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BUSINESS AND HUMAN RIGHTS
NAVIGATING A CHANGING LEGAL LANDSCAPE
JANUARY 2022

INTRODUCTION

Legislation governing business impacts on human rights is increasing, with mandatory human rights reporting, due diligence obligations and other regulatory and legislative devices continuing to emerge across the globe. These requirements form part of broader efforts to drive responsible business conduct, sustainable corporate governance, and to include business in efforts to tackle climate change through the energy transition. In this briefing, the Global Business Initiative on Human Rights and Clifford Chance consider these developments, focusing on what businesses need to know to navigate the changing legal landscape.[1]

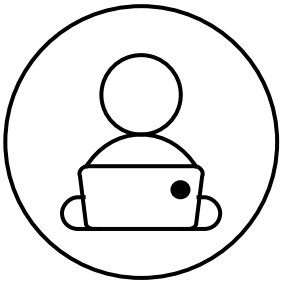
Global plans for economic recovery from COVID-19 recognise the need to respond to some of the vulnerabilities the pandemic has highlighted for workers, communities and supply chains. Governments around the world continue to propose and adopt mandatory due diligence and reporting requirements with this additional imperative.

In tandem, many governments now regard the deepening climate crisis as an urgent global challenge. As governments recast their strategies to reach the objectives set out in the Paris Agreement, there is more widespread recognition of the need to respond to the risks to people which arise on the path towards climate neutrality, and in ensuring a transition to net zero that is 'just' for all states, communities and vulnerable people.[2] Business has a role in facilitating a just transition, including by carrying out human rights due diligence through supply chains, as most recently acknowledged by 14 states' adoption of the Declaration on Supporting the Conditions for a Just Transition Internationally in November 2021.[3] The convergence of regulation to support sustainable futures for people and the planet tallies with a sharpening focus by legislatures and regulators on the growing deployment of environmental, social, governance (ESG) factors by the investment and finance sectors.

Legislative requirements on corporates to implement responsible business practices are grounded in existing soft law standards such as the UN Guiding Principles on Business and Human Rights (the UNGP) and the OECD Guidelines for Multinational Enterprises (the OECD Guidelines) which have been endorsed by governments, stakeholders and businesses. Countries are taking different approaches as to whether, how far and in what manner those standards are incorporated into law. While some states transpose concepts and principles from the standards directly, other states simply incorporate standards into legislation 'by reference'. Others seek to reflect the standards within newly defined duties, acknowledging their foundations within such standards without transposing them directly into new laws. Those businesses which choose to align their human rights and environmental risk management processes with those standards voluntarily will be best placed to meet the demands of mandatory measures geared at promoting respect for human rights and other ESG objectives through reporting and due diligence.

[1] This briefing is a 2022 update of briefings surveying the changing legal landscape that were produced in 2019 and 2020, available here and here.
[2] The UN Working Group on Business and Human Rights has highlighted that respect for human rights is a core element of just transition and sustainable development strategies in its roadmap for the Next Decade of Business and Human Rights, see here.
[3] See Clifford Chance blog here.

INTRODUCTION
(CONTINUED)



WHAT YOU NEED TO KNOW

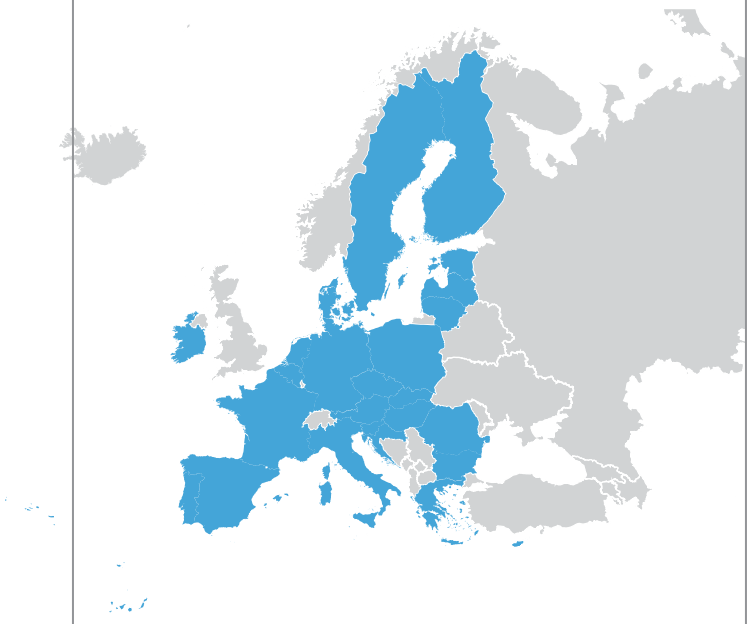
- ✓ There is significant momentum behind the introduction of mandatory human rights and environmental reporting and due diligence requirements at a national level. A process towards an EU-level mandatory due diligence law is also well advanced, despite delays. The scope of human rights-related legal requirements differs across jurisdictions, meaning that some businesses may need to comply with a multiplicity of requirements. In practice, many businesses are likely to be impacted both directly and indirectly, including those in the value chains of organisations directly subject to the legal measures.
- ✓ Litigation continues to focus on corporate accountability for human rights-related harms. The new corporate due diligence measures provide avenues of redress against business where corporate disclosures, due diligence processes, and/or action on human rights and also environmental issues appear to fall short. The intersection between human rights and environmental concerns is further reflected in a trend toward climate litigation which employs human rights as a basis for corporate legal liability.
- ✓ There is increasing recognition by policymakers and legislatures of the value of adopting a holistic approach to driving responsible and sustainable business conduct that integrates – at least to some extent – a focus on human rights, the environment and also good governance.
- ✓ Alongside human rights due diligence, business should be aware that legislatures and regulators are using other measures (such as sanctions and custom restrictions) to promote responsible business conduct on human rights and environmental issues.
- ✓ Businesses already familiar with implementing the principle of respect for human rights will have a good basis from which to tackle compliance with new legal requirements. As new laws are embedded into practice and their interpretation is tested, it is possible that soft law standards could serve as a lode star for business responses.

KEY HUMAN RIGHTS-RELATED LEGISLATIVE DEVELOPMENTS WORLDWIDE

The following maps are annotated to show some of the key human rights-related legislative developments at national and supranational (EU) level in Europe, the Americas and the Asia-Pacific. To review a summary of each of the initiatives, please hover your mouse over a country shaded in blue. Laws that are in force at the date of publication are highlighted in green; those that have been adopted but are not yet in effect are in purple; and initiatives that remain proposals are highlighted in yellow.*

- Proposed initiative
- Passed but not yet in effect
- In effect

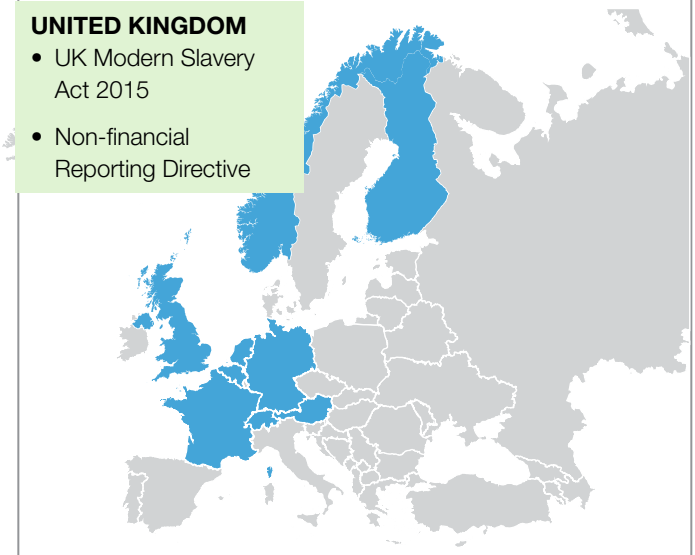
EU



EUROPE

UNITED KINGDOM

- UK Modern Slavery Act 2015
- Non-financial Reporting Directive



*THE MAPS ARE VIEWED BEST IN ADOBE

KEY HUMAN RIGHTS-RELATED LEGISLATIVE DEVELOPMENTS WORLDWIDE
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THE AMERICAS

ASIA PACIFIC

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FIVE THINGS BUSINESSES NEED TO KNOW

1. Piecemeal legislation is giving rise to fragmented legal obligations to report and/or carry out due diligence on human rights related issues, and in some instances environmental issues.

The last ten years have seen a proliferation of legislation aimed at business concerning human rights issues. Early forms of such legislation promoted transparency by imposing corporate reporting requirements that tackled one issue at a time. In particular, measures to tackle forced labour and human trafficking require businesses to report on steps taken to address human rights-related abuses in their operations and supply chains. The California Supply Chains Act, the UK Modern Slavery Act, and the Australia Modern Slavery Act follow this model. To varying degrees, such measures operate to encourage or require due diligence in relation to the relevant forms of abuse.

Newer legislative initiatives broaden corporate obligations significantly. Businesses are increasingly required to carry out due diligence in relation to actual and potential adverse human rights-related impacts and, in some instances, negative environmental impacts. The French Loi de Vigilance requires that certain corporate entities report steps taken pursuant to a vigilance plan in relation to human rights and fundamental freedoms, health and security and protection of the environment.[4] Germany, the Netherlands and Norway have passed laws which require due diligence in relation to actual or potential adverse human rights impacts (and in some instances, adverse environmental impacts).[5] Also, the EU has proposed revisions to the EU's Non-Financial Reporting Directive (NFRD). Under the proposal, the Corporate Sustainability Reporting Directive (CSRD), more companies would be required to disclose information on policies and due diligence processes in their supply chains in relation to 'sustainability matters', which refers to environmental, social and employee matters, respect for human rights, anti-corruption and anti-bribery matters, and governance.

The EU Commission is also expected to propose text for legislation which would require businesses to carry out human rights and environmental due diligence. The exact form and scope of the proposed legislation remains unclear pending publication of the Commission's draft proposal (expected in the first quarter of 2022). However, if such legislation is brought into force in the EU, a large number of businesses operating outside the EU, as well as those based in the EU will likely be affected.[6]

The growing momentum towards mandatory due diligence measures has been welcomed by representatives of diverse stakeholder groups – including a growing number of businesses and industry groups, civil society organisations and investors. However, as domestic legislation proliferates, companies will find themselves under pressure to comply with an array of laws, with each differing in scope and application, placing different demands on businesses. It remains to be seen whether the types of legal measures that have secured support within Europe will gain traction in other parts of the world, or whether other leading economies such as the United States will prefer other approaches to promoting business respect and accountability for human rights.

In parallel, efforts supported by the UN Human Rights Council to develop a treaty on business and human rights continue.[7] The current draft treaty (now in its third revision), provides that states which are party to the treaty shall require business enterprises to undertake human rights due diligence. During the most recent Intergovernmental Working Group[8] session in October 2021, it was stressed that any treaty on business and human rights should be aligned with relevant standards. Most notably, many delegations considered that the UNGP "must" be the basis for the discussion of the working group.[9] The draft treaty also includes commitments by states to ensure that there are adequate grounds for remedy and corporate liability at a domestic level. It remains to be seen how far the treaty will incorporate or align with the principles articulated in the due diligence and remedy pillars of the UNGP. It may take some time to reach international consensus on the terms of a binding treaty. In the meantime, as acknowledged during the recent session, many jurisdictions are already implementing mandatory human rights due diligence alongside other measures to implement the UNGP.

4 See further Annex One.
5 See further Annex One.
6 See further Annex One. Also, Clifford Chance blogs and briefings are available here, here, and here, Clifford Chance & GBI briefing, Jan 2021 here.
7 The Open-Ended Intergovernmental Working Group on Transnational Corporations and Other Business Entities with respect to Human Rights was set up pursuant to a UN HRC resolution. See further here.
8 The Open-ended intergovernmental working group on transnational corporations and other business entities with respect to human rights was established by the UN Human Rights Council in 2014 to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises, see here.
9 Draft report on the seventh session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, para. 12, available here.

2. Civil litigation seeking accountability for human rights harms is likely to increase.

Efforts to legalise aspects of the UNGP carry potential risks to businesses, as the risk of litigation and enforcement for non-compliance with legislation regulating corporate conduct in connection with adverse human rights impacts increases. Two trends are notable. First, legislation providing for corporate action on human rights related issues includes (to varying degrees) consequences for non-compliance. For example, the French Loi de Vigilance permits third parties to apply for injunctive relief to require a company to comply with the law by implementing a "vigilance" plan, and to seek damages where non-compliance has caused loss.[10] Four cases based on the law are pending before the French courts. In the first, six environmental NGOs filed a case against a French oil company in relation to an oil drilling project in Uganda, alleging the inadequacy of the company's vigilance plan to take certain human rights and environmental risks into account.[11] Another case relates to the alleged failure of a company's vigilance plan in respect of climate change targets. The third case raises allegations that human rights risks in connection with a windfarm project owned indirectly by a French power company were not identified. The claimants allege that appropriate measures were not taken to prevent adverse impacts on the rights of Indigenous peoples, to uphold their rights to express their free, prior and informed consent, to access information or to participate in public decision-making processes related to the project.[12] In the fourth case involving a French company from the agri-food industry, indigenous peoples and NGOs seek compensation for the loss caused to their ancestral lands and livelihoods in relation to the deforestation of the Amazon. Litigation arising out of failures to comply with the German Supply Chain Act is likely to increase. The legal bases of such claims is as yet unclear since the German Supply Chain Act expressly excludes the possibility of civil liability arising under the Act for failures to comply with the Supply Chain Act, though it also states that any liability under general German civil law (e.g. the law of torts) remains unaffected.

Second, climate change litigation increasingly relies on or incorporates claims related to adverse human rights impacts or abuses. 40 human rights-based cases on climate change were initiated between 2015 and mid-2020,[13] and this phenomenon is likely to increase. While many of these cases have been aimed at states, businesses are increasingly susceptible. A 2021 judgment of the District Court of The Hague, Netherlands shows how standards such as the UNGP may be utilised by the courts. In *Milieudefensie et al. v. Royal Dutch Shell plc* the court considered that internationally recognised human rights and the UNGP should be taken into account when considering whether the company had violated the unwritten standard of care.[14] Similarly, claims have been initiated by NGOs against automotive manufacturers before the German courts where it is argued that the companies must stop distributing cars and vans with internal combustion engines globally from 2030 and must reduce CO_2 emissions of cars sold until that point. The claimants argue that the CO_2 emission budget which can allegedly be attributed to this company would otherwise be exceeded, negatively affecting the human rights of individuals.

Bolstered by such developments, civil society calls for governments to introduce legislation to augment grounds for corporate accountability for human rights and environmental harms. For example, in October 2021, a civil society group lobbied the UK Parliament to pass legislation to hold companies accountable for failures to prevent human rights abuses and environmental harm in the supply chain.

[10] See further Annex One.
[11] See Clifford Chance blog here.
[12] See Clifford Chance blog here.
[13] See https://www.chathamhouse.org/2021/11/climate-change-and-human-rights-based-strategic-litigation.
[14] A Clifford Chance blog discussing the judgment is available here.

3. The growing regulation of sustainability issues including on ESG and sustainable finance will drive attention towards the implementation of responsible business frameworks, including the UNGP.

The growing trend for states and regulatory authorities to require businesses to understand and address their environmental as well as their human rights impacts reflects a broader trend to take a holistic approach to responsible business conduct. This is consistent with the objective articulated in the roadmap of the UN Working Group on Business and Human Rights to improve the connections between different UN agendas, for example, to highlight the urgency of tackling the climate crisis on the one hand, and to push for better management of businesses' involvement with adverse human rights impacts on the other.[15]

In particular, there is increasing momentum behind responsible business writ large as governments seek to harness the influence of finance to achieve sustainable growth while addressing climate and social challenges. This is evidenced in the EU's focus on sustainable finance as a key component to deliver the European Green Deal. To assist the EU to scale up sustainable investment to reach climate and energy targets and minimise the potential for corporate 'greenwashing' on sustainability, the EU Taxonomy Regulation specifies criteria to be met if an economic activity is to be labelled as environmentally sustainable. The activity must meet one or more of six environmental objectives and do no significant harm to any of the others, in compliance with technical screening criteria. Also, the activity needs to be carried out in compliance with minimum safeguards, which include being "aligned with" the UNGP, the OECD Guidelines and certain core international human rights laws. This renders the implementation of the UNGP and responsible business frameworks central to the attainment of the environmental goals of sustainable investment. The EU Taxonomy Regulation is informing the approaches of other governments.

The UK Government has announced that it will implement a Green Taxonomy that is intended to follow the same format. The EU is considering whether the EU Taxonomy should be extended to social objectives. An EU advisory body suggested that the aim of a social taxonomy would be to direct capital flows to entities and activities that operate with respect for human rights.[16] Linking human rights with broader social and environmental goals is also a feature in other EU legislation such as the Sustainable Finance Disclosure Regulation which lays down sustainability disclosure obligations for manufacturers of financial products and financial advisers toward end-investors. Outside of the realm of sustainable finance, the proposed CSRD (discussed above) would reframe current reporting obligations under the NFRD, requiring reporting and in some instances due diligence on sustainability matters and would apply to a broader group of corporate entities.[17]

Stronger stock exchange requirements for listed companies on ESG disclosures are emerging across the globe, which will mobilise corporates' focus on the management of the full spectrum of sustainability issues. For example, the 2019 London Metals Exchange (LME) listing rules introduced requirements (applicable from June 2022) that future LME-registered brands implement the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. In turn, the OECD guidance refers to the steps companies should take to identify, prevent and mitigate actual and potential adverse impacts, to ensure that they respect human rights and do not contribute to conflict through their activities in the supply chain and refers to the UNGP and the OECD Guidelines. Almost 30 stock exchanges globally have established ESG listing rules. For example, in June 2021, the Tokyo Stock Exchange issued a revised corporate governance code, which includes the expectation for companies to take appropriate measures to address sustainability issues, including respect for human rights.

Businesses may well regard it as encouraging to see the management of sustainability issues converging where convergence makes sense, but there remain unresolved questions regarding whether the full range of sustainability issues can be appropriately addressed under singular legislative (and existing soft law) frameworks. Both policymakers and businesses still have a distance to travel to fully align the various agendas in practice.

[15] Raising the ambition – increasing the pace, UNGPs 10+: A Roadmap for the Next Decade of Business and Human Rights, available here.
[16] Draft Report by Subgroup 4: Social Taxonomy, July 2021, available here, p.15.
[17] For more detail on EU developments, see further Annex One.

4. Alongside human rights due diligence requirements, states are using a wider range of legal and policy approaches to strengthen businesses' respect for human rights and ensure other responsible business practices are followed.

A range of measures are now used by states to impose pressure on businesses to identify and take action in relation to actual or potential adverse human rights impacts in their operations and value chains. Three types of measures are gaining prominence:

- First, economic sanctions have been imposed to address and punish association with gross human rights abuses or corruption. So-called 'Magnitsky sanctions' have developed in scope and application since they were first introduced in response to the abuse and death of Sergei Magnitsky. In general terms, they allow the use of wide-ranging measures such as asset freezes, travel bans and economic and trade restrictions on individuals and entities to deter and provide accountability for gross human rights abuses. Similar sanction regimes are now in place in the US, Canada, the EU, the UK, and most recently, Australia. These types of regimes have most recently been used to address alleged human rights abuses in the Xinjiang region, China, which has, in turn triggered the imposition of counter-measures such as blocking sanctions by China.
- Second, procurement-related requirements have been used to prohibit human trafficking and forced labour. US prohibitions in place in relation to government supply chains for some time were bolstered in 2015 to place due diligence obligations on contractors and requirements to develop compliance plans are described further in Annex One.
- Third, trade-related restrictions can be used to control the import of goods that may be connected with forced labour.[18] For example, under the Tariff Act (as amended by the Trade Facilitation and Trade Enforcement Act of 2015), the US Customs and Border Protection (CPB) issues Withhold Release Orders (WROs) to detain imports of goods when information reasonably indicates that they were made with forced labour. Though goods may be detained by the CPB, WROs do not automatically entail a ban on the import of goods – goods can be released if importers can prove that their goods are not associated with labour conditions prohibited under US law. For example, such WROs have been used to restrict the importation of disposable gloves from Malaysia where forced labour in the supply chain has been suspected. Under the US Uyghur Forced Labor Prevention Act, passed in December 2021, nearly all goods "mined, produced, or manufactured wholly or in part" in the Xinjiang region or involving persons working in the Xinjiang region in specified poverty alleviation programs cannot be imported into the US unless "clear and convincing evidence" is provided that the relevant goods were not produced through forced or indentured labour. The focus on forced labour is echoed in other types of measures taken by governments worldwide.[19] The EU may introduce similar import restrictions and the Canadian government has recently announced an intention to enact further legislation in this area.

While these measures do not expressly require corporates to carry out human rights due diligence, such legislation can carry their own enforcement risks where corporates fail to comply (e.g. in relation to non-compliance with sanctions). Also, they exert pressure on companies to understand the potential human rights risks in their supply chains and business relationships better, and thereby increase the imperative for companies to streamline their processes to include appropriate management of human rights impacts as a matter of normal business practice.

[18] See further Annex One.
[19] See further Annex One.

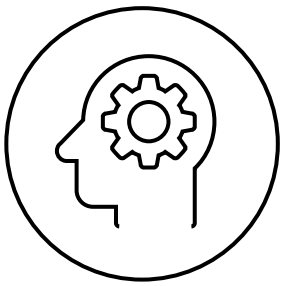
FIVE THINGS BUSINESSES NEED TO KNOW (CONTINUED)

5. Businesses need to remain focused on effective implementation of the corporate responsibility to respect under the UNGP to achieve meaningful outcomes for people.

Business should continue to focus on the UNGP which continue to reflect internationally accepted standards of business conduct in connection with human rights. The UNGP can allow businesses to address proliferating legal obligations on similar issues coherently. However, consistent, effective and meaningful implementation of international standards is key to success in this regard. Several key elements for effective implementation can be foreseen:

- First, implementation must go beyond check-box due diligence or selective inclusion of human rights issues. Different contexts will require different approaches and legislation rarely provides sufficient clarity as to what is expected of business. What is effective will differ – businesses will need to prioritise and develop tailored solutions. Recent developments signify an appreciation that different sectors offer differing opportunities and challenges and that sectoral responses to management of human rights and environmental risks can offer solutions that individual businesses cannot deliver effectively alone.
- Second, due diligence under the UNGP is a continuous process that requires business to learn by doing. Sharing practice, collaborating with others and working together are actions businesses can take to continue to improve upon and tackle challenges to meeting the responsibility to respect human rights. In reality, even the best resourced businesses cannot do everything all at once – prioritisation is a necessary reality.
- Third, as the normative framework around human rights due diligence hardens, so too will efforts to measure what is 'good enough'. Businesses will not simply need to demonstrate that they are conducting human rights due diligence, they will have to show the effectiveness of their efforts. Collectively, we must get much better at meaningfully assessing progress and effectiveness – for example through better benchmarking of corporates. This can help businesses evaluate how well they manage risks and help those holding business accountable to focus on what really matters.
- Finally, grievance mechanisms, as well as being a component of providing access to remedy for human rights-related harms that occur, are a core component of effective human rights due diligence, Mandatory due diligence legislation is beginning to specify that companies should have grievance mechanisms in place or participate in external ones, such as those established by industry associations. The spectrum of remedial options available in respect of human rights-related abuses is broad, but remedies must be effective. Research into the role of remedial mechanisms in the context of business-related human rights impacts continues. In March 2022, the Office of the High Commissioner for Human Rights' (OHCHR) Accountability and Remedy Project will launch a consultation exploring the links between human rights due diligence, accountability, and access to remedy – and further scrutiny of businesses' role in the remediation of business-related human rights harms is likely to follow.

FIVE THINGS BUSINESSES NEED TO KNOW
(CONTINUED)



CONCLUSION

As laws and regulation on human rights and environmental issues proliferate, there is a risk of fragmentation and multiplicity of due diligence and reporting requirements. Businesses will need to engage in longer-term thinking to ensure that they adequately address risks to people and to the planet in their efforts to comply with other legislative initiatives tackling adverse human rights and environmental impacts. The need for coherent corporate governance and coordination internally is key.

Achieving this may include efforts to de-silo social and environmental teams and integrating these agendas with anti-corruption and other work that intersects with ESG risk within businesses. However, drives by business to manage environmental, social and governance factors coherently should not override or ignore the different approaches called for to manage the risks posed by each factor effectively. The goals of human rights due diligence and environmental due diligence will often diverge. Responding to legislation that requires businesses to integrate the two calls for business to take a detailed approach to each issue at hand, so as not to lose sight of the purpose of such legislation: to improve businesses' approaches to preventing, mitigating and remedying the negative impacts that they have on society and the environment.

ANNEX ONE
SUMMARY OF KEY HUMAN RIGHTS-RELATED DEVELOPMENTS

KEY

- Proposed initiative
- Passed but not yet in effect
- In effect

Country and legislative initiative	Summary
EUROPEAN UNION Conflict Minerals Regulation	• Companies 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, particularly in relation to those minerals and metals that potentially originate from "*conflict-affected and high-risk areas*" unless entities can demonstrate that they purchase from refiners that comply with the regulation. • In-scope companies 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. • The EU's expectations of companies are set out in a guidance 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). • Respect for human rights is embedded in the operative provisions of the regulation, as the term "*conflict-affected and high-risk areas*" includes areas where there are widespread and systematic violations of international law, including human rights abuses. • Each EU member state shall determine the consequences of infringements of the regulation. • 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.
EUROPEAN UNION Sustainable finance-focused measures: (1) EU Taxonomy Regulation	**(1) EU Taxonomy Regulation** • The EU Taxonomy Regulation establishes an EU-wide classification system that allows investors and businesses to identify the extent to which certain economic activities can be considered to be environmentally sustainable. Certain EU entities, or non-EU asset managers offering financial products in the EU, will be required to refer to the taxonomy when making disclosures in their annual reports and other public statements. • Adherence to certain minimum human rights-related standards is embedded in this framework: compliance with the minimum safeguards set out in the UNGP, the OECD Guidelines and the International Bill of Human Rights (among other standards) is one of the criteria for an economic activity to be considered "*environmentally sustainable*" (see Article 3(c) and Article 18(1) of the Regulation).
(2) EU Sustainable Finance Disclosure Regulation	**(2) EU Sustainable Finance Disclosure Regulation (SFDR)** • The SFDR sets out harmonised rules for EU financial market participants and financial advisers on sustainability-related disclosures. It imposes disclosure obligations on all financial market participants in the EU, requiring those participants to disclose certain information in their pre-contractual documents and on their website. • Participants are required (among other things) to consider whether there have been any principal adverse impacts of investment decisions on "*sustainability factors*" and to publish a statement on their website explaining whether any such adverse impacts have occurred. Respect for human rights is one of the "*sustainability factors*".

ANNEX ONE
SUMMARY OF KEY HUMAN RIGHTS-RELATED DEVELOPMENTS (CONTINUED)

KEY

- Proposed initiative
- Passed but not yet in effect
- In effect

Country and legislative initiative	Summary

EUROPEAN UNION
 	
Non-financial Reporting Directive
	• The Non-financial Reporting Directive (NFRD) amends the Accounting Directive 2013/34/EU.
	• 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, anti-corruption and bribery, board diversity, and, importantly, respect for human rights). The statement should also be publicly available.
	• 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.
	• 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.
	• Each EU member state must set out the consequences of non-compliance in national legislation.
	• The EU member states mentioned in this briefing have implemented the NFRD into domestic legislation via the following legislative acts:
	  ◦ Austria: Sustainability and Diversity Improvement Act (2017);
	  ◦ Belgium: Law of 3 September 2017 on the publication of non-financial information and information relating to diversity by certain large companies and groups;
	  ◦ Finland: Act amending the Accounting Act (1376/2016);
	  ◦ France: Amendments to the Law on Accounting PZE No. 51 here and here;
	  ◦ Germany: Law to strengthen the non-financial reporting of companies in their management and group management reports (NFR- Directive Implementation Act);
	  ◦ The Netherlands: Decree Disclosure of Non- financial Information PbEU, 2014, L330 and Decree Disclosure Diversity Policy PbEU, 2014, L330;
	  ◦ United Kingdom (former member): The Companies, Partnerships and Groups (Accounts and Non- financial Reporting) Regulation No. 1245; and
	  ◦ Norway (EEA): Accounting Act 1998, as amended, § 3-3c.

ANNEX ONE
SUMMARY OF KEY HUMAN RIGHTS-RELATED DEVELOPMENTS (CONTINUED)

KEY

- Proposed initiative
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- In effect

Country and legislative initiative	Summary

EUROPEAN UNION
 	
Corporate Sustainability Reporting Directive (proposed law)
	• On 21 April 2021, the European Commission adopted the proposal for a Corporate Sustainability Reporting Directive (CSRD), which will expand the scope of the reporting obligations of the Accounting Directive (as amended by the NFRD). Under the current proposed text for the CSRD, member states will be required to transpose Articles 1 to 3 into national law by 1 December 2022.
	• Under the proposed directive, reporting obligations would extend to "large undertakings" irrespective of whether they are public-interest entities. "Large undertakings" are defined as undertakings meeting at least two of the following three criteria:
	  ◦ balance sheet total exceeding EUR20,000,000;
	  ◦ net turnover exceeding EUR40,000,000; and
	  ◦ average number of employees during the financial year exceeding 250.
	• In addition, the undertakings would be required to report information necessary to understand their impact on sustainability matters and how sustainability matters affect their development, performance and position.
	• The term "sustainability matters" means sustainability factors and includes environmental, social and employee matters, respect for human rights, anti-corruption and governance factors.
	• Information reported would require a description of the principal actual or potential adverse impacts connected with the undertaking's value chain, including its own operations, its products and services, its business relationships and its supply chain.
	• The proposed CSRD would also introduce sustainability reporting standards, which are to be developed in cooperation with the European Financial Reporting Advisory Group. These standards expect undertakings to provide information on a number of social factors –including respect for human rights and standards set out in the International Bill of Human Rights and other core UN human rights conventions (see Article 1(4) of the proposed CSRD).

EUROPEAN UNION Sustainable Corporate Governance Initiative (proposed law)	• On 29 April 2020, the European Commission announced that it would develop a legislative proposal by 2021 on mandatory human rights and environmental due diligence for companies, framed as part of the European Green Deal. • It is not yet clear what the scope of the legislation will be. The draft text, which has been rejected twice by the European Commission's Regulatory Scrutiny Board, is expected in early 2022. • On 10 March 2021, the European Parliament approved a resolution with recommendations to the Commission on corporate due diligence and corporate accountability. The resolution: (i) calls on the Commission to propose a negotiating mandate for the EU for the UN Treaty on Business and Human Rights process; (ii) requests that the European Commission submit a legislative proposal on mandatory supply chain due diligence for the Parliament's consideration; and (iii) incorporates the text of a proposed draft directive. It is not clear whether and to what extent the European Parliament's resolution will be incorporated into the Commission's proposed text.

ANNEX ONE
SUMMARY OF KEY HUMAN RIGHTS-RELATED DEVELOPMENTS (CONTINUED)

KEY

- Proposed initiative
- Passed but not yet in effect
- In effect

Country and legislative initiative	Summary
EUROPEAN UNION Batteries Regulation (proposed law)	• On 10 December 2020, the EU Commission proposed the Batteries Regulation, repealing Directive 2006/66/EC and amending Regulation (EU) No 2019/1020. • The proposed Regulation will apply to all batteries, except for those in equipment connected with the protection of member states' essential security interests and equipment designed to be sent into space. It also imposes corresponding obligations on 'economic operators', defined as manufacturers, authorised representatives, importers, distributors or fulfilment service providers who is subject to obligations in relation to manufacturing batteries, making batteries available on the market, placing them on the market or putting them into service. • Batteries shall only be placed on the market or put into service if they meet (i) certain sustainability and safety requirements and (ii) certain labelling and information requirements. There is also an overarching provision that batteries shall not present a risk to human health, safety, property or the environment. • In addition, economic operators who place rechargeable batteries and certain electric-vehicle batteries on the market are subject to supply chain due diligence obligations in relation to the raw materials required for battery manufacturing. According to Annex X, these raw materials include cobalt, natural graphite, lithium, nickel and chemical compounds based on such raw materials. Specifically, economic operators are required to identify and assess adverse impacts associated with specified social and environmental risks (which include human rights), implement a strategy to respond to such risks, obtain third-party verification of their supply chain due diligence policies and report on their supply chain due diligence policies. • Notably, the proposed Regulation refers to the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, OECD Due Diligence Guidance for Responsible Business Conduct and OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas in the context of risk-based due diligence policies, though the proposed Regulation does not refer to the UNGP or OECD Guidelines. • In addition, the proposed Regulation restricts the use of hazardous substances in batteries and sets out requirements in relation to the end-of-life management of batteries. • The proposed Regulation provides that member states are to lay down the rules for any penalties.

ANNEX ONE
SUMMARY OF KEY HUMAN RIGHTS-RELATED DEVELOPMENTS (CONTINUED)

KEY

- Proposed initiative
- Passed but not yet in effect
- In effect

Country and legislative initiative	Summary
EUROPE	
AUSTRIA Bills for a Social Responsibility Act (324 / A) and (579 / A) (proposed law)	• Two bills have been proposed for a Social Responsibility Act (324 / A – 2018) and (579 / A – 2020), which are designed to prevent the placing on the market and sale of products that violate the prohibition of forced and child labour along the production and supply chains. Bill 579 / A was referred to the Committee on Employment and Social Affairs on 29 May 2020. • If adopted, the Act would apply to all importers and dealers with a registered office, head office, main branch or branch in Austria, provided that they exceed at least two of the size criteria specified in Section 22(1) of the Commercial Code (UGB). • The Act would impose a duty of care on importers to whom the Act applies that comprises two elements: (a) a risk analysis as to violations of the prohibition of forced and child labour along the production and supply chain, and (b) follow-up measures – namely, appropriate preventative measures that will need to be carried out if a risk cannot be ruled out following the risk analysis. Dealers are required to reveal the name of the entity which delivered the relevant product within four weeks upon request by an institution listed in Section 29(1) of the Consumer Protection Act. • An injunction may be sought by an institution listed in Section 29(1) of the Consumer Protection Act against any importer or dealer who contravenes their obligations under the Act.
AUSTRIA Supply Chain Law (*Lieferkettengesetz*) (proposed law)	• On 2 March 2021, the Social Democratic Party (SPÖ) introduced a motion for a resolution to Parliament calling for the development of a Supply Chain Law (*Lieferkettengesetz*), which would require Austrian companies to undertake mandatory human rights and environmental due diligence. • The proposed law is broad: under the current proposed terms, it would apply to all companies that place products on the market or offer services in Austria and achieve a minimum annual turnover (which has yet to be defined). In addition, the due diligence obligations would apply across a business's entire supply chain (own company, subsidiaries, subcontractors and suppliers) and apply across all sectors. • Penalties and sanctions would be introduced for violations of human rights and environmental due diligence obligations. These would include fines, the confiscation of raw materials and products, exclusion from public procurement, and civil and criminal consequences in the event of serious offences. Victims of human rights abuses would also be guaranteed access to the Austrian courts. • In its 15th session on 21 October 2021, the environmental committee deferred the deliberation of the proposed law.

ANNEX ONE
SUMMARY OF KEY HUMAN RIGHTS-RELATED DEVELOPMENTS (CONTINUED)

KEY

- Proposed initiative
- Passed but not yet in effect
- In effect

Country and legislative initiative	Summary
EUROPE (continued)	
BELGIUM Duty of vigilance and remediation in supply chains proposal (proposed law)	• On 22 April 2021, the Belgian Federal Parliament voted to consider a legal proposal that would create a duty of vigilance and duty of responsibility (i.e. duty of remediation in case of breach) for companies. • If adopted, the proposal would impose a duty of care on all companies established or active in Belgium, whereby these companies would have to take into account human, environmental and employment rights in their business operations. • Companies within scope would also be required to identify, prevent, mitigate, monitor and remedy human rights, labour rights and environmental impacts throughout their 'value chain', i.e. all the subsidiaries, subcontractors, customers and investors with which they maintain a commercial relationship. • Large companies (those employing more than 250 people, and with an annual turnover of over EUR50 million or more than EUR43 million on their balance sheet) and companies operating in high-risk sectors would be required to produce an 'alertness plan' which would include a risk estimate of their activities and their proposed strategy to deal with any such risks. • Victims of a breach of the duty of care would have the possibility to bring a collective action against the company, invoking its civil liability. To the extent the company had sufficient means to exercise control over its commercial partners and their compliance with the duty of care, it could also be held liable for all damage caused by an entity in the value chain. • The proposal also provides an option for the government to monitor compliance with the act (violations of which will invoke severe penalties). • See the Clifford Chance briefing here. • The draft proposal is currently being reworked by the Parliament following comments made by the Council of State (a judicial body that also acts as legal advisor to the legislator) in September 2021. The Council of State recommended, among others, to clarify the scope of the obligations imposed to companies in the course of their activities and across their 'value chain', as well as the penalty system.
FINLAND Proposal for a Corporate Social Responsibility Act (proposed law)	• In June 2019, the Finnish Government committed to developing national mandatory human rights due diligence legislation in accordance with the UNGP and the OECD Guidelines, as well as promoting EU-level legislation, as part of a formal policy programme. • According to the Finnish Government's judicial analysis, the proposed Act could include limitations on the scope of application, such that the Act only applies to companies of a specific size or operating in different sectors or geographical areas (although no clear steers on this have yet been provided). • Due diligence extending throughout the entire supply chain is expected to be limited by the appropriateness and proportionality of the requirement: companies would not be required to show the same level of awareness of the impacts of their operations or to take uniform action in all parts of their supply chains. • Administrative or criminal sanctions could be imposed for non-compliance with the due diligence obligation, in addition to liability for damages being imposed on companies that fail to exercise due diligence. • A working group to support the drafting of a regulation on responsible business conduct began work on 10 March 2021.

ANNEX ONE
SUMMARY OF KEY HUMAN RIGHTS-RELATED DEVELOPMENTS (CONTINUED)

KEY

- Proposed initiative
- Passed but not yet in effect
- In effect

Country and legislative initiative	Summary
EUROPE (continued)	
FRANCE Law 2017-399 related to Duty of Vigilance of Parent Companies and Commissioning Companies (effective March 2017)	• 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. • 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 anymitigation action taken. The plan should cover the business, its subsidiaries, and those suppliers and subcontractors with which the company has an established business relationship. • Third parties may apply for an injunction to require a company to comply with the law and implement the "vigilance" plan, and to seek damages where the non-compliance has caused loss. In this respect, there has been a debate on jurisdiction (civil courts vs commercial courts) that has been solved by the French Supreme Court in a recent decision, ruling in favour of civil courts (Cass. com., 15 Dec. 2021, No. 21-11.882). • On top of this, Law 2021-1729 of 22 December 2021 on confidence in the judicial system includes a provision which provides that the French civil court of Paris would have jurisdiction to hear matters relating to the Duty of Vigilance law. • See further, Clifford Chance briefing.
GERMANY Corporate Due Diligence in Supply Chains Law (effective from 2023-2024)	• From 2023, the law will apply to companies with 3,000 or more employees in Germany; from 2024, the scope will be extended to companies with 1,000 or more employees in Germany. • In-scope companies will be required to conduct human rights and environmental due diligence in their supply chains. Companies must carry out a risk analysis of own operations and direct suppliers to identify risks to people and the environment and to prevent, end or mitigate harms. Companies must extend their due diligence to indirect suppliers where they gain "*substantiated knowledge*" of a potential human rights harm. Where harm occurs, affected people can make a complaint directly to the Federal Office for Economic Affairs and Export Control (BAFA), which holds regulatory powers of investigation. • BAFA can impose fines for non-adherence, based on the company's turnover and the severity of the breach. In the event of significant violations of the Supply Chain Act involving fines of at least EUR175,000, exclusion from public procurement contracts is envisaged. • See further, Clifford Chance briefing

ANNEX ONE
SUMMARY OF KEY HUMAN RIGHTS-RELATED DEVELOPMENTS (CONTINUED)

KEY

- Proposed initiative
- Passed but not yet in effect
- In effect

Country and legislative initiative	Summary
EUROPE (continued)	
THE NETHERLANDS Child Labour Due Diligence Act 2019 (effective date to be confirmed)	• 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 that they have conducted due diligence in the supply chain in order to prevent child labour by submitting a publicly available disclosure statement. These statements are to be published in a central register. • 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 draft and implement a plan of action in these cases. A reasonable suspicion exists when there is a clear indication that goods and/or services came about with the use of child labour. The obligation to investigate refers to sources that are reasonably known to and can readily be consulted by the company. In case of an indication of child labour, there is no expressed provision that the company is obliged to terminate the business relationship with a supplier. The action plan in place needs to avoid the use of that labour in the future. It is anticipated that guidance will follow that refers to the UNGP. • Complaints regarding non-compliance may be submitted to the company. Failing correction, the regulator is able to issue an order to require companies to comply. As for now, it is unclear which authority will be appointed as the public regulator. • After the imposition of a binding instruction by the regulator, non-compliance with the obligation to submit the statement can result in an administrative fine of up to EUR4,350 and a failure to exercise due diligence or implement a plan under the Act can result in an administrative fine of up to EUR870,000 or up to 10% of the company's turnover in the previous financial year. • As the Dutch Minister for Foreign Trade and Cooperation indicated that the Government prefers to incorporate the child labour due diligence obligations into new broader human rights and environmental due diligence legislation, it is expected that the Child Labour Due Diligence Act will not come in effect in the short term.
THE NETHERLANDS Responsible and Sustainable International Business Conduct Bill (proposed law)	• If adopted, a statutory duty of care would be imposed on all Dutch companies engaged in foreign trade and large foreign companies (which is the case if the company exceeds at least two of the three following criteria on its balance sheet date: (1) balance sheet total: EUR20 million; (2) net revenue: EUR40 million; or (3) average number of employees during the financial year: 250 conducting activities in the Netherlands or selling products on the Dutch market. • Large companies would be obliged to conduct due diligence. A duty of care would arise if a company knows or reasonably can suspect that its activities and those throughout the production chain can have negative impacts on human rights, labour rights or the environment outside the Netherlands. • The proposal would require large companies (i) to take all measures that can reasonably be requested from it to prevent such impacts or (ii) where impossible, mitigate or reverse these as much as possible, and, where necessary, remedy such impacts, and (iii) where the impacts cannot sufficiently be mitigated, to terminate the activities insofar as this can reasonably be requested from the company.

ANNEX ONE
SUMMARY OF KEY HUMAN RIGHTS-RELATED DEVELOPMENTS (CONTINUED)

KEY

- Proposed initiative
- Passed but not yet in effect
- In effect

Country and legislative initiative	Summary
EUROPE (continued)	
THE NETHERLANDS Responsible and Sustainable International Business Conduct Bill (proposed law) (continued)	• The Bill contains a non-exhaustive list of examples specifying when human rights, labour rights or the environment are negatively affected. This is the case if the value chain involves for example a limitation on the freedom of association and collective bargaining, discrimination, forced labour, child labour, unsafe labour conditions, slavery and environmental damage. • To this end, large companies would be obliged to conduct due diligence in order to identify the actual and potential negative impacts of the business' own activities and its business relationships' activities and monitor and communicate the measures taken and the results achieved, and remediate impacts of its own activities, contribute to remediating the actual impacts to which it contributed and by using its leverage to prevent and mitigate the (remaining) impacts to the extent possible. In short, the due diligence obligation consists of six elements: (1) having a due diligence policy in place; (2) a risk assessment of the negative impacts of the business' own activities as well as those of the business relationships; (3) an action plan and the termination of its own activities that cause or contribute to negative impacts; (4) monitoring of implementation and effectiveness; (5) an annual reporting obligation and (6) having a remediation mechanism in place and offering remediation or contributing to it. • A regulator would be established to supervise compliance with the Act, who can issue financial sanctions, including administrative fines, for non-compliance with the due diligence obligation. Receiving two financial sanctions in a five year period would be a criminal offence, punishable by additional financial sanctions and/or a prison sentence. • If enacted, the new Act would replace the Child Labour Due Diligence Act (see above), which has been passed but is not yet in effect. • In November 2021 the Netherlands published a non-paper, in which it stressed the importance of effective and ambitious mandatory human rights and environmental due diligence legislation at EU level and set out its views on necessary building blocks. These building blocks address the scope of legislation, the requirements it should impose, as well as issues relating to enforcement. • On 2 December 2021, the Dutch Minister for Foreign Trade and Cooperation announced in the Dutch Parliament that he would bring forward national mandatory human rights, environment and climate due diligence legislation, following the delay of the European Union's Sustainable Corporate Governance initiative. The minister indicated that it would use the building blocks as published in November 2021 and the proposed Responsible and Sustainable International Business Conduct Bill as set out above as a starting point. By doing so, the Netherlands is increasing its pressure on the European Commission to push forward its proposal for mandatory human rights and environmental due diligence. • In its recently published coalition agreement, the new government reconfirms that it will promote effective and ambitious due diligence legislation at EU level, but at the same time aims to introduce national legislation in this respect, taking into account a level playing field with neighbouring countries and the implementation of possible EU legislation.

ANNEX ONE
SUMMARY OF KEY HUMAN RIGHTS-RELATED DEVELOPMENTS (CONTINUED)

KEY

- Proposed initiative
- Passed but not yet in effect
- In effect

Country and legislative initiative	Summary
EUROPE (continued)	
NORWAY Transparency Act (adopted on 10 June 2021, effective 1 July 2022)	• The law applies to all Norwegian-domiciled "larger enterprises" offering goods and services in or outside Norway and to foreign "larger enterprises" offering goods and services in Norway and who are taxable in the jurisdiction. • "Larger enterprises" are public limited companies, listed companies and other accounting entities, in addition to companies which meet at least two out of the following three criteria: (a) over NOK70 million in sales revenue, (b) over NOK35 million in balance sheet total, and/or (c) have an average number of full-time employees above 50 in the financial year. • In-scope enterprises will be required to carry out due diligence in line with the UNGP and OECD Guidelines in order to identify, prevent and mitigate possible adverse impacts on fundamental human rights and decent work. Such companies will also be required to report annually on the due diligence results, including any measures taken by those companies to mitigate severe risk or harm and remedy adverse impacts. • The proposed legislation also includes a right to information, which entitles any person to information about how an in-scope enterprise conducts itself with regard to fundamental human rights and decent work. 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. • The Consumer Authority and Market Council will be responsible for the law's implementation and enforcement. Enforcement may include fines and/or injunctions for non-compliance with due diligence and disclosure obligations under the Act. The law does not provide any right for victims to seek remedy in court or impose any civil liability on companies for harms caused. • The Consumer Authority will provide guidance to enterprises on the implementation of the Act.
SWITZERLAND Indirect Counter-Proposal by the Swiss Parliament to the Responsible Business Initiative	• Under the Indirect Counter-Proposal, the requirement to issue an annual report on non- financial matters will apply to large Swiss "public interest companies" only. These include publicly traded companies and regulated entities supervised by the Swiss Financial Market Supervisory Authority (FINMA), where they have at least 500 full-time employees and either a balance sheet sum of CHF20 million or turnover of CHF40 million. Due diligence and reporting requirements apply to all business with their registered office, headquarters or principle place of business in Switzerland where those businesses either circulate or process "conflict minerals" or offer goods or services in relation to which there is a reasonable suspicion of child labour. • The annual non-financial report will need to include information to help understand the relevant company's approach and impact on the environment, social and employment-related matters, respect for human rights and anti-corruption. • Companies falling within the scope of the due diligence and reporting requirement are required to put into place a management system which is in line with the company's supply chain policy, and which is required to be communicated to suppliers and the public. An identification of actual and potential risk of adverse impacts in the supply chain also needs to be conducted, with a risk management plan needing to be produced based on any risks identified. Conflict minerals importers will need to engage a third-party auditor to monitor compliance with these obligations, with all in-scope companies also required to issue an annual compliance report on these obligations.

ANNEX ONE
SUMMARY OF KEY HUMAN RIGHTS-RELATED DEVELOPMENTS (CONTINUED)

KEY

- Proposed initiative
- Passed but not yet in effect
- In effect

Country and legislative initiative	Summary
EUROPE (continued)	
SWITZERLAND Indirect Counter-Proposal by the Swiss Parliament to the Responsible Business Initiative (continued)	• The Indirect Counter-Proposal includes criminal sanctions for non-compliance with reporting duties, as well as for making false statements associated with them. These offences are punishable by fines. • The Federal Council confirmed the final draft of the Ordinance on Due Diligence and Transparency in the Sectors of Minerals and Metals from Conflict Areas and Child Labour on 3 December 2021. The Ordinance clarifies some of the open questions about the scope of the Counter-Proposal's due diligence obligations. It sets out the threshold for the import volumes to which due diligence and reporting obligations will apply and also provides detail on the exemptions for small- and medium-sized enterprises.
UNITED KINGDOM UK Modern Slavery Act 2015	• Entities which have an annual turnover of GBP36 million or more, that carry on a business in the UK, and supply goods or services must publish an annual statement signed by a director (or equivalent) on their website in a prominent place (or make available on request if no website). • 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. • The Act is supported by statutory guidance which refers to the UK government's expectation that businesses respect human rights in accordance with the UNGP. Guidance on reporting during the COVID-19 pandemic was recently issued. • In its response to the Independent Review of the Modern Slavery Act 2015, the UK government recommended mandatory reporting criteria, the establishment of a UK government online registry of modern slavery statements, and additional sanctions for non-compliance, including warnings, fines, and director disqualification. • The government has now made commitments to strengthen the provisions of the Act. In September 2020, it published a Response to the Transparency in Supply Chains Consultation, in which it committed to introduce new measures to strengthen the Modern Slavery Act. The proposed measures include mandating areas that statements must cover, introducing a requirement to publish statements on a new digital government reporting service, introducing a single reporting deadline, and introducing a requirement for public bodies with a budget threshold of GBP36 million or more to also report under section 54. • In addition, on 12 January 2021, the UK government announced its intention to introduce financial penalties for organisations which fail to meet their annual slavery reporting obligations under the Modern Slavery Act (although these fines have not yet been specified). • The UK government is facing pressure to strengthen the Act in line with these commitments, including recently from the BEIS Committee. • See further, Clifford Chance briefing.

ANNEX ONE
SUMMARY OF KEY HUMAN RIGHTS-RELATED DEVELOPMENTS (CONTINUED)

KEY

- Proposed initiative
- Passed but not yet in effect
- In effect

Country and legislative initiative	Summary
THE AMERICAS	
CANADA An Act to enact the Modern Slavery Act and to amend the Customs Tariff (Bill S-216) (proposed law)	• If passed, the Act would apply to any "entity" that: (a) produces or sells goods in Canada or elsewhere; (b) imports into Canada goods produced outside Canada; or (c) controls an entity engaged in any activity described in (a) or (b). An "entity" for the purposes of the draft Act is a corporation, trust, partnership or other unincorporated organisation that is listed on a stock exchange in Canada or meets at least two of the following three conditions for one of its two most recent financial years: (i) has at least CAD20 million in assets; (ii) generates at least CAD40 million in revenue; (iii) employs an average of at least 250 employees. • In-scope entities would be required (within 180 days of the end of the financial year) to provide a report that sets out the steps that the company has taken during that year to prevent and reduce the risk that forced labour or child labour is used at any step of the production of goods in Canada or elsewhere by the entity or of goods imported into Canada by the entity. In addition, the Act would allow a designated person to enter any place to examine documents or equipment in connection with the Act. • Certain penalties would apply, including a fine of not more than CAD250,000 if the entity fails its reporting obligation or if any person/entity makes any false or misleading statement. These penalties can also apply to officers, directors and agents of the company in question, where the relevant individual was involved (be that through direct authorisation or acquiescence) in the commission of the offence. • The Bill is very similar to Bill S-211 for An Act to enact the Modern Slavery Act and to amend the Customs Tariff (which did not complete its second reading in 2020), but has a few key changes, including expanded definitions of forced labour and child labour; the requirement for the Minister of Public Safety and Emergency Preparedness to maintain a public register of modern slavery reports; and a 5-year review period of the legislation. The Bill is also similar to Bill S-211 for An Act to enact the Fighting Against Forced Labour and Child Labour in Supply Chains Act and to amend the Customs Tariff (which completed its second reading on 14 December 2021). The latter introduces reporting obligations for government institutions and sets out more detailed provisions in relation to the annual report, including a requirement to provide information on the entity's supply chain, on due diligence processes in relation to forced labour and child labour and on the entity's effectiveness in ensuring that forced labour and child labour are not being used in its business and supply chains. • Bill S-216 passed its vote at second reading on 30 March 2021 by the Canadian Senate and has now been sent to the Standing Senate Committee on Banking, Trade and Commerce for further review.

ANNEX ONE
SUMMARY OF KEY HUMAN RIGHTS-RELATED DEVELOPMENTS (CONTINUED)

KEY

- Proposed initiative
- Passed but not yet in effect
- In effect

Country and legislative initiative	Summary
THE AMERICAS (continued)	
MEXICO The General Law of Corporate Responsibility and Corporate Due Diligence Initiative (proposed law)	• The initiative was proposed on 6 October 2020 by Senator Germán Martínez Cázares of the governing MORENA party and is currently under discussion by the Mexican Senate. • The proposed law would apply to national and foreign companies operating in Mexico, and Mexican companies operating abroad. It would be applicable to micro, small, medium-sized and large companies according to the size, function and circumstances of their operation or business. • In-scope companies would be required to establish a corporate social responsibility programme, including establishing policies and procedures to ensure they respect human rights. In order to meet this requirement, companies would need to have in place a policy and corporate human rights commitment, a human rights due diligence mechanism, and processes for remediating human rights impacts to which they have caused or contributed. • In addition, the proposed law would impose a due diligence obligation on in-scope companies which would extend to a business's own operations, supply chain and business relationships. Large companies would be required to create an office to oversee the development, implementation and monitoring of responsible business conduct, including due diligence. • Companies caught by the law could be held liable where their activities knowingly contribute directly or indirectly to human rights abuses; and/or where the activities of any entity directly linked to the operations, products or services of the company result in human rights abuses. The draft law also envisages sanctions for companies linked to human rights abuses and/or that do not conduct adequate due diligence.
UNITED STATES US Tariff Act of 1930 (as amended by the Trade Facilitation and Trade Enforcement Act 2015)	• Section 307 of the Act prohibits the importation of goods and merchandise mined, produced or manufactured wholly or in part in any foreign country by convict labour, forced labour and/or indentured labour, including child labour (together "*forced labour*"). • If information "*reasonably but not conclusively indicates*" that the items being imported were produced by forced labour, the Commissioner of U.S. Customs and Border Protection (CBP) may issue a Withhold Release Order (WRO). Where the Commissioner is provided with information "*sufficient to make a determination*" that items were produced by forced labour, it will publish a formal finding to that effect in the Customs Bulletin and in the Federal Register. Once issued, WROs and findings are active until formally revoked by the Commissioner. • Shipments of items subject to a WRO will be detained by the CBP. The importer can choose to re-export the detained shipment, or submit information to CBP which demonstrates that the goods were not produced by forced labour. Goods subject to a finding shall be excluded from entry to the United States or seized, unless the importer can establish by satisfactory evidencethat the merchandise is admissible. • In December 2021, the US Congress passed and the President signed the Uyghur Forced Labor Prevention Act, which establishes a rebuttable presumption that goods from the Xinjiang Region of China were made with forced labor and therefore barred from import into the United States. The presumption will go into effect on June 21, 2022 and can be overcome by proving by clear and convincing evidence that the goods in question were not made using forced labor.

ANNEX ONE
SUMMARY OF KEY HUMAN RIGHTS-RELATED DEVELOPMENTS (CONTINUED)

KEY

- Proposed initiative
- Passed but not yet in effect
- In effect

Country and legislative initiative	Summary
THE AMERICAS (continued)	
UNITED STATES Federal Acquisition Regulation Final Rule: Ending Trafficking in Persons	• Prohibitions in the Federal Acquisition Regulation (FAR) against trafficking of persons in federal contracts were strengthened in 2015 by way of amendments to FAR Rules 9, 22, 42 and 52. • 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. • The contractor must procure the same certificates and plans from their subcontractors where the thresholds apply. • Penalties for non-compliance range from removal of employees from projects to suspension or disbarment of the contractor. • In December 2016, the Office of Management and Budget released a draft memorandum regarding "Anti-Trafficking Risk Management Best Practices & Mitigation Considerations" which may be taken into account by agencies applying the FAR.
UNITED STATES Dodd-Frank Act Final Rule 1502	• 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. • 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. • 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. • 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. • Interpretive guidance supports the Final Rule. • See further, Clifford Chance briefing.

ANNEX ONE
SUMMARY OF KEY HUMAN RIGHTS-RELATED DEVELOPMENTS (CONTINUED)

KEY

- Proposed initiative
- Passed but not yet in effect
- In effect

Country and legislative initiative	Summary
THE AMERICAS (continued)	
CALIFORNIA, UNITED STATES California Transparency in Supply Chains Act of 2010	• 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). • The statement must disclose efforts to eradicate slavery and human trafficking from their direct supply chain for tangible goods offered for sale. • 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. • The Attorney General may seek an injunction to enforce the reporting requirement. • The expectations of the Department of Justice of the State of California are set out in non-binding guidance.

ANNEX ONE
SUMMARY OF KEY HUMAN RIGHTS-RELATED DEVELOPMENTS (CONTINUED)

KEY

- Proposed initiative
- Passed but not yet in effect
- In effect

Country and legislative initiative	Summary
ASIA-PACIFIC	
AUSTRALIA Modern Slavery Act 2018 (Cth)	• 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 their operations and supply chains and in those of any entities owned and controlled by them. • The statement must provide information regarding the identity of the reporting entity, its operations and supply chains, risks of modern slavery identified, details of risk management practices and details of how the effectiveness of these practices is assessed. • 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. • There are no financial penalties for failing to prepare a statement. However, the Minister for Home Affairs may request an explanation of the entity's failure to comply or take remedial action. The position on penalties may be reviewed after a 3-year period. Entities not subject to mandatory reporting may volunteer to comply. • The Act's accompanying explanatory memorandum explains the mandatory content of the statement, and draws on terminology and concepts set out in the UNGP. • The Australian Government has also published Guidance for Reporting Entities which is complimented by supplementary guidance material, including guidance regarding reporting during the COVID-19 pandemic. • See further, Clifford Chance briefing.
NEW SOUTH WALES, AUSTRALIA New South Wales Modern Slavery Act 2018 (in force 1 January 2022)	• Following revision due to conflict with the Commonwealth Modern Slavery Act, the NSW Modern Slavery Act does not impose supply chain reporting obligations on commercial organisations. • However, the Act establishes an Anti-Slavery Commissioner and Modern Slavery Committee, and the Commissioner has power to develop and publish codes of practice for the purpose of providing guidance to commercial entities in identifying modern slavery taking place within their supply chains and steps that can be taken to remediate or monitor identified risks. The Commissioner may also promote public awareness of and provide advice on steps that can be taken by organisations to remediate or monitor risks of modern slavery taking place in their supply chains, including encouraging organisations to develop their capacity to avoid such risks.

ANNEX ONE
SUMMARY OF KEY HUMAN RIGHTS-RELATED DEVELOPMENTS (CONTINUED)

KEY

- Proposed initiative
- Passed but not yet in effect
- In effect

Country and legislative initiative	Summary
ASIA-PACIFIC (continued)	
WESTERN AUSTRALIA, AUSTRALIA Procurement Act 2020 (WA) (in force 25 June 2021) and Procurement (Debarment of Suppliers) Regulations 2021 (WA) (in force 1 January 2022)	• Introduced as part of a revision of Western Australia's public procurement arrangements, the debarment regime will operate to preclude suppliers who engage in unlawful and irresponsible business practices from seeking or being awarded a contract to supply goods, services, community services and works to the Western Australian Government. • The regime identifies 3 categories of debarment conduct based on seriousness, each with a different duration of debarment. Category A debarment conduct is the most serious, and includes contravention of specific legislation relating to (amongst others) human trafficking, unlawful employment under the Migration Act 1958 (Cth) and grave non-compliance with occupational health and safety legislation. Category B conduct includes non-compliance with the modern slavery reporting requirements of the Modern Slavery Act 2018 (Cth) and other breaches of industrial legislation, awards and agreements, workers compensation and occupational safety and health legislation. The third category, 'other debarment conduct', relates to other conduct which would be likely to have a material adverse effect on the integrity of procurement or reputation of the state. The regime also applies to similar conduct which takes place in other jurisdictions outside of Australia. • A maximum period of debarment of 5 years applies to Category A conduct, while a 2-year debarment applies to Category B or other debarment conduct. Before a supplier is debarred, the Director-General of the Department of Finance (WA) must issue a show cause notice and provide an opportunity for the supplier to make submissions. The Director-General must be satisfied that the supplier has been convicted of a listed offence, or that the conduct occurred and the supplier has not denied the conduct, and that the debarment is in the public interest. Affiliates of a supplier (including overseas entities) can also be debarred if it is in the public interest. The names of debarred suppliers will be published on a public register. • The Director-General may enter into an undertaking with a supplier to remedy or mitigate the causes of the conduct for which the supplier has been or could be debarred, in which case the debarment may be set aside. • The Western Australian government has published a Guide for suppliers, a Guide for Western Australian Government agencies and a list of Frequently Asked Questions.

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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.

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CONTACTS

THE GLOBAL BUSINESS INITIATIVE ON HUMAN RIGHTS (GBI)

BENN HOGAN
DEPUTY DIRECTOR

T +353 86 165 6331
E benn.hogan @gbihr.org

CATIE SHAVIN
DIRECTOR

T +44 79 0260 0203
E catie.shavin @gbihr.org

SOPHIA AREIAS
DIRECTOR

T +34 658 436 949
E sophia.areias @gbihr.org

ROSIE BEACOCK
RESEARCH AND ANALYST

T +44 7784 117 195
E rosie.beacock @gbihr.org

CLIFFORD CHANCE

RAE LINDSAY
PARTNER

T +44 20 7006 8622
E rae.lindsay @cliffordchance.com

DR THOMAS VOLAND
PARTNER

T +49 211 4355 5642
E thomas.voland @cliffordchance.com

ANNA KIRKPATRICK
SENIOR ASSOCIATE

T +44 20 7006 2069
E anna.kirkpatrick @cliffordchance.com

OLIVIA JOHNSON
ASSOCIATE

T +44 20 7006 5107
E olivia.johnson @cliffordchance.com

LAURA DIETZ
ASSOCIATE

T +49 211 4355 5107
E lauraIsabell.dietz @cliffordchance.com

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