

# Compilation of Key Findings

## **Chapter Three: Orienting and Embedding – Internal Company Management of Business Relationships**

- Human rights are firmly on the corporate agenda but compete for management attention in a crowded field of issues relevant to business relationships.
- The integration of human rights considerations into business relationships benefits from clear leadership and coordination of knowledge and expertise across relevant functions in the company.
- Companies prefer to bring human rights into business relationships by embedding them in existing management systems.
- There is a recognition that building capacity amongst business partners to manage human rights, rather than just to comply with codes of conduct, is a more sustainable approach.
- If companies send conflicting messages to their partners about their human rights expectations and requirements, this undermines the commitment of both parties.
- Faced by vast and complex value chains, companies constantly need to prioritise their investments of time and resources. Some are developing internal processes to ensure they give appropriate attention to human rights.
- Companies that start by addressing human rights in their own operations can address the human rights performance of their business partners with greater clarity.
- Companies are actively learning from their efforts to integrate environment, health and safety, and anti-bribery and corruption concerns in their management systems and business relationships.

## **Chapter Four: Respecting Human Rights Throughout the Business Relationship Cycle**

### *Selecting and Starting the Relationship*

- Corporate values and business principles are the foundation of efforts to integrate human rights in business relationships.
- While their codes of conduct for suppliers commonly make explicit reference to human rights, only a few of the companies surveyed have explicit statements on human rights expectations with regard to other types of business relationships.
- Companies tend to focus on particular human rights that are relevant to their industry or business relationships. They are starting to adopt a wider perspective on human rights and business risks.
- Because not all business partners understand or value the language and content of human rights, companies adopt a variety of communication strategies to discuss human rights with their business partners.

- An increasing number of actors influence company expectations, including customers, multistakeholder initiatives, investors and governments.
- Few companies have internalised or operationalised the idea that they should consider all human rights, rather than a selected number, in their human rights assessments.
- Company checks on business partners touch on human rights, but rarely do so explicitly.
- Companies generally assess the human rights impacts of operations, products or services with which they are involved through their business relationships, and the track record of business partners.
- Country assessments of human rights risk are frequent in only a few kinds of business relationships (suppliers, customers, joint ventures). Large transactions tend to receive more attention.
- Companies undertake a range of actions to prevent and mitigate human rights impacts that are associated with their business relationships.
- How often and under what circumstances companies involve outside stakeholders to assess the human rights impacts of their business relationships varies by industry and type of relationship.
- There is an emerging practice of calculating the costs and benefits of addressing human rights in business relationships.

#### *Formalising the Relationship*

- Despite the challenges, companies increasingly see advantages in including human rights concepts and language (in some form) in contracts with business partners.
- “Well-known” human rights concerns (notably forced and child labour, and security issues) are often referenced in contracts, directly or via references to company policies or codes of conduct.
- When human rights are included in contracts, companies use different reference points and different legal techniques.
- Companies are using various techniques inside and outside contracts to make human rights more specific.
- Seeking “ways to honour the principles of internationally recognised human rights” when faced with conflicting national requirements are rarely dealt with in contracting.
- Companies are creating leverage with business partners to address human rights issues but it is often not through the contract alone that they create meaningful commitment to change.
- Companies are using contractual provisions to address human rights issues in the value chain beyond their immediate business partner.

### *Managing the Relationship*

- Building the capacity of business partners to manage human rights issues can be an important mitigation strategy.
- For certain business relationships, companies have systems in place to track performance against company codes or contractual requirements.
- Companies appreciate that dynamic situations require dynamic and regular assessment and tracking, but this is not always widely embedded in actual practice.
- Companies often respond more urgently to severe human rights impacts, and expect business partners to prevent or mitigate severe impacts before addressing other issues.
- Communicating with external stakeholders about human rights in business relationships is not yet common practice.
- Establishing grievance mechanisms and providing access to remedies for negative human rights impacts in business relationships is a work in progress.

### *Ending or Renewing the Relationship*

- Companies recognise that terminating relationships on human rights grounds is an option when things go wrong, but that it is not always the best option from a business or human rights perspective.
- Companies may suspend relations with partners, or take over their operations, on human rights grounds, but usually do so in the course of dealing with broader concerns.
- Renewing business relationships can be an incentive for business partners to improve their human rights performance.
- Companies increasingly review human rights at the end of their relationships, when they consider their reputational legacy.
- Communicating about termination of business relationships on human rights grounds can be complex in reality.

## **Chapter Five: Respect for Human Rights in Joint Venture Relationships**

### *Selecting and Starting the Relationship*

- Companies can help to manage human rights-related risks by choosing their JV partners with care, but their choices may be limited in some circumstances.
- Before forming a JV, companies use various avenues to convey their human rights expectations to business partners.
- Companies do serious due diligence for certain JVs, and often consider human rights.
- Due diligence appears to vary in scope, and is more extensive when a company operates or holds a majority stake in the JV.

- To understand country situations and challenges, companies may consult external stakeholders but more frequently speak to potential business partners.

#### *Formalising the Relationship*

- JV agreements can be designed to consider human rights explicitly.
- Contractual language on human rights is considered mandatory by some companies, whereas others include it where possible.
- JV agreements may stipulate operating procedures that explicitly or implicitly address human rights.
- Companies create long-term leverage by their choice of roles and procedures in the JV.
- Internal coherence and alignment may affect the human rights content of the agreement.
- Some companies treat regulatory and reputational risks as conditions precedent.
- Referring to third party standards, including MSIs, builds further leverage to address key issues.
- Seeking finance for the JV from financial institutions that have a clear set of social and environmental standards is often a sensible way to establish leverage over JV partners.

#### *Managing the Relationship*

- When companies are not operators of a JV, they usually involve themselves less in its regular social and environmental assessments, rarely build capacity in human rights, and do not consistently report on its human rights practices.
- Some companies receive consistent reporting on their JVs' human rights performance.
- Grievance mechanisms for employees and affected communities are variable.

#### *Ending or Renewing the Relationship*

- JV agreements rarely consider human rights-related problems to be material breaches.
- Legacy issues (including human rights) can affect the reputation of former owners.

### **Chapter Six: Respect for Human Rights in Merger, Acquisition and Disposal Relationships**

#### *Orienting and Embedding*

- M&A teams may need guidance on when, how and why to consider human rights.

#### *Selecting and Starting the Relationship*

- Initial due diligence processes and interactions can uncover what is required for alignment and provide a framework for dialogue with a target company.
- The extent of human rights inquiries during initial assessments may depend on the importance of the deal.

- Existing M&A checklists are unlikely to expressly reference human rights, but checklists are evolving.
- Information gathering, including with stakeholders, may be constrained by the need to maintain commercial confidentiality.
- Country risk analysis is important to understanding broader human rights risks. Processes to take account of sanctions seem to be in place.
- When companies obtain human rights information on a target company they tend to rely on self-disclosure. They increasingly request information on financing conditions and their participation in MSIs.
- Companies are starting to scrutinise the business relationships of potential target companies.
- It can be difficult to price reputational and other liabilities related to human rights impacts. A company may find it easier to estimate the cost of bringing M&A targets into compliance with its standards.
- Human rights issues alone are unlikely to delay a merger, acquisition or disposal unless they are accompanied by other serious (reputational, legal, operational) risks. Companies may have good reasons to become more selective.
- Inquiries on human rights are more common during mergers and acquisitions than disposals.

#### *Formalising the Relationship*

- In acquisitions, leverage should not be an issue in theory but in practice may be more difficult to exercise.
- Companies tend not to include explicit references to human rights in contracts relating to mergers, acquisitions and disposals.
- Closing conditions may incorporate human rights elements even if they are not included in the contract.

#### *Managing the Relationship*

- If human rights issues are addressed, they are generally integrated in broader action plans that raise the target enterprise's practices to the company's standards. Few companies have stand-alone human rights action plans.
- Target companies may need continued guidance on raising standards.

#### *Ending or Renewing the Relationship*

- Assets can remain associated with a company after disposal.
- Disinvestment due to human rights challenges can pose difficult dilemmas.

## **Chapter Seven: Respect for Human Rights in Franchising and Licensing Relationships**

### *Selecting and Starting the Relationship*

- It is important to communicate expectations and establish standards early, especially in long-term franchise agreements.
- Consumer expectations can stimulate consideration of human rights in these business relationships.
- Company assessments are often more detailed when the company name is associated with the business relationship.
- A partner's capacity to manage human rights issues is an important dimension of assessment.

### *Formalising the Relationship*

- The duration of many franchise agreements makes it necessary to manage human rights issues throughout the relationship, rather than relying on the contract.

### *Managing the Relationship*

- Companies use many forms of leverage to focus franchisees' attention on human rights issues.
- Companies routinely track the human rights performance of franchisees.
- Grievance mechanisms are a work in progress.

### *Ending or Renewing the Relationship*

- Terminating a relationship usually requires several steps.

## **Chapter Eight: Respect for Human Rights in Supplier and Service Provider Relationships**

### *Orienting and Embedding*

- Creating coherence between human rights policy commitments and procurement is a well-recognised challenge.

### *Selecting and Starting the Relationship*

- Companies most frequently set and communicate their expectations for suppliers and service providers by developing company codes or policies.
- Understanding the supplier or service provider is a key part of understanding potential human rights risks.
- Assessing country risks often depends on where the supplier or service provider is located and the types of services provided.

- Faced by complex supply chains, companies prioritise certain risks. Some are developing approaches to risk that explicitly consider human rights.
- Stakeholder consultations in supply chains often focus only on workers once the relationship has started.
- When supply chains consolidate, it is an opportunity to align shared values.
- Companies do not yet know how to calculate the efficiency of their spending on supply chain compliance.

#### *Formalising the Relationship*

- Contractual references to human rights issues serve several purposes.
- Given the wide range of their relationships, companies use an array of tools to generate leverage.
- It is common to specify the consequences of non-compliance.
- Graduated contractual provisions can provide flexibility.
- Companies are asking partners to communicate the company's requirements to their business partners.
- Reflecting MSI and industry initiative requirements in contracts, is an approach to note.

#### *Managing the Relationship*

- Monitoring (some) suppliers has become a routine part of supply chain relationships.
- Companies are reducing the audit burden and identify key concerns.
- Non-compliance measures are often viewed by suppliers as punitive. Some companies find proactive and incentive-based systems more effective.
- Some reporting by suppliers and of audit results is occurring in select sectors.
- "Whistle-blower lines" are the most common form of grievance mechanism, but practices vary.
- MSIs can assist companies to resolve disputes and prompt development of effective dispute mitigation.

#### *Ending or Renewing the Relationship*

- Termination clauses are common in supplier contracts, but rarely applied in practice, in favour of corrective action.

### **Chapter Nine: Respect for Human Rights in Direct Customer Relationships**

#### *Orienting and Embedding*

- Consumer expectations about human rights can focus a company's attention.

- Staff need appropriate incentives and disincentives (embedded in a company culture supportive of human rights) to take on difficult discussions with customers.
- Regulatory and MSI requirements can be a source of leverage.

#### *Selecting and Starting the Relationship*

- Business customers and partners are expressing their expectations on human rights. This can lead to a “battle of standards” that companies are starting to address and avoid.
- Consumer expectations on human rights can be a source of leverage that assists companies to raise human rights issues with their business partners.
- “Know Your Customer” processes may address certain human rights issues but do not yet do so systematically.
- Including human rights considerations in standard bidding documents could improve outcomes and level the playing field.
- Knowing how customers will use products or services is a key challenge.

#### *Formalising the Relationship*

- Company contracts are excluding certain uses of products or services.
- Some companies require compliance by customers as a contractual requirement.
- A company may need to take a big picture approach regarding product misuse associated with its name or brands.
- Instalment sales contracts and after sales service agreements can provide a measure of leverage over customers’ use of products.
- Customers may use contracts to shift liability to business partners in a manner out of line with the Guiding Principles.

#### *Managing the Relationship*

- Risk management approaches can identify which customers require additional attention.

#### *Ending or Renewing the Relationship*

- Legacy issues can be a key challenge.

## **Chapter Ten: Respect for Human Rights in Investor-State Relationships**

#### *Selecting and Starting the Relationship*

- Investor-state contracts provide opportunities for private partners to proactively improve uptake of the Guiding Principles by their state business partners and level the playing field amongst public and private businesses.

- Business relationships with governments can magnify real or perceived involvement with states' human rights abuses.
- State-owned enterprises (SOEs) inexperienced in human rights management can bring risks and challenges for their private partners.
- Assessing country risk is a standard consideration.
- Developing processes to assess governments as business partners is still a work in progress.
- National authorities or international financial agencies may require stakeholders to be consulted on large projects and respondents often feel well placed to lead this process.

#### *Formalising the Relationship*

- Host states are not always equipped or willing to accommodate international and public expectations on human rights when negotiating agreements.
- Companies and external stakeholders often have different perceptions about the extent to which companies exert leverage with governments.
- Projects covered by investor-state contracts often require provision of public security. This raises challenges around state sovereignty and the duty to protect.
- Referring to multistakeholder initiatives can provide an avenue to reinforce human rights in investor-state agreements.

#### *Managing the Relationship*

- Perceptions of the benefits from (and motives for) local content requirements are mixed.
- "Additional goods and services" provisions can be seen to contribute positively to local development or inappropriately displace government's responsibility.
- Contractual transparency expectations increase when working with governments.
- Demands for public reporting of revenue are also increasing.
- Company's operational-level grievance mechanisms can provide a competitive advantage when working with government.

#### *Ending or Renewing the Relationship*

- After a change of government, companies may have to build their relationships all over again.
- Legacy, and its reputational consequences, are highly correlated to country context.