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Implementing the UN Guiding Principles on Business and Human Rights: challenges for businesses

Demonstrating respect for human rights is increasingly important for investor relations, brand management and to minimise the risk of litigation. When managed successfully, this can be a significant brand and business enabler. Several years after the launch of the UN Guiding Principles on Business and Human Rights, many companies are facing the challenge of how to implement them in earnest.

The UN Guiding Principles on Business and Human Rights

The Principles were endorsed by the UN in 2011. There has been widespread business convergence around them, and they are setting the standard for international corporate best practice in this area, with regulators using them as a reference point with increasing frequency.

The Principles state that businesses should respect human rights and set clear practical expectations, providing a framework within which companies can build structured processes to identify and manage their impacts. Similar expectations are set by the OECD Guidelines for Multinational Enterprises. Companies who fail to meet the OECD Guidelines may find themselves the subject of a complaint to their National Contact Point, who administer the guidelines and report publicly on their determination of any complaint. This process is one of the key mechanisms for creating the 'case law' of this area.

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Why should companies implement the Principles?

Implementation of the Principles is increasingly viewed as best practice. Used effectively, they can help strengthen a group's risk management processes, facilitate early identification and resolution of human rights issues (which often overlap with other risk areas) and help to:

- secure the company's social licence to operate in a particular location
- facilitate compliance with human rights laws
- minimise the risk of litigation
- satisfy institutional investors who take ethical and human rights factors into account
- facilitate compliance with applicable human rights reporting requirements for which there is a growing trend
- make companies attractive partners of choice for other businesses or governments
- enhance the company's reputation and brand value
- satisfy consumers' expectations of corporate ethical standards
- satisfy sustainability requirements for project finance and other asset specific finance of banks and export credit agencies

What do the Principles require?

Policies: Companies should actively communicate their commitment to human rights through publicly available policies, approved at the most senior level and informed by relevant expertise.

Due diligence: Due diligence should be carried out to identify any actual or potential adverse human rights impacts with which the company may be involved either through its own activities or as a result of its business relationships. This should be ongoing, involve meaningful consultation with potentially affected groups and draw on relevant expertise.

Integration: Due diligence findings should be integrated into relevant functions and processes, including decision-making, and the effectiveness of any action taken asa result must be evaluated.

Communications: Companies should demonstrate transparency and accountability in communicating externally how the business addresses human rights impacts.

Remediation: Where businesses have caused, or contributed to, adverse impacts they should provide for, or cooperate in, their remediation through legitimate processes.

Gauging the required level of response to adverse human rights impacts

The Principles require different levels of response depending on how the actual or potential adverse human rights impact is caused, or likely to be caused.

> Causer: If the company has caused, or may cause, the impact, then it should take the steps necessary to cease or prevent it and remediate impacts already caused

> Contributor: If the company contributes to the impact, it should take the steps necessary to cease or prevent its contribution and remediate adverse impacts already contributed to, as well as using its leverage to mitigate any remaining impact

> Business relationship: Where the company has not contributed to an adverse impact, but that impact is directly linked to its operations, business or services through a business relationship, the extent of the company's obligation will depend upon a range of factors, including the extent of its leverage over the entity concerned, how crucial the relationship is to the company and the severity of the abuse, as well as whether ending the relationship would itself have adverse human rights impacts

Influencing the behaviour of business partners

This can be a particularly difficult area for companies. Where the impact is merely linked to the company through a business relationship, the company has no obligation to remediate harm, but it must accept the consequences of continuing the relationship, if that is its choice (for example, in terms of adverse brand impact and the risk of complaints or legal challenges made by NGOs).

> Using leverage: Where the company has leverage, it should seek to use it and evidence its approach. Even if this is not sufficient to persuade the counterparty to change its approach, there may be ways to increase its influence, for example by offering capacity building. Increasingly, our clients are contemplating contractual provisions in respect of human rights issues

> Crucial relationships: A crucial relationship is one where ending the relationship creates very substantial challenges, for example where a supply that is essential and cannot be sourced from another supplier, or where the relationship is a broader one, and commercially sensitive for the company. In such cases, the more serious the abuse, the more quickly the company will need to see change from its counterparty before it contemplates more draconian measures, such as termination of the relationship. For as long as the relationship continues, the company should be prepared to evidence its continuing efforts to mitigate the impact

The challenge of identifying impacts

A company's operations may have a range of human rights implications, and identifying these is often more complex than companies anticipate, particularly where operations are global. A comprehensive review, involving a cross-section of the company's functions and, where appropriate, external stakeholders and expertise, may help reveal actual and potential adverse human rights impacts.

At appropriate junctures (such as the entry into a new business relationship, the launch of a new product, entry into a new market or the renewal of an existing contract), appropriate due diligence or, if necessary, a full human rights impact assessment should be undertaken. These can be vital tools for companies to successfully identify and manage their impacts, as well as to ensure they are able to evidence the process they have in place to do so.

> In the workplace: Businesses should be able to guarantee important workplace rights unless local laws prevent this (such as the right of employees to associate freely, to be free from discrimination and to exercise freedom of religion and of expression). Adequate standards of health and safety within the workplace need to be maintained and the right to privacy respected

> Along the supply chain: Amongst other things, companies may need to show what steps they take to minimise the risk of child or forced labour in their supply chain or the use of conflict minerals in their products

> Sale of products: A business may need to take steps to ensure that products sold for legitimate purposes are not likely to be misused to infringe the human rights of others

> The local community/stakeholders: Acquiring land for infrastructure projects or mineral exploration can interfere with rights of the local population and any acquisition or resettlement process needs to take account of stakeholder interests

> Local government: Areas of potential difficulty include doing business in countries with significant corruption issues, affected by conflicts and/or with weak governance

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