



Columbia FDI Perspectives
Perspectives on topical foreign direct investment issues
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They can run but they can't hide: MNEs and responsible business conduct
by
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The story of the past nearly 50 years of responsible business conduct (RBC) codes is that of “irresponsible” companies trying to run and hide in countries in which national laws do not meet international standards, and of unions, civil society, most governments, and responsible companies finding ways to expose them. To counteract such “free-riding”, RBC instruments increasingly require countries and companies to provide information on their efforts to implement their principles, making it ever harder for rogue businesses to hide their behavior.

A notable example of how nominally non-binding instruments are becoming more effective is the evolution of the [ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy \(MNE Declaration\)](#). In the heated discussions of the 1970s about global development, trade unions (which represent workers in ILO member states) had pressed for an ILO Convention on MNE labor practices. Because ILO Conventions bind ratifying states and become part of their domestic legal framework, employers and most governments benefitting from the bulk of FDI flows opposed the idea. An important further consideration was that an ILO Declaration, while voluntary, has global reach, while a Convention only binds ratifying states.

With the likelihood that few governments would ratify a Convention, trade unions accepted the compromise of a Declaration that included follow-up mechanisms to deal with disputes, as well as information gathering and research, promotional activities and company-union dialogues. These follow-up mechanisms regularly alert MNEs and governments of their responsibilities and support their efforts to meet them.

Today, countries wishing to attract socially responsible FDI can use the MNE Declaration as a framework to strengthen their domestic labor and social laws and policies based on the Conventions upon which the MNE Declaration draws (e.g., the [Fundamental Principles and Rights at Work](#)). These principles are also incorporated or mirrored in most social responsibility instruments.¹

The authority of the MNE Declaration is further enhanced by its global backing by host and home countries, as well as employers and unions. This reinforces the reputational damage that exposure of abuses causes. The International Organization of Employers works with its national members to foster socially responsible business conduct. Likewise, the International Trade Union Confederation and its partners in the Global Unions Federation encourage their members to pressure companies to apply the MNE Declaration's principles. The latest version of the MNE Declaration promotes [company-union dialogue](#).

The [2006 ILO Maritime Labour Convention](#)—dealing with the rights of seafarers—goes further in counteracting the attraction of “social irresponsibility havens”. This Convention requires mandatory inspections of foreign ships by port countries to enforce seafarers' rights (Regulation 5.2.1). Its ratification by the most important port countries means that practically all ships have to comply with the Convention's requirements, even if the vessels are registered in non-signatory countries where the protections for seafarers are weaker.

In a similar way, countries could require MNEs operating in their territories to prepare global due diligence reports on their compliance with internationally recognized principles and standards of responsible business conduct, *wherever they are operating*.

Momentum is building in this direction. In 2017, the G20 committed “to fostering the implementation of labor, social and environmental standards and human rights in line with internationally recognized frameworks”.² The UN, the ILO and the OECD have jointly called on businesses to “undertake due diligence to identify, prevent and mitigate their actual and potential negative impacts and account for how those impacts are addressed”.³ The European Commission is preparing a legislative proposal on [Sustainable Corporate Governance](#) to introduce mandatory due diligence reporting by MNEs operating in the EU. The current [draft of a new UN instrument](#) on human, labor and environmental rights and MNEs would require MNEs in ratifying states to undertake due diligence reporting.

Action along these lines would make it more difficult for irresponsible companies to run and hide. However, the credibility of due diligence reports will be suspect if MNEs prepared reports themselves or through their accountants or ESG consultancies. Few of such ESG auditors are well qualified to do workplace labor inspections, especially along supply chains. Indeed, the people best placed to identify behavior contrary to RBC labor principles are workers and their unions—but speaking out all too often leads to dismissal. The protection of workers' rights is fundamental. As a next step, therefore, it would be important to establish ILO global social and labor qualifications for auditors that make “running and hiding” truly hard, not least by ensuring that the voice of workers is heard and acted upon.

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¹ The [OECD Multinationals Guidelines](#), the [UN Global Compact](#) are examples. Delegates are currently discussing the inclusion of a reference to the MNE Declaration in the WTO's [Investment Facilitation Framework for Development](#), similar to the [European Council Conclusions on Human Rights and Decent Work in Global Supply Chains](#).

² See [Hamburg Leaders' Declaration](#), p. 4.

³ [ILO, UNHR and OECD, Responsible business – Key messages from international instruments \(Geneva: ILO, 2019\)](#), p. 4.

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