The International Business and Human Rights Agenda – The Shifting Landscape for Producers

Freshfields Bruckhaus Deringer LLP

International and national authorities are making increasing use of the UN Guiding Principles on Business and Human Rights (the Guiding Principles) to develop revised standards for human rights compliance, legal reporting and due diligence. The Guiding Principles – and these developments – mean that human rights are no longer just a corporate social responsibility issue but are a matter of legal compliance. All companies, including those operating in the industrial and consumer goods sectors, need to be aware of these changes. In implementing the Guiding Principles, companies should also appreciate that implementation has the potential to significantly increase human rights legal compliance risk. In particular, the scope of emerging duties, which extend to the whole of a producer’s supply chain, coupled with legal developments in the law of tort, may lead to the imposition of parental liability for non-compliance with human rights going forward.

Introduction to the UN Guiding Principles on Business and Human Rights

The UN Guiding Principles on Business and Human Rights were endorsed by the UN Human Rights Council on 16 June 2011. Based on Professor John Ruggie’s “Protect, Respect and Remedy” framework, the Guiding Principles in practice establish for companies a detailed “global standard of expected conduct” in relation to human rights. It is clear that, as a minimum, this standard requires compliance with all internationally recognised human rights (to include, for example, the right to freedom of association, the right to just and favourable conditions of work, the prohibition of inhuman and degrading treatment, and the protection of children from economic and social exploitation).

Companies need to “know and show” that they respect human rights by having the policies and processes elaborated in the Guiding Principles in place. Many companies are doing so. For example, Microsoft, Vodafone, Hitachi, H&M and Starbucks have adopted human rights policies or statements to emphasise their commitment to respect human rights, which are based on or aligned with the Guiding Principles and have integrated human rights concerns with their strategic decision-making.

Several features of the Guiding Principles are particularly relevant to those operating in the consumer goods sector:

- Companies must commit to respect human rights through a publicly available statement of policy approved at the most senior level. This needs to be reflected in operational policies and procedures and embedded throughout the company.
- Companies are to carry out ongoing human rights due diligence in order to identify, mitigate and prevent adverse human rights impacts. This includes conducting human rights impact assessments, acting upon the findings of those assessments and tracking the effectiveness of the actions taken.
- Companies need to take responsibility for their supply chain. Where an adverse impact on human rights is not caused by the company itself but an entity within its supply chain, leverage over the entity concerned should be used to avoid or mitigate the adverse impact. Where the company lacks leverage, it should consider ending the supply chain relationship.
- Companies need to communicate externally how they have addressed any adverse impact on human rights. Where companies are operating in circumstances that pose a severe risk, communications should be reported formally and more frequently.
- Where companies identify that they have caused or contributed to an adverse impact on human rights, they need to provide for remediation.

The Guiding Principles therefore require all companies to place respect for human rights at the heart of their operational agenda. Moreover, it is increasingly clear that the suite of obligations imposed by the Guiding Principles are being used to influence and generate further sources of obligations.

From Voluntary Principles to (Soft?) Regulation and Beyond

While the Guiding Principles carefully state they do not impose new legal obligations on business, it would be wrong to conclude that (non) compliance has only reputational consequences. A number of international bodies and national governments have taken or are taking specific measures to implement (explicitly or implicitly) the Guiding Principles, both through so-called “soft regulation” and also through harder-edged legal obligations.

Soft regulation: The Guiding Principles as a reference point for revised international standards and governmental action

The Guiding Principles are becoming increasingly influential in the search for revised international standards for business. The OECD Guidelines for Multinational Enterprises (the OECD Guidelines) were updated in 2011 to include a new chapter (Chapter IV) on human rights. These changes to the OECD Guidelines expressly draw upon and are consistent with the Guiding Principles. While the OECD Guidelines are themselves not legally enforceable, governments that
have approved them are required to establish a “National Contact Point” to encourage promotion and effective implementation at a national level. National Contact Points are required to provide a complaints process to deal with allegations that the OECD Guidelines have been breached.13 The UK National Contact Point is very busy, currently having 14 cases before it, and its activities are a focus of the UK’s National Action Plan for the implementation of the Guiding Principles.

- The most recent iterations of the Equator Principles and UN Global Compact both draw on the Guiding Principles,14 the text accompanying the Global Compact noting that the Guiding Principles are the “authoritative global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity”.

Increasingly, therefore, the Guiding Principles are the “tool of choice” for managing human rights risks in the business context. This is true in both the international and national contexts. In the international context, for instance, following the collapse of the Rana Plaza garment factory in Bangladesh on 24 April 2013, the UN Working Group on Business and Human Rights panel discussion emphasised how effective implementation of the Guiding Principles by companies could help prevent and address supply chain risks. At the national and regional level, governmental action is being used to drive the implementation of the Guiding Principles. The European Commission has published guides to help companies implement the Guiding Principles15 and, in a very significant move, has required all EU Member States to publish National Action Plans on implementation, of which the UK Government’s is the first.16

“Hard law” requirements for human rights due diligence and reporting

As well as influencing the formulation of “soft” regulation, there is an increasing trend towards implementing “hard law” requirements for human rights due diligence and reporting that embody elements of the Guiding Principles.

In Europe:

- The UK National Action Plan makes it clear that the UK Government expects UK companies to comply with and respect internationally recognised human rights wherever they operate, and to adopt appropriate due diligence policies to identify, prevent and mitigate human rights risks. As stated in the ministerial foreword, the action plan “embodies [the UK’s] commitment to protect human rights by helping UK companies understand and manage human rights. It sends a clear message of our expectation about business behaviour, both in the UK and overseas”.17 As a first step to hard law implementation of the Guiding Principles (and announced on the same day as the UK National Action Plan), the UK has recently amended the disclosure obligations of companies listed on various stock exchanges, including the London Stock Exchange, the New York Stock Exchange and NASDAQ. Such companies must provide a strategic report that discloses, to the extent necessary for an understanding of the business, information about human rights (including information on any human rights policy and its effectiveness).18

- Denmark has made it compulsory for large companies (i.e. those that exceed specified asset, turnover or employee number thresholds) to explicitly report on their policies to respect human rights in their annual reports. If a company has no established human rights policy this must be made evident in the annual report.19

- On 16 April 2013, the European Commission published a proposal to amend its Accounting Directives to require large companies20 to include a non-financial statement in their annual report containing information relating to their respect for human rights.21 Companies would have to provide information on their human rights policy or an explanation as to why there is no human rights policy. This proposal is currently being considered by the European Council and Parliament.

Similarly, in the USA, the Dodd-Frank Act requires certain companies to determine whether their products contain conflict minerals by carrying out extensive supply chain due diligence, and to report their findings to the Securities and Exchange Commission (SEC).22 This requirement applies to all reporting companies (including foreign issuers)23 that manufacture or contract to manufacture products where conflict minerals are necessary to the functionality or production of the product.

Compliance with human rights by companies has for a long time been a reputational issue. The Guiding Principles do not change that. In fact, the reputational risk of failing to adhere to human rights has been heightened by the Guiding Principles. They provide a common vocabulary for human rights issues that is deployed by non-governmental organisations and governmental departments across the globe.

However, as the previous section shows, the Guiding Principles - and the reforms inspired by them - have moved respect for human rights from being a corporate social responsibility issue to being also a genuine legal compliance issue. For companies operating in Europe and the United States, there are hard-edged legal consequences for failure to comply with human rights due diligence and reporting requirements. For instance:

- A failure to comply with the requirements of the US Dodd-Frank Act is a criminal offence, and can result in a fine or imprisonment.24

- Non-compliance with the human rights disclosure obligations in the UK Companies Act 2006 can result in the directors of the company committing a criminal offence.25

However, the elements identified in the previous section are, we would suggest, merely precursors to much more wide-ranging potential consequences. The Guiding Principles may both increase litigation risk for human rights violations, and be used by government to influence public procurement and wider government contract processes.

Growing litigation risk

Companies that breach human rights may be pursued within the framework of a tort claim, such as the tort of negligence. To bring such a claim, it must be established in the normal way that the company owed a duty of care to the persons affected by its conduct and that its conduct breached that duty of care, causing (foreseeable) harm.

The Guiding Principles increase the risks for companies of litigation of this type in two main ways.

First, the human rights policies of a company – even those voluntarily entered into – may be used to inform the content of duties owed by that company, to which the company may then be held accountable.26 As the Guiding Principles require companies to develop both a publicly available statement of policy, and to have embodied that policy in operational procedures and processes, they require companies to formulate a (publicly available) standard in
relation to human rights, against which they may then be judged. In particular, we anticipate that the plaintiff bar will seek to develop arguments that the absence of policies and procedures mandated by the Guiding Principles amounts to unreasonable and negligent conduct—both in relation to the protection against risks to life and health of workers in manufacturing operations or regarding the potential end uses by others of goods put into the supply chain.

Secondly, the requirement in the Guiding Principles for a company to embed its policy in operational procedures and processes means that companies must not apply differential human rights standards to different parts of the corporate group (for instance, a lower standard to overseas subsidiaries working in countries where standard business practice may elsewhere lead to human rights concerns—for instance in relation to restrictions to the right to belong to a trade union). This is significant from an English tort law perspective, because recent developments have increased the risk of the parent company being held liable for the actions of its overseas (subsidiary) operations. In Chandler v Cape plc, the English Court of Appeal held that a parent company is responsible for, or in control of specific functions of, its overseas subsidiaries may owe a duty of care to those affected by the conduct of those subsidiaries.

The Guiding Principles are explicit in requiring parent companies to assume responsibility for the human rights policies of their subsidiaries. The reasoning in Chandler v Cape would imply that where tort claims are being pursued against parent companies for alleged violations of human rights by their subsidiaries (often attractive for plaintiffs seeking to have their cases heard in a more favourable jurisdiction to that where the alleged conduct took place), the very existence of human rights policies mandated by the Guiding Principles will provide a basis for the imputation of liability. It is imperative, therefore, that companies effectively implement—and ensure adherence to—appropriate human rights standards across all levels of their corporate group.

We note, however, that while the Guiding Principles and the UK courts have potentially opened one avenue of increased litigation risk, the US courts have recently restricted another. The US Alien Tort Statute enabled companies to be held accountable in the US courts for human rights breaches regardless of where the conduct took place. However, two recent Supreme Court cases have limited the use of this statute for tort claims where the conduct arose outside of the USA, the Supreme Court holding that there is a presumption against using the US Alien Tort Statute to sue in US courts for breaches occurring outside the USA. The nexus with US territory must be of “sufficient force to displace the presumption against extraterritorial application” and the fact that a corporation has substantial business activities within the USA is not in itself sufficient to confer jurisdiction on the US courts.

Contractual relations and procurement with government entities

Increased litigation risk is not the only additional legal compliance risk emanating from the Guiding Principles. Government procurement is increasingly likely to require companies to show compliance with the Guiding Principles.

For instance, the UK’s national action plan to implement the Guiding Principles specifically provides that the UK Government is “committed to ensuring that in UK government procurement human rights related matters are reflected appropriately when purchasing goods, works and services.” Companies need to be aware that a breach of human rights is likely to result in exclusion from governmental contractual opportunities.

Compliance with the Guiding Principles may also impact a company’s access to finance. Governments that have signed up to the Guiding Principles may be unwilling to use their sovereign wealth funds, or export guarantee schemes, to invest in projects or companies which cannot show that they are Guiding Principles-compliant. For example, the Government Pension Fund of Norway, Norway’s sovereign wealth fund, must observe ethical guidelines which may exclude investments in companies where there is an unacceptable risk that the company contributes to or is responsible for serious or systematic human rights violations. Beyond sovereign funds, we see export guarantee schemes also require compliance with human rights standards as a precondition for support.

More broadly, as the Equator Principles now make specific reference to the Guiding Principles and human rights due diligence, and have been adopted by a large number of financial institutions (including all the large UK banks), positive lending decisions will increasingly be dependent on compliance with international human rights standards.

The Guiding Principles in Action - Case Studies in Relation to Consumer Goods Companies

To re-cap, the Guiding Principles impose an obligation on transnational corporations to respect human rights by avoiding causing or contributing to adverse human rights impacts through their own activities. Additionally, and perhaps more relevantly in the context of consumer goods, the Guiding Principles impose an obligation on companies to prevent or mitigate adverse impacts that are directly linked through “business relationships” to the company’s operations, products or services, even if the company itself has not contributed to such impacts.

The Guiding Principles make clear that while local conditions in a particular country or region may affect the human rights risks of a company’s activities, companies have the same obligations to respect human rights in all jurisdictions in which they operate. Moreover, those obligations extend to a company’s supply chain and to its other business relationships and have the potential to expose parent companies to law suits where subsidiaries are alleged to have committed civil wrongs which have the character of human rights violations.

Given their wide application, key to managing a company’s compliance with its obligations under the Guiding Principles will be a thorough, meaningful and transparent due diligence process. The complexity and scope of the due diligence undertaken may vary depending on the size of the business and the risk of human rights abuses, but in all cases, the process must be designed to identify, prevent, mitigate and account for potential adverse human rights impacts. Moreover, and key to suppliers of consumer goods, the Guidelines make clear that the due diligence process should be ongoing during the course of the business relationship and does not end on the initiation of a commercial relationship with a supplier or recipient of goods. These obligations may also be enhanced in certain contexts, for example in conflict zones or other sensitive regions.

Hand-in-hand with the obligation to undertake due diligence are those requiring that potential human rights impacts be appropriately addressed. Additional obligations include those in respect of:

- tracking the efforts made to address human rights impacts;
- communication of the human rights impacts of the business’ operations; and
- the remediation of adverse impacts.
Set out below are three scenarios which draw out these obligations in different contexts, demonstrating the extent to which producers must be mindful of the potential for the Guiding Principles to have increased their human rights obligations. In each scenario, it is assumed that the relevant company has adopted the appropriate human rights standards within its operational policies, as required by Guiding Principle 16. Where a company has not done so, this could lead to further risk of sanction.

**Case Study 1 - The End Use of Supplied Products**

**Fact pattern**

- WoodCo is a company that specialises in the production of machinery including electrical saws and mechanical diggers, all of which may be used in a number of commercial applications. WoodCo sells its equipment worldwide, including into areas of South-East Asia and South America known to be at risk of deforestation.
- WoodCo's machinery is sold in these areas primarily to government entities with the understanding that it will be used by licensed professionals for the purposes of forestry management, using internationally recognised standards and practices.
- However, allegations arise that equipment supplied by WoodCo has been used by companies, individuals and government contractors in the illegal harvesting of woodland resources in protected areas. These resources are crucial to local populations, for whom the woodlands are both culturally significant and a source of vital materials for subsistence.

**Issues for consideration**

While all companies must undertake appropriate due diligence, those which sell products for which more than one use may be possible, are likely to find the obligations in respect of the end use of their goods particularly complex.

Notwithstanding that WoodCo had not itself engaged in any human rights abuses, in circumstances where its products have been used in a manner which may lead to potentially adverse impacts on human rights, it may find itself open to an accusation that its activities are linked to human rights violations.

A complaint which draws out the potential issues of suppliers of “dual use” products was recently brought to the UK OECD National Contact Point against the companies Gamma International UK Ltd and Trenvior GmbH. The complaint against Gamma and Trenvior related to the provision of surveillance technologies to an overseas government. While the products and services provided had commercial applications, they were used in this instance for governmental surveillance operations which resulted in allegations being raised that the companies had aided and abetted the government in perpetrating human rights abuses.

In order to mitigate such a risk, WoodCo must:

- ensure not only that appropriate due diligence is undertaken at the beginning of the commercial relationship, but that it remains diligent and open to the potential impact of its products post-sale (Guiding Principle 17); and
- be particularly cautious where there is a known risk of an adverse human rights impact. In particular, companies must be mindful where their activities may affect vulnerable or marginalised populations, and when doing business in areas with heightened sensitivities (Guiding Principle 18).

The level of due diligence required, particularly where there is possibility for varying uses of the products being sold, will likely be a key area for compliance arising out of the Guiding Principles for consumer goods companies. As due diligence is required both at the start of and throughout the duration of the business relationship, the re-tasking of compliance functions to monitor the end-use of products may in some cases be necessary and proportionate.

Once WoodCo has discovered that its products are being used in a way that might have potentially adverse human rights impacts, it must act upon that finding by taking appropriate action (Guiding Principle 19).

What action is appropriate in a particular case will vary according to whether:

- the business causes or contributes to an adverse impact, or whether it is involved solely because the impact is directly linked to its operations, products or services; and
- the extent of its leverage in addressing the impact.

Where a business has not contributed to an adverse human rights impact but that impact is linked to its operations, product or services (as is the case for WoodCo), various factors must be considered when determining the appropriate actions. These factors may include:

- the extent to which the business can use leverage to alter the behaviour of the entity concerned;
- how crucial the relationship with the entity is to the business; and
- whether terminating the relationship with the entity would itself have adverse human rights consequences.

WoodCo should ensure that it weighs up such factors in a manner consistent with its obligations under the Guiding Principles. This may require, particularly where WoodCo does not have significant leverage over the purchasers of its goods, the cessation of supply to those entities suspected of engaging in activities potentially adverse to human rights.

Finally, in order best to prevent criticism of the human rights impacts of its business (and to fulfill the obligation to “know and show” compliance with the Guiding Principles), WoodCo should:

- track the effectiveness of any response undertaken to address the adverse human rights impacts (Guiding Principle 20); and
- adequately account for, and where necessary communicate, the potential human rights impacts of its business (Guiding Principle 21).

**Case Study 2 - The Operations of Subsidiaries**

**Fact pattern**

- SnackCo is a food and beverage company with its headquarters in the UK. SnackCo operates in multiple countries throughout Europe and can point to an untramelled human rights record in its own operations.
- FizzCo is a subsidiary of SnackCo through SnackCo's sparkling beverage business. FizzCo has its main bottling plant in Africa. The working conditions in FizzCo's plant are of a low standard. The conditions imposed by FizzCo are resisted by its staff, who attempt to unionise in order to represent themselves.
- FizzCo responded by threatening all workers associated with the union with dismissal, a practice not in direct contradiction of the national law of the jurisdiction in which FizzCo operates.
Issues for consideration

It is important to note that the responsibility to respect human rights is additional to issues of legal liability and enforcement, although these are frequently present in cases of alleged human rights violations. As a result, the fact that FizzCo’s employment practices were not in direct contravention of national law will not alleviate SnackCo of its obligations (commentary to Guiding Principle 11).

Several recent complaints to the US OECD National Contact Point have considered the issue of alleged labour violations relating to workers’ rights to association and representation. In an assessment on 8 November 2013, the National Contact Point considered allegations from the Federation of Free Workers, a Philippines-based trade union federation against Janssen Pharmaceuticals, a division of Johnson & Johnson. The complaint alleged that Janssen had used unreasonable sales performance benchmarks as a pretext to dismiss certain workers who were involved in unionised activities. While the National Contact Point declined to take action in this instance, it is clear that the rights of workers throughout the supply chain and in subsidiary companies is a matter which must be addressed.

While SnackCo has not itself engaged in any activities which might be considered to have adverse impacts on human rights, the Guiding Principles apply such that parent companies will assume responsibility for the human rights breaches of their subsidiaries. In the case at hand, this application is notwithstanding that the abuses occurred in a country in which SnackCo does not itself operate (Guiding Principle 13(b)).

Once more, SnackCo must be able to demonstrate that it:

- has undertaken appropriate due diligence – for example, where FizzCo is a recently acquired subsidiary (Guiding Principle 17); and
- perhaps of more relevance in the case at hand, that it has identified and assessed any actual or potential human rights impacts with which FizzCo is involved (Guiding Principle 18).

The above obligations may, depending on the arrangements which SnackCo has in place, require that it considers and evaluates the adequacies of its internal compliance procedures, and where necessary, adjusts such procedures so as to have appropriate oversight of its subsidiary companies.

On discovering the adverse human rights impact, SnackCo will find itself under an obligation to take appropriate action and to track the effectiveness of any measures taken (Guiding Principles 19 and 20).

Appropriate action on identifying an adverse human rights impact from its operations will require SnackCo to take the steps necessary to cease and prevent the adverse impact.

An obligation to provide adequate remediation will also arise (Guiding Principle 22). While remediation in the case at hand may be relatively straightforward (i.e. compensation to the worker affected), in other circumstances, this may be more complex and may require that an operational-level grievance mechanism be put in place.

FabricCo is StyleCo’s primary supplier of quantities of a rare silk, a material necessary in many of the company’s products.

FabricCo operates primarily from factories in Asia, some of which are located in areas prone to conflict and human rights violations.

It becomes apparent that the materials from FabricCo are supplied using exploitative labour practices, and that funds from the proceeds of the factories may be linked to certain groups engaged in human rights abuses in regional conflicts.

Issues for consideration

The Guiding Principles impose an obligation on companies in respect of adverse human rights impacts linked to their operations, products or services by a “business relationship” (Guiding Principle 13).

The ethical sourcing of materials has risen to the fore as an issue in a number of industries, most prominently in the context of the sourcing of so-called conflict materials. This has led to the recent prominent announcements by several technology companies including Apple and Intel of their attempts to implement systems to verify the sourcing of the metals used in their electronics so as to avoid links to groups engaged in violence in conflict zones. Such moves are likely to have been driven by the development of legal compliance and disclosure standards concerning the use of such materials, including the US Dodd-Frank Act.

The concept of a “business relationship” is a broad one, and is specifically defined in the commentary to Guiding Principle 13 as including “entities in the value chain”. In the case at hand, therefore, adverse human rights impacts which are linked to the supply of goods to StyleCo by FabricCo, will be caught by the Guiding Principles.

As for all consumer goods companies, it is of fundamental importance that StyleCo put in place procedures that allow it to demonstrate that it:

- has undertaken appropriate due diligence (Guiding Principle 17); and
- identified and assessed any actual or potential human rights impacts (Guiding Principle 18).

As the Guiding Principles require a business to conduct due diligence prior to the commencement of a commercial relationship, and as it has engaged with a supplier linked to human rights violations, StyleCo may find itself open to an allegation that it has not adequately complied with its obligations. It will therefore be crucial for StyleCo to be able to demonstrate that appropriate due diligence was carried out. The level of due diligence appropriate will depend on the particular context, but StyleCo should be aware that operating in certain environments, including conflict-affected areas, may increase the risk of becoming complicit in human rights abuses (Guiding Principle 23).

On discovering the potential adverse impacts to human rights, StyleCo must take appropriate action (Guiding Principle 19). As StyleCo has not caused or contributed to the potential adverse human rights impact, rather such impact is linked to its operations, products or services, in determining the appropriate action, StyleCo should refer to Guiding Principle 19 and consider:

- the extent to which it can exercise leverage over FabricCo;
- how crucial the relationship with FabricCo is to its business; and
- whether terminating the relationship with FabricCo might itself have adverse impacts on human rights.

The extent to which StyleCo has any significant leverage over Case Study 3 - Ensuring the Protection of Human Rights Through the Supply Chain

Fact pattern

- StyleCo is a UK-based manufacturer and retailer of clothing. StyleCo requires large quantities of raw materials for the manufacture of its clothing.

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FabricCo will be a matter for determination. Where possible, StyleCo could consider increasing its leverage, for example through the offering of incentives. Where StyleCo is unable to alter FabricCo's practices, it should consider terminating the business relationship. As set out, the human rights impact of ending this relationship must first be assessed.

As the product supplied by FabricCo to StyleCo is rare, it may be that the relationship between the companies is crucial to StyleCo's business. Where StyleCo decides that this justifies the maintenance of an ongoing relationship with FabricCo (for example, if there is no reasonable alternative to the material supplied by FabricCo), it must nonetheless assess the potential human rights impact, including its severity. Where the impact is particularly serious, the more StyleCo will need to consider change in order to justify a continued commercial relationship.

Notwithstanding an assessment that the relationship with FabricCo is crucial to its business, should StyleCo choose to retain such a relationship, it will remain liable for all reputational, financial or legal consequences. StyleCo should be aware of the potential corporate legal liability that may arise as a result of being found to be complicit in human rights abuses, and should consider consulting with independent experts in order to assess the impact of its ongoing relationship.

Where StyleCo does continue its relationship with FabricCo, it must:

- track the effectiveness of any response undertaken to address the adverse human rights impacts (Guiding Principle 20); and
- adequately account for, and where necessary communicate, the potential human rights impacts of its business (Guiding Principle 21).

Endnotes

1 The "Protect, Respect and Remedy" Framework was formulated as a conceptual means of anchoring the business and human rights debate. This framework is based on three pillars: (i) the State duty to protect against human rights abuses by third parties; (ii) the corporate responsibility to respect human rights; and (iii) the need for greater access to effective judicial and non-judicial remedies for victims of human rights abuses.

2 Commentary to Guiding Principle 11.

3 Guiding Principle 12.

4 Guiding Principle 15.

5 Microsoft Global Human Rights Statement (September 2013), Hitachi Group Human Rights Policy (May 2013), H&M's human rights statement and Starbucks' Global Human Rights Statement, Vodafone's Business Principles and Code of Conduct. Vodafone, in particular, conducted an analysis on its group approach to human rights against the Guiding Principles to identify the categories of human rights most relevant to its business. Following this analysis, human rights issues have been integrated into the due diligence process that Vodafone conducts before entering new markets.

6 Guiding Principle 16.

7 Guiding Principles 17 to 20.

8 Guiding Principle 19 and the related commentary.


10 Guiding Principle 22. The Ruggie Principles make clear (Guiding Principle 14) that the means by which a business meets its responsibility to respect human rights must be proportionate to the circumstances. Larger consumer goods producers are therefore expected to be more active in remediating any adverse impact on human rights.

11 The influence of the Guiding Principles – and the Framework that preceded it – can be seen even in instruments which make no specific reference to it. For instance, in November 2010 the International Organisation for Standardisation launched an International Standard providing guidelines for social responsibility (ISO 26000). This standard incorporates the responsibility of businesses to respect human rights.

12 Chapter IV of the OECD Guidelines for Multinational Enterprises, paragraph 36 on page 31.

13 If the UK National Contact Point finds that a company is in breach of the OECD Guidelines, it will provide voluntary recommendations to the company, if appropriate, to assist it in bringing its conduct into line with OECD Guidelines. It will also specify a date by which the company is asked to update the UK National Contact Point on its progress toward meeting these recommendations (see the Department for Business, Innovation and Skills, UK National Contact Point Procedures for Dealing with Complaints Brought Under the OECD Guidelines for Multinational Enterprises, January 2014).

14 Widely adopted, the UN Global Compact has been joined by 5,300 businesses from around 130 countries. The Equator Principles have been adopted as a risk management framework by a large number of financial institutions across the globe.

15 In three sectors: ICT services, employment and recruitment agencies, and oil and gas.


17 HM Government, Good Business: Implementing the UN Guiding Principles on Business and Human Rights, September 2013, Ministerial Foreword.

18 Section 414C(7)(b) of the Companies Act 2006. This was inserted by regulation 3 of the Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013, which came into force on 1 October 2013.


20 Companies with more than 500 employees and either (i) a balance sheet total of more than €20 million, or (ii) a net turnover of more than €40 million.


22 Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

23 Reporting companies are companies that must file periodic reports with the SEC under section 15 or 15(d) of the Exchange Act. A company becomes subject to section 13 or 15(d) in the following circumstances:

- companies with (i) total assets greater than $10 million, and (ii) a class of equity securities held by 2000 or more persons or 500 or more persons who are not accredited investors; or
- companies that have issued to the public equity or debt securities not listed on any US exchange.

There is no exemption for foreign private issuers or smaller reporting companies that fall within the circumstances listed above.


25 Sections 414A(5)-(6) and 414D(2)-(3) of the Companies Act 2006.
See, for instance, *Chandler v Cape plc* [2012] EWCA Civ 525, where a parent company’s group-wide health and safety policy informed the standard of care it assumed to those affected by the conduct of its subsidiaries.  

For example, plaintiffs may seek to bring claims into the UK to have the benefit of its more extensive disclosure regime, which can provide a powerful lever in settlement discussions.  


Section 2(2)(a), *Guidelines for the observation and exclusion of companies from the Government Pension Fund Global’s investment universe*, 1 March 2010.  

From 2012, the OECD has required export credit agencies to take into account “relevant adverse project-related human rights impacts” and to consider National Contact Point statements on complaints made pursuant to the OECD Guidelines (*OECD Common Approaches*, 2012). UK Export Finance has confirmed it will consider any negative final NCP statements a company has received in respect of its human rights record when considering a project for export credit.

The Equator Principles have also been adopted by the US Export-Import Bank in its project assessment process.


Guiding Principle 23.  

Guiding Principles 14 and 15.  

Guiding Principle 19.  

Guiding Principle 20.  

Guiding Principle 21.  

Guiding Principle 22.

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**Note**

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Paul Bowden is a partner in Freshfields Bruckhaus Deringer’s environment, planning and regulatory group. He specialises in products litigation. Paul contributed to the research programme which preceded Professor John Ruggie’s Guiding Principles for Business and Human Rights in 2011.

Deba Das is an associate in Freshfields Bruckhaus Deringer’s EU litigation practice, with a particular focus on commercial public law and human rights. He has represented public and private sector clients before the UK and European courts, including British Sugar in the successful conclusion of the European sugar industry’s challenge to overpayments of sugar levies to the European Commission running into the hundreds of millions, Airlines for America on its challenge to the extension of the EU’s carbon emissions trading scheme to international aviation, and the Government of Turkey in successfully defending a multi-billion dollar energy sector expropriation claim in the European Court of Human Rights. He provides EU law and sanctions compliance advice to fast moving consumer goods companies. In 2012 he was a delegate to the UN Working Group on Business and Human Rights inaugural stakeholder forum in Geneva. He is currently on the Council of the leading UK rights NGO, JUSTICE.

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- product crisis management - we work with our clients’ in-house legal and incident management teams on designing and implementing corrective action plans and liaise with regulators on their behalf;
- product liability litigation and regulatory challenges - our team are highly praised for both their expertise of conducting the defence of product liability claims brought within their own jurisdictions and the coordination of the defence of multinational product liability claims; and
- product regulation - we advise on all aspects of product regulation from regulatory and product liability implications on new product launches, labelling and marketing requirements, product registrations and marketing authorisations to advertising and consumer law issues.

We help product manufacturers and retailers manage their litigation and regulatory risk, resolve disputes with suppliers, consumers and regulators, and allocate product-related risk in corporate transactions.