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Evolution of ESG Supply Chain Landscape on Major Projects

Grow | Protect | Operate | Finance

Speakers



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Evolution of ESG

- **1980s - 1990s:** Corporate Social Responsibility, Sustainable Development and Triple Bottom Line.
- **2000s:** Carbon Disclosure Project, Principles for Responsible Investment and the introduction of Environmental, Social and Governance.
- **2010s:** Sustainability Accounting Standards Board, International Integrated Reporting Council and Task Force on Climate Related Financial Disclosure.
- **2020s:** Institutional Shareholder Service group adds ESG Scores, S&P ESG indices launched, World Economic Forum Sustainable Value Creation Metrics, Canadian Securities Administrator's and International Sustainability Standards Board climate disclosure standards etc. etc.

Supply Chain ESG – Overview

Refers to integrating environmental and socially responsible procurement practices (manufacturing, packaging, sale) into the complete lifecycle of a product.

Manufacturer's ESG footprint is often more in its supply chain, than its direct operations. Programs and solutions directly tied to the supply chain can yield major ESG impacts. Conversely, failing to mind supply chain ESG risks can lead to major problems (legal and reputational).

Risks and regulatory burdens related to the S and G components are growing.

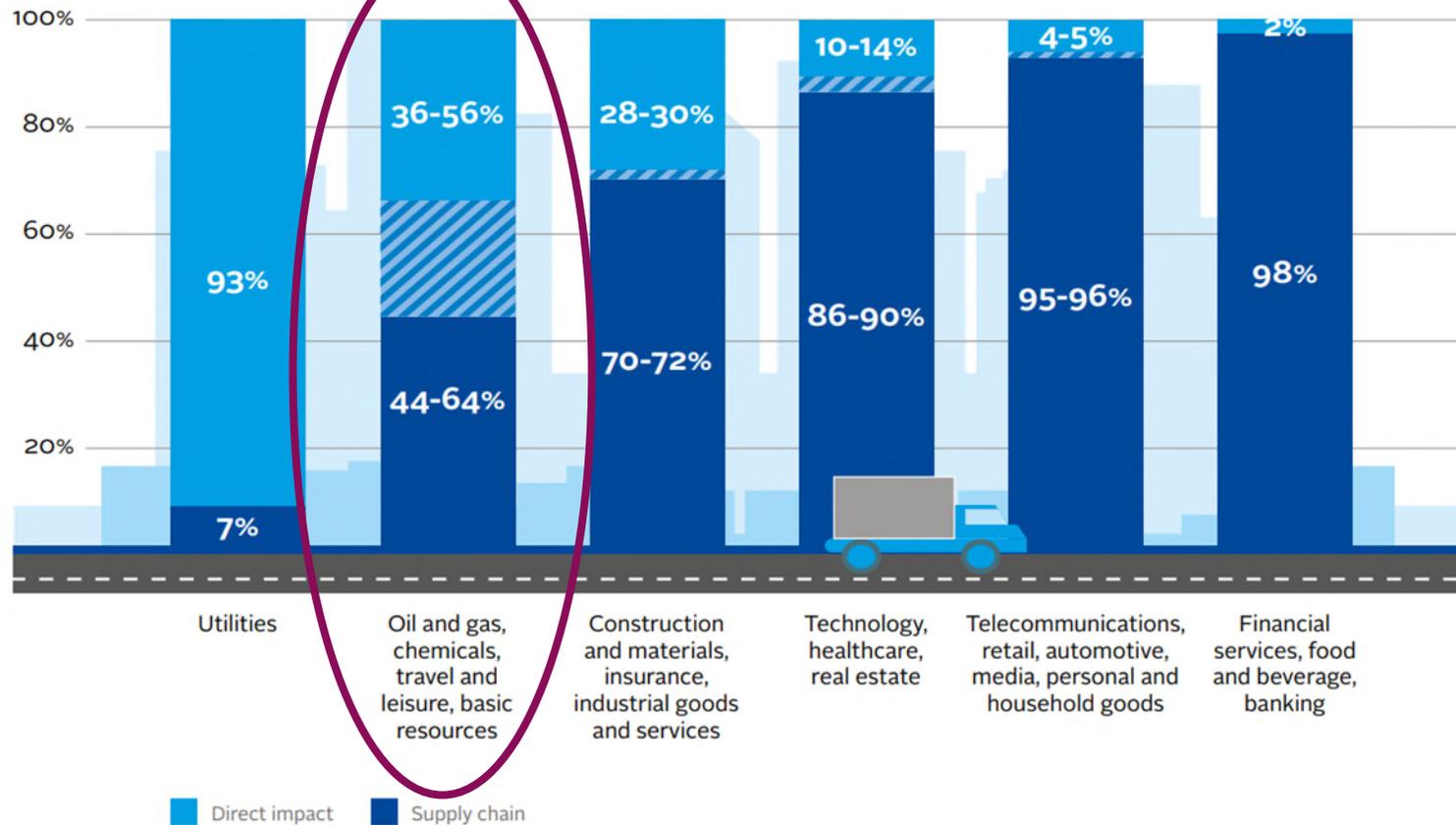
"...ESG will continue to gain importance and come under increased scrutiny in the coming years, making it an issue that manufacturers can't afford to ignore."

[The State of ESG in Manufacturing, Assent, IndustryWeek](#)



Supply Chain ESG – Overview

Figure 1 – Share of a sector's environmental impact located in the supply chain



Source: UN Principles for Responsible Investment, *Managing ESG Risk in the Supply Chain of Private Companies and Assets*, <https://www.unpri.org/download?ac=1894>.

Modern Slavery Reporting Legislation



Canada's Modern Slavery Reporting Legislation

Prohibitions

Customs Tariff:

- Prohibits goods made in whole or in part by forced labor and child labour from entering Canada

Canadian Sanctions & Advisory Warnings

- China sanctions are a specific response to modern slavery concerns in Xinjiang; Canada also has a specific business advisory for Xinjiang

Procurement Code of Conduct

- Code of Conduct now includes modern slavery/ forced labour requirement for suppliers

Canada's Modern Slavery Reporting Legislation

Fighting Against Forced Labour and Child Labour in Supply Chains Act

What is an Entity?

- Corporation or a trust, partnership or other unincorporated organization that:
 - Is listed on a stock exchange in Canada;
 - Has a place of business in Canada, does business in Canada or has assets in Canada, and meets at least two of three possible financial or employment thresholds for at least one of the two most recent financial years;
- They have at least CA\$20 million in assets;
- They have generated at least CA\$40 million in revenue;
- They employ an average of at least 250 employees; OR
- Is prescribed by the regulations (Reporting Entities).

Scope of Legislation:

- Any entities (a) producing, selling or distributing goods in Canada or elsewhere; (b) importing into Canada goods produced outside Canada; or (c) controlling an entity engaged in any activity described in (a) or (b) (Reporting Activities).

What does the report need to include

The steps the entity has taken during its previous financial year to prevent and reduce the risk that forced labour or child labour is used at any step of the production of goods in Canada or elsewhere by the entity or of goods imported into Canada by the entity.

- (a) its structure, activities and supply chains;
- (b) its policies and its due diligence processes in relation to forced labour and child labour;
- (c) the parts of its business and supply chains that carry a risk of forced labour or child labour being used and the steps it has taken to assess and manage that risk;
- (d) any measures taken to remediate any forced labour or child labour;
- (e) any measures taken to remediate the loss of income to the most vulnerable families that results from any measure taken to eliminate the use of forced labour or child labour in its activities and supply chains;
- (f) the training provided to employees on forced labour and child labour; and
- (g) how the entity assesses its effectiveness in ensuring that forced labour and child labour are not being used in its business and supply chains.

Key aspects of Canada's Modern Slavery Legislation

- The reports are public. The reports must be prominently posted on a company's website. They will be available in a government registry.
- For *Canada Business Corporations Act* entities or entities created under any other act of parliament, reports must be sent out to shareholders with other financial reporting documents.
- The reports must be approved by an entities' board and signed off by one or more directors or officers.
- There are penalties for non-compliance, including fines up to CA\$250,000. This includes false or misleading statements.
- Directors/officers are specifically liable under the *Act*, in addition to any other general director/officer liability.
- The *Act* also includes reporting on child labour – it is one of the first jurisdictions in the world to include reporting on child labour in supply chains.

What to do to mitigate supply chain risk?

Risk Mapping & Policy Development: Supply chain mapping to determine potential risks, and developing a human rights component in your internal governance documents

KYC & Assessment: Know your suppliers. This can include questionnaires, third party screening/ monitoring, audits

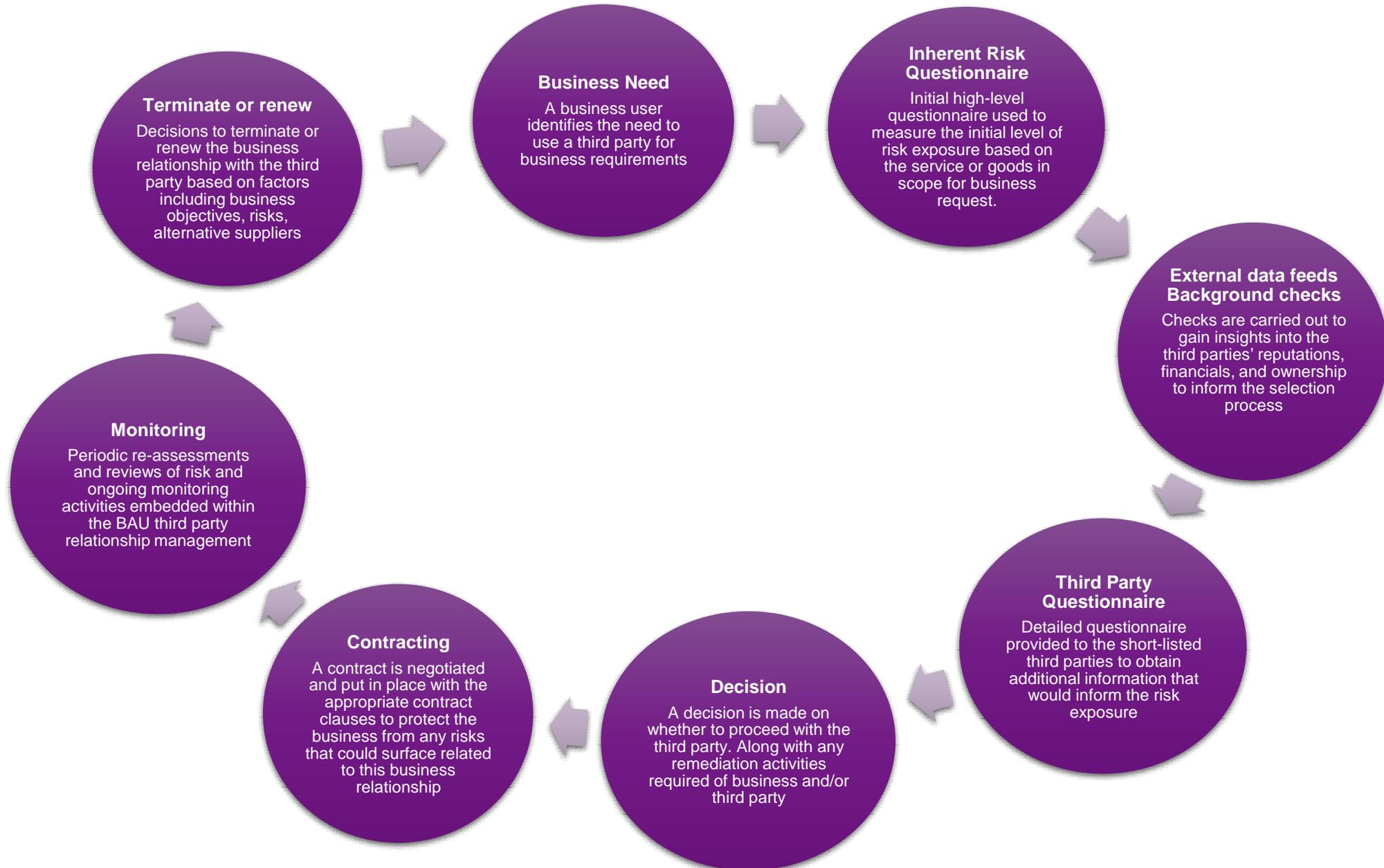
Legal Protections: Contractual representations, warranties, indemnities & covenants on modern slavery. Codes of conduct for suppliers that cascade to cover 2nd and 3rd tier suppliers. Notification requirements. Remedies for non-compliance (suspension, penalties, termination)

On the Ground: On site verifications

Monitoring: Periodic review and assessment of risks and suppliers



Supplier Risk Overview



Additional information



Practical Consideration

Risk Assessment and Supplier Engagement

Benefits of good ESG risk management in supply chains:

- Quicker response to emerging regulation or legal obligations which incur supply chain responsibility
- Protecting (social) license to operate
- Mitigate disruption risks and related costs
- Supports business continuity
- Alignment with internal responsible investment policies and commitments and with internationally accepted best practices (e.g. UN Global Compact, the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights)

Sound risk management starts with risk assessment: identifying and prioritizing ESG risks in supply chain

- Geographic reach (OECD/non-OECD, CPI score, sanctions)
- Sector-specific risks (human rights, labour practices, biodiversity, pollution, etc.)
- Critical/unique v. commodity nature of products being procured
- Length of supply relationships
- Complexity – How many tiers?
- \$ Spend

Supplier Risk Red flags

- Absence of supplier policy framework (no stated commitment to UN Sustainable Development Goals, UN Global Compact etc.)
- The supplier or its address is the same or similar to one of the parties found on sanctions lists.
- The supplier is located in, or the goods are otherwise shipped to or through, a country subject to international sanctions.
- It is difficult to obtain information about the foreign supplier (ownership, locations, scope of business).
- Supplier unwilling to share even basic information about its raw materials purchasing.
- The supplier is affiliated or associated with the military or the defence industry, or to a military or government research body.
- The shipping route or method is unusual.
- Packaging is inconsistent with the stated method of shipment or destination.
- Supplier hostile to audit/inspection clauses.

ESG Related Clauses

- Compliance with laws (can include labour laws, modern slavery/human trafficking legislation, anti-corruption, sanctions etc.)
- Verification/inspection/audit clauses.
- Reps/warranties regarding second and third tier suppliers
- Compliance with ESG KPIs
- ESG reporting requirements
- Termination rights: include for violations of ESG norms
- Inducements for a) suppliers with robust ESG risk management and performance; and b) suppliers who make improvements

Typical ESG Compliance Clause

- **ESG compliance.** The Company shall use commercially reasonable efforts to comply with applicable ESG Laws and regulations. Where future changes in ESG Laws are reasonably foreseeable, the Company shall take all reasonable actions to ensure continued compliance. The Company shall respond diligently to requests for information on ESG matters received from <>. In the event a violation of ESG Laws occurs, the Company shall proactively inform <> as soon as practicable.
- **ESG Laws** means environmental, social and governance laws, regulations, orders, decrees, codes, requirements or other measures relating to, without limitation, standards of conduct concerning sustainable development and the protection of the environment or human health, modern slavery and human trafficking, human rights, forced or prison labour, anti-bribery and corruption, anti-competitive behaviour, and labour standards (including the right to collective bargaining).

Resources

- [Dentons ESG: Global Solutions Hub](#)
- [Dentons ESG in Canada Page](#)
- [Canada's modern slavery framework: New reporting obligations](#), Dentons Insight, May 26, 2023
- [Managing ESG Risk in the Supply Chains of Private Companies and Assets](#), UN Principles for Responsible Investment
- [Fighting Corruption in the Supply Chain](#), United Nations Global Compact
- [Global Reporting Initiative \(GRI\) Standards Resource Center](#)
- [Supporting the Forced Labour Import Ban and Social Corporate Responsibility \(CSR\) initiatives](#), Government of Canada

Thank you

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