



Human Rights & Responsible Sourcing

The Evolving Legal Landscape & Best Practices

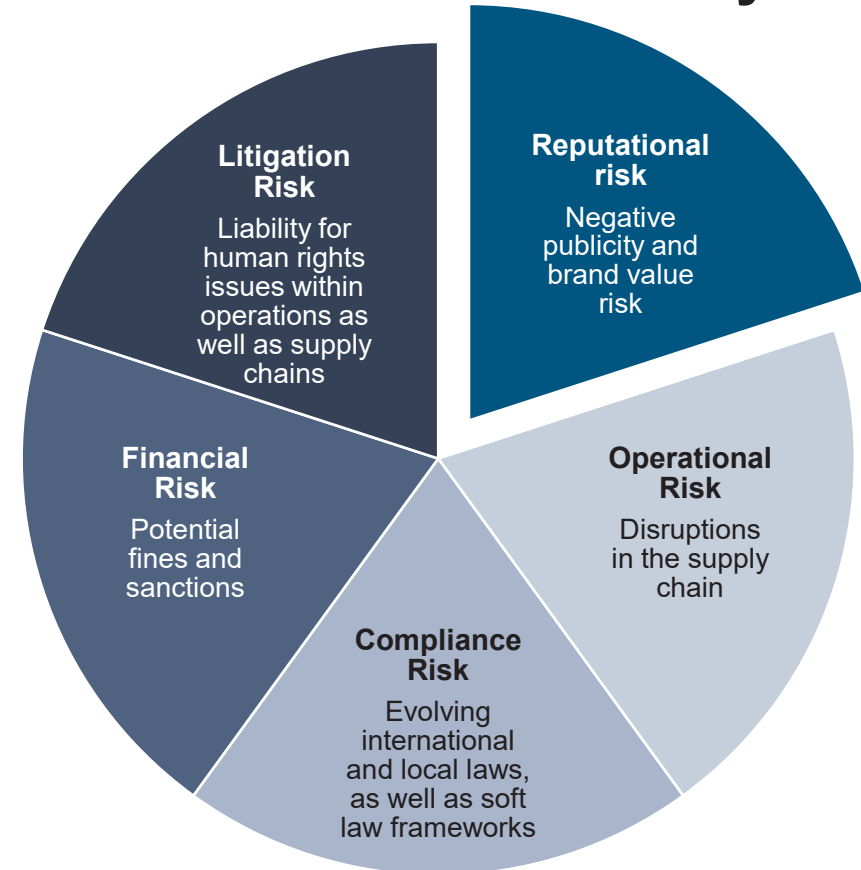
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Why Are We Discussing This Today?

- Human rights and supply chain issues are key areas of regulatory focus with an increasing number of laws developing in multiple jurisdictions
 - One of the areas where we can often see bipartisan efforts
- In addition to legislation and regulation, stakeholders are increasingly pushing businesses to implement more robust ESG practices across their value chains
 - For example, in June 2024, Private Equity International [reported](#) that California Public Employees' Retirement System had been reducing fund commitments where it had concerns about portfolio companies' labor practices

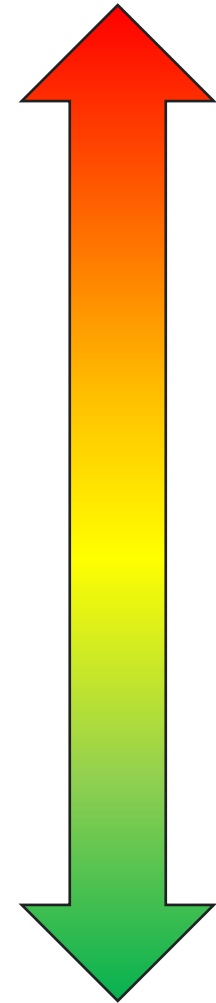
Various Risks at Play



Key Areas of Focus: Where Are the Evolving Risks?

- New laws (disclosure, diligence, substantive restrictions)
- Broader scope
 - Moving beyond direct operations into supply chain and other stakeholder impacts
 - Moving from reactive to proactive expectations on how companies monitor & address human rights
 - Concerns of “greenwashing”/“socialwashing” for ethical sourcing and related claims
- Expanding interpretations
 - Recognition of additional rights (e.g., “right to a healthy environment”)
 - Revisiting what certain rights entail (e.g., “free prior and informed consent”)

Where we are headed: increased regulation, scrutiny, and complexity





Overview of Key Laws & Frameworks

Contextual Background on Human Rights Legal Requirements

- Legal approaches have undergone an evolution overtime; however, policymakers may choose to use one or more of these strategies to continue addressing human rights concerns:



- There is a similar arc in the relative “hardness” of expectations
 - Understanding today’s soft law can often help to prepare for tomorrow’s hard law
- While jurisdictions are in different positions, the overall trend is towards greater scrutiny and heightened expectations, particularly with regards to supply chain management
- In many cases, disclosure is as much about prompting change as transparency

UN Guiding Principles on Business and Human Rights

- Primary **soft law** framework guiding expectations on businesses' approach to human rights
- UNGPs use a “**protect, respect, and remedy**” framework under which governments have a responsibility to protect, and businesses have a responsibility to respect, internationally recognized human rights
 - Businesses should have policies and processes to meet their responsibility to respect human rights
 - Should include a policy commitment to respect human rights, human rights due diligence processes, and processes to enable remediation of any adverse human rights impacts
- **Human Rights Due Diligence** – UNGPs prescribe 4 steps:
 1. Identify and assess nature of actual and potential adverse human rights impacts
 2. Integrate findings across relevant internal functions and processes
 3. Track effectiveness of response to adverse human rights impacts
 4. Externally report on how the business addresses human rights impacts
- Treaty in negotiation that would oblige state parties to impose requirements on businesses to do human rights due diligence

OECD Guidelines on Responsible Business Conduct

- Additional **soft law** framework providing guidance for best practices by multinational enterprises on various economic, environmental, and social topics
- OECD recommendations of relevance for businesses addressing human rights are as follows:

Human Rights	Employment & Industrial Relations
<ul style="list-style-type: none"> ▪ Respect human rights ▪ Avoid causing or contributing to adverse human rights impacts, and address such impacts if they occur ▪ Seek to prevent or mitigate adverse human rights impacts directly caused by their business operations or their value chain ▪ Have a publicly available policy commitment on respecting human rights ▪ Conduct human rights due diligence, as appropriate ▪ Provide for or facilitate remediation of adverse human rights impacts 	<ul style="list-style-type: none"> ▪ Respect the right of workers to join trade unions or representative organizations ▪ Contribute to abolition of all forms of forced and child labor ▪ Be guided by the principle of equal opportunity and treatment in employment ▪ Provide a safe and healthy working environment ▪ Observe standards of employment, contractual arrangements, and industrial relations ▪ Ensure wages, benefits, and working conditions in host countries are at least as favorable as those offered by comparable local employers

Laws Focused on Disclosure

Various jurisdictions have disclosure-focused regulations that require companies meeting a specific threshold for doing business in their jurisdiction to report on the steps they have taken related to human rights. Examples include:

Regulation	Status	Details
UK Modern Slavery Act	In effect since 2015	First country to require large businesses to report on initiatives to eliminate modern slavery from supply chains.
Australia Modern Slavery Act	In effect since 2019	Requires entities to report on forced-labour risks in their supply chain and their annual efforts to reduce them.
California AB 3234	Adopted in 2024	Requires certain companies in California to disclose results of voluntary social compliance audits, including certain information on child labor practices
Canada Fighting Against Forced Labour and Child Labour in Supply Chains Act	In effect since January 2024	Requires businesses to prepare annual reports on their efforts to prevent forced labour and child labour in goods imported to Canada.
California Transparency in Supply Chains Act	In effect since 2012	A statute that requires covered businesses to disclose their efforts to eliminate slavery and human trafficking from their direct supply chain. For tangible goods offered for sale.
EU Corporate Sustainability Reporting Directive	In effect since January 2023	Requires certain large companies to disclose how they manage ESG issues, including social and employee issues and respect for human rights.

Laws Focused on Diligence

In more recent years, various jurisdictions have adopted affirmative requirements for companies to conduct due diligence on their supply chains. Examples include:

Regulation	Status	Details
France Duty of Vigilance Law	In effect since March 2017	Requires covered businesses to establish and implement a plan for diligence of human rights, environmental, and health & safety issues in their operations, in the operations of any subsidiaries, and in their supply chains.
Germany Supply Chain Diligence Law	In effect since January 2023	Requires covered businesses to undertake various due diligence measures, with the goal of preventing or minimizing human rights and environmental risks.
Dutch Child Labour Due Diligence Act	In effect since 2022	Requires supply chain due diligence and reporting for businesses providing goods or services in the Netherlands to prevent such goods or services from being produced using child labor.
Norwegian Transparency Act	In effect since July 2022	Requires covered businesses to undertake human rights due diligence in alignment with the OECD Guidelines for Multinational Enterprises.
EU Corporate Sustainability Due Diligence Directive	In effect since July 2024 (EU Member States have until 2026 to transpose into national law)	Requires covered businesses to conduct due diligence to identify and assess environmental and human rights issues across their value chain, and to take steps to prevent and eliminate them.
Netherlands Responsible and Sustainable International Business Conduct Act	Proposed in 2021; amended proposals in 2022 and 2023	Would repeal the Child Labour Due Diligence Act. Introduces, among other things, a due diligence obligation for covered businesses to identify, prevent, mitigate, and monitor any actual or potential human rights risks in their value chain.

Laws Focused on Substantive Prohibitions

Various jurisdictions have also adopted substantive requirements regarding the structure and legal compliance expectations of supply chains. Examples include:

Regulation	Status	Details
US Uyghur Forced Labor Prevention Act	In effect as of June 2022	<p>Creates a rebuttable presumption that any goods mined, produced, or manufactured wholly or in part in the Xinjiang Uyghur Autonomous Region of China are ineligible for import under the US prohibition against the import of goods produced by forced labor.</p> <p>Enforcement has included several priority sectors (though is not limited to these sectors).</p>
EU Forced Labor Ban	Approved by the European Parliament in April 2024; awaiting approval by the Council of the EU	Prohibits the sale, import, and export of goods made using forced labor in the EU.
US Tariff Act of 1930	In effect as of 1930	Prohibits goods “mined, produced, or manufactured wholly or in part” by forced or indentured labor from entering the United States.
US Alien Tort Statute (ATS)	In effect as of 1789	<p>Permits foreign nationals to seek redress in US courts for harms caused by human rights offenses; parties may sue corporations, but Supreme Court has interpreted the ATS narrowly:</p> <ul style="list-style-type: none"> • Does not allow for foreign corporations to be defendants. • For suits against domestic corporations involving conduct/injury abroad, plaintiffs must show that there is a sufficiently strong connection between the foreign conduct/injury and domestic corporate conduct. Allegations of general corporate activity or operational decision making will typically not be enough to prove this connection.
US Trafficking Victims Protection Act (TVPA)	In effect as of 2000	<p>Creates a framework to address trafficking in persons (e.g., labor trafficking) through prevention, protection, and prosecution. It has been reauthorized and amended several times, including to:</p> <ul style="list-style-type: none"> • Add criminal charges for those that financially benefits from forced labor; and • Create a civil cause of action for victims of TVPA violations



Best Practices & Practical Considerations

How Businesses Can Approach Human Rights

- Companies will need to take a risk-informed approach to the management of human rights matters.
- This can be informed by sector, geography, value chain, and specific stakeholder pressures. However, in either case, a company's approach can generally be structured along a few key pillars:

Governance	Diligence	Mitigation	Disclosures
<ul style="list-style-type: none"> ▪ Clear allocation of oversight responsibilities for relevant human rights issues ▪ Policies on human rights issues, informed by relevant standards and frameworks ▪ Incorporation of contractual provisions on human rights with key third-parties (e.g. suppliers) ▪ Trainings for employees and management on relevant human rights issues 	<ul style="list-style-type: none"> ▪ Diligence on own supply chain (incl. supply chain mapping and/or supplier audits) to identify potential human rights risks and any related substantive legal obstacles (e.g., UFLPA, forced labor bans) ▪ Compliance with any applicable diligence obligations (e.g., France, Germany, EU) ▪ Conducting human rights impact assessments to identify potential and actual human rights risks 	<ul style="list-style-type: none"> ▪ Action plans for identified human rights risks/issues of concern (this may include direct remediation, plans from suppliers, or other items depending on the issue in question) ▪ Capacity building for suppliers on human rights expectations 	<ul style="list-style-type: none"> ▪ Compliance with any applicable disclosure obligations (e.g., Australia, California, Canada, EU, UK) – including streamlining/harmonizing multiple responses ▪ Engagement with Indigenous Peoples and local communities, as applicable ▪ For general stakeholder engagement, can typically incorporate human rights updates into existing ESG reporting

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Austin Pierce advises companies, funds, and their boards to advance their corporate strategies through the identification and management of environmental, social, and governance risks and opportunities.

He draws from deep experience working with clients across sectors and sizes in some of their most pressing ESG needs, including human rights matters. Austin has advised on the development and implementation of human rights policies, engagement with various stakeholders and Indigenous communities, comprehensive investigations and assessments of companies' human rights initiatives, and how such matters relate to various regulatory, transactional, and financing regimes. He has also helped companies with assessing and managing potential human rights impacts in their value chains, including the design of diligence programs and related responsible sourcing initiatives.

A recognized thought leader, Austin frequently contributes to leading industry publications such as the *Harvard Law School Forum on Corporate Governance*, *Law360*, *PracticalESG*, and *LatinLawyer*. He has also written extensively on the intersection of environmental and social matters, including in contributions to the American Bar Association's *Guide to Human Rights Due Diligence for Lawyers* and *LatinLawyer's Guide to Environmental, Social, and Corporate Governance*.



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