

BUSINESS AND HUMAN RIGHTS:
NAVIGATING A CHANGING LEGAL LANDSCAPE



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BUSINESS AND HUMAN RIGHTS: NAVIGATING A CHANGING LEGAL LANDSCAPE

BUSINESSES ARE INCREASINGLY REQUIRED TO IMPLEMENT HUMAN RIGHTS DUE DILIGENCE PROCESSES AND/OR TO REPORT ON HOW THEY MANAGE HUMAN RIGHTS-RELATED ISSUES. IN OUR THIRD JOINT BRIEFING,¹ THE GLOBAL BUSINESS INITIATIVE ON HUMAN RIGHTS AND CLIFFORD CHANCE CONSIDER THESE DEVELOPMENTS, FOCUSING ON WHAT COMPANIES NEED TO KNOW TO POSITION THEMSELVES TO NAVIGATE THE CHANGING LEGAL LANDSCAPE.

An increased regulatory focus on business' human rights responsibilities was envisaged by the [UN Guiding Principles on Business and Human Rights](#) (UNGPs) – the authoritative global framework for addressing business-related human rights risks. Governments and regulators are beginning to use mandatory reporting and due diligence requirements to prompt businesses to address their human rights impacts. More regulation is likely to follow.

These initiatives follow legal and regulatory developments in other areas of responsible business conduct, such as bribery and corruption, health and safety, and environmental risks. Whilst any increase in legal requirements can be uncomfortable for companies, regulation may also be welcomed where it clarifies expectations of companies and creates a level playing field.

Regulation will only achieve this if it is well-designed. As new legislative initiatives continue to be tabled for discussion, there is a window of opportunity for businesses to help shape these developments to ensure they are practicable as well as effective at preventing, and addressing, adverse human rights impacts.

WHAT YOU NEED TO KNOW

- ✓ Elements of the corporate responsibility to respect human rights are now embedded in legal requirements in several jurisdictions – new laws in this area are likely to emerge in the coming years.
- ✓ The scope of these legal requirements differs from country to country and can in practice impact a broad range of businesses directly and indirectly, including those in the supply chains of those directly subject to such legal requirements.
- ✓ Businesses that are already working seriously to implement respect for human rights in their organisations are likely to be well-placed to meet new legal requirements.
- ✓ Businesses that are not already working to implement respect for human rights should start now.
- ✓ Some statutory guidance for laws already refer to the UNGPs and other similar instruments. By taking an approach to reporting and due diligence that is consistent with the UNGPs, businesses can position themselves to respond to the current regulatory environment and any developments in the future, thereby minimising their potential future legal risk exposure.

¹ Our first joint briefing, 'National Action Plans on Business and Human Rights', October 2015, is available [here](#). Our second joint briefing, 'Access to Remedy: The Final Frontier?', November 2016, is available [here](#).

HOW THE LEGAL LANDSCAPE HAS CHANGED

Ten years ago, there were few laws requiring businesses to implement human rights due diligence and reporting processes. Now, governments increasingly expect businesses to actively manage their human rights impacts and are introducing laws to encourage this approach. These new initiatives increase the legal – as well as commercial and reputational – risks for businesses that are not taking effective steps to identify and address human rights issues in their business activities and relationships.

These legal initiatives are not uniform in approach. They tackle different issues and focus on different subjects. Some focus on a specific human rights issue, such as human trafficking, forced labour or child labour, or on abuses related to particular commodities, such as conflict minerals whilst others take a broader approach to reporting on all human rights issues. The laws also vary in terms of which business organisations fall within their scope; some apply only to entities incorporated or registered within the regulating State; others extend to organisations doing business in that State (regardless of where they are incorporated or registered), meaning they have broader international effect. See overleaf and Annex One for more information.

Key trends and commonalities:

These initiatives aim to increase transparency and drive action through mandatory public reporting. Regardless of the scope of the requirement, the existing and proposed legislation considered in our review all require some form of public reporting. This may be through the publication of a statement on a website or via the submission of a statement to a publicly available government repository. By increasing publicly available information about business practices, these initiatives create a reputational incentive for businesses to strengthen their efforts to manage the relevant human rights-related risks.

These initiatives include mandatory content requirements, although they vary in the degree of discretion accorded to business to determine the types of information to be disclosed. The UK Modern Slavery Act, the legislation yet to come into force in New South Wales and the bill proposed in Hong Kong all require companies to report on the steps taken to address modern slavery risks, if any. While companies may be encouraged to refer to certain categories of step, there is no specific list of items that has to be covered. Other legislative models prefer to specify particular categories of information that companies must report (including the Australian Modern Slavery Act). In some cases, this includes information about the risks of human rights-related issues in the company's operations and supply chains, as well as information about how the company manages those risks and the effectiveness of its approach.

Some initiatives also introduce mandatory human rights due diligence requirements. The French Duty of Vigilance law requires due diligence on human rights issues as would the legislation in Switzerland, if passed. Following amendments to the Federal Acquisitions Regulation, the US requires contractors and subcontractors providing certain services to carry out due diligence before certifying that they have not carried out prohibited trafficking activities (which include forced labour). Further, companies subject to reporting requirements on conflict minerals in the US must include in their reports a description of the measures they took to exercise due diligence on the source and chain of custody of those minerals. Similarly, conflict minerals legislation in the EU requires certain entities to identify and assess risks, implement a strategy for risk management, and carry out third party audits. These would be subject to oversight by the relevant national authorities.

KEY LEGISLATIVE DEVELOPMENTS WORLDWIDE

NORTHERN AMERICA

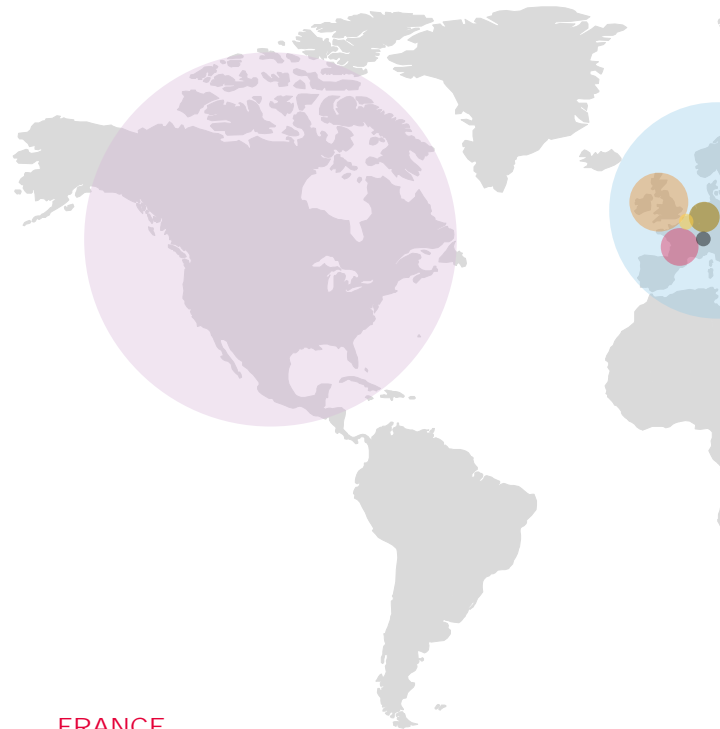
- **California Transparency in Supply Chains Act 2010 (effective January 2012):** Certain sellers and manufacturers doing business in California must publish efforts to eradicate human trafficking in direct supply chains annually. The Attorney General may seek an injunction to require an entity to comply.
- **US Federal Acquisition Regulation: Ending Trafficking in Persons (effective March 2015):** Certain contractors to the US government must annually confirm (after carrying out due diligence) that no trafficking activities (which include forced labour) are taking place and that compliance plans have been implemented. There are a range of penalties for non-compliance.
- **US Dodd-Frank Act Final Rule 1502 (effective February 2012):** Certain SEC issuers manufacturing or contracting for products from conflict minerals countries must file annual reports detailing steps taken regarding the source of the product. There is no financial penalty for non-compliance of this rule. However, there is potential liability for false or misleading statements.
- **Canada: An Act respecting the fight against certain forms of modern slavery through the imposition of certain measures and amending the Customs Tariff (C-423) (proposed law):** Under the proposed law, certain entities would be required to report on steps taken to prevent or reduce the risk of forced and child labour in the manufacture, production, growing, extraction or processing of goods in Canada or elsewhere or imported by the entity into Canada. Fines could be imposed for failures to comply with the Act or where false or misleading information is given. Directors would also be liable for the offences of those persons or entities under their direction or authorisation.

GERMANY

- **Proposal for a framework law on the sustainable design of global value chains and the amendment of commercial law provisions, including a core law on the regulation of human rights and environmental due diligence in global value chains (proposed law):** Under the proposal, certain German companies would be required to report publicly on the fulfilment of due diligence relating to the environment and human rights. Sanctions for non-compliance include fines, criminal liability, and exclusion from public procurement processes.
- **Law to strengthen the non-financial reporting of companies in their management and group management reports (NFR-Directive Implementation Act)** implementing the Directive 2014/95/EU (Non-financial Reporting Directive) (See EU box).

UNITED KINGDOM

- **UK Modern Slavery Act 2015 (effective March 2015):** Certain companies doing business in the UK must issue a statement setting out the steps taken to address modern slavery in the business and supply chain (or state that no steps have been taken). The Secretary of State may seek an injunction to require an entity to comply. There is no financial penalty for non-compliance.
- **The Companies, Partnerships and Groups (Accounts and Non-financial Reporting) Regulation No. 1245** implementing the European Union (Non-financial Reporting Directive) (See EU box).

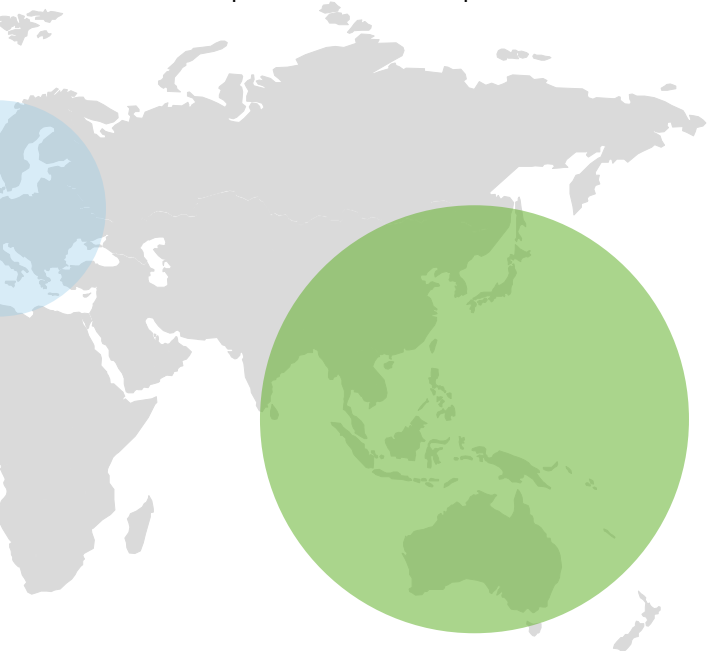


FRANCE

- **Law 2017-399 related to Duty of Vigilance of Parent Companies and Commissioning Companies (effective March 2017):** Certain large French companies must report on steps taken in relation to human rights and the environment and implement and publish a vigilance plan. Third parties may seek injunctions to require an entity to comply. Damages may be imposed for non-compliance.
- **Amendments to the Law on Accounting PZE No. 51** (implementing the European Union (Non-financial Reporting Directive) (See EU box).

EUROPEAN UNION

- **Non-financial Reporting Directive (EU member States required to implement by Dec 2017):** EU member States must enact legislation requiring certain large public interest entities to report annually on non-financial issues including human rights. Each member State must stipulate the consequences (if any) for non-compliance.
- **Conflict Minerals Regulation (partly effective 2017, main operative provisions directly effective on companies in 2021):** Certain importers of tin, tungsten, tantalum and/or gold must conduct and report on due diligence on supply chains. EU member States may decide on infringement consequences. Currently there are no financial penalties for non-compliance.



THE NETHERLANDS

- **Dutch Child Labour Bill (proposed law):** Under the proposed law, certain companies doing business in the Netherlands would be required to certify that they have conducted due diligence in relation to child labour in their supply chains. The Dutch supervising authority may seek injunctive relief to require an entity to comply. A fine may also be imposed for non-compliance.
- **Decree Disclosure of Non-financial Information PbEU, 2014, L330 and Decree Disclosure Diversity Policy PbEU, 2014, L330** implementing the European Union (Non-financial Reporting Directive) (See EU box).

SWITZERLAND

- **The Responsible Business Initiative (proposed initiative):** If implemented, Swiss-based companies would have to meet certain requirements, including carrying out appropriate due diligence on any potential impacts on internationally-recognised human rights and environmental standards in their organisations.
- **Counter-Proposal by the Swiss Parliament to the Responsible Business Initiative (proposed law):** The Swiss Parliament has tabled a counter-proposal to a legislative initiative proposed by the Responsible Business Initiative. Under the counter-proposal, certain Swiss companies would be required to report publicly on measures taken to ensure compliance with human rights and environment laws binding under Swiss law in the company's areas of activity, including abroad and with third parties. This includes identifying and minimising risks (with a focus on severe adverse impacts) and ensuring effective remedy. Damages may be imposed for non-compliance.

ASIA PACIFIC

- **Australian Modern Slavery Act 2018 (effective January 2019):** Certain entities based or operating in Australia are required to publish a statement setting out the steps taken to address modern slavery, which must be published and submitted to the government, who must register compliant statements on an internet-based register. There is currently no financial penalty for non-compliance.
- **New South Wales Modern Slavery Act 2018 (passed, not yet effective):** Certain entities with employees in New South Wales must publish a statement with respect to steps taken to ensure that the entities' goods and services are not a product of supply chains in which modern slavery is taking place. A fine may be imposed for failures to make a statement in compliance with the Act or where false or misleading information has been given.
- **Hong Kong Modern Slavery Bill 2017 (proposed law):** Under the proposed law, certain companies doing business in Hong Kong must issue a statement stating the steps taken to address modern slavery in the business and supply chain (or state that no steps have been taken). The Chief Executive in Council may seek an injunction to require an entity to comply. There would be no financial penalty for non-compliance.

FIVE THINGS BUSINESSES NEED TO KNOW

1. These developments are likely just the beginning of a trend.

The business and human rights-related legal landscape is evolving, and the pace of change appears to be increasing. It is highly likely that we will continue to see governments introducing legislation to encourage or require businesses to manage their human rights impacts.

These changes in the legal landscape are a natural and anticipated evolution following the broad international support for the UNGP, which catalysed action by States as well as business. As highlighted by the UNGP, business-related human rights challenges often result from regulatory gaps, which well-constructed legislation can help bridge. A major source of regulatory challenge is complex global supply chains spreading across international boundaries. These initiatives aim to close this governance gap by addressing the realities of international business and follow the approach taken with respect to initiatives in other areas of responsible business conduct, for example, bribery and corruption. Businesses should therefore be prepared to respond to increasing regulation which focuses on addressing risks throughout their businesses (worldwide) and their supply chains.

2. These developments create a range of new legal, commercial and reputational risks for businesses – even for those that are not directly required to comply with the new laws.

The initiatives considered in this briefing have some form of legal consequence for compliance failings, even if such consequences have been criticised as being weak. The initiatives have, or propose, diverse legal consequences for compliance failings. Some proposed laws contemplate the imposition of a fine for non-compliance (New South Wales, Canada, and the Netherlands). The US conflict mineral legislation (which envisages a broad range of potential sanctions from the removal of employees from projects to suspension or disbarment of the contractor), the forthcoming New South Wales Modern Slavery Act, and the proposed Canadian forced labour and child labour law permit penalties to be imposed where false or misleading statements have been made. The French Duty of Vigilance law goes the furthest, specifying that third parties may seek injunctive relief to require entities to comply and allowing damages to be imposed for non-compliance.

By contrast, some laws prefer the option of injunctive relief on the part of the regulating authority and do not envisage any financial penalties. This is currently the approach of the UK Modern Slavery Act and the California Transparency in Supply Chains Act.

In addition to legal risks, businesses should also be aware that there are commercial and reputational risks that can flow from non-compliance with these initiatives where businesses fail to meet stakeholder expectations in these areas. Significantly, reputational and commercial risks may follow for businesses within the value chain of those businesses directly subject to such initiatives as they are scrutinised as part of a broader compliance and risk management strategy.

Businesses' exposure to these initiatives will vary depending on the legal nature of the business, where it is headquartered, how large the enterprise is, where it operates and what products it sources. Some businesses will be required to comply with more than one of these laws.

FIVE THINGS BUSINESSES NEED TO KNOW (CONTINUED)

3. These initiatives are typically narrower in focus and expectation than the UNGP. However, the expectations of governments and stakeholders continue to be shaped by the UNGP.

There are trends and commonalities across some of the legislative initiatives addressed in this briefing (see page 3 for some of these). However, there are also significant differences, reflecting diverse government priorities, objectives and theories of change. Whilst efforts to align legislation may increase over time, it is unlikely we will see a fully harmonised approach. Businesses would therefore be well-advised to take a holistic approach to implementing respect for human rights as set out in the UNGP as this can help businesses ensure a consistent and coherent approach to compliance with the various laws and regulations in this area.

The UNGP have been identified as a key reference for businesses in guidance materials developed alongside certain of the existing legal requirements. For example, guidance produced by the governments of Australia and the UK to support efforts to meet the corporate reporting requirements set out in the relevant modern slavery acts refer to the UNGP, and the EU legislation encourages entities to rely on the OECD Guidelines for Multinational Enterprises (which is expressly aligned with the UNGP) as well as the UNGP when reporting on due diligence.

Implementing respect for human rights consistently with the UNGP can also help ensure businesses are well-positioned to meet new and future regulatory requirements. Whilst current regulatory requirements may fall short of wholesale adoption of UNGP standards, future legislative initiatives may go further. Even if there is no express incorporation of UNGP concepts within particular laws, their objectives are most readily met by the application of the UNGP's frameworks and processes that support respect for human rights. Crucially, stakeholder expectations are commonly set by reference to the UNGP. Working to meet this authoritative global standard should support companies to both meet stakeholders' expectations and current and future regulatory requirements. This may mean going beyond the requirements of current legal frameworks.

4. Well-designed legal initiatives can benefit business, particularly those that are committed to embedding respect for human rights in their activities and relationships.

Smart regulation supports and encourages businesses to take effective action to address human rights-related challenges. Legislative initiatives can improve access to information, level the playing field and strengthen business leverage to address human rights challenges in their relationships. These initiatives can also create greater clarity for businesses and their stakeholders regarding the human rights responsibilities of such businesses. These factors have led to significant business support for some of the modern slavery legislation discussed in this briefing, including efforts to strengthen it. Business practitioners can leverage these initiatives internally to strengthen leadership commitment, coordination and resource allocation to advance human rights programmes.

To achieve these benefits, it is important that regulatory and legislative initiatives are thoughtfully designed. Importantly, these initiatives should reinforce – and at least not undermine – the scope of the corporate responsibility to respect as set out in the UNGP. For example, there is a real risk that overly-prescriptive requirements could be counterproductive, encouraging a tick-box approach to achieve a minimum standard of compliance rather than the more holistic approach envisioned by the UNGP. This concern has informed the debate over the benefits or downsides of prescriptive content requirements within modern slavery legislation aimed at transparency of risk management within businesses and supply chains.

Another area where such initiatives could produce unintended effects is where the focus is on a single issue, such as conflict minerals or modern slavery, as this creates a strong driver for businesses to prioritise efforts to address that particular issue, even if, objectively, it would not qualify as one of the salient human rights risks facing that organisation. Businesses need to consider carefully how to allocate and manage their resources towards both compliance and effective human rights risk management, making efforts to address each of their salient issues.

Legislation should also support context-specific action and 'learning by doing', recognising that many companies are in the early stages of embedding respect for human rights. This can be particularly important where legislation addresses systemic human rights challenges, such as modern slavery, where communication and collaborative approaches are key to achieving meaningful outcomes. Legislation that has a chilling effect on company action and disclosure is likely to be ineffective and, potentially, counterproductive.

FIVE THINGS BUSINESSES NEED TO KNOW (CONTINUED)

5. Many businesses are beginning to consider human rights-related issues as a result of these legislative developments – and need to build capacity and know-how to do so effectively.

There are now many resources and sources of support available, such as the [GBI Business Practice Portal](#) and references for guidance and good practice such as the [UN Working Group on Business and Human Rights' report on Human Rights Due Diligence](#) published in 2018. Businesses can accelerate their efforts by building on lessons learned by their peers – via business partners, industry groups, guidance materials and online platforms. Businesses newer to this may find it helpful to begin by focusing on a particular, priority issue (gauged by reference to the severity of risks as well as any business or legal requirement) to learn what works and what does not. However, to meet stakeholders' expectations – and position the business to meet the demands of future legislation – it will be important to build on these initial steps over time, and work towards embedding respect for human rights holistically, in line with the UNGP.

For all businesses, these legislative developments are likely to require enhanced collaboration and coordination between business units, in-house teams and functions to manage human rights-related challenges; these might include the corporate responsibility, procurement, corporate affairs and business development teams as well as the legal department. The engagement of senior leadership will also be key. Building a shared understanding of the company's human rights responsibilities – and the way these are reflected in emerging legislative developments – can help create a strong foundation for this work.

CONCLUSION

The legal landscape for business with regards to human rights-related issues is changing – and is likely to continue to do so as pressure grows for governments to play a more effective role in addressing business-related human rights challenges, including through the use of law. For many companies, inaction is no longer an option. For those yet to be affected by these developments, it may be prudent to get started in anticipation of future legal requirements.

Business practice is advancing rapidly as emerging legal developments gain traction. Companies and their stakeholders have an important role to play to inform dialogue about how to shape legal and regulatory developments to ensure they are practicable for business and achieve meaningful outcomes for affected people.

In the meantime, as businesses face increasing regulation, they will be well-advised to share good practice across peers to ensure reporting that is effective for both the business and affected stakeholders.

ANNEX ONE: SUMMARY OF KEY HUMAN RIGHTS-RELATED LEGAL INITIATIVES

Country and legislative initiative	Summary
<p>AUSTRALIA</p> <p>Modern Slavery Act 2018 (effective 1 January 2019)</p>	<ul style="list-style-type: none"> • Entities based or operating in Australia, which have an annual consolidated revenue of AUD100 million are required to publish a statement approved by the principal governing body of the entity and signed by a responsible member of the entity, describing the risks of modern slavery in the operations and supply chains of reporting entities and any entities owned and controlled by those entities. Statements must be submitted within 6 months of the end of the reporting period to the government who must register statements compliant with the Act on an internet-based register. • The statement must provide information including regarding the identity of the reporting entity, its structure, its operations and supply chains, risks of modern slavery and risk management and its effectiveness. • There are no financial penalties for failing to prepare a statement. The position on penalties may be reviewed after a 3-year period. Entities not subject to mandatory reporting may volunteer to comply. • The bill was supported by an explanatory memorandum which explains that the mandatory content of the statement draws on terminology and concepts set out in the UNGP, and a supplementary explanatory memorandum. • See further, Clifford Chance briefing.
<p>NEW SOUTH WALES, AUSTRALIA</p> <p>New South Wales Modern Slavery Act 2018 (passed, not yet effective)</p>	<ul style="list-style-type: none"> • Entities which have a turnover of AUD50 million or more, have employees in New South Wales and supply goods and services for profit must make a public statement with respect to steps taken to ensure that its goods and services are not a product of supply chains in which modern slavery is taking place. The government is required to keep a register of companies that have disclosed that their goods or services may be affected by modern slavery and whether the entity has taken steps to address the concern. • The regulations may require a statement to include information on the structure of the organisation and its supply chains, due diligence, risks of modern slavery and management steps, and training available to employees. • Failures to make a statement in accordance with the Act, or where false or misleading information is given, in each case may lead to a maximum fine of AUD1.1 million. • No formal guidance has been issued by the government of New South Wales yet, although this is anticipated. • The bill was supported by an explanatory note. • See further, Clifford Chance briefing.
<p>CANADA</p> <p>An Act respecting the fight against certain forms of modern slavery through the imposition of certain measures and amending the Customs Tariff (C-423) (proposed law)</p>	<ul style="list-style-type: none"> • Under the proposed law, an entity listed or doing business, or which has assets in Canada that has 2 or more of the following characteristics in the last 2 financial years: (i) CAD20 million in assets, (ii) CAD40 million in revenue, (iii) employs an average of at least 250 employees, would be required to report the steps taken to prevent and reduce the risk that forced labour or child labour is used at any step of the manufacture, production, growing, extraction or processing of goods in Canada or elsewhere or imported by the entity into Canada. • The report would be required to report on the entity's structure, the goods that it manufactures (etc.) in Canada or imports into Canada, policies on child labour and forced labour, activities that carry risks, steps that it has taken (including remediation) to address risks, and training, and it would be required to be published in a prominent place on its website and its accuracy and completeness attested to by a director. • Failures to comply with the Act, or where false or misleading information is given to the Minister, in each case, may lead to a maximum fine of CAD250,000 and summary conviction. Directors would also be liable for the offences of those persons or entities under their direction or authorisation.
<p>EUROPEAN UNION</p> <p>Conflict Minerals Regulation (partly effective 2017, main provisions effective on companies in 2021)</p>	<ul style="list-style-type: none"> • Entities that import tin, tungsten, tantalum and/or gold into the EU annually above certain thresholds must conduct and report on due diligence on their supply chain unless entities can demonstrate that they purchase from refiners that comply with the regulation. • Entities must identify and assess risks, implement a strategy for risk management, carry out third party audits, and report annually on policies and practices for responsible sourcing. • The EU's expectations of companies are set out in guidance which is based on and takes account of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas and entities should ensure that due diligence schemes are aligned to the OECD's Guidance (which is, in turn, aligned with the UNGP). • Each EU member State shall determine the consequences of infringements of the regulation. • In 2023 and every 3 years afterwards, the EU shall determine, based on member States' reports, the effectiveness of the regulation and assess whether member States should have competence to impose penalties on entities.

SUMMARY OF KEY HUMAN RIGHTS-RELATED LEGAL INITIATIVES (CONTINUED)

Country and legislative initiative	Summary
<p>EUROPEAN UNION</p> <p>Non-financial Reporting Directive (EU member States required to implement by Dec 2016)</p>	<ul style="list-style-type: none"> • Large public interest entities (including listed companies, banks, and insurance companies) with more than 500 employees or who are parent companies of a corporate group with more than 500 employees are required to provide a statement in their management report on non-financial matters (at a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery and board diversity). The statement should also be publicly available. • The statement should include information on policies and due diligence processes of the entity, and where proportionate, its supply chains. In providing information, entities may rely on international frameworks such as the UNGP and the OECD Guidelines for Multinational Enterprises. • The report must detail these matters to the extent necessary for an understanding of the reporting entity's development, performance and position and of the impact of its activity in such areas. • Each EU member State must set out the consequences for non-compliance in national legislation.
<p>FRANCE</p> <p>Law 2017-399 related to Duty of Vigilance of Parent Companies and Commissioning Companies (effective March 2017)</p> <p>See also Amendments to the Law on Accounting PZE No. 51 here and here implementing the European Union (Non-financial Reporting Directive)</p>	<ul style="list-style-type: none"> • French-registered companies with 5,000 or more employees (including employees of their French subsidiaries) or 10,000 or more employees worldwide are required to provide in their annual report an overview of measures taken pursuant to a “vigilance” plan in relation to human rights and fundamental freedoms, health and security and protection of environment. • The vigilance plan (which must be publicly available) must provide an overview of and explain the implementation of risk mapping and evaluation procedures, and explain any mitigation action taken. The plan should cover the business, its subsidiaries, and those suppliers and subcontractors with which the company has an established business relationship. • Third parties may apply for an injunction to require a company to comply with the law and implement the “vigilance” plan, and damages may be imposed for non-compliance. • See further, Clifford Chance briefing.
<p>GERMANY</p> <p>Proposal for a framework law on the sustainable design of global value chains and the amendment of commercial law provisions, including a core law on the regulation of human rights and environmental due diligence in global value chains (proposed law)</p> <p>See also the Law to strengthen the non-financial reporting of companies in their management and group management reports (NFR-Directive Implementation Act) implementing the Directive 2014/95/EU (Non-financial Reporting Directive)</p>	<ul style="list-style-type: none"> • The proposed law would apply to large enterprises and other companies that are active either themselves or through controlled companies in a high-risk sector or in conflict and risk areas with a registered office, head office or main branch in Germany. • The draft law provides for a variety of duties of care wherein it differentiates between preventive measures in a run-up to a violation of human or environmental law requirements and remedial measures subsequent to a serious violation. • Public reports would have to be submitted to demonstrate compliance with Sec. 4 to 10 of the proposed law. • The competent authority would be empowered to issue the necessary orders for the enforcement of the Act. • As set out by the numerous fine and criminal law provisions, failures to comply with the Act would lead to a maximum fine of EUR1 million or a term of imprisonment of at least one year. In addition, the draft law stipulates that a company may be excluded from the public procurement procedure if it fails to comply with its obligations. • The details of the imposed obligations would be regulated by a Federal Ministry through the enactment of statutory ordinances.

SUMMARY OF KEY HUMAN RIGHTS-RELATED LEGAL INITIATIVES (CONTINUED)

Country and legislative initiative	Summary
<p>HONG KONG</p> <p>Modern Slavery Bill 2017 (proposed law)</p>	<ul style="list-style-type: none"> • Under the proposed law, a commercial organisation doing business in Hong Kong over a certain size would be required to publish a slavery and human trafficking statement each year which sets out the steps it has taken to ensure there is no slavery or trafficking in its supply chains or its own business, or states that it has taken no such steps. • The statement may contain information on 6 areas and the statement would need to be approved by the board and signed by a director, and published on a website via a prominent link. • The Chief Executive in Council may seek an injunction to require compliance. • The bill was considered by the Hong Kong Legislative Council in June 2018.
<p>THE NETHERLANDS</p> <p>Child Labour Bill (proposed law)</p> <p>See also the Decree Disclosure of Non-financial Information PbEU, 2014, L330 and the Decree Disclosure Diversity Policy PbEU, 2014, L330 implementing the European Union (Non-financial Reporting Directive)</p>	<ul style="list-style-type: none"> • Under the proposed law, Dutch companies that provide goods and services to Dutch consumers (and non-Dutch companies that supply to end users in the Netherlands more than twice a year) would be required to certify annually that they have conducted due diligence. Statements are to be published in a central register. • Companies would be expected to determine whether there is reasonable suspicion that product or services provided by their first tier suppliers is being provided using child labour. If so, companies must create and adopt a plan of corrective actions. It is anticipated that guidance will follow that refers to the UNGP. • The bill proposes that complaints regarding non-compliance may be submitted to the company. Failing correction, it is proposed that the Dutch Authority for Consumers & Markets would be able to issue an order to require entities to comply. Non-compliance would also be subject to a fine.
<p>SWITZERLAND</p> <p>Responsible Business Initiative (proposed initiative)</p> <p>Counter-Proposal by the Swiss Parliament to the Responsible Business Initiative (proposed law)</p>	<ul style="list-style-type: none"> • The Responsible Business Initiative has proposed the introduction of a new article, article 101a, “Responsibility of Business” in the Constitution proposing that certain companies be obliged to carry out appropriate due diligence to monitor and address any potential impacts on internationally-recognised human rights and environmental standards in their organisations. An informal translation is available here. • The government has put forward a counter-proposal to the Responsible Business Initiative. Under the proposed law, any Swiss company assessed (together with companies which they control) to have two or more of the following characteristics: (i) balance sheet total of CHF40 million, (ii) sales of CHF80 million, or (iii) 500 full-employees, would be required to take measures to ensure compliance with human rights and environmental laws binding under Swiss law in the company’s areas of activity, including with third parties and abroad and produce a public report on the same. This includes identifying and minimising risks (with a focus on severe adverse impacts) and ensuring effective remedy. Companies with a low impact may be exempt. • Companies would be liable for damage suffered. • An informal translation is available here. • On 12 March 2019, the Swiss Senate rejected the counter-proposal. The counter-proposal will head back to the House of Representatives. There remains the possibility that the Responsible Business Initiative goes to a national public vote.
<p>UK</p> <p>UK Modern Slavery Act 2015 (effective March 2015)</p> <p>See also The Companies, Partnerships and Groups (Accounts and Non-financial Reporting) Regulation No. 1245 implementing the European Union (Non-financial Reporting Directive)</p>	<ul style="list-style-type: none"> • Entities who have an annual turnover of UKP36 million or more, who carry on a business in the UK, and supply goods or services must publish a statement signed by a director (or equivalent) on their website in a prominent place (or make available on request if no website). • The statement must set out the steps taken to ensure that modern slavery is not taking place in their business or supply chains, or state that no steps have been taken. The Secretary of State may seek an injunction to require compliance. • The Act is supported by statutory guidance which refers to the UK government’s expectation that businesses respect human rights in accordance with the UNGP. • See further, Clifford Chance briefing.

SUMMARY OF KEY HUMAN RIGHTS-RELATED LEGAL INITIATIVES (CONTINUED)

Country and legislative initiative	Summary
<p>US</p> <p>Federal Acquisition Regulation Final Rule: Ending Trafficking in Persons (effective March 2015)</p>	<ul style="list-style-type: none"> • Prohibitions in the Federal Acquisition Regulation (FAR) against trafficking of persons in federal contracts were strengthened in 2015 by way of amendments to FAR Rules 9, 22, 42 and 52. • Contractors to the US government of supplies acquired (excluding commercially available off-the-shelf items) or for services performed outside the US with an estimated value that exceeds USD500,000 are required (both prior to contract award and annually thereafter) to certify that they have implemented a compliance plan in accordance with certain content requirements, and (after conducting due diligence) confirm that neither it nor any of its agents, proposed subcontractors, or their agents have engaged in prohibited trafficking-related activities (which include forced labour), or if prohibited activities are found, certify annually that appropriate remedial and referral actions have been taken. • The contractor must procure the same certificates and plans from their subcontractors where the thresholds apply. • Penalties for non-compliance range from removal of employees from projects to suspension or disbarment of the contractor. • In December 2016, the Office of Management and Budget released a draft memorandum regarding "Anti-Trafficking Risk Management Best Practices & Mitigation Considerations" which may be taken into account by agencies applying the FAR.
<p>US</p> <p>Dodd-Frank Act Final Rule 1502 (effective November 2012)</p>	<ul style="list-style-type: none"> • Certain issuers who file reports with the Securities Exchange Commission (SEC) who have tin, tungsten, tantalum and/or gold from certain African countries (referred to as conflict minerals) necessary to the functionality or production of a product it has manufactured or contracted to be manufactured, are required to file annual reports to the commission and make information publicly available. • The report must include a description of the measures it took to exercise due diligence on the conflict minerals' source and chain of custody and may require an independent private sector audit. • The reporting company is liable for misleading and false statements unless it can be shown that it acted in good faith and did not know the report is misleading and/or false. • In April 2017, the SEC Division of Corporation Finance issued a statement that it would not recommend enforcement against companies that only file reports describing their reasonable country of origin inquiries and whether any of their conflict minerals originate (or may originate) from a relevant country. However, the Commission has given no formal guidance as to the enforceability of the remaining provisions. • Interpretive guidance supports the Final Rule. • See further, Clifford Chance briefing.
<p>CALIFORNIA, UNITED STATES</p> <p>California Transparency in Supply Chains Act of 2010 (effective January 2012)</p>	<ul style="list-style-type: none"> • Retail sellers or manufacturers who are doing business in California and have annual worldwide gross receipts that exceed USD100 million must publish a statement available through a conspicuous and easily understood link on their websites (or make the statement available within 30 days on request if they have no website). • The statement must disclose efforts to eradicate slavery and human trafficking from their direct supply chain for tangible goods offered for sale. • The statement must detail how far the entity has engaged in (at a minimum) verification of product supply chains, audits of suppliers, certification of direct suppliers, internal accountability for employees and contractors regarding slavery and trafficking, and training for certain employees and management. • The Attorney General may seek an injunction to enforce the reporting requirement. • The expectations of the Department of Justice of the State of California are set out in non-binding guidance.

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