

# Business and Human Rights Update

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International Employment

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The push to improve business “non-financial reporting” of human rights and environmental practices has gained significant momentum over recent months, with the implementation of EU Directive 2014/05/EU and the new Global Reporting Initiative (GRI) Standards to promote and shape the future of corporate reporting on sustainability. Stock exchanges in around 45 countries now require or encourage corporate sustainability disclosures—with Singapore the latest to implement “comply or explain” rules in July 2016.

Investor, governmental, industry association and other stakeholder interest in human rights issues will only be heightened by the Corporate Human Rights Benchmark, which aims to rank the top 100 companies in the agricultural products, apparel, and extractive industries on their human rights performance. The results of the benchmarking are expected in March 2017.

At the domestic level, the U.K. Modern Slavery Act 2015 introduced a requirement for certain companies to report annually on steps taken to eliminate modern slavery in their global supply chains, while gender pay reporting obligations now included in the Equality Act come into force on April 6, 2017.

This update provides a brief summary of key developments in the field of business and human rights, and of market trends identified by the World Business Council for Sustainable Development, among others.

## Global Developments

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### EU Directive

Giving effect to the European Commission’s view that non-financial reporting provides shareholders and other stakeholders with a more complete and meaningful sense of the performance of business, Directive 2014/95/EU amended prior European legislation to include new disclosure obligations. The Directive required that, with effect from December 2016, public-interest entities (broadly, listed companies, banks, insurance undertakings and other companies that are so designated by Member States) with more than 500 employees should disclose in their management reports information—necessary for a complete understanding of the company’s/group’s “development, performance, position and impact”—relating to:

- environmental matters;
- social and employee aspects;
- respect for human rights;
- anticorruption and bribery issues; and
- diversity policies.

Statements should include descriptions of the company's/group's business model and policies; the outcome of such policies; performance indicators; risk of adverse impact; and proposed steps to manage such risks.

### Other EU National Developments

Legal developments in the field are spreading rapidly across Europe. A French Private Bill will require French companies to report on mechanisms in place to identify and mitigate human rights risks and impacts on the part of their organisations, and those of their subsidiaries, contractors, and suppliers. In Switzerland, constitutional reform may be in the pipeline. The Responsible Business Initiative was presented to Swiss authorities in October 2016; if passed by the Swiss government, it will compel Swiss-based multinationals to undertake human rights due diligence in all of their business activities abroad. If relevant companies fail to undertake this mandatory due diligence, they may in the future be held accountable for abuses committed by subsidiaries abroad.

### UK Regulations

See our previous alerts for information concerning the [Modern Slavery Act 2015](#) and the [Equality Act 2010 \(Gender Pay Gap Information\) Regulations 2017](#) (expected to come into force on April 6, 2017).

The draft Companies, Partnerships and Groups (Accounts and Non-Financial Reporting) Regulations 2016 were published in November 2016. The Regulations implement the relevant provisions of the Directive referenced above, and reflect the outcomes of the BIS consultation paper published early last year. They amend the Companies Act 2006 in the following principal respects:

- Inserting new section 414CA requiring traded companies, banks, authorised insurance companies, and companies carrying out insurance market activities (public interest entities under the Directive) to publish non-financial statements.
- As far as the contents of statements is concerned, section 414CB mirrors the requirements of the Directive closely (though it omits requirements with respect to diversity policies). It adds that companies not pursuing policies in relation to one or more of the non-financial matters listed above must give a clear and reasoned explanation for not doing so. Disclosure of information concerning upcoming developments may be withheld if the disclosure would, in the opinion of the directors, be seriously prejudicial to the commercial interests of the company.
- If the information required by the Regulations is already included in other reports, published pursuant to national or international reporting frameworks, then the statement need not duplicate information provided elsewhere, but should reference the alternative frameworks used.

## International Guidelines on Reporting

There is a plethora of international guidance on the reporting of business and human rights issues. In October 2016, the Global Reporting Initiative launched its new GRI Standards (replacing the earlier G4 Standards). The standards are designed to represent best practice for reporting on a range of topics, including social impacts. The launch of these new standards closely followed the launch of the GRI and UN Global Compact “SDG Leadership through Reporting” initiative in September 2016. This initiative will involve the creation of multi-stakeholder working groups—including companies and reporting experts—who will work to shape reporting on Sustainable Development Goals (SDGs).

The GRI Standards are of course not the first “soft law” guidance on human rights reporting. The UN Guiding Principles Reporting Framework provides guidance on meeting information thresholds when reporting and identifying salient human rights issues in a global supply chain. The OECD Guidelines for Multinational Enterprises also make recommendations on responsible business conduct, including in relation to labour and human rights issues and risk-based due diligence of supply chains. These international guidelines and their supporting databases should aid companies in identifying salient human rights issues in their global supply chains and report on these issues effectively and in a way that meets minimum legal thresholds.

Businesses should, however, exercise caution when publicly subscribing to international non-legal guidelines. Whereas such standards were once aspirational and had no direct legal impact, legal action brought in recent years in California and Canada demonstrate the potential for such standards to have hard legal consequences. In these class action cases, claimants—including Bangladeshi workers affected by the Rana Plaza collapse and consumers of seafood products linked to the Thai fishing industry—have argued that public statements made by companies indicating that the company complies with voluntary “soft law” standards such as the UN Guiding Principles gave rise to a duty of care. While no judgments have yet been issued, these cases highlight the possible broader legal ramifications of making public commitments to non-legal international standards.

## Market Trends

Following a review of sustainability reports from 163 companies across 20 sectors and 35 countries, the World Business Council for Sustainable Development (WBCSD) has published a report identifying the reporting trends and emerging good practice seen in 2016. Just one year after the United Nations launched the Sustainable Development Goals, which provide concrete targets for addressing human rights violations globally, the WBCSD found that nearly one third of reviewed reports discuss the relevant organization’s progress against those targets. This number is expected to increase year-on-year.

The WBCSD also discovered that 87 percent of reports contained a commitment by the organization to respect human rights and that, more notably, 76 percent of members confirmed that they had gone a step further and communicated their position on human rights to their suppliers. This suggests that businesses are increasingly using their purchasing power to influence the behavior of their supply chains with respect to human rights. Examples of ways in which businesses might do this include the following:

- providing training to suppliers;
- commercially incentivizing better practices;
- including compliance provisions within commercial contracts; and

- educating and influencing local government following the outcome of human rights due diligence.

Whilst 56 percent of WBCSD members stated that they have internal processes in place to identify and assess human rights risks within their supply chains, only 33 percent of reports identified any internal processes for incorporating and acting upon those identified risks. Even fewer members (23 percent) indicated that they actively monitored the efficacy of their initiatives to address any human rights impacts. These low levels of engagement are illustrative of the significant challenges that businesses face when trying to implement meaningful human rights programmes across their organizations, including a lack of awareness and dedicated resources. Where possible, the WBCSD encourages businesses to prioritize funding for training and awareness campaigns and to allocate responsibility for overseeing human rights issues to a senior member of the organization in order to highlight the importance of the initiative to the organization.

### The Future of Reporting

The Global Reporting Initiative's "Sustainability and Reporting 2025" project discusses the expected trends for sustainability and human rights disclosures over the coming decade. Digital reporting across multiple platforms is already on the rise and it is predicted that, in coming years, reporting will become more frequent until it is almost being carried out in real-time, allowing stakeholders to make better informed decisions regarding the human rights challenges facing their businesses.

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