

ESG supply chain risk and compliance

New developments in diligence and disclosures

Reflective of global Environmental, Social and Governance (ESG) trends we're seeing in the marketplace, new supply chain laws and regulatory requirements are coming. Are you operating internationally with a complex existing supply chain? Even if not directly applicable to your business right now, whether you are a retailer, supplier or a manufacturer, you need to take a proactive approach in identifying and managing the risks across your existing supply chain to mitigate both litigation and reputational risk for your business.

What is supply chain sustainability?

A supply chain or global value chain is the entire process of transforming raw materials into finished goods for consumers. It covers everything from production methods and procurement practices to product development and information systems. Supply chain sustainability refers to integrating environmental and socially responsible procurement practices (manufacturing, packaging, retail) into the complete lifecycle of a product.

4 key areas of sustainable supply chain risk for your business



Supply chain & data management tracking

With impending supply chain laws and regulations, proactively managing data is now more important than ever. If you are still operating manual or part-manual tracking, this will become increasingly difficult. Your technology supplier platform needs to be developed with ESG and sector-specific nuances in mind. As disclosure requirements increase, you will also need to take steps to meet these requirements while also protecting commercially-sensitive supplier information.

What's the risk?

Your supply chain becomes difficult to manage, increasing risk and ultimately resulting in significant exposure. Taking a proactive approach now means increasing accuracy and unlocking efficiencies for your organization.

How can we help?

We can partner with you to review and heat-map your existing data management and supply chain tracking system across ESG parameters including reviewing supplier questionnaires. We can advise on digitizing your existing platform or on the due diligence and selection of new technology providers. We can also ensure you are meeting supplier disclosure obligations without breaching confidentiality.



Supply chain reporting

You will need to have significant supply chain transparency to meet upcoming disclosure requirements. Do you have enough information to meet your legal compliance obligations? For example, you will be required to provide more information on the diligence you have conducted to ensure that your operations are not resulting in human rights or environmental violations anywhere in the globe. With this in mind, are your existing reporting measures and supplier contracts robust enough to meet these requirements? Perhaps there's an inherent existing risk in your supply chain based on the existing countries you're operating in?

What's the risk?

If a material risk already exists in your supply chain, you need to take immediate action to remediate this risk.

How can we help?

We can work with you to mitigate risks based on the regulatory regimes of the jurisdictions your supply chain currently operates in. We can review existing contracts with suppliers and vendors to ensure these will meet your legal obligations everywhere and harmonize your entire supply chain. We can also carry out specific investigations and audits.



Compliance and due diligence

If your procurement and value chain is spread across jurisdictions, it needs to comply with an ever-changing regulatory landscape. This will require increasing administration and disclosure. Compliance under one jurisdiction may also impact the due diligence of other suppliers in another part of your supply chain. You also need to understand the impact of specific trade agreements on your business operations.

What's the risk?

Your organization will face penalties (particularly in industries like the retail sector) and business disruption if you are unable to meet disclosure requirements around your suppliers. You will also forego more strategic commercial and funding opportunities if your supply chain is not fit for purpose when it comes to sustainability.

How can we help?

We can advise on compliance under domestic laws including how these laws will impact your business operations (for example, the recent German supply chain law). We can partner with you to prepare an ESG-specific due diligence questionnaire for sub-suppliers and vendors across sectors and jurisdictions. We can also advise on regional regulatory requirements across the EU, UK, US, Canada, CPTPP and RCEP (rules of origin). We can harmonize compliance throughout your supply chain, closing gaps made by jurisdictional discrepancies. We can also advise on all types of contracts from trade and investment treaties to international investment agreements and technology.



Reputation management, confidentiality & marketing

You need to know enough about your supply chain to be in a position to negate any potential negative external press coverage or claims, with detailed facts and information. You also need to be able to validate any marketing claims and ESG/ sustainability certifications you make externally.

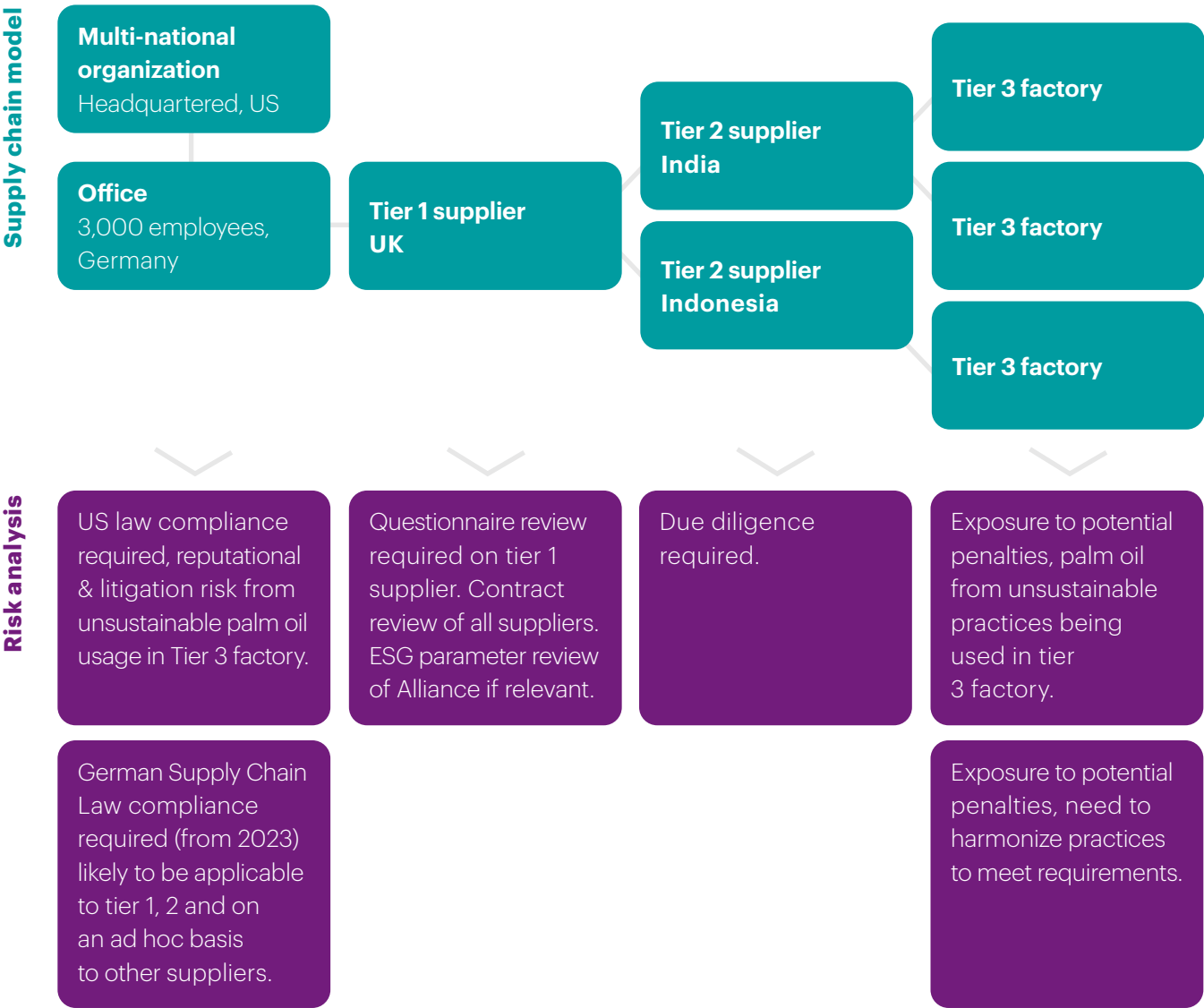
What's the risk?

Litigation around marketing and advertising claims. Negative press coverage can result in share price volatility and loss of customers and investors. Equally if organizations leverage this area as an opportunity, it can help differentiate your business particularly in the luxury and organic goods space.

How can we help?

We can partner with you to advise on product and process-related reputation management e.g. source of leather and how it was extracted. We can help ensure compliance when making claims around responsible and sustainable supply chains. Our attorney client privilege and technology solutions (private cloud) can help protect supplier information or highly sensitive data. We can also support in dispute avoidance and litigation situations.

Let’s look at a practical example of how risks can exist even in a very simply supply chain model



3 key supply chain questions for this business?

1. As a UK supplier, is it enough that your sub-supplier contracts only mimic UK law rather than the law of the jurisdiction in which your sub-supplier operates?
2. You are already part of an Alliance and have a diligence system in place but how future-ready is it to comply with the forth-coming laws?
3. How do you bridge the gap between real risk on the ground and what you are disclosing?

Some of our recent project experience

OIL MAJOR, AFRICA

This project involved risk and liability ESG due diligence together with design of a post-closing ESG performance package. We reviewed the environmental and social performance of the target company against bespoke client criteria to create a ‘red flag’ ESG review. Criteria included KPIs derived from the Paris Agreement and UN SDGs. We also reviewed the management plan structure to identify gaps. We develop a contract management platform for ESG supply chain performance and on-boarded pre-closing counterparties.



E-COMMERCE, EUROPE

We reviewed sustainability claims on a range of e-commerce products to be marketed and sold in the European Union. We designed a management system to address the risk of false or misleading sustainability claims by third party suppliers. We also developed a risk tool based on the client’s ESG risk priorities to manage supply chain breaches of ESG performance standards.



WORLD VISION, CANADA

We assisted World Vision to understand the opportunities and challenges for developing Canadian supply chain legislation. The full Canadian parliamentary report tabled in the House of Commons—A Call to Action: Ending the Use of All Forms of Child Labour in Supply Chains—on child labour and modern slavery in global supply chains, was released in October 2018.



LUXURY GOODS, EUROPE

We drafted a duty of care package for the procurement of sustainable materials for a luxury brand. The focus included a provision for endangered animals, testing regimes, employee working conditions, child and slave labour.



INTERNATIONAL ORGANIZATIONS/
PRIVATE ENTERPRISES, GLOBAL

Since 2003, we have advised on the importance of direct and cascading supply chain effects that should be used to prevent and lessen bribery, extortion and coercive acts and actors. We have advised and trained many clients and communities including World Bank, American and International Bar Association, International Trademark Association, American Conference Institute, International Association of Contract and Commercial Management (now World Commerce and Contracting Association), TRACE International and the United Nations.



INDUSTRIAL MANUFACTURER, US

A publicly traded global supplier of industrial and environmental machinery based in the US engaged us to provide them with recommendations on their ethics code, policies and practices and advice as to risks and opportunities in publishing information related to their policies and practices on their internal and external websites and in their annual ESG report. We also briefed them on the status of SEC disclosure rules and provided additional counsel from an employment law perspective to assist them with their company’s overall ESG positioning.



Environmental



Social



Governance

Spotlight on some media examples

While, we've focused on retail and consumer companies in this spotlight, similar instances of complaints are rising across all industry sectors.



In a complaint filed in the US Superior Court in the District of Columbia in early 2021, Aldi was accused of false advertising and marketing. The advocacy group GMO/Toxin Free USA alleged ALDI's claim that its salmon is sustainably sourced, is not credible.



Mowi, the world's leading seafood company, agreed to settle a similar lawsuit for \$1.3 million (€1.1m). The complaint alleged that the sustainability claims on its Ducktrap River of Maine smoked salmon were false.



Red Lobster is facing a class action complaint alleging that its farmed shrimp and Maine lobster are not sustainably sourced, as the company claims they are. The new complaint, filed by a consumer in U.S. District Court in California, claims that Red Lobster's shrimp is sourced from "industrial shrimp farms that do not employ the highest environmental or animal welfare standards."

Source: www.seafoodsource.com

Our ESG supply chain team

Our ESG team includes former General Counsel, leading academics and authorities on ESG as well as cross-practice experts to ensure you, and we, take a holistic view as we explore and advise on the challenges and opportunities facing your business.



Contact us

To discuss how we can best support your specific ESG supply chain journey, get in contact.

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