

# MANDATORY HUMAN RIGHTS DUE DILIGENCE ON THE CARDS IN THE US?

25 July 2019 | United States of America

Legal Briefings – By **Amal Bouchenaki, Benjamin Guthrie and Antony Crockett**

---

On July 10, 2019, the U.S. House of Representatives Committee on Financial Services opened debate on the discussion draft of a bill that would require publically listed companies to conduct human rights due diligence and report on their findings and responses.

While this bill is in the earliest stages of the legislative process and is unlikely to be passed in the near future, it moves the United States into the growing community of countries in which similar legislation is being considered or enacted.

The draft bill [Corporate Human Rights Risk Assessment, Prevention, and Mitigation Act of 2019](#) would apply to all publically listed companies that are required to file annual disclosures with the U.S. Securities and Exchange Commission (**SEC**). It would require these companies to:

- Undertake an annual analysis to identify human rights risks and impacts in their operations and value chain;
- Rank any risks and impacts based on their severity; and
- Include a human rights section in their annual reports to the SEC that describes the structure of the company's supply chain, addresses the findings of the annual assessment and ranking exercise, identifies the actions the company has taken to avoid or mitigate any risks or impacts, describes the results of those actions and assesses their efficacy, and explains the processes the company has in place to avoid and mitigate human rights impacts.

Although the details of the legislation can be expected to evolve by the time this bill or any similar piece of legislation becomes law, if indeed it does, several features of the current draft are worth noting.

First, the bill's requirement that companies assess human rights risks and impacts in their "value chain" entails an obligation to conduct due diligence not only with respect to downstream business partners—e.g. suppliers and contractors—but also upstream business partners, meaning any entity that receives products or services from the company, with the exception of end consumers receiving the product or service for personal use. This is in addition to the company's obligation to conduct due diligence in respect of its own operations.

Second, while companies could face liability for failing to conduct human rights due diligence or failing to file annual reports, the bill does not currently create liability for any adverse human rights impacts, or provide for a right of action on the part of victims.

Finally, and relatedly, by placing oversight responsibility with the SEC and linking companies' human rights obligations to their existing financial and governance reporting obligations, the draft bill seeks to rely on transparency and public pressure, including pressure from investors, to incentivize companies. The SEC is also the agency with oversight over U.S. conflict mineral reporting regulations.

The draft bill is part of a growing wave of proposals to make human rights due diligence mandatory. France passed the first such law in 2017, following which legislation has been either introduced or called for in a number of other countries. Finland has committed to exploring similar legislation for the European Union during its presidency of the Council of the EU. Therefore, while the US bill is in an early stage, the move toward mandatory human rights due diligence is picking up steam globally, and companies should continue to monitor developments in this area.

[Please click here to visit our Business and Human Rights Hub](#)

## KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



<b>AMAL BOUCHENAKI</b> PARTNER, NEW YORK +1 917 542 7830 amal.bouchenaki@hsf.com	<b>BENJAMIN GUTHRIE</b> ASSOCIATE, NEW YORK +1 917 542 7851 benjamin.guthrie@hsf.com	<b>ANTONY CROCKETT</b> SENIOR CONSULTANT, HONG KONG +852 21014111 Antony.Crockett@hsf.com
---	--	--

---

## LEGAL NOTICE

The contents of this publication, current at the date of publication set out above, are for reference purposes only. They do not constitute legal advice and should not be relied upon as such. Specific legal advice about your specific circumstances should always be sought separately before taking any action based on this publication.

© Herbert Smith Freehills 2019

---

**SUBSCRIBE TO STAY UP-TO-DATE WITH LATEST THINKING, BLOGS, EVENTS, AND MORE**

Close

© HERBERT SMITH FREEHILLS LLP 2019