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Human rights due diligence: an evolving landscape

Legislative developments, case law, shifting societal expectations and increasing scrutiny from stakeholders are transforming human rights supply chain risk assessment from an optional exercise into business necessity. This shift is significant in the context of mergers and acquisitions (M&A), where acquirers need to identify historical breaches and other compliance risks to inform their decision making (*see feature article "ESG issues in M&A deals: adapting to the new climate", www.practicallaw.com/w-043-5288*).

Whether the compliance risks are within the target company or its supply chain, they may affect financial viability, reputational standing and legal exposure. The cost of remedial measures should also be factored into investment decisions. The change in the due diligence landscape is also important for day-to-day risk management at the portfolio company level.

Businesses that are engaged in M&A should adopt strategies to proactively navigate developments across the UK, the EU, the US and beyond in order to mitigate human rights compliance risks and ensure long-term sustainability.

Supply chain risk management

In order to incorporate human rights supply chain due diligence into their M&A strategies, businesses should consider the following issues:

- Supply chain mapping and risk assessment. Businesses need to identify and understand the entire supply chain of a target company, including second and third-tier suppliers, in order to identify high-risk areas (*see feature article "Supplier relationships: risks and opportunities", www.practicallaw.com/w-037-6473*).
- Evaluating compliance frameworks. Businesses should assess a target company's existing compliance policies and internal controls for comprehensiveness, key dates, associated training, and monitoring, audit and post-implementation checks.
- Contractual protections and remediation strategies. Businesses should insert clauses into supplier agreements that include clear expectations on adherence to ethical standards, compliance with relevant regulations and standards, and remediation plans for non-compliance.
- Training and internal capacity building. Businesses should regularly train employees (including procurement teams) and supply chain partners on regulatory requirements and ethical business practices, and document this training.
- Strengthening audit and monitoring mechanisms. Businesses should conduct regular supply chain audits and implement robust monitoring systems, possibly using technology such as AI.

Supply chain regulation

Several key regulatory frameworks have emerged as critical benchmarks for human rights compliance in the context of supply chains, including the UK's Modern Slavery Act 2015 (2015 Act), the US Uyghur Forced Labor Prevention Act of 2021 (UFLPA) and, more recently, the EU's Corporate Sustainability Due Diligence Directive (*2024/1760/EU*) (CSDDD). However, each of these regimes is in flux, making it difficult for businesses to set due diligence standards effectively. Moreover, these frameworks do not exist alone; businesses must consider the full suite of supply chain related regulations that may apply to them, depending on their industries, sectors and jurisdictions (*see feature article "Sustainability in supply chains: due diligence in focus", www.practicallaw.com/w-035-5415*).

Businesses should also consider incorporating voluntary frameworks into their supply chain due diligence processes, such as the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct and the UN Guiding Principles on Business and Human Rights (*see Focus "UN business and human rights treaty negotiations: a long and winding road", www.practicallaw.com/w-038-6346*) (*www.oecd.org/en/publications/oecd-guidelines-for-multinational-enterprises-on-responsible-business-conduct_81f92357-en.html; www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf*).

Modern Slavery Act 2015

In the UK, there is no singular law mandating comprehensive supply chain due diligence to address human rights or environmental risks. Instead, the 2015 Act requires in-scope companies to publish annual transparency statements outlining their efforts to prevent modern slavery within their supply chains (*see feature article "Supply chain reporting: complying with the Modern Slavery Act 2015", www.practicallaw.com/6-622-9282*).

The 2015 Act was originally considered to be world-leading and was praised for focusing on transparency. However, it has since been criticised for its lack of clarity and impact through enforcement. For example, companies that fail to take action merely need to state as much, with no mandatory requirements imposed for the content or format of these statements.

On 16 October 2024, the House of Lords Modern Slavery Act 2015 Committee published a report on potential legislative amendments to the 2015 Act (*www.gov.uk/government/publications/modern-slavery-government-response-to-house-of-lords-committee-report*). In particular, the committee recommended that the government should introduce legislation requiring larger companies to undertake modern slavery due diligence in their supply chains and to take reasonable steps to address any problems that are identified. On 16 December 2024, the government published its response, stating that it will assess the best ways to prevent environmental harms, modern slavery, and human and labour rights abuses in both private and public sector supply chains, including effective due diligence requirements (*www.gov.uk/government/publications/modern-slavery-government-response-to-house-of-lords-committee-report*).

On 24 March 2025, the Home Office published updated statutory guidance on how to comply with the letter and spirit of the 2015 Act, which includes practical case studies to support companies and groups considering their obligations (*see News brief "Revised guidance on modern slavery statements: raising the bar for good practice", this issue*).

The CSDDD

The CSDDD is the EU's flagship legislation on due diligence. It was published in the Official Journal in 2024 after a relatively challenging legislative process in which various provisions were diluted following objections from EU member states. On 26 February 2025, the European Commission (the Commission) proposed reforms to the CSDDD as part of an omnibus sustainability package, which aims to simplify sustainability related requirements across several regulations (*see News brief "Streamlining ESG reporting: the EU's omnibus package", www.practicallaw.com/w-046-2734*).

The CSDDD requires in-scope entities, which can be incorporated outside of the EU, to integrate risk-based due diligence processes into their policies and risk management systems to identify, prevent, end or mitigate adverse impacts from their activities (including the activities of subsidiaries and business partners) on human rights and the environment. Currently, the value chain requirements extend to direct and indirect business partners but, under the omnibus proposals, the requirements relating to indirect partners are likely to be limited to particular risks of adverse impacts.

Like other EU directives, member states will need to implement the CSDDD, including providing for enforcement. The current version requires member states to designate authorities to supervise compliance and impose sanctions, including "naming and shaming". Further penalties may include fines of at least 5% of the company's net worldwide turnover. The omnibus proposals include removing the civil liability triggers, tasking the Commission with developing penalty guidelines, and postponing by one year the transposition deadline and the first phase of application to 26 July 2028.

The UFLPA

US trade law, including section 307 of the US Tariff Act of 1930, has long prohibited the importation into the US of products of forced labour. However, US Customs and Border Protection (CBP) has rarely enforced the prohibition because a carve-out existed for imports with respect to which no comparable product made in the US could meet domestic demand. Before 2022, when the UFLPA took effect, it remained extremely difficult for CBP to establish that a particular import was the product of forced labour.

The UFLPA changed the state of play by establishing a rebuttable presumption that goods that have been mined, produced or manufactured, wholly or in part, either in Xinjiang or by an entity on the UFLPA entity list are the subject of forced labour and prohibited from being imported into the US. CBP enforcement statistics show that the UFLPA has stopped over 15,500 shipments and ultimately denied the entry of over 8,600 shipments from June 2022 to March 2025 (*www.cbp.gov/newsroom/stats/trade/uyghur-forced-labor-prevention-act-statistics*).

The adoption and vigorous enforcement of the UFLPA add to longstanding legal, reputational and commercial risks that US companies must address through robust supply-chain due diligence. For example, US companies must ensure that:

- Their supply chains do not involve improper payments to foreign officials in connection with securing access to natural resources or facilitating the cross-border movement of goods, which could give rise to violations of the US Foreign Corrupt Practices Act of 1977.
- They do not enter into transactions involving entities, individuals, countries or regions that are targets of US sanctions.

Increasing litigation risk

Businesses also face an increased threat of litigation relating to supply chain practices, including at offshore subsidiaries, although the English courts have yet to rule substantively on the liability of parent companies in this regard (*see feature article "Managing risk in multinationals: parental responsibility", www.practicallaw.com/w-021-7622*).

In *Limbu and others v Dyson Technology Ltd and others*, a group of migrant workers filed claims against three Dyson companies, alleging that they had been trafficked to Malaysia and subjected to forced labour, exploitative conditions and, in some cases, detention, torture and physical abuse (*[2024] EWCA Civ 1564*). The High Court declined jurisdiction, ruling that Malaysia was the most appropriate forum (*[2023] EWHC 2592*). However, the Court of Appeal upheld the workers' appeal. It emphasised the significance of the Dyson companies being domiciled in the UK and observed that, while the harm occurred in Malaysia, Dyson's UK headquarters set policies on working and living conditions and had been informed of the abuses without taking action. The Dyson companies have applied for permission to appeal to the Supreme Court.

In *Alame and others v Shell Plc and another*, a large group of claimants alleged that oil spills had damaged their land and water sources, affecting their health and livelihoods (*[2024] EWCA Civ 1500; www.practicallaw.com/w-045-6113*). Shell argued that it should not be held responsible for pollution caused by third parties, such as through theft or sabotage. The High Court held that, due to the difficulty in linking specific damages to over 100 individual spills, the claim should be treated as a global claim, requiring the claimants to prove that Shell was wholly responsible for the environmental harm (*[2024] EWHC 510*). However, the Court of Appeal allowed the claimants' appeal, directing that the case should proceed through lead cases instead.

In February 2025, the High Court began hearing preliminary issues on Nigerian law in *Alame*. This followed an earlier ruling by the Supreme Court that it was reasonably arguable that the parent company, Royal Dutch Shell plc, owed the claimants a duty of care in respect of the activities of its Nigerian subsidiary (*Okpabi and others v Royal Dutch Shell Plc and another [2021] UKSC 3; www.practicallaw.com/w-030-2235*).

In the US, a federal jury in South Florida in June 2024 held a US company, Chiquita Brands International, liable for financing a Colombian paramilitary group that had been designated as a terrorist organisation (*In Re Chiquita Brands International Inc, Alien Tort Statute and Shareholders Derivative Litigation 0:08-md-01916 (SD Fla Jun 10, 2024) ECF No 3811*). Chiquita was ordered to pay more than $38 million in damages to Colombian families whose relatives, including banana workers and trade unionists, had been killed by the paramilitary group. In October 2024, the court rejected Chiquita's arguments relating to limiting damages for pain and suffering (*(SD Fla Oct 18, 2024) ECF No 3906*).

Challenges for businesses

There are a number of ways in which businesses can mitigate human rights compliance risks in their supply chains (*see box "Supply chain risk management"*). However, businesses may face various challenges when implementing these steps, including:

- Supplier resistance to transparency.
- A lack of standardised data collection methods.
- The complexity of mapping global supply chains across jurisdictions with varying regulations.
- Resource constraints.

It is also difficult for businesses to effectively and actively monitor if and how requisite standards are being upheld, in particular as suppliers may agree to adhere to policies but fail to meet them in practice. Using AI and data analytics to enhance transparency and risk detection may assist businesses by providing real-time visibility, alerts and detection (*see feature article "AI tools for ESG compliance: promises and pitfalls", www.practicallaw.com/w-043-8579*).

By embracing robust due diligence frameworks, leveraging technology and fostering strategic partnerships, investors can safeguard financial and reputational interests, and promote responsible practices. This will also help to reduce litigation risk for portfolio companies and associated risks that investors may take on as an ultimate parent company.

Tim Welch, Rebecca Grapsas and Hayley Lund are partners, Amy Waddington is a senior counsel, and Sarah Chaplin is an associate, at Weil, Gotshal & Manges LLP.