



## International Business and Human Rights

A failure to identify and manage Business & Human Rights risks arising from environmental, social and governance (ESG) issues can create legal, regulatory and litigation risks and harm reputation and brand value.

Human rights controversies can lead to a loss of commercial opportunities, increased operating costs and extended project delivery time, prevent access to capital and impact shareholder and investor relations. Mainstream investors now expect effective human rights governance and risk management systems within the context of a wider Sustainability and ESG strategy.

### CONTACTPERSONEN

#### Rhys Davies

Partner  
Perth | Whadjuk  
Country  
T:+61 8 6467 6079  
rhys.davies@dlapiper.com

#### Jonathan Exten-Wright

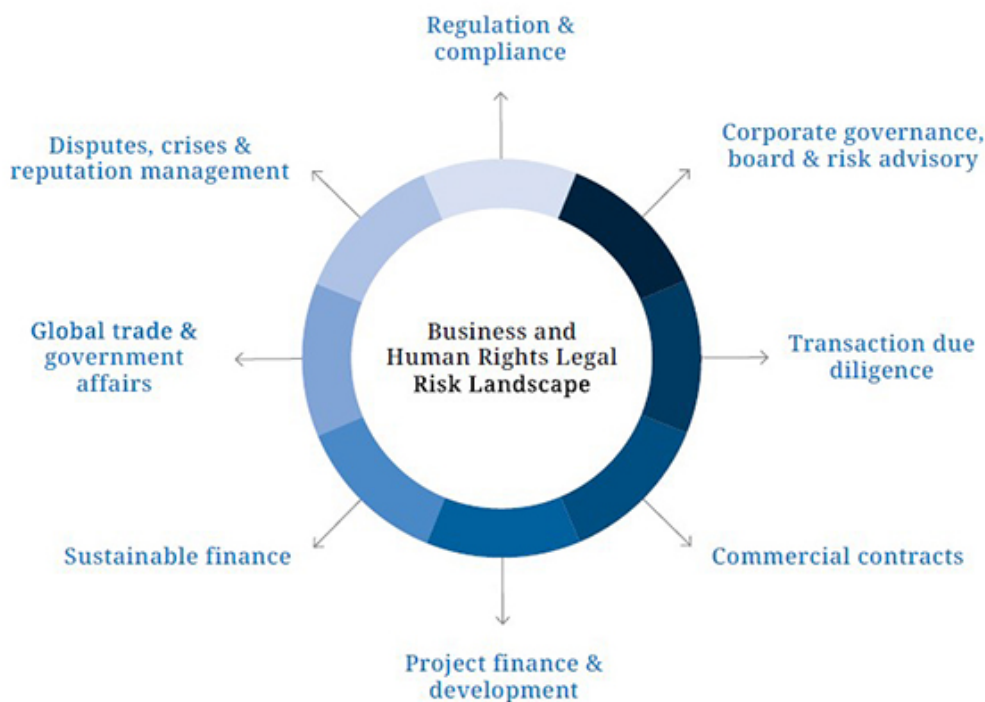
Partner  
Londen  
T:+44 (0)20 7796 6619  
jonathan.exten-  
wright@dlapiper.com

#### Sarah Ellington

Legal Director  
Londen  
T:+44 (0)20 7796 6022  
sarah.ellington@dlapiper.com

#### Daniel D'Ambrosio

Senior Associate  
Londen  
T:+44 20 7153 7882  
Daniel.DAmbrosio@dlapiper.com



## Our approach

We work with our clients to embed business and human rights risk management into a holistic Sustainability and ESG strategy. We advise boards, senior executives and in-house counsel as well as sustainability and other business professionals to develop business and human rights strategies, identify and manage salient risks across project development, investment planning, transactional, compliance, due diligence, risk assessment and supply chain management processes and meet human rights reporting and disclosure obligations.

Our team is best known for:

- **Strategic full service approach with specialist business and human rights expertise** - Our approach combines specialist human rights and market-leading regulatory, corporate, commercial and litigation lawyers to navigate strategic, governance, transactional, compliance and dispute resolution issues.
- **Holistic solutions through collaboration with subject matter experts** - We work with cross-functional and cross-discipline, internal and external subject matter experts to complement the advisory services our lawyers provide. This includes consultants, investigators, academics, data providers, civil society organisations.
- **Global collaboration** – Our global team is spread across the Americas, Europe, the Middle East, Africa and Asia Pacific with key anchors in every region so that clients can tap into our network of expertise around the world.

## CAPABILITIES

Our team has market-leading experience supporting clients across the range of strategic, legal, financial and operational issues that arise.

### Cross-border disputes, crises and reputation management

We represent clients on the most high-profile and sensitive disputes relating to environmental, social and human rights issues, including high-value arbitration and some of the most significant class-action litigation in the UK and USA in recent years. We advise on complaints to non-court based processes, including multiple OECD National Contact Points, membership organisation grievance mechanisms and other informal processes and support clients with the design of grievance mechanisms using novel approaches. We advise across the spectrum of dispute management issues, including dispute avoidance, handling the PR aspects, media and press inquiries and investigations, parliamentary and other government inquiries and dealing with NGO and other stakeholder activism,

including at the international level.

### **Aligning human rights risk management with corporate strategy and risk appetite**

We support clients to identify salient human rights risks and implement mitigation measures into governance structures and policy frameworks, due diligence and third party risk assessments as well as wider compliance and supply chain management programmes.

### **Regulatory and compliance advice**

We advise clients on ever-increasing regulatory requirements across transparency and disclosure obligations, supply chain and wider compliance requirements, trade and procurement rules as well as criminal finance and sanctions-related requirements. We advise on human rights impact assessments and investigations at country, corporate and project level.

### **Integrating human rights into corporate, commercial and financing transactions**

We advise clients on integrating human rights risk identification and management into transactional due diligence, risk mitigation and monitoring, KPIs and contractual frameworks. We advise on human rights impact assessments and investigations at country, corporate or project level.

### **Commercial contracts**

We support clients to align commercial contracts with corporate purpose, sustainable sourcing strategies and overall risk appetite to identify and mitigate human rights risks and ensure leverage is used effectively and with a view to the legal and regulatory risk landscape.

### **Transaction due diligence**

We work with clients to incorporate human rights into ESG due diligence in M&A and project financing transactions to anticipate salient risks, incorporate mitigants in transaction documentation and, ultimately, harness sustainable value.

### **Government affairs and policy advisory**

We support clients with monitoring, analysing and reporting on Business and Human Rights legislative processes, developing advocacy strategies and/or campaigns, influencing the legislative agenda in the interest of a client's position and conducting a strategic stakeholder analysis and mapping and coalition-building. We also advise governments on incorporation of international legal and "soft-law" standards into public and private regulation.

## **EXPERIENCE**

---

Our recent experience includes:

- Defending parent company liability claims in the English High Court and Court of Appeal (permission for the Claimants to appeal to the UK Supreme Court refused), involving submissions as to English, Australian, Canadian and Kenyan Law. This included advising on crisis management and public relations issues regarding on-going advocacy campaigns, media and press inquiries and investigative reports and responses to criticism raised in international fora, including at the UN.
- Acting in the defence of claims brought by many thousands of foreign plaintiffs under the United States Alien Tort Statute. This case is one of the most significant business and human rights cases in recent times because it clarifies the law in relation to whether claims can be brought by foreign plaintiffs against corporations under the United States Alien Tort Statute.
- Acting for a major brand in relation to several claims of illegal acts of human trafficking alleged to have occurred on their branded properties. We are also advising on policies and practices around human trafficking, including vigilance plans, education, training of team members, and coordination with local, state, and national organizations.
- Acting for a European Consumer Goods Multinational Retailer in arbitration proceedings against one of their Chinese suppliers because it was found during an unannounced audit inspection that the Chinese supplier's factory was using child labour.
- Acting for a number of client in relation to complaints before the UK and Dutch National Contact Points.
- Advising a global sustainability association on the re-design of a novel grievance mechanism.
- Advising numerous project sponsors in negotiations with Indigenous Peoples in connection with mining, energy and infrastructure development projects.
- Advising numerous project sponsors and financiers in relation to the application of the Equator Principles and IFC Performance

Standards to the project financing in relation to mining, energy and infrastructure development projects.

## ACHTERGROND

---

### Publicaties

#### **Anti-slavery and human rights obligations on corporations: impact on supply chains**

5 August 2021

The past few years have seen rapid development in legislation targeting modern slavery and forced labor in various developed economies. This trend will only accelerate as multinationals increasingly focus on their sustainability and ESG goals.

---

#### **Court of Appeal agrees it is arguable that a duty of care may arise in relation to end-of-life asset disposal**

12 March 2021

On 10 March 2021, the English Court of Appeal handed down its decision in Hamad Begum (on behalf of MD Khalil Mollah) v Maran (UK) Limited.

---

#### **'Parent company' liability: from Vedanta to BHP**

18 December 2020

On 9 November 2020, the English High Court handed down its decision in Município De Mariana & Ors v BHP Group Plc & Anor [2020] EWHC 2930 (BHP), striking out for abuse of process what would have been the largest mass tort claim in English legal history.

---

#### **The EU has adopted a new Magnitsky-like global human rights sanction regime... a new era for sanctions compliance?**

11 December 2020

An important Decision establishing a global human rights sanctions regime was adopted by the Council of Ministers on 7 December 2020, providing the European Union with a new sanctions framework that will enable the targeting of individuals, entities and bodies associated with serious human rights violations and abuses worldwide.

---

#### **Three ESG steps to keep your project bankable in 2021**

17 September 2020

Version four of the Equator principles will take effect on 1 October 2020, and it introduces three new requirements to the international environmental and social baseline for project finance.

---

#### **Human rights compliance programmes: Why now?**

10 September 2020

Businesses are increasingly required to identify and manage their involvement in adverse environmental and social impacts throughout their organisations and supply chains. Previously, drivers for developing human rights compliance programmes have included reputation risk and compliance with best practice and "soft law" standards.

---

## **Court of Appeal confirms mining company is not liable for human rights abuses in Sierra Leone**

17 July 2020

Earlier this year, the Court of Appeal handed down its judgment in the case of *Kalma v (1) African Minerals Limited, (2) African Minerals (SL) Limited and (3) Tonkolili Iron Ore (SL) Limited*. In this case review, we consider the Court's findings in relation to (i) accessory liability and (ii) companies' duty of care when operating abroad.

---

## **UK imposes targeted human rights-based sanctions in first autonomous move**

9 July 2020

On 6 July 2020, UK Foreign Secretary Dominic Raab announced the first autonomous sanctions designations since the UK formally left the European Union on 31 January 2020.

---

## **COVID-19: UK Government guidance on Modern Slavery reporting**

6 May 2020

The UK Government has acknowledged the impact of COVID-19 on businesses' modern slavery reporting requirements and will allow businesses to delay publication of their modern slavery statement.

---

## **Acquisition interrupted? The potential impact of nascent class actions on mergers and acquisitions**

1 April 2020

A recent case has illustrated the potential impact which group litigation / class actions based on so called parent company liability (i.e. the liability of parent companies for the acts of their foreign subsidiaries) can have on international businesses.

---

## **The Hague Rules on Business and Human Rights Arbitration**

18 February 2020

The recently released Hague Rules on Business and Human Rights Arbitration may assist and encourage the widening of the ambit of arbitration beyond commercial disputes to those concerning the effect of commercial activities on human rights.

---