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Guidance on the Application of the ISEAL Code of Good Practice for Setting Social and Environmental Standards

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Introduction

The ISEAL Alliance facilitated an open stakeholder dialogue to develop the Code of Good Practice for Setting Social and Environmental Standards as a means to evaluate and strengthen voluntary standards, and to demonstrate their credibility on the basis of how they are developed. The Code includes criteria that help to ensure that a standard reflects the priorities of interested parties, that it addresses all material issues, and that it is effective in achieving its stated social and environmental objectives. In order for the Code to be applied in a uniform and consistent manner, additional non-binding guidance material is provided in this document. The guidance provides supplemental information to the criteria that are included in the Code as well as interpretation of key terminology and phrases in the criteria. No additional guidance is proposed for sections 2 and 3 of the Code. The substantive criteria of the Code (sections 1 and 4 to 7) are included in their entirety with this guidance document. The guidance is interspersed in italics between the Code criteria.

Provisions of the Code

1. Scope

1.1 This Code of Good Practice specifies general requirements for the preparation, adoption and revision of standards that address social and environmental practices. Compliance with this Code means that the process by which a standard is developed is credible.

Where a standard-setting organization develops standards that do not address social and environmental practices, such as certification methodologies, logo licensing, etc., these do not fall within the scope of this Code.

1.2 This Code applies to process and production method standards, management system standards and supply chain relationship standards that promote progressive social and environmental practices and are operating at the international, regional, national or sub-national level. It applies to standards that are developed using procedures based on the principles of consensus.

This Code has been developed to fill a void in existing guidance to standard-setting organizations. While product-related standards are adequately addressed by the TBT Agreement Annex 3 and ISO Guide 59, these reference documents are not relevant in their entirety to the three types of standards covered by this Code. This Code is meant to complement and co-exist with these two normative documents. To the extent that the TBT Agreement Annex 3 is relevant, it is recommended that standard-setting organizations comply with its criteria.

The Code also emphasizes standards that promote progressive social and environmental practices. While progressive practices are difficult to define, this is generally meant to include practices that improve ecological sustainability and social justice and equity.

4. General provisions

4.1 This Code shall only be applied in its entirety. A standard-setting organization that applies this Code to a relevant standard shall include a statement to this effect, both in its proposal to establish the standard and in the final text of the standard. The standard-setting organization shall also notify the ISEAL Alliance of their intention to apply the Code.

Compliance with the Code of Good Practice is voluntary for standard-setting organizations that are not members of the ISEAL Alliance. However, claims of compliance with, or reference to the Code of Good Practice should only be made by organizations that have applied the Code in its entirety. This will help to avoid a situation where organizations apply criteria in an ad hoc manner that suits them. Notification to ISEAL by an organization of their adherence to the Code will strengthen the enforceability of the Code. The ISEAL Alliance may develop a compliance assessment mechanism for organizations that request assessment of their compliance with the Code, or may include them in the informal peer review process being developed for ISEAL members.

4.2 Where a standard-setting organization that has accepted this Code receives a complaint regarding its compliance with the provisions of the Code, it shall make an objective and documented effort to resolve the complaint, based on a publicly documented complaints resolution mechanism.

The two elements of complaints resolution that make it credible are that it is objective and documented. Objective means that it is based on a consistent procedure that does not favour one party over another. A documented effort means that the decision-making process and resulting decision are written down and made available to all those who request it.

5. Procedures for the development of standards

5.1 Documented procedures for the process under which each standard is developed shall form the basis of the activities of a standard-setting organization. These procedures shall be developed with the active involvement of a balance of interested parties. They shall contain a complaints resolution mechanism for the impartial handling of any substantive or procedural complaints. All interested parties shall have access to this complaints resolution mechanism.

It is important that interested parties are involved even in elaboration of the standard development procedures. However, it would be difficult to manage a process involving all interested parties. Therefore, in this component of the process, as in other stages of standard development, the Code requires a balance of interested parties. The type of representation

needs to be defined by the standard-setting organization but should include some form of balanced participation from major interest sectors, which can include: producers, consumers, traders, retailers, unions, NGOs, indigenous groups, government, local authorities, international organizations, researchers and academic bodies.

A distinction between substantive and procedural complaints is necessary to avoid frivolous complaints. Substantive complaints relate to the content of the standard, while procedural complaints relate to the way in which the standard was developed. Some discretion is required by the standard-setting organization to consider the basis of the complaint. The standard-setting organization should have documented criteria for determining whether to consider a complaint.

5.2 Upon commencement of any new standard development activity, interested parties shall be given the opportunity to comment on terms of reference for the proposed standard. The terms of reference shall include a justification of the need for the standard and clear objectives that the standard seeks to achieve. Through a regular review process, interested parties shall also be provided opportunities to comment on the standard-setting process, which highlights the mechanisms by which they can participate.

Giving interested parties an opportunity to comment requires both that they are notified of the opportunity and that they have adequate mechanisms to comment. Some of the actions that constitute appropriate notification include, but are not limited to email notices, prominent posting to websites, and notices in the organization's publications. Mechanisms to comment include submission of comments by email, fax or mail, and/or through workshops and other face-to-face gatherings.

An underlying element of notifying interested parties is that many of these parties should have been previously identified by the standard-setting organization. The standard-setting organization should work to refine the objectives of the standard at an early stage, as this will make it easier to identify which different interest groups will be impacted by the standard. The standard-setting organization also needs to be proactive in identifying and involving disadvantaged groups. This point is addressed in 7.2.

Justification of the need for the standard is a very important first step to avoid the development of redundant standards. The two elements that should form part of this justification are an assessment of whether the proposed standard will meet an expressed need, and documentation of what other standards exist or are in the process of development, that meet all or part of the expressed need.

5.3 Where the standard-setting organization is actively engaged in standard-setting activities, it shall publish a work programme at least once a year containing its name and address, a contact point, the standards it is currently preparing, amending or revising and the standards that it has adopted in the preceding period. A standard is under preparation from the moment a decision has been taken to prepare it until that standard has been adopted. For each standard listed in the work programme, a brief description shall be included of the scope of the standard, including the objectives and rationale for the standard.

Publishing a work programme means that the work programme should be made available in electronic form or in hard-copy to interested parties upon request. Hard-copies should be priced to reflect the real costs of processing and distribution. In addition, the work programme should be posted on the organization's website. Standard-setting organizations are encouraged to

provide information on recent standard developments to relevant international clearing house mechanisms on environmental and health requirements, where these exist. Examples include recent initiatives by the Sustainable Trade and Innovation Centre (STIC) and the UN Conference on Trade and Development (UNCTAD).

5.4 The public review phase in the development of a new standard or revision of an existing standard shall include at least two rounds of comment submissions by interested parties, where necessary. Each round shall include a period of at least 60 days for the submission of comments. However, this period may be shortened in exceptional circumstances where justified by a policy of the standard-setting organization. In such cases, the modifications and justification shall be documented, and the comment period shall still be no less than 30 days.

In specific circumstances, exceptions can be made to the number of rounds of comments. A second round of comment submissions is only necessary when unresolved issues persist after the first round. In addition, one round of comments is sufficient where there are no objections raised or substantial comments received in that round. Where a balloting system is in place to resolve outstanding issues, negative ballots without comments should not require resolution and re-balloting. Finally, administrative and non-substantive changes to a standard can be made at the discretion of the standard-setting organization.

The period allowed for initial comments should take into account any translation requirements, means of transmission to the interested parties and the return of their comments, and the methods used to communicate with interested parties. Standard-setting organizations are encouraged to increase the comment period if required by these circumstances.

Some of the circumstances where a standard-setting organization can be justified in decreasing the comment period include cases where urgent problems of safety, health or environment arise or threaten to arise; where necessary to ensure effective administration of the standard development process without limiting the participation of interested parties; and where necessary to meet rapid changes in the marketplace. Extensions to the scope or revisions to technical elements of an existing standard may also constitute justifiable circumstances. Where the comment period is reduced, the standard-setting organization should give consideration to the impact that this may have on the acceptance of the standard by the interested parties.

5.5 The standard-setting organization shall take into account, in the further processing of the standard, the comments received during the period for commenting. The standard-setting organization shall compile comments received according to the issues raised and shall prepare a written synopsis of how each material issue has been addressed in the standard revision. This synopsis shall be made publicly available.

Comments received by the standard-setting organization should each be considered on an equal and objective basis. Taking a comment into account means that it is considered in the revision of the standard and a justification given if the issue area that the comment addresses is not to be incorporated.

Public availability of the synopsis means that, at minimum, it is posted to the website of the standard-setting organization and a notice of its availability is distributed to interested parties by email. Considerations need to be made for notifying those interested parties who do not have access to email or internet.

The standard-setting organization shall establish a permanent mechanism through which comments and requests for clarifications on existing standards are documented, so that they can be considered in the next revision process for the standard.

5.6 The standard-setting process shall strive for consensus among a balance of interested parties. The standard-setting organization shall establish and document procedures to guide decision-making in the absence of consensus. These procedures shall ensure that no group of interested parties can dominate nor be dominated in the decision-making process. Interested parties shall be made aware of these procedures at the outset of the standard-setting activity.

As in the guidance to 5.1, for a decision-making process to be manageable, some form of balance between interest sectors is required. It is the responsibility of the standard-setting organization to ensure that sectors are identified and balanced in their participation in the decision-making process. It is possible for a balance to be fulfilled or partially fulfilled by Boards of Directors or by Committees of the standard-setting organization.

The range and diversity of interested parties related to social and environmental standards makes the likelihood of reaching true consensus very low. It is acceptable to work towards consensus but to have a fall-back mechanism for making decisions should consensus not be reached on a given issue. It is important that the standard-setting organization has a documented decision-making procedure in the absence of consensus, and makes an explicit effort to inform interested parties of this procedure before the start of standard development or revision. This decision-making process should include criteria to determine at what point consensus is not achievable and when alternative decision-making procedures should come into effect.

Where the standard-setting organization intends to set performance levels of a standard so that only a minority of enterprises can meet the standard, such as in the case of some ecolabels, it is unlikely that a consensus decision by all interested parties will be reached. In such cases, it is acceptable for the standard-setting organization to implement alternative decision-making mechanisms, so long as the standard does not discriminate between products other than by their performance levels.

5.7 All approved standards shall be published promptly. Final international standards shall be placed in the public domain and shall be made freely available in electronic format. Other final standards shall be available at as low a cost as possible, and provisions should be made to assist parties with legitimate financial constraints to obtain the relevant documents. On the request of an interested party, the standard-setting organization shall freely provide an electronic copy of its standard-setting procedures, most recent work programme or draft standard. Procedures shall be in place to enable hard copies of notices, standards and other related materials to be made available upon request at as low a cost as possible. Where requested, organizations that have set international standards shall, within their means, provide translations of draft and final versions of these standards when relevant.

The Code recognizes that International standards hold a special distinction among standards, given their explicit prioritization in the WTO Agreement on Technical Barriers to Trade. Annex 3 of the TBT Agreement states that “Where international standards exist or their completion is imminent, the standardizing body shall use them, or the relevant parts of them, as a basis for the standards it develops...” (Provision F) Given that international standards should be used as references for the development of national and regional standards, it is important that they are placed in the public domain and are available without cost. Placing them in the public domain

makes them accessible to interested parties and to other standard-setting organizations. This will also facilitate assessments of the need for new standards and avoid redundancy.

All other final standards should not be priced out of reach of interested parties. Costs should reflect the real costs of processing and delivery and the lowest cost required to recoup the expenses of the standard-setting organization associated with the development of the standard.

5.8 Proper records of standard development activities shall be prepared and maintained by the standard-setting organization.

Proper record-keeping includes keeping on file documentation of the standard development process, lists of the interested parties involved at each stage of the process, comments received, and all draft and final versions of the standard. Records should include indications of the stage of development of the standard, as well as future opportunities for public comment. Records should be kept for a minimum of five years.

5.9 Standards shall be reviewed on a periodic basis for continued relevance and effectiveness in meeting their stated objectives and, if necessary, revised in a timely manner. A review process shall occur at least every five years. The date of any revisions or reaffirmations of a standard shall be noted in the standard. A process to receive comments and requests for clarification shall be established and maintained upon publication of the initial standard. Proposals for revisions can be submitted by any interested party and shall be considered by the standard-setting organization through a consistent and transparent process.

The review process should consider whether a need continues to exist for the standard and whether external circumstances have changed to the point of requiring changes in the standard. The review process should also include a formal comment submission period, while recognizing that interested parties are able to submit comments or proposed revisions at any time. The decision on whether to revise the standard should be based on the results of the review process, which incorporates comments received to date.

The process for considering proposals for revisions should be similar to that for taking comments into account, as detailed in 5.5 above.

5.10 The standard-setting organization shall identify at least one focal point for standard-related enquiries and for submission of comments. Contact information for this focal point shall be made easily available.

Contact information should be included on all documentation associated with the standard and the standard development process. It should also be included on the website and in work programmes.

5.11 Administrative requirements relating to conformity assessment and marks of conformity shall be presented separately from technical, process or management requirements.

Requirements that may facilitate conformity assessment but that do not directly contribute to the achievement of the stated objective, such as onerous documentation requirements, should be avoided.

6. Effectiveness, relevance and international harmonization

6.1 The social, environmental and/or economic objectives of a standard shall be clearly and explicitly specified in the standard. Standards shall be no more trade-restrictive than necessary to fulfil the legitimate objectives of the standard.

While the objectives of a standard are defined in the terms of reference at the outset of the standard-setting process, it is important that the standard-setting organization keeps in mind the need for the standard to meet these objectives as it is being developed or revised. This is especially important during the decision-making process. Approval of a standard should be dependent on a strong likelihood that the standard will achieve its intended social, environmental or economic objectives. The standard-setting organization should assess the likelihood of a standard achieving its objectives before it is approved.

Among the types of objectives that can be considered legitimate are environmental protection, human health or safety, animal or plant life or health, labour and social welfare, and cultural considerations. The standard-setting organization is ultimately responsible for determining whether an objective is legitimate and should look to the types of objectives being used by other standard-setting organizations in its determination.

6.2 The standard-setting organization shall take account of relevant regulatory and market needs, as well as scientific and technological developments in the standard development process.

The emphasis of this criteria is to ensure the relevance of a given standard. A standard should build on and complement existing regulatory requirements and should reflect a defined market need. It is the responsibility of the standard-setting organization to determine whether a scientific or technological development is relevant to the standard and supports the objectives of the standard. This can occur during the standard review process.

6.3 International standards shall be used as the basis for corresponding national or regional standards, except where they would be ineffective or inappropriate. Where international standards are designed as the basis for national or regional standards, they shall be accompanied by clear guidance or related policies and procedures for taking into account local economic, social, environmental and regulatory conditions where the standard is applied. This guidance shall include criteria to judge the acceptability of proposed local variations in the standard.

National or regional standards should seek to be as consistent as possible with relevant international standards. Criteria for assessing whether international standards are ineffective or inappropriate for use as the basis for corresponding national or regional standards can include fundamental climatic, geographic or technological factors, local economic conditions, regulatory conditions (including where local law is stricter than the standard), cultural factors, and special considerations for nascent industries.

Guidance for taking account of local conditions should ideally be presented in a separate policy document from the standard. In general, criteria for assessing the acceptability of a proposed local variation should include a determination of the need and necessity for the variation, consistency with the objectives of the standard, sound and verifiable support for the variation, distinguishable improvement, and that the variation is beneficial to international harmonization.

Local market conditions are one of the economic considerations that can be taken into account when assessing the need for a local variation.

6.4 International standards that are to be interpreted at the local level and/or by certification bodies shall avoid language or structure that may create ambiguities in the interpretation of the standard. Standards that are intended for direct implementation shall include objective and verifiable criteria, indicators and benchmarks, while being flexible enough to be applied by enterprises of all scales, and to account for local variations.

All standards should be structured and use language to support consistent interpretation. The basis for consistent interpretation is criteria that are objective and verifiable. Objective criteria do not favour any one type of production or interest group. Standard-setting organizations should be aware especially of biases that favour local conditions, to the exclusion of, or discrimination against conditions in other geographic areas.

Verifiable criteria can be checked for compliance through an audit process. During the standard drafting stage, standard-setting organizations should consider whether and how compliance with each criteria can be ascertained. The emphasis on including indicators and benchmarks is important as it requires that standards not only indicate what they measure (criteria), but also how the criteria are measured (indicators) and where the line is drawn between what is acceptable and what is not acceptable practice (benchmarks).

However, the requirement for inclusion of indicators and benchmarks should not result in standards that are inapplicable for enterprises that operate at different scales, particularly small and medium-sized enterprises. In addition, indicators and benchmarks should not restrict the applicability of a standard to a specific local context. It is important for the standard-setting organization to take into account local and regional differences in technological capacity, economic, social and ecological realities, and, where relevant, traditional knowledge.

6.5 Standards shall be expressed in terms of a combination of process, management and performance criteria, rather than design or descriptive characteristics. Standards shall only include criteria that contribute to the achievement of the stated objectives. Standards shall not favour a particular technology or patented item.

The Code applies to social and environmental standards that focus on the process or production method by which a product is produced, the management system in place, or the relationship between actors in the supply chain. Standards that address the environmental life cycle impact of a product should seek to be compliant with ISO Guide 14024 Environmental labels and declarations - Type I environmental labelling - Principles and procedures.

6.6 With a view to harmonization of standards, a standard-setting organization shall participate within its means in the preparation of relevant international standards that are in line with the vision and objectives of the standard-setting organization.

Relevant international standards are those that address the same subject matter as standards developed by a standard-setting organization. There is a potential for significant costs associated with active participation in a standard development process. Standard-setting organizations should seek to incorporate these potential costs into their financial planning.

6.7 In order for standards to be mutually consistent and free from contradiction for the largest number of user communities, standard-setting organizations shall actively pursue harmonization

of standards and/or technical equivalence agreements between standards, where there is a possibility to do so without compromising the rigour of the standard. The conformity assessment procedures linked with the standard are to be taken into account when pursuing technical equivalence agreements.

Standard-setting organizations should identify other standards that overlap in the scope of their application and in their content. This should be part of the initial scoping phase in the development of a standard, as indicated in the guidance to 5.2, and should also occur during each review of the standard.

Harmonization is the process by which the content of two or more standards is brought into increasing conformity. Activities that support harmonization include, but are not limited to the use of common criteria and indicators, statements of common objectives, adoption of common structures for presentation of standards, and development and adoption of a single international standard.

Technical equivalence occurs where two or more organizations reach agreement that their standards and the process by which those standards are evaluated are equivalent. Technical equivalence agreements can lead to mutual recognition of conformity assessment results. While administrative requirements for conformity assessment are to be presented separately from a standard (5.11), they form an integral part of any negotiations on technical equivalence. For technical equivalence to be meaningful, and to result in mutual acceptance of compliance results, both the content of the standard and the conformity assessment procedures need to be included in negotiations. Where appropriate international standards exist, these can provide a common template to facilitate negotiations on technical equivalence.

7. Participation in the standards development process

7.1 Standard-setting organizations shall ensure that participation reflects a balance of interests among interested parties in the subject matter and in the geographic scope to which the standard applies. Participants in the standard-setting process should have expertise relevant to the subject matter of the standard and/or be materially affected by the standard.

It is important to recognize that there are a number of equally valid approaches to participation and voting that arrive at a balance of interests. Standard-setting organizations should consider the following factors when seeking to achieve a balance of interests: a balance of sectors including those indirectly affected, geographic representation, gender, climate, the scale of the facilities, and different types of organizations. Standard-setting organizations should set stakeholder participation goals at the beginning of a standard development process so that there are clear targets and success criteria.

Materially affected parties are those that will be directly impacted by the application of the standard. The standard-setting organization should ensure that interest groups that are not materially affected, but that have an interest in the standard, do not make up a disproportionate segment of the participants. Ideally, the standard-setting organization should support the participation of materially affected parties that have relevant expertise in the subject matter of the standard. However, if this is not the case, the standard-setting organization should identify other participants with relevant expertise.

7.2 Interested parties shall be provided with meaningful opportunities to contribute to the elaboration of a standard. Standard-setting organizations shall identify parties that will be directly

affected by the standard and proactively seek their contributions. Impartiality shall be accorded throughout the standard development process, so that no single interest predominates. Standard-setting organizations shall include a balance of interested parties in their governance structures that are responsible for setting social and environmental standards.

A meaningful opportunity means that an interested party is provided with an opportunity to submit comments at each stage of the standard development process, and that those comments are duly considered by the standard-setting organization, as per criteria 5.5 and its guidance. Where discussions or decisions happen between a balanced group of interested parties, the standard-setting organization should have a procedure in place to ensure that the interested parties have an equal opportunity to be part of that group.

Parties that will be directly affected by the implementation of a standard are the most important stakeholders in the standard-setting process. As such, it is important that standard-setting organizations take a proactive role in supporting these stakeholders to participate. Identification of these parties at an early stage in the standard development process is important for encouraging full participation. Strategies for seeking comments include, but are not limited to targeted email, phone, fax or mail solicitation, workshops and face-to-face meetings.

It is important not only to ensure that the full range of interested parties has meaningful opportunities to contribute to a standard development process, but to have those parties represented in the relevant decision-making structures of the standard-setting organization. This includes Boards and committees that have direct responsibility for the development of social and environmental standards. In order for a standard to be truly representative of the range of interested parties, those parties need to have a real opportunity to affect decisions in the relevant bodies of the standard-setting organization.

7.3 Where a standard-setting organization has members, membership criteria and application procedures shall be transparent and non-discriminatory.

While many standard-setting organizations are not membership-based, all standard-setting organizations should incorporate a balance of interested parties into their governance structures that relate to standard-setting. This supports criteria 7.2.

For those standard-setting organizations that do have members, the emphasis should be on ensuring that all parties that are interested in applying for membership are afforded objective and transparent treatment, based on the membership criteria and application procedures. Transparency means that the decision-making process and the justification for a decision on a membership application are made available to the applicant and are based on clear criteria and application procedures. Membership-based organizations can avoid discrimination against any applicants for membership by basing decisions only on the membership criteria.

7.4 Constraints on disadvantaged groups to participate effectively in standard development shall be addressed in the standard development process. Standard-setting organizations should consider how the influence of these groups can be increased, even if their participation rates cannot. Particular attention should be paid to the needs of developing countries and small and medium-sized enterprises.

Interested parties in developing countries often face additional hurdles to participation in the standard development process, including lack of expertise, knowledge of the existence of the

standard, funds and infrastructure. These constraints should be considered by the standard-setting organization, with the objective of ensuring their meaningful participation.

Funding constraints are often a primary cause of low participation. Standard-setting organizations should seek to include in their financial planning, funds to enable participation of disadvantaged groups that will be directly affected by the implementation of the standard. However, given that this is not always possible, the standard-setting organization should look to other means by which to facilitate their participation. This can include identifying and communicating with materially affected stakeholders at the beginning of the standard development process, ensuring that developing country stakeholders can make their comments from afar, and notifying organizations or mechanisms that spread information about standards. Technical cooperation and capacity building can also play an important role in enhancing the effective participation of disadvantaged groups.