

HUMAN RIGHTS DUE DILIGENCE

Human rights violations are perpetrated mostly by states. That is why the basic premise of human rights law is to protect civilians against arbitrary conducts of states. Yet the rapid process of globalisation has revealed clearly that other actors of the world order are also likely to infringe on human rights. Business enterprises appear as a major group of non-state entities having a huge capacity to commit or become accomplice in grave human rights breaches. Questions arise particularly for multinational corporations operating in developing countries. The risk of adverse impact on human rights linked to business activities in turn led the international community to adopt a number of regulations.

The United Nations Global Compact includes ten guiding principles in the areas of human rights, labour, the environment and anti-corruption. Following the enactment of the Compact, the United Nations adopted “the Guiding Principles on Business and Human Rights”. The Principles provide clarity and details as to the scope of corporate responsibility envisaged in the Global Compact. They set out the global standards for protection and promotion of human rights in the context of global business. According to the Principles, the duty to control abusive business activity lies primarily with home states of multinational enterprises and those hosting foreign investments. But the Principles also require businesses to respect human rights.

The responsibility to respect enjoins corporations not only to refrain from committing human rights violations, but also it urges them to take positive action for promotion of human rights. While respecting or supporting human rights standards may seem as a burden *prima facie*, it may also help companies to advance their businesses. For instance, there is a rising tendency among consumers to check the records of companies in terms of how they carry out their business activity. Furthermore, some home or host state laws, such as the Alien Tort Claim Act, may lay down certain human rights standards to be followed by corporations falling under their jurisdiction. Hence, it is in the best interests of corporations to respect and promote human rights through generating and implementing self-regulations.

The responsibility to respect and support human rights through self-regulations necessitates policy commitment by businesses. The Guiding Principles on Human Rights require companies to perform human rights due diligence. The compliance programme to be developed by businesses as to human rights due diligence must be based on a set of rules, procedures and mechanisms. Although all businesses have the responsibility to respect and support human rights, the size, type and nature of companies will play a considerable role in shaping the human rights due diligence of a company. Each business should have its own tailor-made programme with a view to the following requirements.

- In preparing human rights due diligence programmes, businesses must identify potential or existing human rights risks pertaining to their operations.
- Following human rights impact assessment, businesses must manage such risks through internal mechanisms tasked with running the human rights compliance programme.
- The internal mechanisms must develop guidelines to be prepared in light of human rights risks identified.
- The internal mechanisms must implement and monitor the compliance programme.

In addition to the essential tenets of a compliance programme listed above, businesses must invoke human rights law consultancy whenever necessary. Some aspects of human rights due diligence entails a certain level of human rights expertise. In other words, the question what actually are human rights is key to conduct human rights due diligence. That being said, the content of human rights is not free from controversy. There exist many conventions and an immense jurisprudence on human rights. Therefore, interpretation of human rights in different contexts is not facile.

As LBF Partners, we offer high quality legal service to businesses for their human rights diligence programmes. Our service comprises tailor-made human rights impacts assessment, due diligence guidance and training. We also offer a fist class consultancy on human rights law.