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15 November 2013

Dear Ms Raval,

Thank you for taking the time to meet with us earlier this week. Oxfam welcomes the opportunity to respond to this consultation. Please accept these comments in addition to the feedback provided in our meeting with you.

Introduction and General Comments

Oxfam is a global movement dedicated to ending poverty and injustice. As such, one of the issues of concern to Oxfam is the transparency and accountability of companies, which have the potential to cause very large impacts, both positive and negative on the lives of poor people around the world.

Oxfam works with business and also engages in public and private to raise accountability, and places particular importance on engaging with the financial sector and investors due to their direct influence and role as responsible owners of companies. For all of these reasons,

Oxfam welcomes the publication of new regulations contained in the Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013, which came into force on October 1st 2013.

Oxfam is concerned to see that the quality of both financial and non-financial reporting is raised, and that the current reforms will serve to significantly increase the quantity and quality of information on environmental, social and human rights factors, which is vital not only for investors but for broader stakeholders affected by business operations in the UK and internationally.

Oxfam agrees with the statement, contained in the 'Explanatory Memorandum' to the new regulations, that the new requirement to disclose human rights issues represents a significant move.[1] Given that this is a new and significant requirement, Oxfam is concerned

[1] Explanatory Memorandum to The Companie Act 2006 (Strategic Report and Directors Report) Regulations 2013. http://www.legislation.gov.uk/uksi/2013/1970/pdfs/uksiem_20131970_en.pdf

that the draft Guidance on the Strategic Report could better reflect this requirement and the importance of it. Our main areas of concern (explained in more detail below) include:

1. The Draft FRC Guidance, though it is not mandatory, can be expected to have a large impact on the behaviour of Directors and the preparers and users of reports. Given this fact, it should be clearer and more specific in expressing the importance of reporting on environmental, social and human rights factors, and the expectations of the type of reporting that will satisfy the intent of the new requirements.

2. The Draft FRC Guidance makes extensive use of the concept of materiality in describing how preparers should select information to include. Oxfam is concerned that the narrow definition set out is overly restrictive and may prevent reporting from fulfilling the requirements to report on relevant environmental, social and human rights issues – denying shareholders and other stakeholders access to important information about companies' long term strategy, business model and principal risks.

3. The Draft FRC Guidance fails to make reference to the UN Guiding Principles on Business and Human Rights (Guiding Principles). As such it misses the opportunity to acknowledge a key development in the standards expected of companies, which is by the United Nations and by many individual governments, including the UK.

4. Oxfam, internationally and as part of the 'IF' Campaign in the run-up to the UK G8 at Loch Erne in 2013, is especially a concerned about the urgent issue of land grabs. Risks associated with conflict over land tenure and use are one example of a human rights issue that has been shown to generate significant risks for companies, investors, and affected people and communities. Poor transparency around land transactions, due diligence and management of risks are a critical barrier to better accountability for all those stakeholders. Oxfam believes this is an opportunity (in danger of being missed) to provide guidance that clarifies clear and relevant disclosures on risks such as land tenure should be included where relevant under the new legislation.

Investors and companies are increasingly aware of the way in which human rights risks such as those related to land tenure (which also encompass wider environmental and social risks) can have a material impact on business success – reputationally, in terms of regulation, and operationally.

Recent research by the Munden Project shows that costs associated with unresolved conflicts over land can increase the costs incurred by investors and the businesses they operate by between 100 and 2,900 percent with projects across different sectors having been documented to fail or to lose money for investors because they don't recognise the importance of negotiating with communities to get a 'social licence' for the investment, or getting communities on board to ensure its long term success.[2]

Transparency could help provide responsible investors and large asset owners like pension funds to push investee companies or funds to take the necessary steps to help guarantee the long term success of the investment by managing land risks. As Munden and many other expert investors in agriculture investment note, the risks are very real and very significant;

[2] "The Financial Risks of Insecure Land Tenure", Munden Project, 2013. http://www.rightsandresources.org/publication_details.php?publicationID=5715

and more than that they are not suitable for insurance or other financial mitigation techniques. Thus, operators must manage them through best practice, and investors must (a) be provided with transparent information to know where these risks lie, and (b) have access to information that demonstrates how these risks are being mitigated.

The G8 Communique and Declaration at the Loch Erne Summit in 2013 clarified the importance of these issues across the food and agriculture business and many other sectors.[3] The communiqué stated that:

"Increasing security of land rights and transparency of land governance fosters participation of citizens, contributes to government accountability, reduces costs for businesses, and strengthens the climate for responsible investment. We welcome global activities to improve land tenure governance, including through access to information and participation of citizens in decision making." [4]

For these reasons, Oxfam emphasises the importance and potential of taking the opportunity to highlight in Guidance the importance of environmental, social and human rights issues, and example of reporting on land rights issues which can frequently be of material importance to business and shareholders, as well as communities affected by business operations.

Specific Comments and Proposals

Summary Section

The Summary section sets out the context for the Guidance, including explaining the requirements established in the legislation, the objectives it aims to promote, and the elements of required reports. It refers to the content of the guidance deriving from the amendments to the Companies Act 2006 amendments.

This section should acknowledge the intention that the amendments would lead to an increased level and quality of narrative reporting on environmental, social and human rights issues.

Specifically, this section fails to highlight the context for the UK Government's expectations on human rights reporting, which is a new requirement in the amendments. It should reference the expectation of inclusion in the Strategic Report, and it should also reference the clear intention in that regard contained in 'Good Business: Implementing the UN Guiding Principles on Business and Human Rights' (paragraph 15), which states clearly that "*... a clarification of the Companies Act 2006, means that company directors will include human rights issues, in their annual reports*"[5]. This has been published since the publication of the FRC Draft Guidance, and so it should be updated to reflect this clear UK Government commitment. This document also states the UK Government's intention to ensure that appropriate guidance is provided to companies on how to fulfil these requirements, and so.

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[4] 2013 G8 Summit Communique. (Page 10-11) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/207771/Lough_Erne_2013_G8_Leaders_Communique.pdf

[5] "Good Business: Implementing the UN Guiding Principles on Business and Human Rights", HM Government, Sept 2013. https://www.gov.uk/government/publications/bhr-action-plan

Section 5 (Question 4 - Materiality)

The definition of ‘materiality’ that is used to in the Draft Guidance to describe what information should be included in the strategic report is a narrow one, and one which is not contained in the original legislation (s 172), which requires information to be disclosed “to the extent necessary for an understanding of the development, performance or position of a company’s business”.

Section 5 adopts an interpretation of ‘materiality’ that is construed in a narrow fashion. It specifies, for example, that materiality of information applies only to shareholders and to information relevant to their financial decision-making. This fails in our view to adequately represent the degree to which many environmental, social and human rights issues are directly material to shareholders. Moreover, it does not appear to take into account the intention of the Act and the Implementation Plan for the Guiding Principles to clarify that such issues should be included not only because they are frequently material to business success, but because it is clearly established that the responsibilities of companies and of directors extend beyond narrow economic concerns to the impact of business operations on society, the environment and human rights.

Paragraph 13 of “Good Business” states, for example, that UK companies should, inter alia, treat the risk of causing or contributing to human rights abuses as a legal compliance issue, that they should identify, prevent and mitigate human rights risks, adopt appropriate due diligence, and be transparent about polices, activities, and impacts, and report on these issues as part of their annual reports.[6]

Oxfam has recently published a short technical briefing which explains Oxfam’s approach to the Guiding Principles and provides analysis and case studies on key issues for business in implementing them. It might provide useful examples for FRC of how to explain the key requirements for UK companies.[7]

Section 6 (Question 5 and 7)

Paragraphs 6.49 to 6.54 refer to the description of ‘principal risks and uncertainties’. Paragraph 6.52 in particular says directors should consider the full range of business risks ‘including commercial, operational and financial risks’. It is increasingly clear that environmental, social and human rights risks may be ‘principal risks’ for business. As such, it would be helpful to note this fact in this section, to avoid the mistaken assumption that environmental, social and human rights risks represent a purely separate category, and to encourage companies to manage and report on these risks more effectively – again reflecting the intent of the Act and Government policy as described above.

Paragraphs 6.61 to 6.64 discuss the relationship between the strategic report and the Financial Statements. Investors are increasingly asking questions of Company boards and management about the way in which environmental, social and human rights risks impact financial performance (e.g. BP over the Macondo spill). There is increasingly clear analysis of the way in which human rights issues such as land rights can affect financial performance,

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[6] Ibid.
[7] “Business and Human Rights: An Oxfam Perspective on the UN Guiding Principles”, Oxfam, 2013. http://policy-practice.oxfam.org.uk/publications/business-and-human-rights-an-oxfam-perspective-on-the-un-guiding-principles-293857

as seen notably in the work of the Munden Project.[8] This is relevant in the light of the above comment on principal risks as Oxfam expects to see investors increasingly raising such issues at AGMs in future, emphasising their core importance in this section.

Paragraphs 6.64 to 6.67 –
This section includes the requirement to report on environmental, social and human rights factors. However no guidance is provided specifically on how to report on human rights issues in the light of the new requirements in the Act and the UK Governments Implementation Plan for the UN Guiding Principles.

As it stands it appears this section of the Guidance will not meet the intention of the legislation or the expectations of the UK Government. The materiality constraint as currently included will negatively impact the provision of important information. The suggestion to include information in sustainability reports instead (para. 6.66) is not adequate. Given the poor quality of information provided on non-financial risks even within the tighter framework of the annual reports, and the need to improve the this aspect of reporting, inviting companies to include such important information in the sustainability report may be counter-productive. It invites continuation of the often vague, excessively positive, and inconsistent reporting on these factors that has plagued corporate reporting hitherto.

As described above, the FRC could include in this section of the Guidance reference to the expectations set out by the UK Government on human rights reporting.

The 'Example' provided under section 6.67 is helpful but could be improved and added to significantly. Oxfam suggests that FRC could include an example relating land rights/tenure risks in business operations and supply chains, and the types of information companies could report on, such as; disclosure of information on name, location and sector of company seeking investment; whether the investment involves a land deal, how much land is involved; documented processes to ensure free, prior and informed community consent; and public disclosure of environmental and social impact assessments.

Oxfam's Behind the Brands scorecard and campaign has analysed the policies of Food and Beverage companies, including UK companies. It includes an analysis of the land policies and practice. Oxfam has found that the companies are interested in how to improve their management of these issues because they are important for the business. We have also found that investors are very interested in the rankings and the scorecard (the full methodology and data is available online at the website - behindthebrands.org). It is of a material issue that is poorly managed and reported upon. Investors would benefit both from high-level information in the main annual reports (for instance level and location of operations exposed to land tenure risks, impact on business of those issue where manifest, description of the policies in place to manage the risk), as well as effective signposting to more detailed information published on company websites to enable full investigation if needed. Such an example might link to the analysis (above mentioned) by Munden Project which illustrates the magnitude of such risks financially.

[8] "The Financial Risks of Insecure Land Tenure", Munden Project, 2013. http://www.rightsandresources.org/publication_details.php?publicationID=5715

Thank you once again for the opportunity to contribute to this consultation. We hope that our comments, and those of our civil society colleagues, will be taken on board so that the reporting requirements on environmental, social and human rights factors are strengthened.

Yours sincerely,

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