**Human Rights Due Diligence Forum: Good Practices and Challenges for Business Enterprises**

**17 October 2016**

On 17 October 2016, Norton Rose Fulbright LLP (**NRF**) in collaboration with the British Institute of International Comparative Law (**BIICL**) hosted a forum on human rights due diligence which explored good practices and challenges for business enterprises. The forum discussed the findings of a report released by NRF and BIICL on human rights due diligence which can be accessed by following this link: <http://human-rights-due-diligence.nortonrosefulbright.online/>. The speakers and audience were made up of legal professionals, academics and representatives of businesses and international organisations.

**Key Takeaways**

The following are the key takeaways from the forum.

* **Why conduct human rights due diligence:** The top incentives for conducting human rights due diligence include brand reputation, corporate legal risk avoidance and compliance with reporting requirements and applicable laws.
* **Focus due diligence on human rights impacts:** Focusing due diligence on the impact of the business enterprise on human rights is the best way to implement the United Nations Guiding Principles on Business and Human Rights (**UNGPs**). Only those businesses which had undertaken specific human rights due diligence processes had identified a significant number of human rights impacts.
* **Corporate perspective:** When conducting human rights due diligence, companies need to look beyond the impact on the enterprise to the impact on the affected rights holder, as a stakeholder. This means that when conducting human rights due diligence, the concept of “materiality”, so ingrained into the mind-set of corporations, is superseded by the actual and potential impact on stakeholders.
* **Mind the gap:** Normal corporate processes such as audit and record keeping are not usually effective in revealing the impact of the business enterprise on human rights. The board of directors and the C-Suite need to dig deeper and conduct specific human rights due diligence in order to bridge the gap between what is being reported and the reality. They also need to ensure that the legal function undertakes careful verification of companies’ public statements. These steps will serve to mitigate potential liability for actual adverse human rights impacts.
* **Nature of the modern corporate group:** Global businesses should be aware that there is an increasing trend for companies in countries such as the UK, Canada, Germany and the US to suffer reputational damage and sometimes even legal action because of the acts of their subsidiaries or subcontractors abroad. An enterprise can no longer just look at its own business. It needs to make sure that proper systems and processes are in place in other companies in the group. It also needs to understand the human rights impacts of other businesses within its supply and value chains.
* **Cross-departmental approach:** In order to have a better understanding of their human rights impacts, business enterprises need to get away from the modern corporate structure where each department is working in a silo and concentrates on its own specific mandate. Human rights due diligence is most effective when it is cross-departmental. To get the best results, a combination of legal, compliance, human resources, procurement and corporate social responsibility teams is desirable.
* **Roles, responsibilities and objectives:** Human rights is not an “add-on” feature of the organisation but should be central to the business strategy. Consequently, it is the responsibility of the board to identify, own, manage and mitigate risks. This means that risk owners need to be clearly identified, resources need to be targeted to the most significant risks and controls, and prevention activities should align with any changes in the risk profile of the organisation. The objective of leaders at all levels across the organisation should be to build a culture where human rights are respected.
* **Look back principle:** The law is developing and in many years to come businesses could be held to account for their actions today. For this reason, it is not enough to look only at where the law is now; businesses need to look at the direction in which the law is travelling to influence their current behaviour, the so-called “look back principle”, which has already been applied in other areas like anti-bribery and corruption, and tax avoidance. In the sphere of business and human rights, it would seem that the courts are moving towards enforcing higher standards than those currently set out in the black letter law, so companies should look to these standards as their guiding point.
* **Voluntary principles treated as hard law:** When determining what standard of due diligence is necessary, it can be helpful to look at the UNGPs, the leading soft law in this area. Although these principles are voluntary, courts are starting to mention these Principles in their rulings.
* **An effective system without budget is a myth:** It is not enough to ask lawyers to draft human rights policies and risk assessments if there is no budget allocated to the implementation, training and enforcement of these. A business enterprise which is serious about assessing and improving its impacts on human rights will therefore look to allocating a sufficient budget for work in this area.
* **Collective action:** One of the most effective ways to deal with human rights issues is to work collectively withother companies, NGOs, law firms and experts to address effectively the human rights risks which are most serious and salient. This collaboration can provide a fresh perspective on human rights impacts and can demonstrate, often publically, a company’s commitment to human rights.
* **Capacity building:** Even though terminating a contract which is particularly problematic in terms of human rights impacts can sometimes seem like the easier option, it is generally a better investment for businesses to work with the relevant companies within their supply chains and value chains in order to improve their human rights standards.
* **Potential defence:** Effectively addressing potential human rights issues in supply chains can mitigate these risks and can serve as a defence if something does go wrong.
* **Be proactive:** The best way to protect yourself is to be proactive – prepare human rights specific training sessions, conduct human rights impact assessments and comprehensive human rights due diligence and put in place a human rights policy.

The forum was made up of two panels. The first panel was led by **Jeffrey Barratt** (Consultant, NRF) and consisted of **Robert McCorquodale** (Director, BIICL) and **Neil Carberry** (Director of People and Skills, CBI). The second panel was led by **Milana Chamberlain** (Partner, NRF) and consisted of **Robin Brooks** (Partner, NRF), **Tyler Gillard** (Manager of Sector Projects, Responsible Business Conduct Unit, Investment Division, OECD), **Adam Greene** (Senior Advisor, Bureau for Employers’ Activities, ILO) and **Julie Vallat** (Head of Ethics and Human Rights Unit, Group Legal Department, Total).

NRF has a dedicated team which works on business and human rights due diligence across the global network. Partners from NRF’s Business Human Rights Group will speak at the fifth annual United Nations Forum on Business and Human Rights in Geneva which takes place from 14 to 16 November 2016. The programme for the event can be accessed through the following link: <http://www.ohchr.org/Documents/Issues/Business/ForumSession5/PoW.pdf>.

BIICL has long-standing expertise in providing independent and authoritative analysis of business and human rights issues. It works with law firms, companies, governments, international organisations, scholars and non-governmental organisations. Some of its work can be found at the following link: <http://www.biicl.org/pilresearch>.

If you have any questions, please do not hesitate to contact Milana Chamberlain at Milana.Chamberlain@nortonrosefulbright.com, Robin Brooks at Robin.Brooks@nortonrosefulbright.com and Sam Eastwood at Sam.Eastwood@nortonrosefulbright.com or Robert McCorquodale at R.McCorquodale@BIICL.org.