

**By E-mail**

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**For the attention of the UN Working Group on Human Rights and Transnational Corporations and Other Business Enterprises (the "Working Group")**

To the distinguished members of the Working Group

**Comments in relation to 2012 Work Programme**

We congratulate you on your appointment to the Working Group and thank you for the opportunity to submit our suggestions regarding the activities to be pursued by the Working Group next year.

Clifford Chance has been closely involved with the United Nations' work in the area of business and human rights. In particular, we contributed to and supported the work of Professor John Ruggie during his time as Special Representative, including through the provision of legal advice on a *pro bono* basis. We had significant involvement in the Corporate Law Tools Project and also Professor Ruggie's work relating to investment, particularly his studies and consultations regarding stabilisation clauses, host government agreements and bilateral investment treaties.

We and our clients were grateful for the opportunity to participate in and contribute to consultations regarding a variety of issues investigated by Professor Ruggie. We look forward to the Working Group continuing the inclusive approach to multi-stakeholder consultation pursued so successfully by Professor Ruggie during the course of his mandate.

The suggestions in this letter are based on our recent experience of the challenges business enterprises may face in seeking to implement the Guiding Principles and more generally in relation to dealing with business and human rights issues.

Guiding Principle 23 states that business enterprises 'should ... seek ways to honour the principles of internationally recognized human rights when faced with conflicting requirements'. The commentary suggests that business enterprises may benefit from consulting on such questions with 'credible, independent experts, including from governments, civil society, national human rights institutions and relevant multi-stakeholder initiatives'. It is implicit in this section of the commentary that an enterprise may benefit from guidance provided by its home State in circumstances where it is having difficulty reconciling international standards with laws and practices in effect in another State. We believe that the Working Group could usefully undertake work to investigate and make recommendations in relation to the ways in which home States can provide meaningful assistance to business enterprises operating in difficult contexts outside of the home State's jurisdiction.

Given that the Working Group is charged with helping build the capacity of all relevant actors to address business related human rights impacts, and with working to enhance access to effective remedies for those whose human rights have been affected by business, we anticipate that significant focus is likely to be placed on Guiding Principle 22 (remediation), Guiding Principles 29 – 30 (non-State-based grievance mechanisms) and, so far as relevant to these, Guiding Principle 31 (effectiveness criteria). In this context, we see opportunities for industry-specific, cross-sectoral and/or regional initiatives to provide expert resource and help develop best practices. Such cooperative and coordinated initiatives may well maximise efficiency and effectiveness of response in ways that would be challenging for individual business enterprises to achieve.

Should you wish to contact us at any point in relation to our suggestions or any other matter, please do not hesitate to do so.

Yours sincerely



Rae Lindsay, Audley Sheppard and Antony Crockett