

C L I F F O R D  
C H A N C E



**BUSINESS AND HUMAN RIGHTS:**  
NAVIGATING A CHANGING LEGAL LANDSCAPE

MAY 2020

# **BUSINESS AND HUMAN RIGHTS: NAVIGATING A CHANGING LEGAL LANDSCAPE**

**Momentum behind the implementation of mandatory human rights reporting and due diligence requirements around the world continues to grow. In this briefing, 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.<sup>1</sup>**

Over the past year, an increasing number of governments around the world have introduced, or begun to explore, mandatory reporting and due diligence requirements to prompt businesses to manage their human rights impacts.

The pace at which such requirements are being introduced may slow temporarily as governments focus on managing the spread of COVID-19. However, the COVID-19 pandemic has also drawn stark attention to the vulnerability of many workers in global value chains, arguably strengthening the case for further mandatory measures and making it likely we will see renewed focus on these in due course.

Calls for mandatory measures are coming from a wide range of stakeholders. Notably, business organisations and individual companies are increasingly voicing support for mandatory human rights reporting and due diligence requirements.

This increased regulatory focus on businesses' human rights responsibilities was envisaged by the [UN Guiding Principles on Business and Human Rights](#) (UNGP) – the authoritative global framework for addressing business-related human rights risks. However, regulation will only help achieve meaningful outcomes if it is well-designed. To achieve this, governments should consult widely when crafting new measures and then monitor implementation to understand what works, obtaining feedback from relevant stakeholders to identify any unintended consequences. Businesses have an important role to play to help shape and strengthen these developments to ensure they are both practicable and effective.

## **WHAT YOU NEED TO KNOW**

- ✓ Elements of the corporate responsibility to respect human rights are now embedded in legal requirements in several jurisdictions – and proposed new laws are being considered in a number of additional jurisdictions worldwide.
- ✓ The scope of legal requirements differs across jurisdictions and may, in practice, impact a broad range of businesses both directly and indirectly, including those in the supply chains of organisations directly subject to the legal measures.
- ✓ 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 and should focus on ensuring their human rights due diligence is effective.
- ✓ Businesses that are not already working to implement respect for human rights should start now and strive to implement an approach that is consistent with the UNGP.
- ✓ The COVID-19 pandemic has focused attention on human rights challenges in companies' own operations and their value chains.

<sup>1</sup> This briefing is a 2020 update of a briefing on the same topic produced in March 2019, available [here](#).

# HOW THE LEGAL LANDSCAPE HAS CHANGED

Ten years ago, there were few, if any, laws requiring businesses to implement human rights due diligence processes and to report on their human rights risk management. Now, governments increasingly expect businesses to manage their human rights impacts proactively and are introducing laws to encourage this. These 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 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. Others take a broader approach to encompass 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.

## Trends and commonalities:

**These initiatives each aim to increase transparency and to drive action through some form of mandatory public reporting.** Regardless of the scope of the requirements, 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, via submission to a publicly available government repository or regular company reports. 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.** Some legislation is prescriptive in its content requirements, whereas other models provide a basic reporting baseline while allowing business to determine exactly what to report. Both approaches may be supported by government-sponsored guidance which in practice serves as a driver towards a more unified approach. Early initiatives such as the Californian Transparency in Supply Chains Act and the UK Modern Slavery Act are examples in the second category (requiring a report on steps taken or confirmation of none; but with government guidance expanding on the authorities' expectations of details required to meet the legislation's objectives). More recent laws, building on experience of and critical observations on prior models, specify more particular content requirements as well as providing guidance on what good reporting 'looks like'. A recent example is the Australian Modern Slavery Act, which took account of extensive consultation and research before expressly requiring information about the risks of human rights-related issues in a reporting organisation's operations and supply chains, as well as information about how the company manages those risks and the effectiveness of its approach.

**Some initiatives impose mandatory human rights due diligence requirements.** The French Duty of Vigilance law requires due diligence on human rights issues, as will the Dutch Child Labour Law (when it becomes effective). Legislation proposed in Switzerland and Norway also envisages mandatory human rights due diligence. Following amendments to the Federal Acquisition Regulation, the US requires contractors and subcontractors providing certain services to carry out due diligence before certifying that they have not engaged in 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. Existing models of legislation and those under consideration demonstrate varying approaches to encapsulating due diligence on human rights issues within very different domestic legal systems, posing consequent challenges for businesses operating across borders.

See overleaf and **Annex One** for more information.

# KEY LEGISLATIVE DEVELOPMENTS WORLDWIDE

## NORTH AMERICA

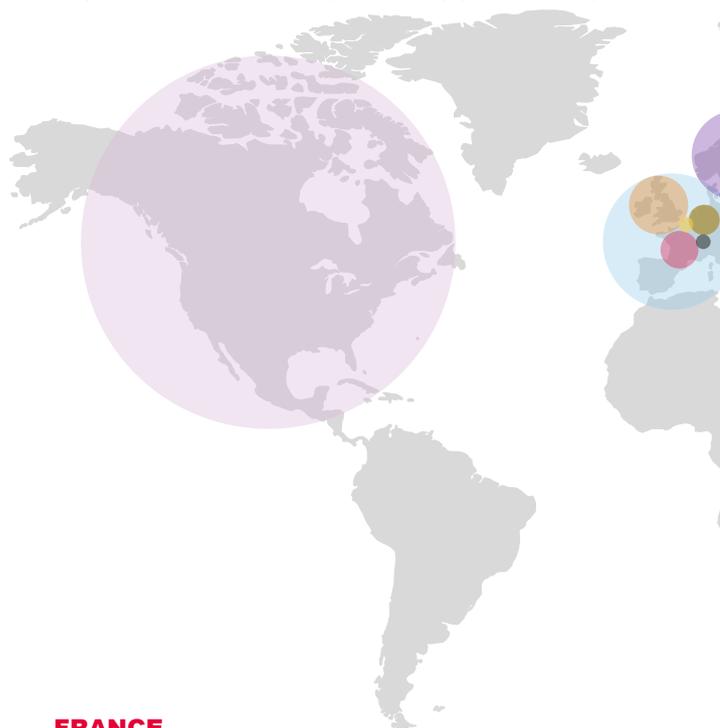
- **California Transparency in Supply Chains Act 2010 (effective January 2012):** Certain sellers and manufacturers doing business in California must publish annually details of their efforts to eradicate human trafficking in direct supply chains. The Attorney General may seek an injunction to require an entity to comply.
- **US Federal Acquisition Regulation: Ending Trafficking in Persons (effective March 2015):** Certain contractors to the US government must confirm annually (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 the Democratic Republic of Congo or bordering countries must file annual reports detailing steps taken regarding the sourcing of the product. There is no financial penalty for non-compliance with this rule. However, there is potential liability for false or misleading statements.
- **Canada: An Act to enact the Modern Slavery Act and to amend the Customs Tariff (S-211) (proposed law):** Under the proposed law, certain entities would be required to report on steps taken to prevent or reduce the risk that forced and child labour is used during any step of the production of goods in Canada or elsewhere and 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 Directive 2014/95/EU (Non-financial Reporting Directive) (See EU box).**

## UNITED KINGDOM

- **UK Modern Slavery Act 2015 (effective March 2015):** Certain commercial organisations 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 Directive 2014/95/EU (Non-financial Reporting Directive) (See EU box).**

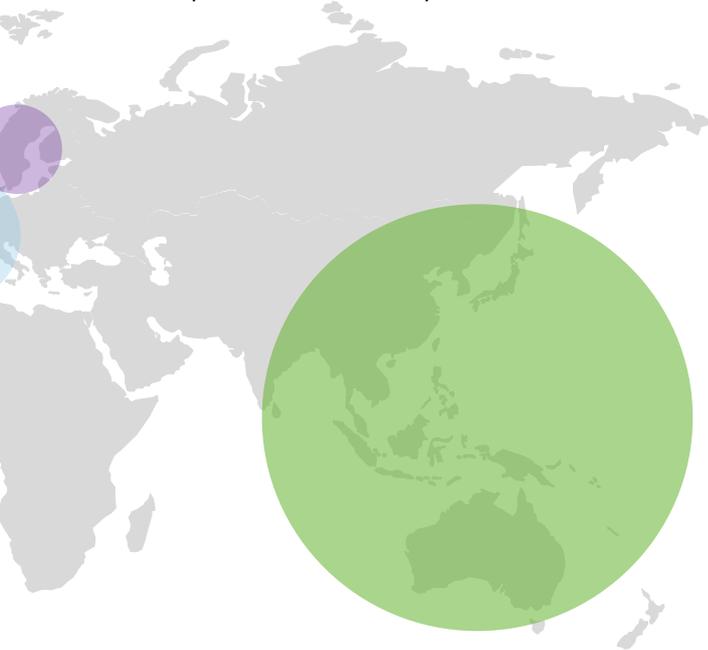


## FRANCE

- **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 Directive 2014/95/EU (Non-financial Reporting Directive) (See EU box).**

## EUROPEAN UNION

- **Non-financial Reporting Directive 2014/95/EU (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 2017/821/EU (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 Due Diligence Act 2019 (passed, not yet effective):** Certain companies doing business in the Netherlands are 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 Directive 2014/95/EU (Non-financial Reporting Directive) (See EU box).

## SWITZERLAND

- **Counter-Proposal by the Swiss Parliament to the Responsible Business Initiative (proposed law):** 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.

## NORWAY

- **Proposal for an act regulating enterprises' transparency about supply chains, duty to know and due diligence (proposed law):** If implemented, all companies offering goods and services in Norway would be required to know of salient risks of adverse impacts on fundamental human rights and decent work in the company and its supply chains. Large companies would be required to exercise and publicly report on due diligence to identify, prevent and mitigate "possible" adverse human rights impacts on decent work. Companies would have a duty to disclose information on request regarding their approach to human rights and decent work. Companies providing goods to consumers would be required to disclose manufacture sites. Penalties would be imposed for failures.

## 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. The government, in turn, 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 commercial organisations doing business in Hong Kong would be required to 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 of the Executive Council would be able to 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. More governments will introduce mandatory measures to address business-related human rights challenges.

Over the past year, the tone of discussions about the introduction of mandatory measures has shifted notably. For some time, there has been a strong sense that the legal landscape is evolving and that initiatives such as the UK Modern Slavery Act and the French Duty of Vigilance Law were just the beginning of a trend. Now, it is clear that more legislation will come and that the pace of change has been accelerating – with the focus on initiatives that incorporate mandatory due diligence, and in which reporting requirements play a necessary and supporting role, but are no longer the primary focus.

This shift has been welcomed by representatives of diverse stakeholder groups, including some businesses, civil society organisations and investors. Indeed, business groups and individual companies are increasingly vocal in their support for the introduction of mandatory measures. This support has been evident in [Germany](#), [Finland](#) and [Denmark](#), where businesses have joined the call for mandatory human rights due diligence; meanwhile, a group of business and civil society organisations has produced a [joint position paper](#) supporting due diligence regulation by the EU in the cocoa sector.

New regulations will not appear overnight, and some jurisdictions will move more swiftly than others. That said, the increasing focus on mandatory measures is moving beyond the jurisdictions identified in our briefing last year. For example, human rights organisations in Latin America are initiating mandatory human rights due diligence discussions at a national level. Further, the Kenyan National Action Plan included as a policy action consideration of a review of the Companies Act 2015 to require mandatory periodic human rights due diligence for certain business activities.

The long-term impact of COVID-19 on the adoption of mandatory measures remains to be seen. It is likely that the pandemic will slow the pace of discussions, at least over the coming months. However, complex global value chains pose a major source of challenge for regulators. By drawing attention to the vulnerability of workers across these value chains, COVID-19 may serve as a catalyst for stronger action by governments (and other stakeholders), including through the introduction of mandatory human rights due diligence measures. The European Parliament has already [expressed its conviction](#) that human rights due diligence will be necessary to prevent and mitigate future crises and ensure sustainable supply chains. The UN Working Group on Business and Human Rights has [emphasised](#) how important effective human rights due diligence is to avoiding and minimising harm to people in the context of the pandemic. Businesses should therefore prepare for the possibility of further regulation that focuses on addressing risks throughout their businesses (worldwide) and their value chains.

## 2. Governments are also introducing mandatory measures to address other areas of responsible business conduct, including climate change.

Efforts to develop a smarter mix of mandatory and other measures to prompt businesses to manage their human rights risks are not happening in isolation. It is well recognised that other challenges, such as corruption and environmental risk management, go hand in hand with impacts on the human rights of individuals and communities. Meanwhile, mandatory requirements are supported by other approaches – such as economic incentives and government procurement practices – to further embed and expand business respect for human rights. Governments are working to implement a mix of measures (including regulatory requirements) to encourage responsible business conduct across the broad spectrum of issues with which business may be involved. Climate change has become a particular focus of policy and regulatory intervention, reflecting growing recognition of the urgent need to limit and adapt to global warming, and the role of business in addressing the issue. It is important that governments work to encourage responsible business conduct holistically and – where measures to address human rights and other issues intersect – promote coherence. Some regulatory initiatives address multiple areas of responsible business conduct together, for example, by requiring due diligence and/or reporting on environmental issues (including climate change) and human rights issues (e.g. the EU Non-Financial Reporting Directive (NFRD) and the French Duty of Vigilance Law). Notably, the European Commission has included a review of the NFRD as part of the European Green Deal – the European roadmap towards climate neutrality.

It is unlikely we will see a unified approach to regulation across all responsible business issue areas – and indeed, that would be inadvisable where particular issue areas would benefit from targeted interventions, and identical approaches may not promote the most effective outcomes in all contexts. However, it is important to ensure that intersections between human rights and other areas are identified, and that opportunities to align initiatives are considered. The OECD Guidelines for Multinational Enterprises (OECD Guidelines) provide a relevant illustration of this approach. When the OECD Guidelines were updated in 2011, the approach to due diligence and to 'involvement' in impacts set out in the UNGP was applied across further areas of responsible business conduct addressed in the OECD Guidelines. Exploring the intersections between mandatory measures to address both human rights issues and climate change, in particular, will likely be important to ensure that respect for human rights is embedded in efforts to ensure just transitions as governments, businesses and societies adapt to a warmer world.

# FIVE THINGS BUSINESSES NEED TO KNOW

(CONTINUED)

### 3. Developments focused on remedy, accountability and liability are gaining momentum.

The initiatives considered in this briefing all include some form of legal consequence for compliance failings, even if some of these have been criticised as weak. In addition to legal risks, commercial and reputational risks can also flow from non-compliance with these initiatives and a failure to meet stakeholders' expectations.

Businesses should also be aware that the broader web of legal accountability and paths to remedy for affected people is developing, adding to the range of potential legal risks for companies involved in adverse human rights impacts. This reflects what is increasingly recognised as an urgent need to improve access to effective remedy for affected people, as well as valid concerns about the need to ensure all businesses, not just the so-called leaders, are working seriously to manage their human rights risks.

The Office of the High Commissioner for Human Rights' (OHCHR) Accountability and Remedy Project has resulted in recommendations to governments to strengthen State-based judicial and non-judicial grievance mechanisms. The third and final phase of this project will result in a set of recommendations to governments on also strengthening non-State-based grievance mechanisms (including companies' operational-level grievance mechanisms), which will be included in the OHCHR's report to the UN Human Rights Council in June 2020. The parallel discussions of the draft business and human rights treaty, discussed in a [previous joint briefing](#),<sup>2</sup> envisage mandatory human rights due diligence by businesses and expanded possibilities for corporate liability and remedy for human rights harms. Efforts to secure remedy for affected people through litigation continue. At a national level, developments over the last 12 months have included a Canadian Supreme Court ruling that claims of overseas human rights abuses could continue before the British Columbia courts, and that liability might be possible based on corporate involvement in breaches of international human rights law. In the UK, successive court judgments continue to clarify the parameters of possible inter-company liability for overseas human rights impacts. Non-judicial mechanisms, such as the OECD National Contact Point Specific Instance process (which supports the OECD Guidelines) continue to be used to test corporate adherence to human rights standards, leading to reports of mediated and voluntary outcomes prompted by the process.

The accountability and remedy map is expanding and will no doubt be informed by emerging legal and regulatory initiatives such as those discussed in this briefing. Keeping abreast of developments across these areas is a challenge for business but key to effective organisational risk management.

### 4. There is increasing pressure on businesses to demonstrate that their human rights risk management is effective.

The introduction of mandatory measures has been accompanied by efforts to understand whether these requirements drive meaningful outcomes for affected people. This includes an increased focus on attempts to assess whether companies' human rights risk management – and, in particular, their human rights due diligence – processes are effective.

Investors, customers, business partners and civil society organisations are looking to understand whether the actions a business is taking result in meaningful outcomes on the ground. For example, there are indications that the ability of a business to attract capital from investors (in the form of equity or debt) is increasingly influenced by how effectively it is perceived to be managing human rights risks. Various benchmarking initiatives are also seeking to establish mechanisms through which investors and other stakeholders can evaluate the adequacy and effectiveness of the steps certain businesses are taking to manage human rights risks.

The importance of businesses being able to demonstrate the effectiveness of their human rights risk management is emphasized by the Australian Modern Slavery Act, which requires companies to report on the effectiveness of their efforts to address modern slavery. Identifying appropriate effectiveness indicators, measuring performance against them and tracking progress is challenging, and calls for significant effort and resources. New requirements to report on these matters create an imperative to redouble effort in this area.

While current regulatory initiatives generally fall short of wholesale adoption of the UNGP standards, future legislative initiatives may go further; and recent developments suggest a shift toward closer alignment with the UNGP. Even where there is no express incorporation of UNGP concepts within specific regulatory requirements, their objectives are likely to be most readily met by the application of the UNGP frameworks and processes that support respect for human rights. The UNGP has been identified as a key reference for businesses in guidance materials and reports developed alongside certain of the existing requirements. Crucially, stakeholder expectations are commonly set by reference to the UNGP. Therefore, working to meet this authoritative global standard should support companies to meet current and potential future regulatory requirements and stakeholder expectations. This may mean going beyond the express requirements of current legal frameworks. For examples of business approaches to implementing the UNGP and practice-based insights, see the GBI Business Practice Portal [here](#).

<sup>2</sup> See the Clifford Chance blog post on this topic [here](#).

# FIVE THINGS BUSINESSES NEED TO KNOW

## (CONTINUED)

### **5. Governments are looking to business (and other stakeholders) for input to ensure that mandatory measures are well-designed and effective.**

To achieve meaningful outcomes for affected people in a way that is practicable for business, it is important that regulatory and legislative initiatives are thoughtfully designed. As we observed in our [2019 briefing](#), smart regulation can be beneficial for businesses that are committed to operating with respect for human rights and can drive positive human rights outcomes on the ground.

When it comes to designing effective regulation to address business-related human rights challenges, governments are learning by doing. Regulatory requirements need to be sufficiently clear that business can implement with confidence of compliance. They also need to be sufficiently prescriptive to create clarity for business, but not so prescriptive that the requirements encourage a tick-box approach, whereby businesses are incentivised to seek to achieve a minimum standard of compliance rather than the more holistic approach envisioned by the UNGP. Governments must consider the pros and cons of focusing (at least initially) on a single issue, such as conflict minerals or modern slavery, or taking a broader approach that encourages businesses to address each of their particular salient human rights issues. Legislation should also support context-specific action, transparency and, where appropriate, collaborative approaches to address complex human rights issues.

Over the past year, some governments have implemented review and consultation processes for human rights-related regulatory requirements. These processes have sought feedback from businesses and other stakeholders to understand what is working well, and also where legislation could be strengthened or clarified. For example, the recent Independent Review of the UK Modern Slavery Act invited feedback on multiple issues for potential reform of the legislation. Similarly, the Australian consultation on the introduction of its Modern Slavery Act was widespread, and the Act itself notably incorporates a three-year review period for the legislation.

Businesses have an important role to play in supporting governments to hone their approach to designing and implementing regulatory requirements. By providing information on how regulation is supporting the business to strengthen its human rights practices, as well as any perceived 'unintended consequences', businesses can help governments improve mandatory measures over time to ensure they are both effective and practicable.

### **CONCLUSION**

The legal landscape for business continues to change as momentum grows for stronger government action and the introduction of mandatory measures to address business-related human rights impacts.

The spread of COVID-19 may temporarily slow the pace of discussions and developments concerning mandatory human rights reporting and due diligence requirements. However, the pandemic has drawn attention to the human rights risks associated with today's global value chains, just-in-time supply chain delivery systems and growing gig economy. Once the worst of this crisis has passed, we can expect attention to refocus on how mandatory measures – and in particular, mandatory human rights due diligence requirements – can help address these issues. Developments at an EU level, if they crystallise, may serve as a catalyst for the more widespread introduction of mandatory measures in Europe and beyond.

Business practice is undoubtedly advancing rapidly as emerging legal developments gain traction. In recent weeks we have seen many companies demonstrate significant leadership to help overcome the human rights and other challenges presented by COVID-19. The experience of grappling with these urgent and unprecedented challenges might serve as an opportunity for businesses to pause to consider how well their risk management frameworks have served them, and whether lessons may be learned for more effective integration of human rights due diligence processes within their organisation. Adaptations may be needed for the medium and longer term effects and structural modifications now might also promote resilience in anticipation of future regulatory developments.

Over the past year, governments, too, have shown increasing awareness of the need to hone and strengthen emerging regulatory requirements addressing human rights challenges, and the value of input from business and other stakeholders in doing so. Recent global events should not shake a collective resolve to shape future developments with the benefit of broad stakeholder contributions.

In the meantime, as businesses face increasing regulation, they will be well-advised to ensure that their human rights risk management is effective and that they communicate clearly and meaningfully about their approach and its outcomes.

# ANNEX ONE: SUMMARY OF KEY HUMAN RIGHTS-RELATED DEVELOPMENTS

Country and legislative initiative	Summary
<p>AUSTRALIA</p> <p><a href="#">Modern Slavery Act 2018</a> (effective 1 January 2019)</p>	<ul style="list-style-type: none"> <li>• 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, which must register statements compliant with the Act on an internet-based register.</li> <li>• The statement must provide information regarding the identity of the reporting entity, its structure, its operations and supply chains, risks of modern slavery and risk management and its effectiveness.</li> <li>• 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.</li> <li>• The bill was supported by an <a href="#">explanatory memorandum</a>, which explains that the mandatory content of the statement draws on terminology and concepts set out in the UNGP, and a <a href="#">supplementary explanatory memorandum</a>.</li> <li>• The Australian Government released <a href="#">Guidance for Reporting Entities</a> which also draws on the UNGP. <a href="#">Guidance</a> regarding reporting during the COVID-19 pandemic was recently issued.</li> <li>• See further, <a href="#">Clifford Chance briefing</a>.</li> </ul>
<p>NEW SOUTH WALES, AUSTRALIA</p> <p><a href="#">New South Wales Modern Slavery Act 2018</a> (passed, not yet effective)</p>	<ul style="list-style-type: none"> <li>• Entities that 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 their 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 specific entities have taken steps to address the concern.</li> <li>• 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.</li> <li>• 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.</li> <li>• No formal guidance has been issued by the government of New South Wales, although this is anticipated.</li> <li>• The bill was supported by an <a href="#">explanatory note</a>.</li> <li>• The New South Wales Legislative Council Standing Committee on Social Issues <a href="#">inquiry into the Modern Slavery Act 2018</a> report was published in March 2018, recommending that the Act be commenced on or before 1 January 2021. The inquiry report supports the reporting threshold remaining at AUD50 million, but recommends that the State and Federal Governments work together to seek harmonisation of the reporting threshold across both Acts. The inquiry report also supports the maintenance of the penalty provisions. The recommended amendments include the introduction of a statutory review period to be conducted in conjunction with the Commonwealth Act's review period.</li> <li>• See further, <a href="#">Clifford Chance briefing</a>.</li> </ul>
<p>CANADA</p> <p><a href="#">An Act to enact the Modern Slavery Act and to amend the Customs Tariff (S-211)</a> (proposed law)</p>	<ul style="list-style-type: none"> <li>• Under the proposed law, an entity listed or doing business, or that has assets in Canada that has two or more of the following characteristics in the last two 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.</li> <li>• The report would be required to include information 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 to assess and manage risks, measures taken in remediation, and training for employees, 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.</li> <li>• 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.</li> </ul>

# SUMMARY OF KEY HUMAN RIGHTS-RELATED DEVELOPMENTS (CONTINUED)

Country and legislative initiative	Summary
<p>EUROPEAN UNION</p> <p><a href="#">Conflict Minerals Regulation</a> (partly effective 2017, main provisions effective on companies in 2021)</p>	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• The EU's expectations of companies are set out in <a href="#">guidance</a> that 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).</li> <li>• Each EU member State shall determine the consequences of infringements of the regulation.</li> <li>• In 2023 and every three 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.</li> </ul>
<p>EUROPEAN UNION</p> <p><a href="#">Non-financial Reporting Directive</a> (EU member States required to implement by December 2016)</p>	<ul style="list-style-type: none"> <li>• Large public interest entities (including listed companies, banks, and insurance companies) with more than 500 employees or that 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.</li> <li>• 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.</li> <li>• 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.</li> <li>• Each EU member State must set out the consequences of non-compliance in national legislation.</li> </ul>
<p>FRANCE</p> <p><a href="#">Law 2017-399 related to Duty of Vigilance of Parent Companies and Commissioning Companies</a> (effective March 2017)</p> <p>See also Amendments to the Law on Accounting PZE No. 51 <a href="#">here</a> and <a href="#">here</a> implementing Directive 2014/95/EU (Non-financial Reporting Directive)</p>	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> <li>• See further, <a href="#">Clifford Chance briefing</a>.</li> </ul>

# SUMMARY OF KEY HUMAN RIGHTS-RELATED DEVELOPMENTS (CONTINUED)

Country and legislative initiative	Summary
<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 <a href="#">Law to strengthen the non-financial reporting of companies in their management and group management reports (NFR-Directive Implementation Act)</a> implementing Directive 2014/95/EU (Non-financial Reporting Directive)</p>	<ul style="list-style-type: none"> <li>• 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.</li> <li>• The draft law provides for a variety of duties of care wherein it differentiates between preventive measures in the run-up to a violation of human or environmental law requirements and remedial measures subsequent to a serious violation.</li> <li>• Public reports would have to be submitted to demonstrate compliance with Sec. 4 to 10 of the proposed law.</li> <li>• The competent authority would be empowered to issue the necessary orders for the enforcement of the Act.</li> <li>• 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.</li> <li>• The details of the imposed obligations would be regulated by a Federal Ministry through the enactment of statutory ordinances.</li> <li>• The 2016 German National Action Plan set a target that at least 50% of all German companies with more than 500 employees have in place policies and processes to identify and mitigate their human rights risks and impacts. In 2018, over 7,000 German companies received a letter signed by five German ministers encouraging them to take part in the monitoring process. The German Government has indicated that it will introduce mandatory human rights due diligence legislation in 2020 if the voluntary implementation by companies proves to be insufficient.</li> </ul>
<p>HONG KONG</p> <p><a href="#">Modern Slavery Bill 2017</a> (proposed law)</p>	<ul style="list-style-type: none"> <li>• 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 that 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.</li> <li>• The statement may contain information on six 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.</li> <li>• The Chief Executive of the Executive Council may seek an injunction to require compliance.</li> <li>• The bill was considered by the Hong Kong Legislative Council in June 2018.</li> </ul>
<p>THE NETHERLANDS</p> <p><a href="#">Child Labour Due Diligence Act 2019</a> (effective date to be confirmed, likely 2021-2022)</p> <p>See also the <a href="#">Decree Disclosure of Non-financial Information PbEU, 2014, L330</a> and the <a href="#">Decree Disclosure Diversity Policy PbEU, 2014, L330</a> implementing Directive 2014/95/EU (Non-financial Reporting Directive)</p>	<ul style="list-style-type: none"> <li>• 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) are required to certify annually that they have conducted due diligence. Statements are to be published in a central register.</li> <li>• Companies are required to exercise due diligence to determine whether there is a reasonable suspicion that goods or services to be supplied have been created using child labour and to implement a plan of action in these cases. They must also submit a publicly available disclosure statement. It is anticipated that guidance will follow that refers to the UNGP.</li> <li>• Complaints regarding non-compliance may be submitted to the company. Failing correction, the Dutch Authority for Consumers &amp; Markets is able to issue an order to require entities to comply.</li> <li>• Non-compliance with the obligation to submit the statement can result in a fine of up to EUR4,350 and submission of an inadequate statement can result in a fine of up to EUR8,700. Failure to exercise due diligence or implement a plan under the Act can result in a fine of up to EUR870,000 or up to 10% of the company's turnover in the previous financial year.</li> </ul>

## SUMMARY OF KEY HUMAN RIGHTS-RELATED DEVELOPMENTS (CONTINUED)

Country and legislative initiative	Summary
<p>NORWAY</p> <p><a href="#">Proposal for an act regulating enterprises' transparency about supply chains, duty to know and due diligence</a> (proposed law)</p>	<ul style="list-style-type: none"> <li>• The Norwegian Ethics Information Committee has recommended the introduction of mandatory human rights due diligence legislation drawing on the UNGP.</li> <li>• Under the proposed legislation, enterprises that offer goods and services in Norway must know of salient risks that may have an adverse impact on fundamental human rights and decent work within the enterprise and its supply chain (referred to as the "duty to know").</li> <li>• Larger enterprises will also be required to undertake due diligence in line with the UNGP in order to identify, prevent and mitigate possible adverse impacts on fundamental human rights and decent work, as well as reporting on the due diligence results, including measures to mitigate severe risk or harm and remedy adverse impacts.</li> <li>• Larger enterprises are defined as those which satisfy two out of three of the following requirements: sales income above NOK70 million, total assets above NOK35 million, and/or average number of full-time employees above 50.</li> <li>• The proposed legislation also includes a right to information, which entitles any person to information about how an enterprise conducts itself with regard to fundamental human rights and decent work (referred to as the "duty to disclose information"). Requests may be submitted orally or in writing and may be dismissed if too broadly formulated or if they do not provide an adequate basis to identify the information requested.</li> <li>• Those entities providing goods to consumers must publicly disclose the manufacturing sites of the goods, although exceptions to this requirement may be promulgated.</li> <li>• The Consumer Authority and Market Council will monitor compliance and may determine an enforcement fine for contravention of the disclosure requirements or may impose an infringement penalty for wilful or negligent infringement.</li> <li>• If implemented, the Consumer Authority will provide guidance to enterprises on the implementation of the Act.</li> </ul>

## SUMMARY OF KEY HUMAN RIGHTS-RELATED DEVELOPMENTS (CONTINUED)

Country and legislative initiative	Summary
<p>SWITZERLAND</p> <p><a href="#">Counter-Proposal by the Swiss Parliament to the Responsible Business Initiative</a> (proposed law)</p>	<ul style="list-style-type: none"> <li>• 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 <a href="#">here</a>.</li> <li>• The National Council put forward a counter-proposal to the Responsible Business Initiative. Under the proposed law, any Swiss company (together with companies which they control) assessed 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 <a href="#">here</a>.</li> <li>• On 12 March 2019, the Council of States rejected the counter-proposal and the matter was referred back to the National Council, which reaffirmed its support for the counter-proposal on 13 June 2019. On 18 December 2019, the Council of States voted against the counter-proposal and instead adopted a proposal limited to reporting and issue-specific due diligence.</li> <li>• On 4 March 2020, the National Council reaffirmed its counter-proposal to the Responsible Business Initiative.</li> <li>• A final decision by the Council of States is anticipated soon.</li> </ul>
<p>UK</p> <p><a href="#">UK Modern Slavery Act 2015</a> (effective March 2015)</p> <p>See also <a href="#">The Companies, Partnerships and Groups (Accounts and Non-financial Reporting) Regulation No. 1245</a> implementing Directive 2014/95/EU (Non-financial Reporting Directive)</p>	<ul style="list-style-type: none"> <li>• Entities who have an annual turnover of GBP36 million or more, that 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).</li> <li>• 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.</li> <li>• The Act is supported by <a href="#">statutory guidance</a> which refers to the UK government’s expectation that businesses respect human rights in accordance with the UNGP. <a href="#">Guidance</a> on reporting during COVID-19 pandemic was recently issued.</li> <li>• In May 2019, the <a href="#">Independent Review of the Modern Slavery Act 2015</a> was presented to the UK Parliament, which recommended, among other things, the introduction of penalties for non-compliance with the Act. The <a href="#">UK Government responded to the Independent Review</a> and announced a <a href="#">public consultation</a> on amendments to the transparency in supply chains requirements. The consultation closed on 17 September 2019 and the Government has not yet announced the outcome.</li> <li>• See further, <a href="#">Clifford Chance briefing</a>.</li> </ul>

# SUMMARY OF KEY HUMAN RIGHTS-RELATED DEVELOPMENTS (CONTINUED)

Country and legislative initiative	Summary
UNITED STATES  <a href="#">Federal Acquisition Regulation Final Rule: Ending Trafficking in Persons</a> (effective March 2015)	<ul style="list-style-type: none"> <li>• Prohibitions in the <a href="#">Federal Acquisition Regulation</a> (FAR) against trafficking of persons in federal contracts were strengthened in 2015 by way of amendments to FAR Rules 9, 22, 42 and 52.</li> <li>• Contractors to the US government of supplies (excluding commercially available off-the-shelf items) acquired 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.</li> <li>• The contractor must procure the same certificates and plans from their subcontractors where the thresholds apply.</li> <li>• Penalties for non-compliance range from removal of employees from projects to suspension or disbarment of the contractor.</li> <li>• In December 2016, the Office of Management and Budget released a draft <a href="#">memorandum</a> regarding "Anti-Trafficking Risk Management Best Practices &amp; Mitigation Considerations" which may be taken into account by agencies applying the FAR.</li> </ul>
UNITED STATES  <a href="#">Dodd-Frank Act Final Rule 1502</a> (effective November 2012)	<ul style="list-style-type: none"> <li>• Certain issuers that file reports with the Securities and 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.</li> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> <li>• Interpretive <a href="#">guidance</a> supports the Final Rule.</li> <li>• See further, <a href="#">Clifford Chance briefing</a>.</li> </ul>
CALIFORNIA, UNITED STATES  <a href="#">California Transparency in Supply Chains Act of 2010</a> (effective January 2012)	<ul style="list-style-type: none"> <li>• Retail sellers or manufacturers that 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).</li> <li>• The statement must disclose efforts to eradicate slavery and human trafficking from their direct supply chain for tangible goods offered for sale.</li> <li>• 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.</li> <li>• The Attorney General may seek an injunction to enforce the reporting requirement.</li> <li>• The expectations of the Department of Justice of the State of California are set out in non-binding <a href="#">guidance</a>.</li> </ul>

**WHY CLIFFORD CHANCE**  
OUR INTERNATIONAL NETWORK



**32 OFFICES**  
**22 COUNTRIES**

ABU DHABI	FRANKFURT	NEWCASTLE	SINGAPORE
AMSTERDAM	HONG KONG	NEW YORK	SYDNEY
BARCELONA	ISTANBUL	PARIS	TOKYO
BEIJING	LONDON	PERTH	WARSAW
BRUSSELS	LUXEMBOURG	PRAGUE	WASHINGTON, D.C.
BUCHAREST	MADRID	ROME	
CASABLANCA	MILAN	SÃO PAULO	
DUBAI	MOSCOW	SEOUL	KYIV <sup>1</sup>
DÜSSELDORF	MUNICH	SHANGHAI	RIYADH <sup>2</sup>

1. Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.

2. Clifford Chance has a co-operation agreement with Abuhimed Alsheikh Alhagbani Law Firm in Riyadh.

# CLIFFORD CHANCE

## CONTACTS



**CATIE SHAVIN**  
Director,  
Global Business Initiative  
on Human Rights

T +44 79 0260 0203  
E [catie.shavin@gbih.org](mailto:catie.shavin@gbih.org)



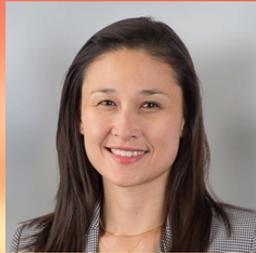
**RIANA CERMAK**  
Manager,  
Global Business Initiative  
on Human Rights

T +44 79 4364 6688  
E [riana.cermak@gbih.org](mailto:riana.cermak@gbih.org)



**RAE LINDSAY**  
Partner,  
Clifford Chance LLP

T +44 20 7006 8622  
E [rae.lindsay@cliffordchance.com](mailto:rae.lindsay@cliffordchance.com)



**ANNA KIRKPATRICK**  
Senior Associate,  
Clifford Chance LLP

T +44 20 7006 2069  
E [anna.kirkpatrick@cliffordchance.com](mailto:anna.kirkpatrick@cliffordchance.com)



**JO EN LOW**  
Senior Associate,  
Clifford Chance LLP

T +44 20 7006 1647  
E [joen.low@cliffordchance.com](mailto:joen.low@cliffordchance.com)

GBI is a business-led organisation that seeks to advance corporate respect for human rights through peer learning and by sharing insights from business practice. GBI members are leading multinational corporations that represent diverse industries and are headquartered in different regions.

The contents of this briefing have been determined by the GBI team and Clifford Chance. Any views expressed in this briefing do not necessarily reflect those of GBI member companies or of Clifford Chance's clients.

Clifford Chance, 10 Upper Bank Street, London, E14 5JJ

© Clifford Chance 2020

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street, London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

[www.cliffordchance.com](http://www.cliffordchance.com)

Abu Dhabi • Amsterdam • Barcelona • Beijing • Brussels • Bucharest • Casablanca • Dubai • Düsseldorf • Frankfurt • Hong Kong • Istanbul • London • Luxembourg • Madrid • Milan • Moscow • Munich • Newcastle • New York • Paris • Perth • Prague • Rome • São Paulo • Seoul • Shanghai • Singapore • Sydney • Tokyo • Warsaw • Washington, D.C.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.

Clifford Chance has a co-operation agreement with Abuhimed Alsheikh Alhagbani Law Firm in Riyadh.

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.