

New Expectations on Apparel and Footwear Manufacturers, Brands and Retailers – Responsible Supply Chains

On February 8, 2017, the Organisation for Economic Co-operation and Development (OECD) issued its [Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector](#) (Guidance). The Guidance promotes a framework, or an outline, of actions to address and reduce the negative human rights impacts of the sector’s business activities. The 186-page Guidance is specifically addressed to the “garment and footwear sector” and is intended to help enterprises in the sector implement the due diligence recommendations contained in the [OECD Guidelines for Multinational Enterprises](#) and [UN Guiding Principles on Business and Human Rights](#).

It will also likely be one resource that non-governmental organizations (NGOs) and activists will use as the basis for their expectations of the sector, and as their rubric for review and scoring of slavery and human trafficking website statements (pursuant to the UK Modern Slavery Act 2015) and non-financial reporting disclosures (pursuant to the EU Non-Financial Reporting Directive).

The Guidance provides basic recommendations for supply chain due diligence processes and supporting measures called “**Core Due Diligence Guidance**” (Core Guidance):

- Embed responsible business conduct in enterprise policy and management systems
- Identify potential and actual harm in operations and supply chain
- Cease, prevent or mitigate harm in operations and supply chain
- Track (verify, monitor and validate progress on due diligence and effectiveness)
- Communicate (communicate publicly and with affected stakeholders)
- Provide for or cooperate in remediation when appropriate

The Core Guidance makes recommendations and then describes actions and steps that can be taken to address each recommendation. The Core Guidance applies to all human rights and environmental risks – not only in an enterprise’s own operations, but also throughout its supply chains.

The Guidance goes further and supplements the Core Guidance with 12 “modules” that address certain risks that enterprises in this sector might encounter. The modules provide additional suggestions and guidance on how an entity might address the specific risks that are relevant to it.

The modules in the OECD Guidance address:

- | | |
|---|---|
| 1. Child labour | 7. Wages |
| 2. Sexual harassment and sexual and gender-based violence | 8. Hazardous chemicals |
| 3. Forced labour | 9. Water |
| 4. Working time | 10. Greenhouse gas emissions |
| 5. Occupational health and safety | 11. Bribery and corruption |
| 6. Trade unions and collective bargaining | 12. Responsible sourcing from homeworkers |

The OECD's Garment and Footwear Guidance is the third of several supply chain due diligence frameworks that the OECD has developed to assist with the implementation of the recommendations in the OECD Guidelines for Multinational Enterprises. One more guidance is in draft form. Currently, other OECD supply chain guidance on responsible business conduct exists for (1) minerals supply chains, (2) child labour in minerals supply chains (in draft form) and (3) agricultural supply chains. Those familiar with the other existing supply chain guidances will recognize similar elements in each. However, the Guidance for Garment and Footwear is different in that it emphasizes the role of corrective action and remediation by enterprises throughout their supply chains.

<u>Minerals Supply Chains</u>	<u>Minerals Supply Chains and Child Labour</u>	<u>Agricultural Products Supply Chains</u>
<p>The main elements of the framework are:</p> <ul style="list-style-type: none"> • Establish strong company management systems • Identify and assess risks in supply chain • Design and implement strategy to respond to identified risks • Carry out independent third party audit of supply chain diligence at identified points in supply chain • Report on supply chain due diligence 	<p>The main elements of the framework are:</p> <ul style="list-style-type: none"> • Establish strong company management systems • Identify and assess risks of child labour and worst forms of child labour in supply chain • Design and implement strategy to respond to identified risks • Carry out independent third party audit of SORs due diligence re worst forms of child labour • Report annually on supply chain due diligence on worst forms of child labour 	<p>The main elements of the framework are:</p> <ul style="list-style-type: none"> • Establish strong company management systems for responsible agricultural supply chains • Identify, assess and prioritize risks in supply chain • Design and implement strategy to respond to identified risks • Verify supply chain due diligence • Report on supply chain due diligence

What should manufacturers, brands and retailers do with this new Guidance?

They can start with the following:

- Consider whether and how they will use or adopt the Guidance
- Review Guidance carefully against their existing social and human rights risk assessment and supply chain due diligence processes to identify gaps
- Review Guidance for new or revised action steps to implement
- Review the Forced Labour Module against their slavery and human trafficking risk assessment, due diligence process and any existing website statements to identify gaps
- Start discussions Guidance with key customers and suppliers and in industry groups

Contact

Dynda A. Thomas

Partner, Cleveland

T +1 216 479 8583

E dynda.thomas@squirepb.com

The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations, nor should they be considered a substitute for taking legal advice.

© Squire Patton Boggs.

All Rights Reserved 2017

Core Due Diligence Guidance

1. Embed responsible business conduct in enterprise policy and management systems

- 1.1 Adopt a policy on responsible business conduct that articulates the enterprise's commitments to responsible business conduct in its own operations and in its supply chain
- Nature of the policy
 - Adopting and updating the policy
 - Communicating the policy
- 1.2 Strengthen management systems in order to conduct due diligence on risks of harm in the enterprise's own operations and in its supply chain
- Oversight
 - Decision-making
 - Functional alignment
 - Information systems to support due diligence

2. Identify actual and potential harms in the enterprise's own operations and in its supply chain

- 2.1 Scope the risk of harm in the enterprise's own operations and in its supply chain
- Methodology
 - Sector risks
 - Product risk factors
 - Country risk factors
 - Business-model risk factors
 - Sourcing model risk factors
 - Identify the enterprise's most significant risks of harm
- 2.2 Conduct a self-assessment of the enterprise's own operations
- Methodology
- 2.3 Assess suppliers associated with higher-risk for harms at the site level
- Supplier selection (risk-based approach)
 - Content
 - Assessment approach & methodology
 - Assessment team
 - Frequency of assessment
 - Understand the operating context
- 2.4 Assess the enterprise's relationship to impacts

3. Cease, prevent or mitigate harm in the enterprise's own operations and in its supply chain

- 3.1 Cease, prevent or mitigate harm in the enterprise's own operations
- Short-term objectives of the corrective action plan (CAP)
 - Longer-term and outcome oriented solutions of a CAP
 - Components of a CAP for the enterprise's own operations
 - Stakeholder engagement and expert consultation
- 3.2 Seek to prevent or mitigate harm in the enterprise's supply chain
- 3.2.1 Prevent contributing to harm in the enterprise's supply chain
- 3.2.2 Implement internal measures to mitigate risks in the enterprise's supply chain
- Prequalify suppliers
 - Consolidate suppliers
 - Know your suppliers
 - Establish business incentives
- 3.2.3 Use leverage to influence the supplier to prevent or mitigate the harm
- 3.2.4 Support the supplier in the prevention or mitigation of harm
- 3.2.5 Disengage from the supplier
- 3.2.6 Engage government

4. Track

- 4.1 Verify, monitor and validate progress on due diligence and its effectiveness in the enterprise's own operations.
- Responding to negative findings
- 4.2 Verify, monitor and validate progress on due diligence and its effectiveness in the enterprise's supply chain

5. Communicate

- 5.1 Communicate publicly on the enterprise's due diligence process, including how the enterprise has addressed potential and actual harm
- Content
 - Expectations of non-financial disclosure in law
 - Instances of non-disclosure
- 5.2 Communicate with affected stakeholders

¹ Source: <https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-Garment-Footwear.pdf>

6. Provide for or cooperate in remediation when appropriate

- 6.1 Establish processes to enable remediation in the enterprise's own operations
 - Operational level grievance mechanisms
- 6.2 Commit to hearing and addressing complaints raised through legitimate processes
 - Mediation
 - Multi-stakeholder grievance mechanisms
 - National Contact Points for the OECD Guidelines
- 6.3 Determine the appropriate form of remedy

Module 1. Child Labour

Embed responsible business conduct in enterprise policy and management systems

- Policy

Identify potential and actual harm in the enterprise's own operations and in its supply chain

- Scoping exercise
- Supplier assessment
- Understanding the local context
- Cease, prevent or mitigate child labour in the enterprise's own operations

Prevent the enterprise's contribution to harm (for retailers, brands and their buying intermediaries)

Tracking

- Verify, monitor and validate progress on due diligence and its effectiveness in own operations

Provide for or cooperate in remediation where appropriate

- Operational level grievance mechanisms
- Determining the appropriate form of remedy

Module 3. Forced Labour

Embed responsible business conduct in the enterprise policy and management systems

- Policy

Identify potential and actual harms in the enterprise's own operations and in its supply chain

- Scoping exercise
- Supplier assessments
- Cease, prevent or mitigate harm in the enterprise's own operations
- Seek to prevent or mitigate harm in the enterprise's supply chain

Track

- Verify, monitor and validate progress on due diligence and its effectiveness in the enterprise's supply chain

Provide for or cooperate in remediation where appropriate

- Report crimes
- Cooperate with authorities

Contact

Dynda A. Thomas

Partner, Cleveland

T +1 216 479 8583

E dynda.thomas@squirepb.com

The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations, nor should they be considered a substitute for taking legal advice.

© Squire Patton Boggs.

All Rights Reserved 2017