

Brief

April 2023

Global company- trade union agreements

A potential proxy for regulatory compliance
and OECD alignment for investors

Due Diligence Design was commissioned by IndustriALL Global Union to carry out an independent review of how global company-trade union agreements can be leveraged under forthcoming sustainability regulations targeting the garment sector and investors.

The findings in this brief are those of Due Diligence Design.

The contents of this document do not constitute legal or investment advice and are provided for general information purposes only.

About this brief

This brief provides investors with an analysis of how global company-trade union agreements in the garment sector are an important proxy for regulatory compliance, reduced human rights risks and OECD due diligence alignment.

It examines the business risk and implications of new sustainability regulations covering investors and portfolio companies in the garment sector and how global company-trade union agreements could mitigate these risks. It also sets out the risks of overreliance in portfolio screening on indicators such as policy coverage, number of audits and human rights expectations in company contracts under new regulations.

Included in this brief

- An executive summary
- An overview of key sustainability regulatory developments in the EU and potential risks to investors
- How global company-trade union agreements may mitigate risk
- Implications for investors
- An Annex of key sustainability regulatory developments covering the garment sector in the EU, North America, and Australia

Limitations

- Our findings are based on review of existing legislative proposals, our extensive experience working with the garment sector, discussions with the European Commission and discussions with IndustriALL Global Union.
- This brief is not a legal brief and does not provide legal or investment advice. Some of the regulations covered in this brief are still in development and will change. Regulations that are in force are too recent to determine how they will be implemented or enforced in practice. As such, this brief provides our assessment on the role that we expect global company-trade unions can play in the future to help to inform investor and company decision-making.

About global company-trade union agreements

Global company-trade union agreements (GC-TUAs) in the garment sector are negotiated agreements between global companies and international trade unions to address systemic human rights impacts in the supply chain.

Global framework agreements

- Global framework agreements are agreements between a single global company and global trade union on labour rights policy, joint activities to address labour risks, monitoring and access to remedy. They cover manufacturing across a company's full supply chain.
- IndustriALL Global Union has global framework agreements with ASOS, Esprit, H&M, Inditex, Tchibo and Mizuno. It also has global framework agreements in other sectors and on specific topics, such as its global agreement on sexual harassment with Unilever.

Sectoral agreements

- Sectoral agreements are agreements between a group of global companies and global trade unions. They often address specific and severe labour risks within the sector. See examples below.
- The International Accord for Health and Safety in the Textile and Garment Industry (the International Accord) is a sectoral agreement between garment sector companies, IndustriALL Global Union and UNI Global Union on building, electrical and fire safety in manufacturing facilities. Companies legally commit to independent factory safety inspections, joint labour-management factory committees on safety and training, and an independent worker grievance mechanism. It was first negotiated in response to the collapse of the Rana Plaza building in Bangladesh on 24 April 2013, in which at least 1,132 people lost their lives.ⁱ
- Act on Living Wages (ACT) is a sectoral agreement between garment sector companies and IndustriALL Global Union. ACT aims to achieve living wages for workers in the global garment, textiles and footwear industry through collective bargaining at industry level and responsible purchasing practices.

Executive summary

Executive Summary

- New EU regulations are requiring investors to integrate sustainability into their policies, processes, decisions and disclosures.
- New EU legislation will also cover the garment sector and include a forced labour ban, mandatory human rights and environmental due diligence and disclosure requirements. These new developments sit alongside existing import bans in the US and national supply chain due diligence and disclosure legislation in the UK and EU. See Annex, [Table 1](#) Key sustainability regulatory developments.
- In this new regulatory environment, the human rights performance of garment portfolios holds increased business risk for investors and requires more robust review of the quality of company programmes.
- Human rights risks and impacts in the garment sector supply chain are well known and well documented. Emerging legislation is specifically targeting the sector as a high-risk sector. This means that the sector will have additional legal requirements and heightened scrutiny.
- Investors can expect increased litigation against garment companies for human rights impacts in the supply chain. Companies can also face significant financial costs under forced labour bans and forced labour is a known risk in the garment sector.
- Portfolio screening currently often relies on indicators such as policy coverage, number of audits and human rights expectations in company contracts.ⁱⁱ This will not be sufficient under emerging legislation to indicate a strong human rights supply chain due diligence approach.

- Global company-trade union agreements (GC-TUAs) may mitigate risks linked to an investor's garment portfolio under emerging sustainability regulations. GC-TUAs in the garment sector are negotiated agreements between global companies and international trade unions to address systemic human rights impacts in the supply chain.
- GC-TUAs are strong on factors that provide confidence in the effectiveness of a company's response and that could mitigate risks to investors.
 1. GC-TUAs align with key elements of OECD due diligence guidance, which is a horizontal requirement across legislation targeting investors and the garment sector and provides a proxy for assessing the quality of a company's response.
 2. GC-TUAs provide effective access to remedy. This is important for investor disclosures under the EU Sustainable Finance Disclosure Regulation (SFDR) and likely a requirement for garment companies under the EU Corporate Sustainability Due Diligence Directive.
 3. GC-TUAs include good governance, which may indicate a stronger level of company performance on human rights supply chain due diligence and could result in lower risk for investors.
 4. GC-TUAs may reduce a company's risk of civil liability. GC-TUAs will not provide safe harbour.

Sustainability regulatory developments and potential risks to investors

Sustainability regulatory developments and potential risks to investors

The human rights performance of garment portfolios holds increased risk for investors under emerging sustainability legislation.

Legislation covering investors

- New EU regulations are requiring investors to integrate sustainability into their policies, processes, decisions and disclosures. Investors must integrate sustainability into their policies, processes and decisions under the revised [EU Alternative Investment Fund Managers Directive \(AIFMD\)](#) and the [Undertakings for Collective Investment in Transferable Securities Directive \(UCITS\)](#), in force for companies since August 2022. Investors may also be included in the EU's forthcoming [EU Corporate Sustainability Due Diligence Directive \(CSDD\)](#), which would require them to carry out human rights and environmental due diligence in line with OECD due diligence guidance.
- Under the [EU Sustainable Finance Disclosure Regulation \(SFDR\)](#) and [EU Taxonomy Regulation](#), investors are required to disclose their sustainability policies, how they take into consideration the principal adverse impacts of their investment decisions on sustainability factors and how their funds align with the EU Taxonomy.

Legislation covering garment portfolios

- New EU regulations will also be implemented for the garment sector by 2025. These sit alongside existing import bans in the US and legislation at EU Member State level.
- The forthcoming EU Corporate Sustainability Due Diligence Directive (CSDD) will require garment companies to manage human rights and environmental risks in their operations and supply chain on a par with business risks and will include civil liability for harm, including in the supply chain. The CSDD will likely apply to large EU-based and foreign companies and mid-sized companies in high-impact sectors.
- Companies will be required to report on their above due diligence under the Corporate Sustainability Reporting Directive (CSRD) on a par with existing financial disclosure rules. The CSRD covers large EU and foreign companies. Human rights due diligence and disclosure legislation is already in force in EU Member States, including the French Devoir de Vigilance, the German Supply Chain Act and the Norway Transparency Act.
- The EU is expected to pass a Forced Labour Ban in 2023, which will cover any product made with forced labour that enters the EU market, regardless of where the producing company is based. The garment sector is already subject to import bans in the US through the US Trade Facilitation and Trade Enforcement Act and the US Uyghur Forced Labor Prevention Act. See Annex, Table 1 Key sustainability regulatory developments.

Garment portfolio risk under new legislation

- Human rights risks and impacts in the garment sector supply chain are well known and well documented. The OECD has identified the following as known sectoral human rights risks: child labour, sexual harassment and violence, forced labour, working hours, occupational health and safety and low wages.
- In the new legislative environment, the human rights performance of garment portfolios holds increased risk for investors and requires more robust screening, due to the following factors.
- First, the garment sector is listed by regulators as a high-risk sector for severe human rights impacts under emerging regulation. This means additional legal requirements and heightened scrutiny. The garment sector is listed as a high-risk sector under the European Commission's CSDD proposal, which means that mid-size companies in the garment sector will also be covered by the legislation.ⁱⁱⁱ Under the CSRD, the European Commission will develop sector-specific disclosure standards for sectors associated with severe human rights and environmental impacts, including the textile sector.^{iv}
- Second, we expect increased litigation against garment companies under the CSDD. The CSDD will include civil liability for human rights and environmental damages and require Member States to enable civil liability cases in the supply chain under national law. Even before the CSDD is finalised, we are seeing an increase in litigation against companies operating in high-risk sectors for human rights abuses, including the garment sector. Investors can expect these trends to continue. See Annex, [Table 2](#), Key supply chain litigation cases.
- Finally, companies can face significant financial costs and even criminal charges under forced labour bans. Under the European Commission's legislative proposal for a [Forced Labour Ban](#), if a product is found to be produced with forced labour, the product cannot be imported or exported from the EU market and the company will be required to withdraw all relevant products already placed on the EU market. In the US, under the [US Trade Facilitation and Trade Enforcement Act](#), if a product is found to be produced with forced labour, the product is detained and the company and corporate officials can be subject to a criminal investigation.^v

How global
company-trade
union agreements
may mitigate risk
to investors

How global company-trade union agreements may mitigate risk

GC-TUAs bring quality due diligence, access to remedy, good governance, and potentially lower civil liability risk for companies. This is key for investors under emerging sustainability legislation.

Challenges with current investor approaches

- Investor research on company human rights performance often relies on indicators such as policy coverage, number of audits and human rights expectations in supplier contracts.^{vi} These indicators will not be sufficient to give confidence in the quality of a company's approach. For example, [Know the Chain](#), a benchmark on forced labour in global supply chains, found that while 97% of companies in their benchmark scored well on forced labour policy, only 11% disclosed details on board-level oversight and 38% on engagement with affected stakeholders in addressing forced labour.^{vii}
- Governments are unlikely to consider company auditing programmes on their own to be sufficient to address severe and foreseeable human rights impacts.^{viii} Garment companies will need to have more comprehensive strategies, involving workers, to demonstrate that their due diligence is sufficiently robust.^{xi}
 - According to [OECD due diligence guidance](#), standard social audit programmes are not sufficient alone to assess for or prevent a range of severe human rights impacts, notably sexual harassment and violence, forced labour, freedom of association violations and severe occupational health and safety violations.^{ix}

- Audit programmes have also been demonstrated to be insufficient in addressing severe human rights impacts in a number of well-publicised cases.^x
- Finally, we are seeing increased litigation against auditing and certification schemes. See Annex, [Table 3](#) for select litigation and consumer authority cases against certification and auditing bodies.

New criteria to respond to regulations

There is no silver bullet for investors to respond to the new regulatory context. Investors will need to assess for a range of factors related to:

1. **Alignment with OECD due diligence guidance.** This is a horizontal requirement across legislation targeting investors and the garment sector and a proxy for assessing the quality of a company's response.
2. **Access to remedy.** This is important for investor disclosures under the SFDR and a requirement for garment companies under the CSDD.
3. **Good governance of supply chain programmes.** This can indicate stronger company performance on human rights supply chain due diligence and a potentially lower risk for investors.
4. **Civil liability risk.** Garment portfolios that do not have strong due diligence programmes under emerging EU legislation hold higher civil liability risk. Investors will want to be aware of where these risks lie.

GC-TUAs are strong on all the above factors and may mitigate risks linked to garment portfolios under emerging EU sustainability regulations. In the following section, we explore each of these factors, why they matter to investors and how global company-trade union agreements meet them.

1. Alignment with OECD due diligence effectiveness criteria

Why this matters for investors

- Alignment with OECD due diligence guidance is a horizontal requirement across sustainability regulations targeting investors and the garment sector.
- Under the SFDR, portfolio companies must meet minimum social safeguards, which include alignment with the [OECD Guidelines for Multinational Enterprises](#) (OECD Guidelines).
- Investors are also required to disclose their share of investments in investee companies that have been involved in violations of the OECD Guidelines and their share of investments in investee companies without policies to monitor compliance with the OECD Guidelines.
- Garment sector companies will be required to implement OECD due diligence guidance under the forthcoming EU CSDD.
- A garment company's alignment with OECD due diligence guidance and its effectiveness criteria gives an indication of the quality of a company's approach. According to the OECD, certain effectiveness criteria distinguish due diligence from a check-the-box exercise and are measurements of the quality of a company's response.^{xii}
- Effectiveness criteria include that due diligence is preventative, proportionate, informed by meaningful engagement with affected stakeholders, appropriate to the circumstances, integral to decision-making, dynamic and involves ongoing communication.

How GC-TUAs meet this

GC-TUAs align with OECD effectiveness criteria in the following ways.

- GC-TUAs enable dynamic monitoring of human rights impacts and provide a platform to respond to crises quickly and effectively. Campaigns and litigation against companies in the garment sector often follow high-risk contexts and crises. GC-TUAs can give confidence that companies are implementing solutions negotiated with trade unions rather than acting independently. For example, in response to the Myanmar military coup of 2021, global brands and IndustriALL Global Union affiliate members negotiated a series of agreements on workers' safety and responsible pausing of orders and a fast-track dispute resolution process to handle and address human rights and labour complaints urgently through ACT.^{xiv}
- GC-TUAs have consistently set best practice on how to address complex and severe human rights impacts in the garment sector in a way that is proportionate to the severity of the risk. For example, the Bangladesh Accord on Fire and Building Safety, the predecessor to the International Accord, was the first time that companies in the sector collectively committed to using independent highly qualified technical inspectors on fire, electrical and building safety in the garment sector to identify severe safety risks. Similarly, ACT set the first sectoral commitments on responsible purchasing practices.
- GC-TUAs are designed to address impacts at scale. Global framework agreements cover manufacturing across a company's full supply chain. Sectoral agreements cover manufacturing across all members' supply chains within a key country or globally.
- GC-TUAs make stakeholder engagement systematic rather than ad hoc. Investors will also be required to assess if companies engage affected stakeholders under the SFDR. For example, under the global framework agreement between H&M Hennes & Mauritz, IndustriALL Global Union and IF Metall, trade unions are involved in monitoring and addressing labour and human rights risks through a National Monitoring Committee system set up in key sourcing countries that includes equal representation from H&M Hennes & Mauritz and trade union representatives.^{xv} Under the global framework agreement between Inditex and IndustriALL Global Union, a Global Union Committee reviews the implementation of the agreement annually.

2. Effective access to remedy

Why this matters for investors

- Under the SFDR, investors will be required to disclose their share of investments without grievance/complaints handling mechanisms to address human rights and business violations.
- The forthcoming EU CSDD will likely require companies to have a complaints procedure for stakeholders to submit complaints. If a negative impact has occurred, remedy must be provided.
- Under OECD due diligence guidance, companies are expected to have processes to provide or cooperate in remediation when human rights impacts occur. Processes must be legitimate, accessible, predictable, equitable, transparent and based on dialogue. Workers should be involved in the design of grievance mechanisms and affected workers in the determination of remedy.

How GC-TUAs meet this

- Grievance mechanisms for worker human rights cases are a core component of GC-TUAs. For example, the International Accord complaints mechanism handles cases pertaining to occupational health and safety violations. ACT dispute resolution mechanisms negotiated at country level handle cases pertaining to violations of freedom of association and wages.
- According to the UN, legitimacy, accessibility and providing remedy are three of the key gaps in supply chain grievance mechanisms.^{xvii} GC-TUAs are strong in all three areas. In GC-TUAs, companies are required to commit upfront to using their leverage with their suppliers to ensure that remedy is provided if a case is substantiated. If remedy is not provided, the company is required, as a last resort, to disengage from the supplier.
- Trade unions play an essential role in negotiating remedy outcomes for affected workers, monitoring that any remedy agreed is delivered and ensuring that workers are not retaliated against.
- Trade unions raise awareness and provide technical support to workers in raising and documenting cases, providing translation and helping workers to understand their rights. This is evidenced by the number of cases raised annually through GC-TUAs. For example, from 2014 to 2023, the complaints mechanism under the Bangladesh Accord and then the International Accord received 2209 cases.

3. Good governance

Why this matters for investors

- Investors will have to take decisions on how they screen, research and weigh company human rights supply chain programmes and collaborations. Good governance is likely to predict a stronger level of performance, which can mean lower risk for investors.

How GC-TUAs meet this

- **Binding contracts as opposed to self-regulation.** GC-TUAs are a form of contract and can be legally binding. They set responsibility at an executive and board level and in some instances hold legal ramifications for companies if they do not fulfil their commitments.
- **Accountability.** GC-TUAs include dispute resolution processes so that cases can be raised against a company if they do not uphold their commitments. For example, under the International Accord, companies can be brought to binding arbitration if they fail to implement the agreement. Under new Labour Arbitration and Conciliation Rules, binding agreements between global unions and global companies can be enforced at the Permanent Court of Arbitration in The Hague.^{xix}
- **Trade unions in decision-making processes.** As noted above, trade unions are an equal party in decision-making under GC-TUAs. This means that decision-making with workers on identifying and addressing labour risks is systematic for issues and countries in scope of the agreement.
- **Monitoring and Transparency.** GC-TUAs can provide data on human rights outcomes.^{xx} For example, under the International Accord, all inspection reports and corrective action plans are made publicly available. ACT discloses the outcomes and progress on responsible purchasing practices. All GC-TUAs include transparency requirements from companies towards trade unions. Not all GC-TUAs include such explicit public disclosure requirements as the International Accord.
- **Financial sustainability.** GC-TUAs include requirements that commitments and actions are financed by global companies. This ensures that actions can be met in practice. For example, under the International Accord, garment companies make legally binding commitments to negotiate commercial terms to ensure that remediation of safety hazards at their factories is financially feasible. This is monitored by trade unions and an independent Secretariat.

4. GC-TUAs and civil liability

Why this matters for investors

- The upcoming EU CSDD will include civil liability for human rights damages and, as noted above, investors can expect litigation against companies in the garment sector.
- Under the European Commission's proposal, companies cannot be held liable for impacts linked to indirect business partners (i.e. supply chain partners) if the company has implemented due diligence in line with the Directive.^{xxi} Collaboration with other entities – which include trade unions – will also be taken into consideration when determining civil liability.^{xxii}
- What this means in practice is that if companies carry out due diligence in full and in accordance with the Directive, it may not be possible for them to be held civilly liable for impacts linked to suppliers that they do not own or control.

How GC-TUAs meet this

- Agreements will not provide safe harbour and will not mitigate against all liability.
- GC-TUAs may help to reduce a company's civil liability for issues covered by the agreements. GC-TUAs enable companies to evidence stakeholder engagement in their due diligence, which will be critical in a company's due diligence defence. GC-TUAs can help to demonstrate the following key elements under the CSDD legislative proposal:
 - Directors must give due consideration to stakeholder input when developing a responsible business conduct and due diligence policy.^{xxiii}
 - If an adverse impact has occurred, damages are paid to affected persons and financial compensation to affected communities. This remedy must be proportionate to the significance and scale of the adverse impact and to the contribution of the company's conduct to the impact.^{xxiv} GC-TUAs have a strong track record of providing remedy.
 - A company's action plan to prevent an impact is developed in consultation with affected stakeholders.^{xxv} GC-TUAs formalise meaningful stakeholder engagement with workers. All action plans under GC-TUAs are designed in equal partnership with affected stakeholders.

Conclusion

Implications for investors

- Investors should consider supply chain human rights impacts linked to their portfolio companies as a business risk due to emerging sustainability regulations.
- Investors will need to assess the quality of a portfolio company's approach and alignment with OECD due diligence guidance. Assessing a portfolio company's policies and auditing will not be sufficient on its own to gain a picture of the quality of a company's human rights due diligence strategy.
- Global company-trade union agreements could provide a proxy for investors for the quality of human rights due diligence and regulatory compliance for specific risks, notably regarding freedom of association and other labour risks addressed by agreements.
- We would advise investors to work with global unions and global companies to consider how global company-trade union agreements can be considered and weighed in practice in investor decisions.

Annex

TABLE 1.
KEY SUSTAINABILITY REGULATORY DEVELOPMENTS IN THE EU, NORTH AMERICA AND AUSTRALIA COVERING THE GARMENT SECTOR

Regulation	Region	In-force for companies	Summary
Corporate Sustainability Due Diligence Directive	EU	2025	Establishes mandatory due diligence on human rights and environmental risks for companies operating within the EU. It includes sanctions and civil liability for companies which failed to take appropriate steps to prevent or mitigate human rights and environmental impacts.
Directive to empower consumers for the green transitionw	EU	2025	Clarifies and establishes rules around when sustainability claims can be made and requires sustainability labels to be verified. It introduces new disclosure requirements and a “blacklist” of banned misleading commercial practices.
Ecodesign for Sustainable Products Regulation	EU	2024	Requires companies to design products to meet specific sustainability performance requirements in order to be sold on the EU market. Companies will also be required to trace and disclose the use of substances of concern throughout the value chain of a product.
Regulation Prohibiting Forced Labour Goods	EU	2024	Bans products made with forced labour from entering and being distributed on the EU market, and from being exported from the EU market. It covers all companies placing goods on the EU market, but there will be an emphasis on larger companies at early stages of the EU value chain, and all products and their components, regardless of the sector, origin, or stage of the supply chain where forced labour took place.
Corporate Sustainability Reporting Directive	EU	2024	Requires companies in the EU market to disclose specific and comparable sustainability information. It covers all listed and non-listed companies that meet two out of the three following criteria: have more than 40 million in net turnover, have more than 20 million in assets, or have more than 250 employees. The Directive also covers SMEs that meet at least two of the following criteria: average of 50 employees over the financial year, €8 million net turnover, and €4 million in total assets, as well as non-EU companies with substantial activity in the EU market (€150 million in annual turnover in the EU), and those with a subsidiary or branch in the EU (with a net turnover of €40 million).
Sustainable Finance Disclosure Regulation	EU	2021	Prescribes new standard disclosure obligations on how ESG factors are integrated by financial market participants (portfolio managers, fund managers, pensions providers, financial advisers, including providers of investment or insurance advice).

Regulation	Region	In-force for companies	Summary
Supply Chain Due Diligence Act	Germany	2023	Requires companies to conduct due diligence on human rights and specified environmental aspects. It applies to companies with a registered office or principal place of business in Germany, and to foreign companies with a branch office in Germany.
Transparency Act	Norway	2022	Requires companies to conduct due diligence with respect to human rights and decent work. It covers all larger companies domiciled in Norway. It also covers foreign companies selling products and services in Norway.
Amendments to the Codes des Obligations	Switzerland	2022	Imposes non-financial reporting duties on large publicly traded companies and regulated financial institutions, as well as due diligence and reporting obligations on companies that circulate or process conflict minerals or have goods or services that have a risk of child labour in their supply chains.
Law on Duty of Vigilance	France	2017	Requires companies to publish a plan with appropriate measures to identify, prioritise and prevent human rights and environmental risks that could occur as a result of their business activities.
Modern Slavery Act	UK	2015	Requires businesses to report on their progress in identifying and addressing modern slavery risks in their operations and supply chains. It applies to companies operating in the UK with turnover of at least £36 million.
Uyghur Forced Labor Prevention Act	US	2022	Bans goods made with forced labour in the Xinjiang Uyghur Autonomous Region of the People's Republic of China from entering the United States market
Fighting Against Forced Labour and Child Labour in Supply Chains Act	Canada	Expected 2024	Requires companies to report on measures taken to prevent and reduce the risk that forced or child labour is used by them or in their supply chains, and to prohibit the import of goods manufactured or produced by forced or child labour.
Forced Labour Ban	Canada	2020	Prohibits the importation of goods that are mined, manufactured or produced wholly or in part by forced labour into Canada. The Canada Border Services Agency (CBSA) is responsible for administering and enforcing the prohibition on forced labour imports.
Modern Slavery Act	Australia	2019	Requires companies to report on the risks of modern slavery in their operations and supply chains and their actions to address those risks.

TABLE 2.
KEY SUPPLY CHAIN LITIGATION CASES

Companies involved	Jurisdiction	Year Filed	Case summary
Dyson	UK	2022	Case filed by a group of migrant workers who allege that they were subject to exploitative and dangerous working conditions in a factory supplying to Dyson. The case is ongoing.
Ansell Corporation and Ansell Healthcare Products, and Kimberly-Clark Corporation	US	2022	Case filed against Ansell and Kimberly-Clark Corporation on behalf of 13 Bangladeshi migrant workers who were allegedly trafficked into Malaysia and forced to work at a disposable glove manufacturing plant. The case is ongoing.
Olam	UK	2022	Pre-action letter on behalf of 60 Ghanaian children who allege working in unlawful, exploitative and dangerous conditions on cocoa farms supplying Olam. The case is ongoing.
Patagonia, Nike, C&A and State of Art	EU	2021	Criminal complaint arguing that brands may have been directly or indirectly complicit in forced labour of members of the Uyghur population in Xinjiang Uygur Autonomous Region. The case argues that the clothing brands may have benefitted from this exploitation and thereby took advantage of it, and the violations could amount to crimes against humanity. The case is ongoing.
Maran (UK) Ltd	UK	2019	Case filed against shipbroker Maran by the wife of a man who fell to his death while working on demolition at the top of a defunct oil tanker in a shipyard in Chattogram, Bangladesh. In 2021, the UK High Court found that Maran owed a legal duty of care and held that Maran did not have control over working conditions in Chattogram, but it did have control over whether the deceased worker would be exposed to the risk of death or serious injury from working on its ship. A legal settlement was reached in 2022.
Camellia Plc	UK	2019	85 claims were filed against Camellia and other UK companies in the Camellia Group for alleged human rights abuses by its Kenyan subsidiary including violence, intimidation and gender-based violence. The case alleged that there was a pattern of systemic violence and intimidation of villagers by security guards employed to protect the company's land. In February 2021, a settlement was reached which included financial compensation for reportedly £4.6 million, the development of an Operational-level Grievance Mechanism (OGM), new roads, and the requirement that the companies establish a non-harassment and victimisation policy to safeguard victims and human rights defenders against future harm or intimidation.

TABLE 3.
SELECT LITIGATION AND CONSUMER AUTHORITY CASES
AGAINST AUDITING AND CERTIFICATION BODIES

Certification	Jurisdiction	Year Filed	Summary
Sustainable Forestry Initiative	Canada	*2022	Complaint filed with Canada's Competition Bureau against the certification body, the Sustainable Forestry Initiative (SFI) for making false and misleading representations about its forest certification standard. The case is ongoing.
Tesco and Intertek Group	UK	2022	Pre-action letter was sent to Tesco and Intertek on behalf of 130 migrant workers and one child alleging that they were subject to dangerous and exploitative working conditions and were trapped in a cycle of forced labour and debt bondage at a factory supplying to Tesco in Thailand. The case is ongoing.
The London Bullion Market Association	UK	2022	Litigation case filed against the London Bullion Market Association (LBMA) on behalf of the families of two artisanal miners for alleged human rights abuses at a gold mine in Tanzania. The case argues that the LBMA certification allowed serious human rights abuses to continue "unabated". The case is ongoing.
Hershey and Rainforest Alliance	US	2021	Case filed against Hershey and the certification scheme Rainforest Alliance for false and deceptive marketing representations on certain Hershey chocolate products. The case is ongoing.

Citations

- i. The Rana Plaza Accident and its aftermath, ILO: https://www.ilo.org/global/topics/geip/WCMS_614394/lang--en/index.htm
- ii. What data do investors need to manage human rights risks? PRI, 29 November 2022 : <https://www.unpri.org/human-rights/what-data-do-investors-need-to-manage-human-rights-risks/10856.article>
- iii. EU companies operating in the garment sector will be covered by the CSDD if they have more than 250 employees on average and a net worldwide turnover of more than € 40 million, if at least 50% of this net turnover was generated in a high-risk sector. Non-EU garment companies are covered if they generate a net turnover of more than €40 million, if at least 50% of this was generated in a high-risk sector.
- iv. The garment sector is listed as a high-risk sector in the EU CSDD, recital 22 (and Article 2(1)(b)(i)), clarifying the companies within scope of the EU CSDD). The CSRD will also set out sector-specific standards for selected sectors. Article 29b(1) specifies that information required under sector-specific reporting standards will need to be adapted to high-risk and high-impact sectors. These sectors are listed in Regulation (EC) No 1893/2006 and include manufacturing including the manufacturing of textiles.
- v. H.R.644 - Trade Facilitation and Trade Enforcement Act of 2015, Congress.gov: [https://www.congress.gov/bill/114th-congress/housebill/644/text?utm_source=google&utm_medium=google&utm_term=\(not%20provided\)&utm_content=undefined&utm_campaign=\(not%20set\)&gclid=undefined&dclid=undefined&GAID=716810173.1609928792](https://www.congress.gov/bill/114th-congress/housebill/644/text?utm_source=google&utm_medium=google&utm_term=(not%20provided)&utm_content=undefined&utm_campaign=(not%20set)&gclid=undefined&dclid=undefined&GAID=716810173.1609928792)
- vi. <https://www.unpri.org/human-rights/what-data-do-investors-need-to-manage-human-rights-risks/10856.article>
- vii. Commitment and Governance - 2020 Know the Chain: <https://knowthechain.org/commitment-governance-2020/>
- viii. Under the draft CSDD, companies can only use a due diligence defence if it was reasonable to believe that their actions would have prevented or mitigated the harm. CSDD, Article 22
- ix. Under the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector, for forced labour, companies are required to conduct “extensive stakeholder engagement” to determine the most appropriate methods to prevent forced labour. For severe occupational health and safety risks, companies are expected to ensure that suppliers are assessed by “structural engineers, electrical engineers... with relevant qualifications”. For risks pertaining to Freedom of Association, OECD due diligence guidance states that “traditional document assessments are insufficient” and that assessments may need to be conducted away from the factory and through non-traditional means, such as focus-group discussions, but always with a heavy reliance on worker and trade union interviews. For sexual harassment and violence, OECD due diligence guidance considers it unlikely that issues will be flagged during audits and so companies are expected to consider sexual violence a risk if it is a risk in the operating context regardless of whether or not it has been raised in an assessment.
- x. Example cases include: The 2012 Ali Enterprises factory in Pakistan, which was declared safe by a social audit firm before a factory fire killed over 250 workers; The 2013 collapse of the Rana Plaza building in Bangladesh which killed over 1000 people and was not identified to be at risk by social auditors; US Customs and Border Protection case against glove manufacturer Brightway Holdings for forced labour, not identified in social audits; Sources: Social Audit Responsibility, Business and Human Rights Resource Centre, September 2021: https://media.business-humanrights.org/media/documents/2021_CLA_Annual_Briefing_v4.pdf, US Customs and Border Protection, <https://www.cbp.gov/newsroom/national-media-release/cbp-issues-withhold-release-order-brightway-group>
- xi. Social Audit Responsibility, Business and Human Rights Resource Centre, September 2021: https://media.business-humanrights.org/media/documents/2021_CLA_Annual_Briefing_v4.pdf
- xii. The Alignment of Industry and MultiStakeholder Programmes with the OECD Garment and Footwear Guidance: Assessment of the Dutch Agreement on Sustainable Garment and Textile, OECD: <https://mneguidelines.oecd.org/Alignment-Assessment-Dutch-Agreement-on-Sustainable-Garment-and-Textile.pdf>
- xiii. Myanmar during the COVID-19 Crisis, Working together to Protect the Health and Welfare of Workers and supporting the payment of Workers and Factories, 12 May 2020: https://actonlivingwages.com/app/uploads/2021/07/Final-joint-statement-Brands-ACT-Employers-Union-on-Covid-Myanmar_English-original.pdf
- xiv. ACT members adopt framework on Workers' safety and terminations in Myanmar, ACT, 21 June 2021: <https://actonlivingwages.com/2021/06/21/act-members-adopt-framework-on-workers-safety-and-terminations-in-myanmar/>
- xv. Committees implementing GFA with H&M meet to strengthen industrial relations, IndustriALL: <https://www.industriall-union.org/implementation-arm-of-hm-gfa-meet-to-strengthen-industrial-relations>
- xvi. OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector, Direct Engagement with Trade Unions, p. 25.
- xvii. OHCHR Accountability and Remedy Project, United Nations: <https://www.ohchr.org/en/business/ohchr-accountability-and-remedy-project>
- xviii. Ibid.
- xix. Action Plan 2021 – 2025, IndustriALL: <https://www.industriall-union.org/about-us/action-plan-of-industriall-global-union>
- xx. What data do investors need to manage human rights risks? PRI, 29 November 2022 : <https://www.unpri.org/human-rights/what-data-do-investors-need-to-manage-human-rights-risks/10856.article>
- xxi. Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, Article 22 (2)
- xxii. Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, Article 22 (2), second subparagraph
- xxiii. Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, Article 26 (1)
- xxiv. Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, Article 8(3)(a)
- xxv. Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, Articles 7(2)(a) and 8(3)(b)



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