

Asset Managers: Mastering Non-Financial Risk

The Evolution of Human Rights Due Diligence



Executive Summary

- Growing stakeholder interest in sustainability topics and the concept of “stakeholder capitalism” is fuelling attention to human rights issues from regulators and market participants around the world. These trends will increasingly impact the asset management industry in a variety of ways, including through the development of mandatory human rights due diligence (“mHRDD”) legal regimes.
- Regulators are already encouraging or requiring human rights due diligence in various forms. Asset managers, particularly those with global footprints, and their compliance teams must be aware of existing legislation in this area and continue to monitor regulatory developments.
- The final section of this article highlights key policy options and tensions that regulators will face in developing mHRDD regimes as these requirements become more common. Attention to these considerations will enable asset managers to better prepare for the future of mHRDD.
- Throughout this article, we highlight certain practical steps that asset managers and their portfolio companies can take now to better mitigate non-financial human rights risks, including:
 - » integrating human rights into group policies and strategic planning processes;
 - » disclosing how human rights considerations are integrated into strategies, policies and procedures;
 - » integrating human rights into risk management policies and procedures; and
 - » engaging with relevant stakeholders regarding human rights.



The modern concept of international human rights has evolved since the UN General Assembly's adoption of the Universal Declaration of Human Rights in 1948. For over 70 years, legislators, diplomats and others have sought to better define, promote and protect our most basic rights on a global scale through various international treaties and numerous national rules and regulations. Throughout this process, the business community has at times struggled to integrate this critical concept into existing processes while stakeholder groups ranging from investors to consumers have demanded increased attention to human rights and broader sustainability issues. This shifting landscape has led regulators and other stakeholders to respond by incentivizing or driving companies to address human rights issues through means ranging from outlawing child labor to regulating workplace safety standards. While many of these initiatives have not directly applied to the asset management industry, some asset managers have proactively taken steps to address human rights issues at the manager level, portfolio company level or throughout their respective supply chains.

For many asset managers, however, human rights issues will soon be a necessary consideration in the investment due diligence process, regardless of whether they view themselves as part of the growing community of businesses that are taking real steps to address these issues. Governments around the world are now developing mHRDD legal regimes applicable to a broad array of companies, including asset managers, that will incentivize or require businesses to consider human rights issues and impacts when investigating new opportunities. As interest in these regimes continues to grow among legislators, business leaders, investors and the public generally, asset managers could soon find themselves subject to a variety of mHRDD laws and regulations that approach this issue in different ways. In such an evolving regulatory landscape, a proactive approach to human rights due diligence could provide a non-financial risk competitive advantage. The question is: how can asset managers prepare for the future of mHRDD right now?

Recently, the UN Office of the High Commissioner for Human Rights published a paper (the **Issues Paper**) outlining the key policy choices that regulators will face when developing mHRDD regimes. The Issues Paper provides useful insight into this potentially complex and uncertain future. By analyzing these policy choices and preparing for the possible outcomes in particular jurisdictions, or for common outcomes across multiple jurisdictions, proactive asset managers can better prepare for new mHRDD obligations and incentives.

This article provides guidance as to what asset managers can expect, even at this relatively early stage in the development of mHRDD regimes, by first discussing why interest in human rights due diligence is growing and then outlining the current state of play with respect to existing and proposed legislation and regulations with mHRDD aspects. The article will then address the key policy options and tensions identified in the Issues Paper and the implications for the asset management industry, including steps that asset managers can take right now to mitigate risk better and respond to their future obligations.

Increasing Stakeholder Interest

In August 2019, a group of 181 CEOs from some of the world's largest companies challenged a foundational concept in modern capitalism that has direct implications for nearly all business processes, including due diligence: the idea of "shareholder primacy". The group resolved to let go of the decades-old notion that "the social responsibility of business is to increase its profits" and committed to deliver value for all stakeholders, rather than their shareholders alone.¹ Just months later, the World Economic Forum (**WEF**) echoed this sentiment by updating its "Davos Manifesto" on the purpose of a company for the first time since it was issued in 1973. The new "Davos Manifesto 2020" begins: "The purpose of a company is to engage all its stakeholders in shared and sustained value creation. In creating such value, a company serves not only its shareholders, but all its stakeholders — employees, customers, suppliers, local

1 Business Roundtable, "Statement on the Purpose of a Corporation" (19 August 2019), available at: <https://opportunity.businessroundtable.org/wp-content/uploads/2020/08/BRT-Statement-on-the-Purpose-of-a-Corporation-August-2020.pdf>



communities and society at large.”² According to the new Davos Manifesto 2020, a company “integrates respect for human rights into the entire supply chain.”

These statements from the leaders of the global business community represent a significant shift toward the idea of a more inclusive capitalism, which could impact everything from day-to-day business operations to executive-level corporate governance processes and the cornerstones of corporate law in many countries. Within this new paradigm, the interests of stakeholders, including their most basic human rights, are as integral to the functioning of a business and its place in society as the profit motive. The wide-ranging implications of this fresh approach will compel business leaders to continue to develop new ways to align existing functions and processes with its new mandate. Already, the WEF’s International Business Council is developing a rubric for defining “stakeholder capitalism” for release in 2020.³ No matter how this new movement is defined, a more fulsome integration of human rights into the due diligence process should follow naturally in the asset management

industry, as many managers and investors already consider certain human rights-related issues in their due diligence processes, such as adherence to employment laws and health and safety standards. Asset managers can also incorporate human rights issues into their group policies and strategic planning processes.

While this trend toward “stakeholder capitalism” is developing among the leaders of the international business community, investor and consumer interest in sustainability concepts is increasing. As a result, recent highly publicized human rights controversies have had negative impacts on share price⁴ and access to foreign markets.⁵ On the environmental front, approximately 950 institutional investors representing almost \$10 trillion in AUM have pledged to divest from the fossil fuel industry,⁶ while nearly \$2.8 billion flowed into ESG-themed ETFs in April 2020 alone, setting records despite the impact of the COVID-19 pandemic that month.⁷ Meanwhile, according to the market research firm Nielsen, US consumers will spend \$150 billion on sustainable products by 2021 and 73% of consumers globally would already

2 Klaus Schwab, “Davos Manifesto 2020: The Universal Purpose of a Company in the Fourth Industrial Revolution” (2 December 2019), available at: <https://www.weforum.org/agenda/2019/12/davos-manifesto-2020-the-universal-purpose-of-a-company-in-the-fourth-industrial-revolution/>

3 Pippa Stevens, “Stakeholder capitalism has reached a ‘tipping point,’ says Salesforce CEO Benioff” (21 January 2020), available at: <https://www.cnbc.com/2020/01/21/stakeholder-capitalism-has-reached-a-tipping-point-says-salesforce-ceo-benioff.html>

4 BBC, “Boohoo told to address exploitation claims amid criticism” (16 July 2020), available at: <https://www.bbc.com/news/business-53428405>

5 M. Mason and R. McDowell, “US says it will block palm oil from large Malaysian producer” (1 October 2020), available at: https://apnews.com/article/malaysia-archive-asia-e2258c8e29cf5dbc6906d14303614679?utm_medium=AP&utm_campaign=SocialFlow&utm_source=Twitter

6 <https://www.imf.org/en/Publications/GFSR/Issues/2019/10/01/global-financial-stability-report-october-2019>

7 International Monetary Fund, Global Financial Stability Report: Lower for Longer (October 2019), available at: <https://www.bbva.com/en/bbva-global-markets-research-notes-record-inflows-in-esg-themed-etfs/>



“definitely or probably change a behavior to reduce their impact on the planet.”⁸ Going forward, attention to this widespread interest in sustainability could be a source of significant value creation and preservation in many industries, and may even be required as lawmakers and regulators respond in various ways, including through mHRDD legislation and rulemaking.

Importantly, interest in sustainability has accelerated rapidly in the first half of 2020 as a result of the COVID-19 pandemic, particularly as it relates to supply chains. It is estimated that at least five million companies from around the world, including 938 of the Fortune 1000, have at least one Tier 1 or Tier 2 supplier in the regions of China most impacted early in the pandemic alone.⁹ The global supply shock created by lockdowns in those regions of China and in other key manufacturing jurisdictions has created nearly universal recognition of the fragility of supply chains and the need to create

sustainable systems that can better withstand stress. At the same time, a flexible system that allows a company to pivot to suppliers in new jurisdictions must contend with the human rights issues specific to two or more jurisdictions, rather than just one, which can introduce other challenges and may require significantly different responses.

These factors have further led to a broader re-examination of the “social” component of ESG as it relates to supply chains and other factors tied to the pandemic, such as employee wellness and social inclusion.¹⁰ While it remains to be seen how this unprecedented phenomenon changes many aspects of society and the global economy, it seems unlikely that interest in sustainability principles will diminish anytime soon. Regular engagement with stakeholders on human rights issues can help asset managers better understand and respond to shifting expectations as this sentiment develops.



For more information on the social aspect of ESG please see our article, “Understanding the “S” in ESG: Guidance for Asset Managers and Investors in a COVID-19 Paradigm and Beyond”, available [here](#).

- 8 Nielsen, “The Database: The Business of Sustainability” (6 May 2019), available at: <https://www.nielsen.com/us/en/insights/podcast/2019/the-database-the-business-of-sustainability/>
- 9 Dun & Bradstreet, “Business Impact of the Coronavirus”, available at: https://www.dnb.com/content/dam/english/economic-and-industry-insight/DNB_Business_Impact_of_the_Coronavirus_US.pdf
- 10 A. Miller and B. Barker, “SCM Direct: Unwrapping the ESG investing trend” (13 July 2020), available at: <https://www.etfstream.com/features/scm-direct-unwrapping-the-esg-investing-trend/>

The convergence of a “top-down” trend toward “stakeholder capitalism” among global business leaders with a “bottom-up” trend of increasing interest in sustainability topics among consumers and investors, fueled in no small part by the COVID-19 pandemic, has led governments to quickly respond in a variety of ways. mHRDD regimes represent just one way that legislators and policy-makers are addressing this growing interest in “stakeholder capitalism”, sustainability and human rights, but, for the investment community, it is perhaps the most salient of current initiatives and an opportunity to obtain a potentially significant competitive advantage through proactive action, risk prevention and mitigation.

State of Play

As regulators around the world increasingly focus on human rights issues, it is becoming more important than ever for compliance and legal teams in the global asset management industry to monitor and understand this evolving landscape. The UN defines human rights due diligence as the processes that all business enterprises should undertake to identify, prevent, mitigate and account for potential and actual impacts on human rights caused by or contributed to through their own activities, or directly linked to their operations, products or services. This broad definition puts considerable responsibility on business enterprises that is likely to extend downward to subsidiaries and affiliates, as well as horizontally throughout supply chains.

FOUR MAIN ELEMENTS OF HUMAN RIGHTS DUE DILIGENCE (UNITED NATIONS)

BUSINESSES SHOULD:



Identify and assess actual or potential adverse human rights impacts of a company’s own activities and its business relationships



Integrate the findings arising from its assessments across relevant internal functions and processes, and take appropriate action



Track the effectiveness of the response (e.g., risk management and mitigation efforts)



Account for how the company addresses its human rights impacts (e.g., through reporting externally)

The Issues Paper notes that a number of countries have already taken the lead in encouraging or requiring human rights due diligence in various forms. At this time, France has perhaps the most widely recognized national regime reflecting mHRDD principles. Known as the Duty of Vigilance Law, this legislation requires large French companies with 5,000 or more domestic

employees, or more than 10,000 employees worldwide, to prepare and publish annual “vigilance plans” detailing their approach to assessing and addressing the human rights and environmental risks posed by their activities. The map on pages 8 and 9 sets out other laws and regulations containing mHRDD principles.



Other Laws and Regulations Containing mHRDD Principles

THE 2015 UK MODERN SLAVERY ACT

Requires certain commercial organizations to publish and prominently display a "modern slavery statement," signed by a director (or equivalent), setting out steps taken to ensure that modern slavery is not taking place in their business or supply chains (or stating that no steps have been taken).

THE US FEDERAL ACQUISITION REGULATION: ENDING TRAFFICKING IN PERSONS

Requires certain government contractors to carry out due diligence to confirm that neither they, nor their subcontractors or agents, have engaged in human trafficking-related violations, including forced labor.

THE DUTCH CHILD LABOUR DUE DILIGENCE ACT

Requires companies serving Dutch consumers to exercise due diligence in determining whether there is a reasonable suspicion their goods and services have been created using child labor and, if so, to respond.

THE CALIFORNIA TRANSPARENCY IN SUPPLY CHAINS ACT

Requires certain businesses to disclose, on an annual basis, the efforts they are making to eradicate human trafficking and slavery from their supply chains.

THE FRENCH DUTY OF VIGILANCE LAW

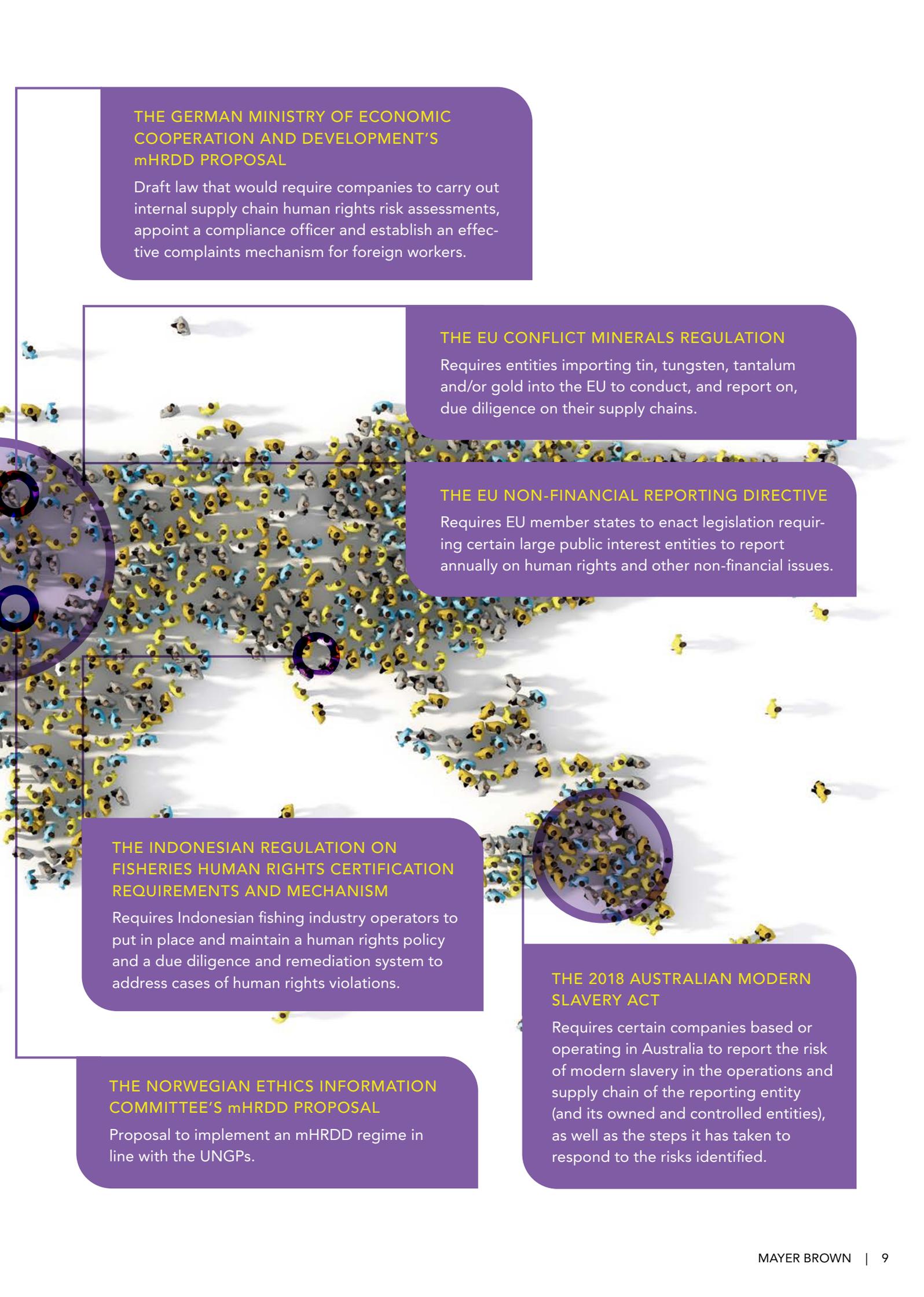
Requires large French companies to prepare and publish annual "vigilance plans" detailing their approach to assessing and addressing the human rights and environmental risks posed by their activities.

THE PROPOSED EU HUMAN RIGHTS AND ENVIRONMENTAL DUE DILIGENCE REGULATION

Proposal would require companies to carry out human rights and environmental due diligence on their operations and supply chains, with enforceable sanctions for non-compliance.

THE PROPOSED SWISS RESPONSIBLE BUSINESS INITIATIVE

Proposal to implement an mHRDD regime in line with the UN Guiding Principles on Business and Human Rights (UNGPs).



THE GERMAN MINISTRY OF ECONOMIC COOPERATION AND DEVELOPMENT'S mHRDD PROPOSAL

Draft law that would require companies to carry out internal supply chain human rights risk assessments, appoint a compliance officer and establish an effective complaints mechanism for foreign workers.

THE EU CONFLICT MINERALS REGULATION

Requires entities importing tin, tungsten, tantalum and/or gold into the EU to conduct, and report on, due diligence on their supply chains.

THE EU NON-FINANCIAL REPORTING DIRECTIVE

Requires EU member states to enact legislation requiring certain large public interest entities to report annually on human rights and other non-financial issues.

THE INDONESIAN REGULATION ON FISHERIES HUMAN RIGHTS CERTIFICATION REQUIREMENTS AND MECHANISM

Requires Indonesian fishing industry operators to put in place and maintain a human rights policy and a due diligence and remediation system to address cases of human rights violations.

THE NORWEGIAN ETHICS INFORMATION COMMITTEE'S mHRDD PROPOSAL

Proposal to implement an mHRDD regime in line with the UNGPs.

THE 2018 AUSTRALIAN MODERN SLAVERY ACT

Requires certain companies based or operating in Australia to report the risk of modern slavery in the operations and supply chain of the reporting entity (and its owned and controlled entities), as well as the steps it has taken to respond to the risks identified.



WHAT IS THE DIFFERENCE BETWEEN mHRDD AND CORPORATE HUMAN RIGHTS REPORTING?

mHRDD regimes typically impose explicit legal duties to **identify, prevent, mitigate and account for** adverse human rights impacts.

Corporate human rights reporting regimes may only incentivize or require companies to **report** on the area of human rights.

Nonetheless, human rights reporting is a necessary and important aspect of human rights due diligence and any fulsome mHRDD regime.

Momentum is now growing for the development of an EU-wide approach to mHRDD. In April 2020, the European Commissioner for Justice, Didier Reynders, announced that the EU plans to draft a legislative proposal by 2021 that would require businesses to carry out human rights and environmental due diligence on their operations and supply chains. The Commissioner suggested that the regime would likely be cross-sectorial (in that it would be comprehensive, rather than focused on specific sectors of the economy) with additional sector-specific requirements, and would contain enforceable sanctions in the event of non-compliance.¹¹ As the EU mHRDD regime develops and eventually binds companies across the EU, it will surely influence legislators and regulators around the world to take similar steps.

For more information about the EU's proposed mHRDD regime, please see our legal update [here](#).

The Future Landscape

mHRDD regimes can take a variety of forms. Some common themes do emerge, however, when examining each framework closely and comparing the principles underlying these policies. In this respect, the Issues Paper outlines a number of “design choices” that policymakers and legislators face in constructing new mHRDD regimes for their regulating States.

These design choices operate as a menu of possibilities for future regimes and are therefore critical for asset managers to understand, even at this relatively early stage in the development of mHRDD, to better prepare for the future. The following summarizes certain key design choices from the Issues Paper that asset managers should be aware of, including an analysis of the implications for the asset management industry and how to leverage these insights to better mitigate risk and create value.

WHO SHOULD BE THE DUTY BEARER?

A “duty bearer” is an entity targeted by mHRDD regulation, which is also saddled with the most significant compliance burden. Importantly, the duty bearer is also the entity that is liable for failure to comply with mHRDD requirements—in the event of a breach, the duty bearer could be sanctioned, fined or otherwise penalized. The Issues Paper notes that duty bearers are typically corporate entities, but more heavy-handed mHRDD regimes could also impose significant compliance obligations and personal liability on individuals as duty bearers (for example, directors and officers).



Asset Managers: Are Your Directors and Officers Fluent in Human Rights?

Asset managers should have less trouble complying with mHRDD regimes that make their corporate entities the only duty bearers,

11 Business and Human Rights Resource Centre, “EU Commissioner for Justice commits to legislation on mandatory due diligence for companies”, available at: <https://www.business-humanrights.org/en/eu-commissioner-for-justice-commits-to-legislation-on-mandatory-due-diligence-for-companies>

as this is typical of legislation in other contexts and aligned with the familiar concept of limited liability for corporate managers. On the other hand, mHRDD regimes that make duty bearers of individuals will raise a number of more unusual and sensitive issues. In these cases, directors and officers must be made aware of any new duties or responsibilities imposed on them by the mHRDD regime. Asset managers may need to engage in capacity building to ensure that each of their individual duty bearers has the ability to meet these new requirements. Some individuals may not be comfortable accepting any degree of personal liability for their position, and governance structures may need to be reshuffled in order to find willing and capable individuals to ensure compliance with new mHRDD requirements.

Going forward, while it is highly unlikely that any future mHRDD regime would have retroactive effect, the public and other stakeholders may judge past decisions around human rights issues by the prevailing standards of the day. This approach has recently taken hold around race and gender issues, in particular, as a result of social movements that have changed the public perception of many historical figures to account for their inequitable conduct, whether or not that conduct was permissible historically. Prudent directors and officers should therefore comport themselves as if their management of human rights issues today could be similarly scrutinized in the future.

WHERE WILL THE LAW APPLY?

mHRDD regimes may apply only to entities incorporated in a regulating State, or they may extend to entities with more tenuous or infrequent connections with a regulating State, such as “doing business” within its borders. Relatedly, regimes can take different positions on compliance by and within a group of entities in different jurisdictions. Some may take an “enterprise” approach, in which a “controlling” corporate entity is made responsible for designing and implementing policies and procedures covering the entire group, even if all

entities are located in different countries. Other regimes might instead require any entity subject to its jurisdiction to develop and implement unique policies and procedures, perhaps with particular attention to human rights issues and due diligence processes most common in that jurisdiction.



Asset Managers: Whose Laws Apply to Your Deals?

The potential for extraterritorial application means that asset managers with operations or investments in multiple jurisdictions must be aware of the various mHRDD regimes applicable to each of those jurisdictions, and of the circumstances in which each regime applies. For example, an mHRDD law in one country might only apply to subsidiaries or branches established within its borders or licensed by its regulators. In this case, an asset manager could limit implementation of that law’s requirements to diligence processes run by its subsidiary or branch in that country. Meanwhile, another jurisdiction might apply its mHRDD regime to any foreign entities “doing business” within its borders by conducting due diligence on an investment into a company incorporated within that jurisdiction. In this case, all of the asset manager’s investment professionals who might invest in that jurisdiction, wherever such professionals are located, must be made aware of and comply with that mHRDD law.

Multinational asset managers may consider developing a cohesive body of overarching group practices around human rights due diligence now, with the option for specific jurisdictions to tailor different aspects to local conditions and future mHRDD regimes. The asset manager would then have a group policy in place to help establish compliance with any future regimes that take an “enterprise” approach to compliance, while permitting some flexibility for local jurisdictions to meet less flexible future requirements. As a general matter, asset managers and their portfolio companies should begin to integrate human rights into their group policies and strategic planning.

HOW WILL THE LAW DEFINE THE "GROUP"?

For companies with multiple entities, the definition of the "Group" to which an mHRDD regime applies may be just as consequential as its territorial scope. Regimes may take a flexible approach to determining a "Group" based on loose affiliations or broad definitions of "control". A broader scope will generally make it more difficult for companies to determine if they are compliant with the mHRDD regime. Conversely, a narrower approach might define a "group" by reference to specific metrics like shareholding percentages, which will create a greater degree of compliance certainty.



Asset Managers: Which Legal Obligations Extend to Your Portfolio Companies?

Generally, asset managers should be aware that the definition of a "Group" in mHRDD legislation might not align with their own concept of the corporate group. It is also critical to understand that a sufficiently broad scope could extend to portfolio companies. For example, an asset manager might be required to conduct proper due diligence on an investment in a foreign company in accordance with an mHRDD regime in the asset manager's home country. After completing this investment, the new portfolio company might then become a "Group" company, subject to the same requirements to conduct due diligence on its own add-on acquisitions or investments (strategic or otherwise) in accordance with the mHRDD regime of the asset manager's home country. In this case, integration plans can incorporate mHRDD requirements into broader post-closing regulatory considerations to mitigate risk and maximize value going forward.

WILL THE LAW ACCOUNT FOR COMPANY SIZE?

Regulators appear to be mindful of the potential regulatory and cost burdens associated with mHRDD compliance. Accordingly, application of these regimes has been mostly limited to larger, often public, companies, although that scope may expand as it becomes evident that even smaller entities can have a significant human rights impact. As public interest in human rights issues continues to grow, it becomes increasingly likely that entirely new regimes, too, will seek to capture smaller, private businesses within a sufficiently broad scope.



Asset Managers: Regulation Will Catch Up to Public Sentiment

In this context, future mHRDD regimes will likely apply, at a minimum, to the largest asset managers and particularly those that are also public companies. At the same time, smaller and private asset managers should not assume they will remain exempt from these rules as public attention to human rights issues continues to increase. Asset managers should further consider that even small, private portfolio companies could be captured by sufficiently broad mHRDD rules and ensure that portfolio company management have the knowledge and capacity to address these rules.

Asset managers can respond to these changes in public sentiment by starting to develop and disclose how they incorporate human rights considerations into their strategies, policies and procedures. To develop more responsive integration and disclosure processes, asset managers can first engage with key investors that have expressed an interest in ESG matters to understand what human rights information is most important and useful for their purposes. Asset managers can then tailor approaches accordingly.



For more information on the global ESG landscape and practical advice for asset managers see our article, "Private Equity for the Public Interest: The Evolution of ESG and Considerations for Asset Managers and Investors", available [here](#).

WILL THE LAW ONLY APPLY TO CERTAIN SECTORS?

In seeking to strike an appropriate regulatory balance, mHRDD regimes might take a “risk-based” approach to regulation that applies strict scrutiny to higher risk sectors and a “lighter touch” to lower risk sectors. For regimes that take this approach, local conditions in the regulating State will influence the risk determination. For example, future mHRDD regimes in Southeast Asia might require heightened scrutiny for transactions in the palm oil industry, which is of less concern in Europe. Alternatively, an mHRDD regime might take a “blanket” approach and disregard varying degrees of risk across sectors by applying the same obligations to any transaction undertaken by a covered entity.



Asset Managers: Are You Dealing in High-Risk Sectors?

At a minimum, asset managers should expect mHRDD regimes to apply to investments in “high-risk” sectors. While the definition of “high-risk” may vary across jurisdictions, the following sectors are generally regarded as higher risk and are more likely to be included: mining, manufacturing, textiles, infrastructure and agribusiness. Asset managers should also understand if the laws apply at both the manager and portfolio company level and assess the impact of sector-specific legislation on operations at the required levels.

In any event, asset managers should consider how to integrate human rights into risk management policies at the appropriate level. For example, if sector-specific risks are too granular or difficult to identify, asset managers may find it easier to integrate broader country-specific human rights issues (which are sometimes more thoroughly researched and understood by organizations like the UN Office of the High Commissioner for Human Rights) into existing country risk management processes.

HOW WILL THE LAW REQUIRE AND/OR INCENTIVIZE mHRDD?

mHRRD legislation could promote the incorporation of human rights into the due diligence process

in various ways. The Issues Paper divides the possible approaches into three principal categories:

- **Perform and Prevent** - the regime could require companies to both perform and actually prevent harm through the due diligence process. Here, the occurrence of a human rights harm would constitute a breach, regardless of whether the issue was identified in the diligence process and steps were taken to respond.
- **Perform** - the regime could require companies to perform human rights due diligence only. In this case, a company that performs human rights due diligence in accordance with the regulation would fulfill its obligations, regardless of whether human rights issues exist and whether they are uncovered.
- **Incentivize** - the regime might only incentivize human rights due diligence, without a legal requirement to conduct it. Incentives might include the ability to use the performance of human rights due diligence as a defense to legal liability if a human rights harm occurs after the due diligence process.



Asset Managers: Beware, It's Not Just Regulation, But Reputational Risk that Impacts the Bottom-Line

In the interest of efficiency, many asset managers may tailor the degree of their human rights due diligence to meet the relevant obligations only. Even where human rights due diligence is not legally required, however, in many cases it will make good business sense to incorporate these issues into the diligence process. For example, consider an asset manager that acquires a manufacturing company in a foreign jurisdiction. If forced labor violations are later uncovered at this portfolio company and the asset manager is sued, the performance of human rights due diligence might be one fact that helps to mitigate the asset manager's legal and, perhaps just as importantly, reputational risk. Transparent, regular and responsible engagement with relevant stakeholders regarding human rights issues, particularly at the portfolio company level, can be an effective tool to mitigate these non-financial risks.

Conclusion

While the development of the mHRDD concept is only one aspect of the continuing global trend toward promoting and regulating sustainable business practices, the implementation of these regimes is particularly significant for asset managers given the importance of due diligence to the investment process. Compliance with these new regimes may appear to be a daunting task, particularly as many aspects of these future legal regimes remain uncertain. Thankfully, asset managers are not without guidance. By analyzing the design choices in the Issues Paper and preparing for the future of mHRDD, asset managers may not only be better placed to comply with these requirements but also to actively contribute to a more just and sustainable world.

For more practical advice on how to better integrate human rights considerations into existing practices, please see our article, "[Top of the List: Best-in-class companies are already anticipating change by reviewing and refreshing their human rights programmes](#)".





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How Can We Help?

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