

## BETWEEN COMPLIANCE AND BEST PRACTICE HUMAN RIGHTS RISK ASSESSMENT AND MANAGEMENT 10 TAKEAWAYS

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Ropes & Gray and Wallbrook recently held a roundtable discussion in New York, “Between Compliance and Best Practice: Human Rights Risk Assessment and Management.” On the Ropes & Gray side, the session was led by Michael Littenberg, Partner and Global Head of the firm’s ESG, CSR and Business and Human Rights practice. The Wallbrook lead was Mariana Abreu, Partner and Head of ESG & Human Rights.

Human rights risk and compliance is an increasing area of focus for both corporates and asset managers. Both Ropes & Gray and Wallbrook have leading advisory practices in this subject area. At the roundtable, Ropes & Gray provided an overview of adopted, pending and proposed corporate human rights legislation. The Wallbrook team provided practical advice on conducting a human rights risk assessment, with case studies involving various geographies and industries.

In this Note, we highlight selected high-level takeaways from the session:

1. Substantive corporate human rights-related regulation is increasing. Regulations have been adopted, are pending or have been proposed in many jurisdictions. During the session, the Ropes & Gray team noted it is tracking approximately 100 CSR regulations globally, a large number of which relate to human rights compliance.
2. Ropes & Gray noted the significant increase in mandatory human rights due diligence legislation. The first compliance period for German, Norwegian and Swiss legislation is underway. The proposed EU Corporate Sustainability Due Diligence Directive also continues to move forward. Most recently, the Parliament adopted its negotiating position on the CSDDD.
3. The Ropes & Gray team also noted the increase in trade-based forced labor regulation and related enforcement. The United States has been leading in this area, with a particular focus on China. Since the adoption of the Uyghur Forced Labor Prevention Act – which creates a presumption that Xinjiang-linked goods are produced using forced labor – over 3,500 shipments into the United States have been detained. The Ropes & Gray team noted that trade-based forced labor legislation also recently took effect in Mexico and has been proposed at the EU level.
4. New legislation explicitly or implicitly requires human rights risk and impact assessments. This legislation is consistent with the approaches espoused in the United Nations Guiding Principles on Business and Human Rights (UNGPs) and the Organisation for Economic Co-operation and Development’s Guidelines for Multinational Enterprises.
5. Finally, the Ropes & Gray team provided some observations on human rights compliance programs. They noted that many corporates are struggling to stay on top of the significant number of developments in this area. Corporates also are struggling to efficiently and effectively manage global human rights compliance and reporting. To meet these challenges, many U.S.-based multinationals are moving toward centralized global responsibility for compliance with corporate human rights legislation and are taking steps to further assess human rights risks and enhance compliance processes. The Ropes & Gray team also noted that many asset managers are enhancing their focus on human rights as part of their ESG integration.
6. The Wallbrook team explained that businesses are expected to have policies stating their commitment to human rights, however policies alone are not sufficient to mitigate risk. Businesses should implement these policies through regularly conducting human rights due diligence, preventing, mitigating or remedying adverse impacts and regularly evaluating the effectiveness of those efforts.

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7. Investors and multinational companies alike may be connected to numerous human rights risks throughout their portfolio, operations, supply chains or value chains. Wallbrook indicated that, under the UNGPs, businesses have a responsibility to act on all actual and potential human rights impacts that they may cause, contribute to or be linked to through their business partners. However, when there is a need to prioritize, companies should begin by addressing the most salient risks, assess how they are connected to the harm, and how much leverage they have to address the harm. When prioritizing, businesses should consult experts on the UNGP framework and seek advice from counsel on regulatory compliance.

8. Effective grievance mechanisms can be a useful way to assess potential and/or existing human rights-related risks within an organization. Reports made to an ethics hotline, human resources or other channel can help identify human rights risks or adverse impacts. However, a lack of reports through these channels can itself be an indicator of a human rights concern: an unused ethics hotline is not an indication that there are no potential issues. Rather, employees or stakeholders may fear retaliation if they make complaints. Some of the questions the Wallbrook team considers when evaluating a grievance mechanism include: what languages it is available in relative to the languages that employees speak, is there a way to submit grievances anonymously, and are there other barriers to accessibility such as literacy or internet access?

9. Depending on a company's industry, the severity and likelihood of the risks, and internal resources, human rights due diligence can take a variety of forms, including

(but not limited to) desk-based research, internal country-level risk assessments, audits through industry organizations and/or independent human rights impact assessments. The Wallbrook team shared examples of their work conducting desk-based and on-the-ground assessments in South Africa and beyond, highlighting the value of site visits to third-party warehouses and meaningful engagement with workers.

10. The Wallbrook team shared their experience working in challenging jurisdictions, where conducting on-the-ground assessments or investigating human rights abuses may come with a high risk to researchers and the people they interview, particularly in conflict-affected areas or countries with a high risk of surveillance. To avoid harm, businesses should leverage publicly available information. The Wallbrook team has deep expertise conducting desk-based research across the world, including knowledge of relevant databases and how to search court records in every country, as well as consulting local social media, credible activist and investigative journalists' blogs and employee review websites. Engaging local experts and experienced researchers is key.

## FOR FURTHER INFORMATION, CONTACT

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### Wallbrook

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## SELECTED ADDITIONAL RESOURCES

### Ropes & Gray

[Canada to Implement New Modern Slavery Reporting Requirements and Child Labor Import Ban – Slotting into Global Compliance by U.S.-based Multinationals](#)

[Recently Released UFLPA Enforcement Statistics Underscore the Need for Robust Due Diligence Processes](#)

[Mexico Bans Imports Made with Forced Labor in Alignment with the USMCA](#)

[The Pressure in Germany Is Rising: Corporate Social Responsibility Requirements are Increasing – Compliance Considerations for U.S.-based Multinationals](#)

[New Norwegian Mandatory Human Rights Due Diligence Law Creates Obligations for U.S.-based Multinationals Doing Business in Norway](#)

[Swiss Conflict Minerals and Child Labor Due Diligence Legislation Takes Effect – Will Require Due Diligence and Reporting by Many U.S.-Based Multinationals Doing Business in Switzerland](#)

[European Commission \(Finally\) Proposes Mandatory Human Rights and Environmental Due Diligence Directive – A Deep Dive Q&A on the Commission Proposal](#)

### Wallbrook

[Human Rights Risk and Impact Assessments](#)

[Managing Human Rights Risks at the Investment Level](#)

[Child Labor in the US: Corporates have a Responsibility to Act](#)

[Preparing for the Coming Wave of EU Sustainability Regulations](#)