

WFE Briefing on Human Rights-related Disclosure Practices



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Introduction

1. Companies have made real progress in developing plans that help them and mitigate their environmental impact, as well as adhering to high standards of corporate governance. Social factors, however, have not been given the same level of attention, with some companies adopting a position that social issues are the responsibility of governments rather than the private sector and investors¹. The pandemic has encouraged both issuers and investors to reconsider their position, by serving as a catalyst for addressing social change, and these concerns are now amongst some of the most pressing for companies in all markets. A growing number of companies are putting more business focus on addressing social themes such as inclusive labour standards, modern day slavery in supply chains and human capital.

2. Whilst the momentum behind consideration of social issues is building, there are still several challenges that need to be addressed. In particular, the institutional investment community have voiced concerns² about: (i) the difficulty in measuring social issues, (ii) social washing and (iii) financial returns. These are examined in turn below.

3. Whilst there are a number of voluntary frameworks, there is a lack of consistency on how to report progress against them. Without a common framework for disclosure, it can become difficult for investors to compare company performance on social issues and equally for shareholders to hold companies to account where egregious behavior takes place. To this end, the development of a global baseline of sustainability standards under the IFRS Foundation should help to alleviate some of these concerns. Whilst the focus initially will be on climate, the [IFRS Foundation](#) has confirmed its intention to move ahead with other sustainability-related disclosures where there is a global investor need, through leveraging the work of existing standard setters.

4. In terms of capturing data, a quantitative approach is taken for many environmental issues (e.g. greenhouse gas emissions or land degradation). Conversely, social issues are traditionally qualitative in nature, which makes them harder to measure and compare. An inconsistent disclosure framework can lead to investors being presented with inadequate and incomplete information on which to base their capital allocation decisions. This can expose issuers and investors alike to reputational risks, and some listed companies have come under scrutiny for social washing³.

5. A traditionally narrow view of materiality which places shareholder primacy at its core can lead investors to believe that a company's social credentials are less financially material than more tangible issues, such as environmental performance. This narrow and short-term focus on the bottom line fails to recognize that materiality is dynamic and subject to change, with long-term value creation more likely to come from a consideration of much broader factors, including a company's wider stakeholders, employees and customers³. Risks are fluid and can change in nature and intensity over time³ and just as climate-related risk is now dominating investor focus, social events and performance could become important to investors, beneficiaries and stakeholders in the future.

6. Of the myriad of social issues that exist, human rights violations are perhaps seen as the most pervasive problems. Whilst globally accepted voluntary frameworks for human rights-related disclosure are available, the level of maturity on reporting varies, with disclosure being criticized as "tick-box" and companies failing to account for their impacts on people⁵. As part of its 2021 [Annual Review of the Corporate Governance Code](#), the UK's Financial Reporting Council examined (for the first time in the UK) the extent to which companies are reporting on modern slavery risk strategy, as part of their duty to shareholders and wider stakeholders. This review outlined that modern slavery is not yet a mainstream concern for the boards of many major UK listed companies.

1 [Amplifying the S in ESG- Investor Myth Buster, White and Case, 2021](#)

2 [Social Washing is Becoming a Growing Headache for ESG Investors, Bloomberg, 2020](#)

3 Boohoo- a UK listed fast fashion was found to have poor labour practices within its supply chain, which led to a fall in its share price. However, following an independent inquiry, Boohoo have committed to pay workers above the National Living Wage with a guaranteed 40 hour contract and 33 days of holiday.

4 The EU under the CSRD is considering "double materiality" which argues that disclosure should not only address the impact of sustainability factors on a company, but also the impacts of a company on society and the environment. It also reflects the fact that sustainability information is of interest to a broader range of stakeholders than just shareholders.

5 [ESG Investing Practices, Progress & Challenges, OECD](#)

6 [Human Rights Reporting are Companies Telling Investors What they Need to Know, SHIFT](#)

7. It is clear that the aforementioned challenges cannot all be resolved at once. Based on the nature of the products and services offered by exchanges, the risk of human rights infringements within their supply chain is likely to be lower. Nonetheless, effective disclosure of these risks will be a first step in encouraging transparency and accountability to shareholders and wider stakeholders.

8. As a result, the focus of this briefing paper will be to (i) provide WFE members with an overview of the existing voluntary reporting frameworks; (ii) highlight best practice on reporting against specific frameworks from within the exchange community; and (iii) discuss forthcoming legislative proposals and how the WFE can encourage consideration of human rights related issues amongst its membership.

United Nations International Bill of Human Rights

The International Bill of Human Rights consists of the UN Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its two Optional Protocols. In particular the UDHR is a milestone document which sets out 30 freedoms including the following:

- The right to a fair trial;
- The right to freedom of opinion and expression;
- The right to an education;
- The right to privacy and freedom;
- The right to be free from slavery.

Defining Human Rights-Existing Initiatives

9. To examine the prevalence of human rights it is first necessary to consider what is meant by this term and how it has evolved over the years. The concept of human rights is a simple yet powerful one. The Universal Declaration of Human Rights (UDHR) adopted by the UN General Assembly in 1948, was the first legal document to set out the fundamental human rights to be universally protected. This continues to provide the foundation for all international human rights laws and states that human rights are universal, inalienable, indivisible and interdependent. Corporations also have a responsibility to respect human rights which are reflected in a set of additional internationally recognized instruments.

International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work

Adopted in 1998, the Declaration commits Member States to respect and promote principles and rights in four categories, irrespective of whether they have ratified the relevant conventions. These categories include:

- Freedom of association and the effective recognition of the right to collective bargaining,
- The elimination of forced or compulsory labour,
- The abolition of child labour and the elimination of discrimination in respect of employment and occupation.

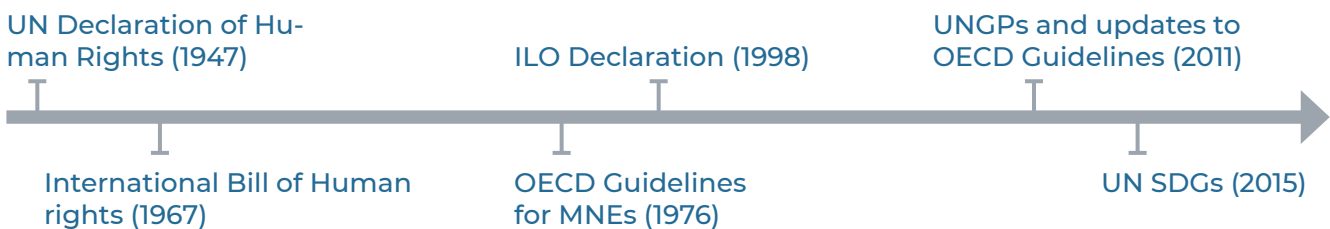
This commitment is supported by a follow-up procedure, whereby Member States that have not ratified one or more of the core Conventions are asked each year to report on the status of the relevant rights and principles.

10. The *Sustainable Development Goals* (SDG or 2030 Agenda for Sustainable Development) are an example of a more recent universal agenda. Launched in 2015, this agenda for “people, planet, prosperity, peace and partnership” with its 17 goals and 169 targets was anchored in the UN Charter, the Universal Declaration of Human Rights and international human rights treaties. Many of the SDG goals and targets mirror human rights frameworks. Goal 16, for example, relates to peaceful and inclusive societies and covers dimensions of civil and political rights, including personal security, access to justice and fundamental freedoms. Although the SDGs themselves are not framed explicitly in the language of

human rights, most targets do reflect the content of corresponding human rights standards for example on accessibility and quality of education, health, water and other services related to those rights.

11. The year 2020 marked the start of the “Decade of Delivery” for the 2030 Agenda, but despite being one third of the way into the SDG journey, the world is not on track to achieve the global goals by 2030, with the pandemic abruptly disrupting and in some cases turning back decades of progress⁷. The UN Under-Secretary General For Economic and Social Affairs has expressed a slightly more optimistic view, noting that “the principles on which the SDGs were established are key to building back better in the post-COVID recovery. The continued pursuit of these universal Goals will keep Governments focused on growth, but also on inclusion, equity and sustainability”. In addition, several governments have recognized that the SDGs can act as a guide to the global response to the pandemic, “to make sure that nobody is left behind⁸”.

12. Commitment to the SDGs is an integral part of the [WFEs Sustainability Principles](#). Exchanges acknowledge their central position in the financial services ecosystem as a meeting venue for market participants and “recognize their role in contributing to the achievement of the 17 SDGs”. In particular, Principle four recognises that making a meaningful contribution towards meeting the sustainability objectives elaborated within the SDGs will require exchanges to provide markets with products that support the scaling-up of sustainable finance and reorientation of financial flows.



7 Finding Transformative Pathways in Turbulent Times, UNSDGs, 2020
 8 European Commission: Global Response to the Pandemic

A Renewed Focus on the Purpose of a Corporation

13. Fifty years ago, Milton Friedman proclaimed that the social responsibility of business is to increase its profits and that directors have the duty to do what is in the best interests of their shareholders—that is to make as much profit as possible. Half a century later, some commentators⁹ argue that a narrow shareholder-centric view of corporations has cost society severely and has been criticized for “causing the degradation of nature and biodiversity, contributing to global warming, stagnating wages, and exacerbating economic inequality”. In the UK, the [Purposeful Company](#) movement has put forward the view that “purpose must be placed at the heart of a British business. This requires embedding a human and moral purpose into the DNA of a company that ensures both a commitment to long-term value creation, and strong business ethics”.

14. In 2019, the US Business Roundtable issued a [statement](#) on the purpose of the corporation that argued companies should no longer solely advance the interests of shareholders. Instead, there should be a broader focus on engaging with a company’s employees, protecting the environment and dealing fairly with suppliers. Germany’s two-tier board system, for example, gives employees of a German corporation and of its subsidiaries the right of co-determination through elected employee representatives on the corporation’s supervisory board¹⁰. This involves taking strategic decisions including on how to invest profits or whom to hire for senior management positions. Meanwhile, employee engagement is enshrined in Swedish Labour law.

15. In the UK, premium listed entities must demonstrate employee engagement through utilizing specific mechanisms. A 2021 [review](#) commissioned by the Financial Reporting Council notes that UK entities “appear to downplay the importance of workforce engagement”. Some of the WFE’s own members¹¹ have focused on the need to facilitate and improve engagement with a broader range of stakeholders including customers, suppliers and the wider workforce, recognizing that such dialogue is “central to supporting long-term value creation”. These disclosures have been detailed as part of the annual report.

16. There are currently very few requirements¹² for companies to explicitly consider the needs of their wider stakeholders, and it is not always the case that shareholders will encourage this. For example, 2021 saw the CEO of [Danone](#) removed from the board by activist investors for prioritising purpose over creating shareholder value. Meanwhile, the Council of Institutional Investors’ response to the Business Roundtable Declaration noted that achieving long-term shareholder value required respect for stakeholders but also clear accountability to shareholders, with “accountability to everyone meaning accountability to no one”. Nonetheless, shareholder activism has also made positive contributions to furthering the ESG agenda, with collaborative engagement being used to place several sustainability friendly directors’ on the board of [Exxon Mobil](#).

17. In some jurisdictions a shift from shareholder primacy to stakeholder capitalism has required a change within company law and existing directors’ duties to encourage greater consideration of wider stakeholder concerns. [B Corps](#) are catching on as a vehicle to achieve this—that is businesses which “balance purpose and profit and are legally required to consider the impact of their decisions on their workers, customers, suppliers, community and the environment”. A B corporation certification (assessed by the not-for-profit B Lab) is given to for-profit organisations that achieve at least a minimum score against a set of ESG standards. A number of publicly traded companies including Ben and Jerrys, Danone and Unilever, have achieved these certifications.

18. The focus on responsible and purposeful business has not diminished. In his annual letter to CEOs, Blackrock CEO [Larry Fink](#) argues that ESG rewards firms that pay attention to the interests of all their stakeholder, not just shareholders, noting that “it is through effective stakeholder capitalism that capital is efficiently allocated, companies achieve durable profitability, and value is created and sustained over the long term”. World Economic Forum (WEF) Chairman [Klaus Schwab](#) further notes that at its core, a purposeful organisation should strive to respect and honour human rights by encouraging “continuous improvements in working conditions and employee well-being... and considering its suppliers as true partners in value creation by integrating respect for human rights into the entire supply chain”.

⁹ 50th Anniversary of Milton Friedman, Fortune, 2020

¹⁰ Co-determination in Germany: a role model for the UK and US

¹¹ LSEG 2020 Annual Report

¹² Section 172 Companies Act 2006 attempts to do this, but this is framed through the lens of “promoting the company for the benefit of members (shareholders) as a whole”. The forthcoming EU Sustainable Corporate Governance proposal will also consider this issue.

A Framework for Responsible Business

19. In 2011 the UN Guiding Principles on Business and UN Human Rights (UNGPs) were endorsed by the Human Rights Council. They provide an authoritative framework which not only reaffirms the states duty to protect against adverse human rights impacts caused by non-state actors (including business), but also establishes that corporates have a responsibility to respect human rights. The principles do not constitute an internationally binding legal instrument but are a widely accepted set of expectations that can be and are increasingly incorporated into national legislation, contractual relationships and other legal developments. The UNGPs are based on three pillars: (i) the state duty to protect, (ii) corporate responsibility to respect, and (iii) access to remedy.

20. As part of their National Action Plans to implement the UNGPs, states should have regard to the following:

- Clearly set out that businesses respect human rights throughout their operations;
- Enforce, and review, laws aimed at requiring business enterprises to respect human rights;
- Ensure that other laws and policies relating to business enterprises enable, and do not constrain, business respect for human rights;
- Provide guidance to business enterprises;
- Encourage, or require, business enterprises to communicate their work to address human rights impacts;
- Promote respect for human rights amongst business enterprises they contract with;
- Take additional steps to protect in regards to state owned enterprises and agencies;
- Support businesses in conflict affected contexts;
- Ensure policy coherence across government, including by providing training, information and support.



Source: UN Guiding Principles

21. In the same year that the UNGPs were unanimously endorsed, the [OECD updated their Guidelines for Multinational Enterprises](#). The guidelines are aligned with the UNGPs and build upon the corporate responsibility to respect human rights through a broader framework of responsible business conduct. There has been a gradual increase in the number of human-rights-related claims filed with NCPs and deemed admissible, ranging from allegations of complicity in war crimes as a result of supplying communications services to governments engaging in drone warfare, to the use of child labour, and illegal land-grabbing in the agri-business sector¹³.

Complaints tend to target the companies involved, as well as banks and other financial institutions.

The OECD Guidelines for Multinational Enterprises

These Guidelines cover all key areas of business responsibility including the following:

- human rights,
- labour rights,
- environment,
- bribery,
- consumer interests.

Whilst not legally binding on companies, they are binding on the 46 signatory governments that are required to ensure that the Guidelines are implemented and observed. The Guidelines also require governments to establish National Contact Points (NCP) to promote the Guidelines and to resolve complaints.

22. In 2020, [Amnesty International](#) conducted a review of the NCP system in the UK, noting that British businesses are not properly being held to account for their human rights abuses connected to their operations as the NCP establishes “an unrealistic threshold of evidence for complainants to meet, especially for a non-judicial process with no power to award compensation or enforce change in business conduct”. In response to some of these challenges, the OCED launched a [stocktaking exercise](#) on its Guidelines, which will also examine concerns related to its unique grievance mechanism.

Actions Taken to Give Effect to the UN Guiding Principles

23. June 2021 marked the 10th anniversary of the adoption of the UNGPs by the UN Human Rights Council. As part of its [stock take of the first decade](#), the UN noted that ten years is not a sufficient period within which to be able to quantify progress or success. Whilst the Guiding Principles can provide a blueprint for responsible recovery emerging from Covid-19 “persistence of business-related abuses is still a major concern and source of deep frustration and should be a matter of urgent priority by states and business... voluntary approaches alone are not enough, and the rise of mandatory measures will undoubtedly accelerate both the progress against and uptake of the Guiding Principles”. These Principles will continue to provide a focal point around which policy discussions are converging. Below are a series of inexhaustive measures that states and WFE members have taken in order to give effect to the UNGPs.

¹³ Human Rights Complaints against Multi-nationals Increasing, Herbert Smith Freehills.

Incorporating the UNGPs into National Action Plans

24. Countries that have incorporated the UNGPs into their national actions plans include: Brazil, China, Denmark, France, Germany, Italy, Netherlands, Russia, Saudi Arabia, Spain, Switzerland, US and UK.

French Duty of Vigilance Law

France implemented the expectations of the UNGPs in its *Duty of Vigilance Law*. Companies with more than 5000 employees are required to publish an annual “vigilance plan”. This plan must establish effective measures to identify risks and prevent severe impacts on human rights and the environment resulting from the company’s own activities, and those linked either directly or indirectly (eg subcontractors and suppliers with whom the company has an established commercial relationships). The law provides for a formal notice mechanism to order the company to comply with its obligations. In the case of non-compliance, a court can take enforcement action to order a company to comply with its vigilance plan.

Source: [*The French ‘Duty of Vigilance’ law Lessons for an EU Directive on Due Diligence in Multinational Supply Chains*](#).

Modern Slavery Legislation, Assessments and Guidance

25. Some countries have implemented or are in the process of implementing due diligence legislation for specific human rights abuses. For some WFE members, reporting against this legislation is a mandatory requirement.

Other members have worked in conjunction with leading human rights organisations to: (i) produce guidance for issuers on modern slavery on how to mitigate against this risk; and (ii) conducted voluntary due diligence assessments across the supply chain.

UK Modern Slavery Act

It is estimated that there are between 10,000-13,000 potential victims of modern slavery in the UK alone. Globally, the International Labour Organisation estimates the total illegal profit made from the use of forced labour amounts to more than \$150 billion a year. Modern slavery refers to situations of exploitation that a person cannot refuse or leave because of threats, violence, coercion, deception, and/or abuse of power. This is a hidden crime that affects every country and every value chain in the world and has been found in many industries, including garment manufacturing, mining and agriculture, and in many contexts from factories to private homes. Modern slavery covers a set of specific legal concepts, including forced labour, debt bondage, forced marriage, slavery and slavery-like practices, and human trafficking. Although modern slavery is not defined in law, it is used as an umbrella term that focuses attention on commonalities across these legal concepts.

The UK Government is committed to tackling this crime. As such, the Modern Slavery Act came into force on 31 July 2015. It makes the penalties for those who perpetrate Modern Slavery simpler and tougher and provides help for victims, including through a statutory defence for victims of modern slavery who are forced to commit some offences as a direct consequence of their slavery. It also created an Independent Anti-Slavery Commissioner whose work is expected to lead to an increase in investigations and convictions. The Commissioner will also look at the countries of origin for victims of slavery and recommend measures to address the problem at source. The Act is supported by a Modern Slavery Strategy, published in November 2014, and guidance for companies on eliminating slavery through increased transparency in supply chains, published in October 2015.

Source: *UK Government National Action Plan*

Office of the Independent Anti-Slavery Commissioner, Recommendations to the Financial Sector (UK)

In January 2021, the Office of the Independent Anti-Slavery Commissioner in the UK published a report on preventing modern slavery and human trafficking: an agenda for action across the financial services sector. This suggested that the financial services sector should ensure that it integrates modern slavery and human trafficking risk across all of its business processes, in the same way it has approached environmental risk. Specifically, Commissioner Dame Sara Thornton made the following recommendations:

1. Modern slavery and human trafficking risk should be embedded throughout the investment life-cycle of a business. Further thought should be given to agreeing a set of expectations and metrics to speed up innovation and the eradication of forced labour.
2. Financial sector entities need to find ways of sharing data more widely on current and emerging threats, while operating within the relevant legal frameworks.
3. Investor-led initiatives demonstrate how collective action can incentivize and accelerate improvements in company disclosure and compliance with the Modern Slavery Act. Banks could also play a role, particularly when financing major international developments.
4. There needs to be greater collaboration on electronic supply chains, as the challenges stretch not only from the point of assembly and manufacture of devices, but also of the mining of rare metals, and the manufacturing of silicon.
5. Financial institutions should report on their investment and lending portfolios under s54 of the Modern Slavery Act. This would require a change in legislation.

Source: [*Dame Sara Thornton's recommendations to the financial Sector \(September 2021\)*](#)

London Stock Exchange Group (LSEG) Modern Slavery Statement 2020

How to Prevent Modern Slavery?

LSEG has a multi-faceted approach to managing the risk of modern slavery through the following:

1. Ensuring governance of modern slavery risk up to a senior level.
2. Providing training and communications to staff.
3. Undertaking slavery specific risk assessments across the supply chain.
4. Having robust standards, policies and procedures in place, including: (i) a procurement policy, (ii) a whistleblowing policy, and (iii) a suppliers code of conduct.
5. Risk assessment and due diligence are carried out against all new and incumbent suppliers globally.
6. Anti-slavery commitments are embedded in suppliers contracts and grievance mechanisms are available for breaches. LSEG has referred to the following publicly available publications, indices, research and guidance documents in conducting its slavery risk assessment: - [The Global Slavery Index 2018](#) (report and scoring data including data sets with additional G20 & fishing metrics) and Minderoo Foundation's Walk Free "Measurement Action Freedom" Report 2019.

LSEG's Commitment to Tackling Modern Slavery in 2020:

- Completed a refreshed risk assessment of its supply chain based on latest slavery guidance, best practice and data which has tiered its suppliers according to slavery risk.
- Sought to obtain agreement to the Supplier Code of Conduct from all Tier 1, 2 and 3 suppliers identified from the most recent risk assessment and analysis.
- Ensured its anti-slavery policies, frameworks and procedures continue to be effective and fit for purpose; continue to evolve its anti-slavery approach, and leverage guidance from available best practice and experts where possible and appropriate.
- Ensure the approach to establishing new international office locations continues to consider the slavery and human trafficking risks associated with those locations as part of its governance.
- Leveraged Supplier Relationship Management governance framework to engage with its most important suppliers to understand their own slavery and human trafficking risks, their anti-slavery practices and approaches; and to seek to identify any potential residual risk to LSEG that requires proportionate action.
- Created an action plan to further enhance our slavery risk mitigation.

Source: [LSEG 2020 Modern Slavery Statement](#)

Hong Kong Exchange (HKEX) Corporate Social Responsibility Report (CSR) “Upholding Supply Chain Sustainability”

On a disclosure basis, the [HKEX 2020 CSR Report](#) (p.56) outlines there were no confirmed non-compliance incidents or grievances in relation to **human rights** and labour practices standards and regulations that would have a significant impact on the Group. Similarly, the Group’s key suppliers have not reported any significant actual or potential negative impact on business ethics, environmental protection, human rights and labour practices, or any non-compliance incidents in respect of these areas.

Additionally, the HKEX Group Procurement Policy is in place to provide guidelines on integrating sustainability into its procurement decision-making. A set of Supply Chain Sustainability guidelines were developed to address the significant social and environmental impacts arising from HKEX’s key suppliers. During the procurement process, suppliers need to comply with the requirements set out in HKEX’s [Corporate Suppliers Policy Statement and Supplier CSR Code of Conduct](#) which covers a number of integrity-related topics from legal and regulatory compliance, business integrity, to human rights issues, labour practices and environmental compliance. In addition, key suppliers are required to fill in the CSR Questionnaires for HKEX to evaluate the suppliers’ CSR performance on a number of integrity-related topics.

Source: *Corporate Social Responsibility Report 2020*

The Stock Exchange of Thailand and Walk Free (an international human rights group) Guidance for Thai Listed Issuers

The Stock Exchange of Thailand (SET), partnered with Walk Free and the Finance Against Slavery and Trafficking (FAST) initiative to launch guidance to assist Thai-listed companies to identify, address and report on modern slavery risks throughout their value chain.

The *Guidance on Modern Slavery Risks for Thai Businesses* was launched on 15 December 2021. It explains what makes workers vulnerable to modern slavery, outlines specific industry risks in Thailand, and provides a checklist on what businesses should do to identify, address and report on these risks. Alongside the guidance, an online, interactive *Modern Slavery Benchmarking Tool* provides businesses with a score and tailored report on what they are doing well and how they can improve.

The publication of the guidance and tool is timely, given the new mandatory sustainability reporting requirements taking effect in Thailand from 1 January 2022 under the SEC's "56-1 One Report" disclosure requirement. The One Report requires that listed companies report on ESG issues, including human rights and social issues, throughout the business value chain.

Walk Free designed the methodology and structure of the guidance and led its research and drafting, drawing on its modern slavery expertise and resources. It conducted an extensive literature review of modern slavery risks in specific Thai industries, and in-depth stakeholder interviews with Thailand-based experts. SET provided technical assistance on the sustainability reporting framework in Thailand and shared its local perspective, as well as engaged with Thai-listed firms to contribute insights into their human rights and labour risk management practices. FAST offered advice on international standards relating to modern slavery, such as forced labour.

The guidance will help Thai-listed companies to strengthen their modern slavery risk management and improve their sustainability reporting. Moreover, investors in the SET can use the guidance to understand key modern slavery risks facing issuers, identify company best practice for addressing and reporting on these risks, and ensure they are using new modern slavery disclosures to inform investment decisions and conduct more effective stewardship of their investment portfolios.

Source: [Walk Free, SET and FAST Provide Thai Business with Tools to Manage Modern Slavery Risks](#)

Nasdaq's Human Rights Process

As a strong advocate of the materiality assessment process – whereby a company undertakes a formal, third-party review of the ESG topics and stakeholders that affect its business – Nasdaq has long wanted to participate in a similar process dedicated specifically to human rights. Human rights performance quantification has become more prevalent in ESG ratings and reporting frameworks, and even the SEC now requires some human capital management reporting (which is inherently related) in U.S. financial filings. Yet our interest in this process was driven mainly by strategic curiosity: Where are our strengths? Where are our weaknesses? Are we complicit, however unintentionally, in any human rights abuses?

Finding the right partner for this work was essential. Although we have excellent human capital expertise and legal resources in house, part of the value in this kind of assessment rests in its external perspective; outsiders tend to draw connections and conclusions that insiders cannot. Nasdaq also explicitly wished to learn from the process, to better understand human rights so that it could properly advise its listed companies and clients.

The consultancy that we engaged ([Shift](#), based in New York) has a structured process in place, which worked very well for our purposes:

- Undertake independent research and engagement with fintech peers and competitors (including, ideally, at least one stock exchange) to capture relevant topics and benchmark our performance;
- Moderate a two-day workshop on human rights management and performance implications with senior executives and business unit leaders within the organization;
- Conduct a series of in-depth interviews with subject matter experts within the firm;
- Review Nasdaq policy documents and KPIs regarding human rights management;
- Deliver a detailed report of findings for internal consideration, including risk analysis and action for improvement.

The report will inevitably prove valuable, not only for sustainability and regulatory reporting purposes, but also to set aspirational goals and targets. Nasdaq also wished to create greater sensitivity and awareness around this issue. Key principles (such as the *UN Guiding Principles on Business and Human Rights*) are essential modern management tools, and this process will be repeated on a biannual basis, much like our materiality assessments.

Source: *Nasdaq*

Forthcoming Supply Chain Due Diligence Legislation

26. The EU as part of its Green Deal is considering a proposal for an EU wide Sustainable Corporate Governance Directive, which would introduce mandatory due diligence assessments across a company's supply chain. Meanwhile, at a national level, member states are also in the process of implementing due diligence legislation.

German Act on Corporate Due Diligence Obligations in Supply Chains

Since 2021, the Act on Corporate Due Diligence Obligations in Supply Chains has placed enterprises in Germany under the obligation to respect human rights by implementing defined due diligence obligations. The core elements of these new obligations include the establishment of a risk management system to identify, prevent or minimize the risks of human rights violations and damage to the environment. Companies will be responsible for their own business area, for the actions of a contractual partner and for the actions of other (indirect) suppliers. From 2023, the Act will apply to around 3,500 enterprises, many of them listed on capital markets. A wide number of companies will be affected indirectly as wider parts of supply chains.

The Act contains a list of eleven internationally recognised human rights conventions. These include, in particular, the prohibition of child labour, slavery and forced labour, the disregard of occupational safety and health obligations, withholding an adequate wage, and the denial of access to food and water as well as the unlawful taking of land and livelihoods. If enterprises fail to comply with their legal obligations, administrative fines may be imposed and they may be excluded from the award of public contracts.

Implications for capital markets, issuers and stock exchanges

Enterprises will have to submit an annual report to the national authority and publish it online to demonstrate how they have met their due diligence obligations. This will create a new data source for sustainability information which will be available for financial markets and investors. The new obligations match the objectives of overall EU sustainable finance agenda. However, in order to improve the availability and quality of decision-useful ESG information, it will be key that the German and EU legislation on due diligence are coordinated with legislation such as the upcoming Corporate Sustainability Reporting Directive (CSRD). For Deutsche Börse Group (DBG) developments in this field are of importance for its issuers as well as its own ESG product and service portfolio. DBG will fall within scope of the legislation and will need to report accordingly.

Source: *Deutsche Börse Group (DBG)*

EU Proposal on Corporate Sustainability Due Diligence

On 23 February 2022 the Commission released its [draft Directive](#) on Corporate Sustainability Due Diligence. The proposal set out a corporate due diligence duty to identify, prevent, bring to an end, mitigate and account for adverse human rights and environmental impacts in a company's own operations, its subsidiaries and their value chain. It builds on the UN's Guiding Principles on Business and Human Rights and OECD Guidelines for Multinational Enterprises and responsible business conduct.

In practice, the new proposal will require companies within scope to:

- Integrate due diligence into policies.
- Identify actual or potential adverse human rights and environmental impacts.
- Prevent or mitigate potential impacts.
- Bring to an end or minimise potential impacts.
- Establish and maintain a complaints procedure.
- Monitor the effectiveness of the due diligence policy and measures.
- Publicly report on due diligence.

Certain large companies will also be required to adopt a plan to ensure that their business strategy is compatible with limiting global warming to 1.5 degrees.

In addition, directors' duties will be expanded to: (i) encourage directors to set up and oversee the implementation of due diligence processes and integrate due diligence into corporate strategy; (ii) encourage directors to take into account the human rights, climate and the environmental consequences of their decisions and the likely impact of their decisions in the long-term; and (iii) require companies to take into account the fulfilment of the obligations regarding the corporate climate change plan when setting any variable executive remuneration.

Source: *European Commission-Proposal for a Directive on Sustainable Due Diligence*

On 23 February 2022 the Commission released its draft Directive on Corporate Sustainability Due Diligence. Below is a snapshot of the key requirements:

- Companies within scope include large European and non-European companies that operate in the single market, and within two years will expand to mid-cap companies that operate in certain 'high impact' sectors.
- To undertake due diligence for actual or potential adverse human rights and environmental impacts in their own operations, those of their subsidiaries and in their value chain. This broadly aligns with the concepts set out in the UNGPs.
- The draft Directive provides for administrative oversight by public bodies, which includes powers to investigate and impose sanctions, and provides civil remedies for victims.
- Where climate change is found to be a "principal risk" or "principal impact" of a company's operations, emissions reduction objectives should be included in a company's plans.
- Member states should amend their laws on breaches of directors' duties to ensure that, when fulfilling their duty to act in the best interest of the company, directors of EU based companies would take into account the consequences of their decisions for sustainability matters.

Next Steps

27. It is clear that the voluntary landscape alone may not be enough to bring about the change required. 2021 saw policy makers and regulators shift their focus to the 'S' in ESG. The European Financial Reporting Advisory Group (EFRAG) [issued](#) a statement of cooperation with SHIFT¹⁴ to help inform the development of European sustainability reporting standards that incorporate the principles of the UNGPs. Investors have also asked for clarity on what constitutes a social investment, as has been the case for environmental investments. As a result, EU Platform on Sustainable Finance has issued a consultation and more recently a report on a [Social Taxonomy](#) which will “help channel investments into achieving both environmental and social objectives”. This will provide the EU with an opportunity to set out a clear global standard for what good looks like on social issues, whilst encouraging new investment into socially beneficial organisations.

28. Mandatory due diligence requirements are also making their way into markets across the world and will be key to speeding up and scaling respect for human rights at an international level. The United Nations Human Rights Office of the High Commissioner has already expressed its [support](#) for the EU Sustainable Corporate Governance proposal, and note that “human rights due diligence enables companies to focus their attention on the most severe human rights risks and identify actual or potential risks to people” and are a “key tool in global efforts to build back better in the wake of the pandemic.”

29. At the WFE, we are committed to helping our members take the first step in promoting and integrating respect for human rights into their own disclosure practices, as well as those of their listed issuers. To support this, we will do the following:

- Help our members within the exchange community with their implementation of the UNGPs through sharing best practice and knowledge, as well as other practical materials;
- Work together as an industry to address the remaining challenges to fostering respect for human rights in a business context;
- Engage with policy makers to contribute to the ongoing debate on respect for human rights as an emerging aspect of ESG; and
- Provide stakeholders with meaningful data on how issuers are handling this risk, through our Annual Sustainability Survey.

¹⁴ SHIFT's work and experience on the UNGPs is globally renowned and will help businesses to integrate the principles into their activities.

WFE Briefing on Human Rights-related Disclosure Practices

The WFE gratefully acknowledges the valuable inputs to this document made by the experts listed here.

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