

## Rules On Corporate Ethics Could Help, Not Hinder, Multinationals

by Kenneth Roth, Financial Times  
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Most multinational companies automatically oppose calls for enforceable standards of corporate social responsibility. Under growing public scrutiny of their behaviour, many western companies have adopted voluntary codes of business conduct. But for most, the notion of enforceable standards remains anathema. Recently, however, some western companies have privately questioned this posture. They have begun to recognise it might be in their interest to operate under enforceable standards that apply to all their competitors, rather than under voluntary ones that, for all practical purposes, apply only to prominent companies.

Public pressure, whether from activists or the press, has largely driven interest in corporate social responsibility. But public pressure tends to focus on highly visible companies, which is fine if a company's competitors are all large public companies. But if competition comes from less prominent businesses that can operate under the radar screen of public attention - the competitive playing field tilts. Well-known companies, worried about the harm that misconduct could cause their reputation, must assume the costs of meeting broadly recognised standards of corporate conduct. For example, a big company might have to accept paying higher wages associated with employing adults rather than children, or permitting trades unions to operate freely in its factories.

By contrast, a no-name company, confident that the public will not notice its misdeeds, may not feel compelled to act so responsibly.

Only enforceable rules, applicable to all companies regardless of prominence, can avoid this double standard. To a limited extent, enforceable regulations already exist but their reach is spotty. Some stock indices, such as FTSE 4Good, require qualifying companies to comply with basic ethical standards. Certain international financial institutions make similar demands of their loan beneficiaries. Companies that are complicit in serious human rights abuses risk liability under laws such as America's Alien Tort Claims Act. And individual governments, sometimes prompted by trade agreements, increasingly demand that trading partners regulate certain corporate conduct. Still, this patchwork of enforceable rules hardly leaves a competitive environment that is fair and predictable.

The issue of social responsibility is not the first in which corporations have recognised the advantage of broad enforceable standards. A similar dynamic emerged after the US government's adoption in 1977 of the Foreign Corrupt Practices Act, which made it illegal for companies operating in the US to bribe foreign officials. That law seemingly left US companies at a competitive disadvantage because their foreign competitors remained free to continue securing business through bribery.

After years of complaints, the Organisation for Economic Co-operation and Development in 1997 adopted a treaty requiring all its member states to criminalise such bribery. According to the OECD, its 30 members account for some 70 per cent of world exports and 90 per cent of foreign direct investment. China remains outside the treaty, but as its companies increasingly operate overseas its exclusion will become legally less tenable.

The OECD has already begun a similar process in the area of corporate social responsibility, but its guidelines for multinational enterprises are, so far, only voluntary.

Using the anti-bribery effort as a model, the OECD should adopt a treaty requiring member states to enact laws similar to its guidelines that would be enforceable under national criminal or civil codes, carrying penalties such as fines or in extreme cases, imprisonment. Like anti-bribery laws, this national legislation would bind any company operating in that nation's jurisdiction.

In addition, the United Nations, which has already drafted non-binding norms on corporate conduct, might provide a forum to negotiate a universally applicable treaty.

What would enforceable standards look like? One must await treaty negotiations to answer that question with certainty. In all likelihood, the purpose of enforceable standards would not be to preclude doing business in certain countries but to prescribe the minimum standards by which corporations should conduct themselves in all countries. In that sense, the standards would reflect recognition that while international commerce may help alleviate poverty in developing countries, it does so more effectively if grounded in positive corporate conduct.

In the human rights realm, for instance, enforceable standards would certainly include the widely recognised core worker rights: the right to organise and bargain collectively, and freedom from forced labour, child labour and workplace discrimination. Companies would have to ensure respect for these rights in their own operations and those of their suppliers. In some cases, such as China's refusal to permit independent trades unions, pragmatism may require interim best-practice standards, but those requirements should be upgraded to international standards as quickly as possible.

Certain industries would require special rules. For example, extractive industries, because they often contribute revenue well beyond ordinary taxation, should face special rules on fiscal transparency to maximise opportunities for public accountability.

Manufacturing companies might be obliged to avoid sales to a government once they learn it is using their product for human rights abuse.

Companies operating in conflict zones should be required to take reasonable steps to avoid complicity in arbitrary violence. Enforceable standards are unlikely to require a global minimum wage - a move some developing countries would decry as protectionism. Wage competition would remain appropriate as long as it is within the context of full respect for workers' rights to organise and bargain collectively. But governments and businesses would be prohibited from competing by undercutting workers' basic rights as a route to lower wages.

Few if any of the standards likely to appear in a treaty on corporate social responsibility would be difficult for most multinational companies to embrace. The only thing these companies have to fear is an end to unfair competition from less savoury competitors. It is time, therefore, for them to begin publicly advocating enforcement.

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