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Business lawyers, the UNGPs and supply chain risks

Business responsibility to respect: how to achieve greater coherence and clear accountability

Increasingly, businesses are being held accountable for committing or contributing to modern slavery and other human rights abuses that occur in their operations and/or supply chains. The risks associated with cases of corporate criminal liability are also on the rise. Cases range from instances of human trafficking in the United Kingdom found to be linked directly to the supply chains of major British brands and retailers, to a European retailer facing legal action and paying millions of pounds in compensation to the families of Pakistan factory fire victims.

Under the United Nations Guiding Principles on Business and Human Rights (UNGPs), the globally recognised authoritative standard on business and human rights, businesses have a responsibility to respect human rights in the context of their operations or business relationships. This means that businesses should undertake appropriate due diligence to avoid infringing the human rights of others and, dependent on the manner of their involvement, should address any occurrence of adverse human rights impacts. An enterprise cannot meet its responsibility to respect human rights if it causes or contributes to an adverse human rights impact in its supply chain and fails to enable its remediation.

Business relationships are defined as the relationships an enterprise has with its partners, entities in its value chain or entities with links to its business operations, products or services. There are many examples demonstrating that implementing the UNGPs is particularly challenging when businesses do not legally own or control their suppliers. However, escalating legal, governance and reputational risks require businesses to consider how to identify and address the risks arising from such relationships, such as third-party outsourcing or the placement of unreported, short-term contingency orders several tiers down a supply chain. The Rana Plaza disaster in Bangladesh highlights the tragic consequences – not only at a human level but also for an entire sector/industry – of failing to detect and mitigate dangerous business practices.

The UNGPs are clear that a business must 'know and show' that it is respecting human rights – including within its supply chain operations – not only through appropriate human rights due diligence but through an aligned and holistic approach to its human rights risk management. Simply ignoring or remaining ignorant of human rights abuses linked to business operations, products or services poses increased risks of being challenged in a legal (and certainly reputational) context, if the business in question should reasonably have known of, and acted on, the risk through appropriate due diligence.

Everyone's business: the role of lawyers

The complexity of supply chains, often due to the distance and opacity of the many tiers between source and buyer, can make it difficult to identify and address not only specific instances of modern slavery but also the problem as a whole. Nevertheless, the legal, governance and reputational drivers for conducting corporate human rights due diligence to address risks in this context are becoming much more explicit. Complex, international supply chains present broader human rights risk management and reputational risks for businesses, not to mention the immediate potential human rights risks to workers themselves. As a result, there is growing client demand for lawyers to understand and provide advice addressing the risks of failing to manage and mitigate the full breadth of relevant human rights risks to which a client may be exposed.

Leading companies now recognise that addressing human rights issues is not only about short-term risk management but also about changing the way the business thinks about human rights

and institutionalising management systems to change approaches and practices in the long term. Therefore, in-house lawyers and professionals responsible for contracting and dealing with risks in supply chain operations need to take additional steps to ensure that responsible and human rights 'risk aware' business practices are adopted throughout a business's operations and supply chains.

In this context, the International Bar Association (IBA), in its Practical Guide on Business and Human Rights for Business Lawyers (the 'Practical Guide'), highlights the strong business case for respecting human rights. The Guide explains that the requirement to manage risks, including legal risks, increasingly means that lawyers (and particularly business lawyers) need to take human rights into account in the provision of their advice and services.

The IBA Practical Guide has identified numerous areas of businesses' legal practice where the UNGPs are relevant, including but not limited to: corporate governance; reporting and disclosure;



litigation and dispute resolution; contracts and agreements; land acquisition; development and use; resource exploration and extraction; labour and employment; tax; intellectual property; lobbying; bilateral treaty negotiation; and arbitration.

In light of the critical role that lawyers have in advising on the legal, governance and reputational issues and legal risk management systems and controls associated with responsible business conduct and ethical business practices, the IBA Legal Policy and Research Unit (LPRU) and the Ethical Trading Initiative (ETI) are working together to:

- explore and discuss tools, techniques and approaches to assist in-house lawyers advising on, and working with, their employers to identify and address human rights risk issues in the context of commercial contracting and supply chain relationships in a manner that is aligned with the UNGPs;
- support engagement and cross-departmental working within companies on ethical trade and human rights due diligence issues and approaches; and

- create a leadership group and provide an interactive forum to facilitate peer learning and a pre-competitive space to discuss common challenges.

We aim to enable in-house lawyers and sustainability/ethical trade teams to identify, implement and support human rights risk management approaches that align with the UNGPs.

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The IBA has produced the *IBA Practical Guide on Business and Human Rights for Business lawyers and a Reference Annex* as part of its continued efforts to support lawyers who advise business clients on the various laws, policies and standards that promote business respect for human rights.

For information on human rights due diligence, see the *ETI's Human Rights Due Diligence Framework*, which serves as a guide for companies to help manage and mitigate labour rights risks, and understand why engagement, negotiation and collaboration are the best way to succeed.