s) that the notifier(s) is seeking and whether these are possible within the mandate of the NCP; and
- what the notifier(s) have indicated about their willingness or unwillingness to participate in a facilitated dialogue with a view to resolving the matter.

11.6. At this stage the NCP may also review open source information and consult relevant government departments with knowledge of the issues raised.

11.7. Following its initial assessment, the NCP will respond to the parties concerned.

11.8. Should the NCP decide that the issue(s) raised do not merit further examination, it will inform the parties of the reasons for its decision. The NCP will also consult with the parties for purposes of issuing a public statement. The statement will at a minimum



describe the issue(s) raised and the reasons for the NCP's decision. If the NCP believes that, based on the results of its initial assessment, it would be unfair to publicly identify a party in a statement on its decision, it may draft the statement so as to protect the identity of the party. The file will then be closed.

11.9. If the matter is considered by the NCP to merit further examination, the NCP will offer good offices to help the parties involved resolve the issues. The NCP may also make publicly available its decision that the issues raised merit further examination and its offer of good offices to the parties involved.

## **12. Stage 2: From Initial Assessment to Conclusion of Facilitated Dialogue**

12.1. Where the issues raised are considered by the NCP to merit further examination, the NCP will offer its good offices, and with the agreement of the parties involved, to facilitate a dialogue to assist the parties in dealing with the issues. This may include access to consensual and non-adversarial means, such as conciliation or mediation.

12.2. For this purpose the NCP will consult with these parties and where relevant:

- Seek advice from relevant authorities, and/or representatives of the business community, worker organizations, other non-governmental organizations, and relevant experts.
- Consult the NCP in the third country or countries concerned.
- Seek the guidance of the OECD Investment Committee if it has doubt about the interpretation of the Guidelines in particular circumstances.

12.3. In common with accepted practices on conciliation and mediation procedures, these procedures would be used only upon agreement of the parties concerned and their commitment to participate in good faith during the procedure.

12.4. In the event Guidelines-related issues arise in a non-adhering country, the NCP will take steps to develop an understanding of the issue(s) involved. While it may not always be practicable to obtain access to all pertinent information, or to bring all the parties involved together, the NCP may still be in a position to pursue enquiries and engage in other fact finding activities. Examples of such steps could include contacting the management of the firm in the home country, and, as appropriate, government officials in the non-adhering country.

12.5. If the parties resolve the issue(s) raised and come to an agreement, the NCP will indicate that the matter was resolved by the parties on the NCP website and in its annual report, which is also posted on the website.

## **13. Stage 3: Drafting and Publication of Report or Statement**

13.1. At the conclusion of the procedures and after consultation with the parties involved, the NCP will make the results of the procedures publicly available, taking into account the need to protect sensitive business and other stakeholder information.

13.2. Where the parties reach an agreement on the issue(s) raised, the NCP will issue a report. The report will at a minimum describe the issue(s) raised, the procedures the NCP

undertook in assisting the parties and when agreement was reached. As part of the development of the report, the NCP will circulate a draft to the parties involved for comments. The report will then be made public by posting on the NCP website and possible inclusion in the annual report. Information on the content of the agreement will only be included insofar as the parties involved agree thereto.

13.3. Where the parties do not reach an agreement on the issue(s) raised or when a party is unwilling to engage in the procedures or participate in good faith, the NCP will issue a statement. The statement will at a minimum describe the issue(s) raised, the reasons why the NCP decided that the issue(s) raised merited further examination and the procedures the NCP undertook to assist the parties. The NCP will make recommendations on the implementation of the Guidelines as appropriate, which will be included in the statement. A statement may be issued without recommendations if the NCP believes that specific recommendations are not required. Where appropriate, the statement may also include the reasons why agreement could not be reached. The statement may also identify the parties concerned, the date on which the issue(s) were raised with the NCP, and any other observations the NCP deems appropriate. As part of the development of the final statement, the NCP will circulate a draft to the parties involved for comments. However, the statement is that of the NCP and it is within the NCP's discretion to decide whether to change the draft statement in response to comments from the parties. The final statement will then be made public by posting on the NCP website and possible inclusion in the annual report.

13.4. If the NCP makes recommendations to the parties, it may be appropriate under specific circumstances for the NCP to follow-up with the parties on their response to these recommendations. If the NCP deems it appropriate to follow-up on its recommendations, the timeframe for doing so will be addressed in the statement of the NCP.

## **14. Confidentiality and Transparency**

14.1. Pursuant to the transparency criteria of operations, the NCP will generally share all relevant information that it receives from one party(ies) with the other party(ies). However, the NCP may determine not to share certain information that it receives if it has been requested not to share the information and corresponding justification and rationale was provided.

14.2. Transparency is recognized as a core criteria and general principle for the conduct of NCPs in their dealings with the public. However, it is also recognized that there are specific circumstances where confidentiality is important. While the initial assessment and facilitated dialogue phases of the process are underway, confidentiality of the proceedings will be maintained. It is understood that proceedings include the facts and arguments brought forward by the parties. At the conclusion of the procedures, if the parties involved have not agreed on a resolution of the issues raised, they are free to communicate about and discuss the issues. However, information and views provided during the proceedings by another party involved will remain confidential, unless that other party agrees to their disclosure or this would be contrary to the provisions of national law.

14.2. The NCP Procedures Guide, in conformity with the laws of Canada, strives to strike a balance between these two principles.

14.3. Canada's NCP is required by the Government of Canada's Policy on Government Security to maintain an appropriate level of confidentiality in respect of information received by the NCP. Canada's access and privacy legislation deals with specific circumstances. The Access to Information Act gives Canadians a right of access to records held by the Government of Canada, but at the same time protects confidential information provided by third parties from disclosure. This protection is backed up by mandatory notification to third parties before information supplied by them, or about them, is disclosed, giving them the opportunity to make representations to the government about disclosure and, if necessary, bring the matter before the Federal Court for judicial review. The Privacy Act protects personal information about individuals from being used for purposes other than that for which it was collected. Personal information can be disclosed only where specifically allowed by the Act, or where the subject individual has given his or her consent.

14.4 Subject to the Access to Information Act and the Privacy Act, the NCP follows the following rules regarding confidentiality and disclosure:

1. In order to facilitate resolution of the issue(s) raised, the NCP will take appropriate steps to protect sensitive business and other information. Equally, other information, such as the identity of individuals involved in the procedures, should be kept confidential. During a review process, confidentiality of the proceedings will be maintained. It is understood that proceedings include the facts and arguments brought forward by the parties.
2. At the conclusion of the procedures, if the parties involved have not agreed on a resolution of the issue(s) raised, they are free to communicate about and discuss the/these issue(s). However, information and views provided during the proceedings by another party involved will remain confidential, unless that other party agrees to their disclosure.
3. 3. After consultation with the parties involved, the NCP will make publicly available the results of these procedures unless preserving confidentiality would be in the best interests of effective implementation of the Guidelines (e.g. to protect sensitive business information or the identity of individuals with a view to ensuring continued cooperation, etc.).
4. The NCP is required to report annually to the OECD. Such annual reports are expected to include an update on the status of specific instances and may be general in nature so as to maintain the confidentiality of commercially sensitive information. Such status updates may also be posted on the NCP's website.

## **15. The Office of the Extractive Sector Corporate Social Responsibility Counsellor**

15.1. As one of the pillars of the Canadian government's corporate social responsibility (CSR) policy announced in March, 2009, (Building the Canadian Advantage: A Corporate Social Responsibility Strategy for the Canadian International Extractive Sector), the Government created a new office of the Extractive Sector Corporate Social Responsibility Counsellor ("Counsellor"). A Protocol between the NCP and the Office of the CSR Counsellor is available on the NCP website [www.ncp.gc.ca](http://www.ncp.gc.ca).

15.2. The mandate of the Counsellor is to review the CSR practices of Canadian extractive sector companies operating outside Canada, and to advise stakeholders on the implementation of four performance guidelines (the International Finance Corporation Performance Standards on Social and Environmental Sustainability, the Voluntary Principles on Security and Human Rights, the Global Reporting Initiative and the OECD Guidelines for Multinational Enterprises).

15.3. If a Request for Review is received by the Counsellor that relates only to the OECD Guidelines for Multinational Enterprises, the Counsellor shall refer the request to the NCP.

15.4. If a Request for Review is received by the Counsellor or the NCP that relates to the OECD Guidelines for Multinational Enterprises and any other performance guidelines for which the Counsellor is responsible, the Counsellor shall lead the review and shall consult with the NCP on issues relating to the OECD Guidelines for Multinational Enterprises.

15.5 The Counsellor is subject to the [Access to Information Act](#) and the [Privacy Act](#).

## Annex 6

### Terms of Reference for Canada's National Contact Point for the OECD Guidelines for Multinational Enterprises

#### Introduction

The Organisation for Economic Co-Operation and Development (OECD) Guidelines for Multinational Enterprises (Guidelines) constitute a well-established and authoritative set of international standards in the realm of corporate social responsibility (CSR). The Guidelines form a key component of the Government of Canada's overall CSR policies. Canada is an adhering country to the OECD Guidelines and is required to maintain a National Contact Point for purposes of furthering the effectiveness of the Guidelines.

#### 1. Definitions

1.1. In this Terms of Reference, the following terms shall be defined as follows:

AANDC: Aboriginal Affairs and Northern Development Canada

Department: means federal departments of the Government of Canada

DFATD: Foreign Affairs, Trade and Development Canada.

EC: Environment Canada.

ESDC: Labour Program of the Department of Employment and Social Development Canada.

Finance: Finance Canada.

Guidelines: OECD Guidelines for Multinational Enterprises.

IC: Industry Canada

NCP: the National Contact Point for the OECD Guidelines for Multinational Enterprises. The Canadian NCP consists of an interdepartmental committee which is supported by a

Secretariat housed at DFATD. References to the NCP are to the interdepartmental committee.

NRCan: Natural Resources Canada.

Permanent Members: Departments of the Government of Canada who are permanent members of the NCP interdepartmental committee.

Primary Contact: Individual at a Department who is the main contact person or liaison official with respect to the NCP.

Specific instance: The term "specific instance" is one derived from the OECD Guidelines. Any individual, organisation, or community ("stakeholder") that believes a corporation's actions or activities have breached the Guidelines may lodge a formal request for review regarding a "specific instance" with the NCP of the relevant country. Hence, a specific instance refers to allegations by stakeholders of an "issue or situation" that it is believed to constitute the non-observance of the Guidelines by multinational enterprises.

## **2. Background**

2.1. The Guidelines are a government-endorsed comprehensive set of recommendations for multinational enterprises on principles and standards for responsible business conduct. The Guidelines are voluntary and are not intended to override local laws and legislation.

2.2. Canada has been an adhering country since the OECD adopted the Guidelines in 1976. The OECD Council Decision of 1991 created the requirement for all countries adhering to the Guidelines to maintain an NCP. The revisions to the Guidelines in 2000 set out the recommended Procedural Guidance for the NCPs.

## **3. Purpose**

3.1. The purpose of this Terms of Reference document is to provide a guide for the composition and operations of the Canadian NCP. Moreover, its adoption is expected to contribute to the transparency and accountability of the NCP's operations.

## **4. Role and Responsibilities of the NCP**

4.1. The primary documents that outline the role and responsibilities of the NCPs are the "Procedural Guidance" chapter of the Guidelines, as well as the "Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises".

4.2. According to the Procedural Guidance notes for the OECD Guidelines, the role of the NCP is "to further the effectiveness of the Guidelines", while the responsibilities of the NCP consist of:

1. making the Guidelines known and available;
2. raising awareness of the Guidelines;
3. responding to enquiries about the Guidelines;
4. contributing to the resolution of issues that arise relating to the implementation of the Guidelines in specific instances, and;
5. reporting annually to the OECD Investment Committee.

## **5. Core Criteria of Operations**

5.1. The NCP will operate in accordance with the core criteria of visibility, accessibility, transparency and accountability, as recommended by the OECD Procedural Guidance.

## **6. Institutional Structure**

6.1. Canada's NCP is an interdepartmental committee composed of federal government departments. The NCP may elect to alter its composition if such alteration is agreed to by all permanent members of the NCP.

6.2. The NCP may, as required, create Ad Hoc Working Groups to perform specific activities in carrying out the NCP mandate.

## **7. Chairperson and Vice-Chairperson**

7.1. The NCP shall be chaired by a Director General level representative of DFATD.

7.2. The NCP shall designate a Vice-Chairperson, from among the Permanent Members of the committee other than the DFATD NCP Secretariat, who shall be at least at the Director level.

7.3. The Vice-Chair shall assume the role of the Chairperson when the Chairperson is absent.

## **8. Secretariat**

8.1. The NCP Secretariat function shall be provided by DFATD.

## **9. Membership**

9.1. Permanent Members: The Permanent Members of the Committee are AANC, DFATD, EC,ESDC, Finance, IC, and NRCan.

9.2. New Permanent Members: The NCP may by consensus accept new members.

9.3. Primary Contact: Each Permanent Member shall designate one of its employees to act as the Primary Contact.

9.4. The Primary Contacts will be responsible for liaising with the NCP and notifying the Secretariat of changes in representation or membership, as well as sharing information, providing appropriate input and coordinating views internally within their respective Departments. The Primary Contact person for each Department, or their proxy, with the respective Department's approval, shall be the primary person with authority to express the views of the respective Department at NCP meetings.

9.5. The Chair of the NCP shall not be considered the Primary Contact for DFATD. DFATD shall designate another official to act as the Primary Contact for DFATD.

9.6. Observers / Resource Persons: Each Department may have a number of operating units with an interest in NCP matters. The Primary Contact of each Department shall determine whether representatives of other units within their Department may participate in NCP meetings as an observer or resource person.

9.7. The Primary Contact for each Department shall ensure that the Secretariat is notified of the proposed participation of any additional Departmental representatives as either Observers or Resource Persons.

9.8. Ad Hoc Members: The NCP may seek to engage the participation of representatives from other federal government Departments on a case by case basis. In such situations, the respective Department may be invited to participate in the NCP's work, and to contribute their knowledge and expertise on any particular subject matter as required.

## **10. Meetings**

10.1. Calling of Meetings: The NCP shall meet at least twice annually, or as considered to be appropriate and necessary by the Chairperson.

10.2. The Secretariat, on behalf of the Chairperson, shall send meeting notices to the Primary Contact of each of the Permanent Members notifying them of meeting dates and times.

10.1. Calling of Meetings: The NCP shall meet at least twice annually, or as considered to be appropriate and necessary by the Chairperson.

10.2. The Secretariat, on behalf of the Chairperson, shall send meeting notices to the Primary Contact of each of the Permanent Members notifying them of meeting dates and times.

10.3. Any Permanent Member of the NCP may request a meeting of the NCP at any time through the Chairperson.

10.4. Quorum: Quorum shall be necessary for an NCP meeting to take place. Quorum shall consist of a gathering of the Primary Contacts, or their proxies, from at least fifty percent plus one (50% +1) of the Permanent Member Departments.

10.5. Decision-Making: Decisions may need to be made by the NCP from time to time on questions relating to the NCP's fulfillment of its role and other matters. Each of the Permanent Members shall be able to express their views at NCP meetings through their Primary Contacts, or their proxies. The NCP will make every effort to make decisions based on consensus. Where a consensus cannot be reached, the majority shall prevail.

## **11. Specific Instances**

11.1. Specific Instances shall be dealt with in accordance to the process outlined in the Guidelines, as well as in the procedures and protocols documents that are posted on the Canadian NCP website, as they may be amended from time to time.

## **12. Confidentiality**

12.1. In order to facilitate the work of the NCP and in line with the OECD Guidelines Procedural Guidance notes, the NCP and all those invited to participate in its proceedings from various Departments shall take appropriate steps to protect sensitive business and other information.

## **13. Reporting**

13.1. The Secretariat shall manage the website content for Canada's NCP, as well as prepare and disseminate individual meeting reports and an annual report for submission to the OECD Investment Committee pursuant to the OECD requirements.

13.2. All Permanent Members shall be consulted and asked to contribute to the preparation of the annual report.

## **14. Resources**

14.1. Permanent Members of the NCP shall, as necessary, endeavour to contribute resources (both human and financial) to the operations of the NCP for purposes of ensuring the timeliness and effectiveness of its work.