

INDIA'S FIRST MAGAZINE ON LEGAL AND CORPORATE AFFAIRS

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# WITNESS

Volume 12 Issue 8 | May 2022

₹ 100 US \$10 UK £6



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# Business & Human Rights- Mandate Emerging Globally for Companies !!!

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## I. INTRODUCTION

Human rights cannot be cordoned off merely as a corporate social responsibility (CSR). In fact, it forms an integral part of all business operations, from human resources to procurement, regulatory measures to legal compliance, human interaction is a key element. For instance, when purchasing land, the human rights implications involves the company to consider resettlement of local populations. When starting a new factory, competition with the local community for water and other basic resources implicates human rights. When hiring human resources, as a reputational and legal liability, the Company must ensure workplace health & safety conditions and also lay emphasis on effective management of environmental impacts. While companies are seen to recognize human rights principles as a moral imperative to operate, there is further acknowledgement that respect for human rights can also serve as a tool for improving business performance.

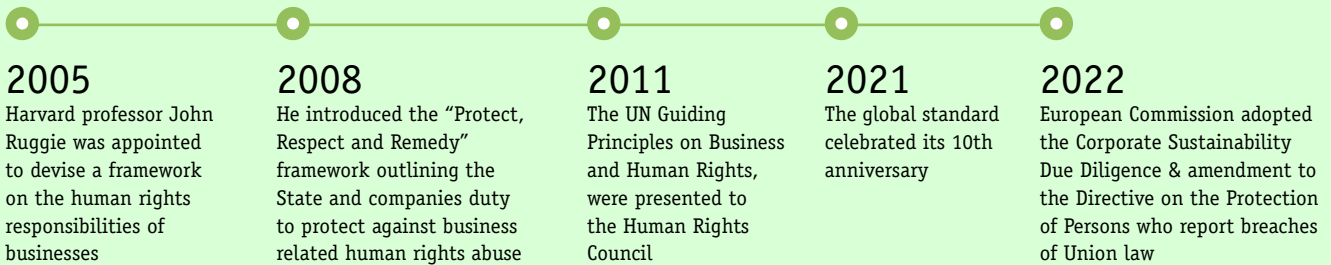
## II. RELATIONSHIP BETWEEN BUSINESS AND HUMAN RIGHTS

Businesses regardless of their operations have an impact on communities worldwide. Such impact has both positive and negative implications. Over the recent years, there have been many controversies revolving around contravention and negative impact of businesses on human rights. For instance-

- Exploitation of an individual's right to privacy by third party organizations or failure to maintain confidentiality due to loopholes in internal data protection systems;
- Setting up of factories or other business units without proper environmental clearances, thus leading to a compromise with respect to the right to a healthy environment;
- Prevalence of forced, compulsory or child labour by way of human trafficking or coercion is one of the biggest concerns faced in the corporate markets across the globe.



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### III. BUSINESS AND HUMAN RIGHTS DUE DILIGENCE – OVERVIEW

1. About the UN Guiding Principles on Business and Human Rights (hereinafter referred to as 'the Principles')

The UN Guiding Principles on Business and Human Rights are applicable on a voluntary basis across all business enterprises, irrespective of the industry or business type or structure. The primary objective of the principles is to provide a set of comprehensive standards and practices focused on achieving tangible results in business and human rights, thus contributing to socially sustainable globalization. A significant aspect of the principles from the ESG perspective is its emphasis on the 'S' component that clarifies the roles and responsibilities for managing business related human rights risks and impacts.

Another crucial element of the Principles is the provision on human rights due diligence, which is the main management tool put forward for companies to execute and demonstrate respect towards human rights. While the concept of human due diligence was previously contested, it has become more widely acceptable since the last decade with countries gradually transitioning to mandating the same. The previous year i.e. 2021 witnessed

countries' new legislative mandates on companies to conduct human rights and decent due diligence work not only throughout their supply chain, but throughout all business relationships in their value chain. The two countries who have adopted new legislations on human due diligence are –

i. Germany – On 03rd March 2021, Germany's Federal Cabinet approved the Act on Corporate Due Diligence in Supply Chains, which is to come into effect from 1st January 2023. The Act is aimed at taking appropriate measures to respect human rights and the environment within their supply chains.

ii. Norway - Norwegian Parliament on 10th June 2021, adopted the Transparency Act which entails regularly conducting human rights due diligence, followed by publication of annual human rights statement and active response to third party requests pertaining to information regarding adverse human rights impacts. The Act shall come into force from 1st July, 2022.

June 2021 marked the first decade anniversary of the Principles by the UN Human Rights Council. In celebration of this occasion, the UN Working Group on Business and Human Rights launched a project to further drive and scale up

implementation of the Principles over the next 10 years. The main components of the project consisted –

- i. Assessing progress, gaps and analysing the various challenges, obstacles and opportunities associated with the implementation of the Principles over the last decade.
- ii. The Working Group recognized the financial sector as a driving force for effective implementation of the Principles and therefore, recommendations made by the institutional investors and others in the investment community were taken into account as crucial contributors.
- iii. Subsequently in November 2021, the 'UNGPs 10+ Roadmap for the next decade' of business and human rights was introduced, with prospective recommendations for governments, businesses and others regarding advancing more robust policy action and change in the coming years.

2. Directive of the European Parliament and Council on Corporate Sustainability Due Diligence and Amending Directive on the Protection of Persons who report breaches of Union law (hereinafter referred to as 'the Draft Directive')



Over the years, there has been a conscious recognition of human rights and environment related impacts associated with business operations. Moreover, these components are considered crucial in achieving the UN SDGs (Sustainable Development Goals). However, in large set ups, it often becomes difficult to assess potential risks linked to the value chain. To address this concern, it is perceived that a due diligence process focused on identification of adverse impacts in value chains can help in formulating suitable human rights and environment related data readily available. In a Joint Declaration on EU Legislative Priorities for 2022, the European Union witnessed giving priority to key policy objectives including delivering an 'economy' for the people. Keeping in mind the far fetching adverse effects of the COVID-19 pandemic, EU endeavours to join forces in repairing and giving priority to social rights, ensure a level playing field with fair trade practices and facilitate access to capital for small and medium- 3 sized enterprises, thereby striving to complete the banking union.

On 23rd February, 2022, the EU Commission adopted the Draft Directive on requiring EU companies to carry out due diligence pertaining to human rights and environment related aspects. The Draft Directive submitted to the EU Parliament and the European Council for approval is set out to provide a horizontal framework to foster contribution of businesses operating in the single market by identifying potential adverse impact on human rights and environment through their activities in both own operations and through their value chains. The Draft Directive once approved shall give each EU Member State two years to formulate

national laws incorporating the Directive. Some of the integral components of the Directive include –

The Draft Directive requires large EU companies and also some non-European companies, carrying out significant business in Europe, to assess their actual and potential human rights and environmental impacts throughout the operations including the supply chains. Any form of non-compliance of the process shall attract penalty and civil liability.

The concept of human rights' due diligence can be said to have found its base in the Principles (UNGPs) along with other global standards that align with ESG parameters. Based on estimations of the Commission, the Draft Directive is expected to apply to approximately 13,000 EU companies. The due diligence process is to be conducted to identify negative impacts that occur within the business operations and accordingly, incorporate corrective actions, for mitigation of risks and to minimize the extent of those impacts.

## 2.1. ARTICLE-WISE DESCRIPTION OF THE DRAFT DIRECTIVE

- Article 1 outlines the rules on obligations of due diligence to be adhered by companies with key focus on human rights and environmental criteria. The process shall include not only the respective company's operations but also the operations of its value chain partners.

- Articles 2 and 3 pertain to the scope of application of the Draft Directive and definitions, respectively.

- Article 4 requires Member States

### Article 5

Implementing a due diligence policy and also ensuring integration of the same in corporate policies

### Article 6

Identification of actual or potential risks and adverse impact in both own and supply chain operations

### Article 7

Ensuring companies devise appropriate measures to curb adverse impact identified under the due diligence process

### Article 8

Take appropriate measures to end the identified adverse impact as per the due diligence process

### Article 9

Provide possibility to submit complaints in case of legitimate concerns associated with the value chain partners

### Article 10

Assess effective implementation of the due diligence process

### Article 11

Ensure publication of annual statement on official website including details pertaining to the outcome of due diligence process

### Article 12

Sets out obligations on the Commission to adopt guidance to help companies comply with the provisions to combat the identified adverse impacts

to ensure that companies conduct the requisite process in compliance with provisions as set out under Articles 5 to 11 of the Draft Directive.

- Article 13 provides support on how companies should fulfil their due diligence obligations; whereas Article 14 provides accompanying measures to companies in the scope of this Draft Directive including operation of dedicated websites, portals or platforms to financially support SMEs and so on.

- Article 15 encapsulates measures to adopt business models and strategies compatible with transitioning to a sustainable economy with limiting global warming to 1.5 °C in line with the Paris Agreement.

- The subsequent Articles 16 to 18 make provisions for authorized representatives to exercise powers for enforcement of certain obligations.

- Article 19 establishes the right to raise an alarm against any company which is believed to be non-compliant with the obligations of the Draft Directive.

#### IV. CONCLUSION

The Draft Directive is formulated in alignment with provisions of the UN Guiding Principles on Business and Human Rights. Accordingly, it extends to the due diligence obligation across all levels of the supply chain. If integrated effectively, the regulation has the potential to lay down the groundwork required to help companies curb adverse risks and proactively manage potential as well as actual impacts identified under the human due diligence mechanism. [W](#)

### Article 20

Lays down rules on sanctions applicable to infringement of national provisions adopted in pursuant to this Draft Directive

### Article 21

Entails details of establishing a European Network of Supervisory Authorities

### Article 22

Provides for civil liability on account of non-compliance

### Article 23

Facilitates reporting of breach and ensuring protection of reporting person

### Article 24

Companies seeking public support to certify no sanction imposed against them for non-compliance

### Article 25

Director's duty of care wrt to decisions pertaining to sustainability matters

### Article 26

Director's responsibility to set up and oversee the due diligence process

### Article 26

Amendment by adding Sustainability Due Diligence and amending Directive (EU) 2019/1937



**Sonal Verma** leads the ESG Practice in the firm as a Partner and Global Leader – Markets & Strategy. With his crossroad working with business & laws – he brings advice & technology for effective change management in the journey of ESG. Sonal is well acclaimed for his work in regulatory & compliance programs over the last decade. He had in the past worked with 1800 plus clients in India and 61 other countries globally. He has worked with the top 3 unicorns and many Fortune 500 companies. His clients have been across different industries, viz. Automotive and OEMs, Pharma and Life Sciences, Manufacturing, Chemical Industry, BFSI, Infrastructure and Utilities (including stateowned PSUs), e-Commerce and Fintech Companies, Diversified Conglomerates etc.



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