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Responsible Business Practices Division
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Thank you for the opportunity to provide comments on the Government of Canada's Responsible Business Conduct (RBC) strategy. We agree that encouraging the responsible business conduct of Canadian companies abroad should be a focus for the Government of Canada and Global Affairs Canada (GAC) specifically. With approximately C\$8 billion in assets under management, NEI Investments' approach to investing incorporates the thesis that companies can mitigate risk and take advantage of emerging business opportunities by integrating best environmental, social and governance (ESG) practices into their strategies and operations.

Below are our key comments on what we believe GAC should focus on as it renews the RBC strategy.

Corporate Transparency

Corporate transparency is a critical aspect of RBC and a foundational tool that allows the capital markets to reinforce the goals of GAC. Investors and other financial sector players can drive corporate performance on key issues (such as human rights due diligence) when provided with accurate, decision-useful disclosure that can then be integrated into investor priorities and activities. Encouraging better corporate transparency should be a key aspect of any RBC framework, but disclosure is only part of the solution. A combination of guidance and mandatory compliance will provide the necessary incentives for corporate action.

- **GAC should be expressly requiring companies to comply with ESG best practices, such as through mandatory human rights due diligence legislation**
 - Legislation would cover such topics as ensuring companies' human rights approaches cover their global supply chains, subsidiaries and all their operations; requiring a particular emphasis on due diligence processes when working with suppliers in high-risk regions or sectors; and mandating disclosure on the outcomes of human rights due diligence processes.
 - Companies should also receive explicit guidance on the substantive issues and risks they should be considering. Such guidance could draw attention to sectors and or regions where certain risks are heightened such as surveillance in tech being used in anti-democratic ways, or regions that are dealing with issues of forced labour in certain sectors, etc.
- **Collaboration around disclosure needs for different stakeholder groups**
 - GAC notes that one of the tools to enhance RBC is to "Require corporate disclosures to improve transparency and provide information to investors and other stakeholders".

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As noted above, we believe that there is a role for mandatory disclosure requirements and support efforts in this vein. Within this discourse it is important to consider how GAC can interact with civil society groups, and responsible investors (such as NEI) to have a better understanding of the types of information and disclosure frameworks that would be helpful to evaluate corporate practices and could be used by various stakeholder groups.

- **Government endorsement of disclosure frameworks**
 - The government has endorsed Towards Sustainable Mining (TSM), which is a useful disclosure framework for mining companies. The government should consider further endorsements of certain recognized disclosure frameworks such as the Task Force on Climate Related Financial Disclosure (TCFD) and the Sustainability Accounting Standards Board (SASB) frameworks to encourage a minimum level of transparency for businesses operating both within and outside of Canada and to align with the international convergence on these frameworks.
 - Regarding alignment with the UN Guiding Principles on Business and Human Rights (UNGPs) specifically, consideration should be given to the UN Guiding Principles Reporting Framework.¹ It is the most comprehensive framework for reporting on human rights due diligence currently available and would meet most, if not all, stakeholder needs on disclosure.

Access to Remedy

Access to remedy is a crucial part of ensuring businesses are accountable to a variety of stakeholders and to ensure the expectation of corporate entities to respect human rights is met. The consultation document notes the disparate views of stakeholders regarding the relative priorities of prevention versus remedy. While we would agree that the best outcome is to prevent the occurrence of human rights impacts in the first place, we believe the area of access to remedy is the least understood (and least evidenced) aspect of the UNGPs framework. As such, it is an area that deserves enhanced attention from GAC.

- **Streamlining intake of matters between NCP and CORE**
 - The dual pronged approach of the NCP and CORE seems confusing and bureaucratic, the process should be streamlined to ensure equitable access. One entity should be responsible for intake and distribution of matters between both entities so as to simplify the process for complainants who would only be required to initiate an appeal for remedy through one entity.
- **Limitations of Voluntary Process**
 - Given that the current process is voluntary there needs to be a well articulated process for how those seeking a remedy can do so when the relevant actors do not want to participate in this voluntary process. Actors who do not want to engage in any settlement discussions are likely the very actors that should be held accountable under a mandatory remedy programme. Consideration should be given at least to

¹ <https://www.ungpreporting.org/>

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mandating corporate action in regard to remedy in situations where the company has clearly abdicated its responsibilities to align with the UNGPs.

- **Require companies to develop grievance mechanisms that align with the UNGPs**
 - GAC should consider how it encourages or requires companies to develop programmes that facilitate access to remedy for employees, suppliers and other stakeholders without retaliation. Best practice would imply designing an effective grievance mechanism in line with the requirements of the UNGPs. This would be a proactive way of ensuring companies have systems that can manage risks before they potentially become larger issues that warrant the intervention of the NCP or CORE. Companies should be encouraged to work with third parties as appropriate to develop systems that respect the requirement for anonymity (such as a whistleblower process).

Board Level Oversight of RBC

We strongly agree with participant feedback from the pre-consultation regarding the importance of effective oversight of human rights risks at the board level. We believe the lack of adequate board oversight of ESG issues generally, and human rights issues specifically, is a critical barrier to the GAC’s aspirational vision to have all Canadian businesses operating overseas aligned with the UNGPs. It has been our experience that boards generally do not have the expertise or the mandate to effectively manage the complex challenges associated with human rights. As such, this is very much an area where government can work with key stakeholders to enhance board capacity and comprehension in regard to human rights due diligence.

- **GAC should work with leading governance bodies to drive the adoption of robust board oversight of RBC**
 - There are several investor-led governance collaborations that are actively working to define governance best practice when it comes to ESG issues. Working with these entities to define best practice in this space should be a priority. We specifically recommend that GAC work with the International Corporate Governance Network (ICGN)² and the Canadian Coalition for Good Governance (CCGG)³, both of whom have developed key best practice governance expectations.

Indigenous Rights and Reconciliation

We agree with the findings of the pre-consultation that federal implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) will be a foundational pillar of any RBC strategy. There is clearly a need to focus on reconciliation within our own borders before prioritizing RBC overseas. However, the two objectives are not mutually exclusive but rather mutually reinforcing and can be pursued in parallel. But moving ahead with RBC priorities without addressing the pressing need for reconciliation would be not only a mistake, but a fundamental blow against the goals of reconciliation.

² <https://www.icgn.org/>

³ <https://ccgg.ca/>

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- **The government of Canada should adopt legislation on the federal implementation of UNDRIP**
 - The government of Canada can follow the precedent of the B.C. Government and its passing of the B.C. Declaration on the Rights of Indigenous Peoples Act (DRIPA) to initiate the path towards aligning Canada's laws with the underlying principles of UNDRIP⁴.

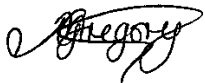
Thank you for the opportunity to provide our perspective on the Government of Canada's Responsible Business Conduct strategy. We hope you find our perspective useful and we would be happy to further discuss any of the issues raised above in more detail. Please contact Jamie Bonham at jbbonham@neiinvestments.com or Michela Gregory at mgregory@neiinvestments.com to set up further discussions.

Sincerely,

NEI Investments



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⁴ <https://www2.gov.bc.ca/gov/content/governments/indigenous-people/new-relationship/united-nations-declaration-on-the-rights-of-indigenous-peoples>

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