



## THE GERMAN ACT ON CORPORATE DUE DILIGENCE OBLIGATIONS IN SUPPLY CHAINS

The German Act on Corporate Due Diligence Obligations in Supply Chains (Supply Chain Due Diligence Act, hereinafter referred to as the “Supply Chain Act” or the “Act”) came into force on 1 January 2023. It aims at obliging large companies to better fulfil their responsibility in the supply chain regarding the respect of internationally recognised human rights. To this end, the Supply Chain Act establishes binding human rights and environmental due diligence obligations. The legislator has been guided by the due diligence standard of the UN Guiding Principles on Business and Human Rights. According to the explanatory memorandum, the Supply Chain Act is basically intended to establish an **obligation to make efforts or a procedural obligation**, but not an **obligation to succeed** or even a **warranty liability**.

### SCOPE OF APPLICATION:

The **direct scope of application** of the Supply Chain Act includes all companies domiciled in Germany (regardless of whether they have a domestic or foreign legal form) as well as foreign companies with a branch office in Germany that generally employ more than 3,000 employees (as of 01 January 2023) or more than 1,000 employees (as of 01 January 2024) in Germany. In the case of affiliated companies within the meaning

of section 15 of the German Stock Corporation Act (AktG), the domestic employees of all group companies are also attributed to the parent company.

**Indirectly affected** by the Supply Chain Act are also all suppliers of the direct target groups of the regulation. They will face corresponding contractual requirements by the target groups of the regulation. These requirements will result in a contractual obligation situation that is **in content partly comparable with the legal obligations** of the target groups of the regulation. The direct suppliers are to be contractually obliged to comply with the human rights and environmental requirements of the target groups of the regulation in their own business area and also to address them appropriately vis-à-vis other indirect suppliers.

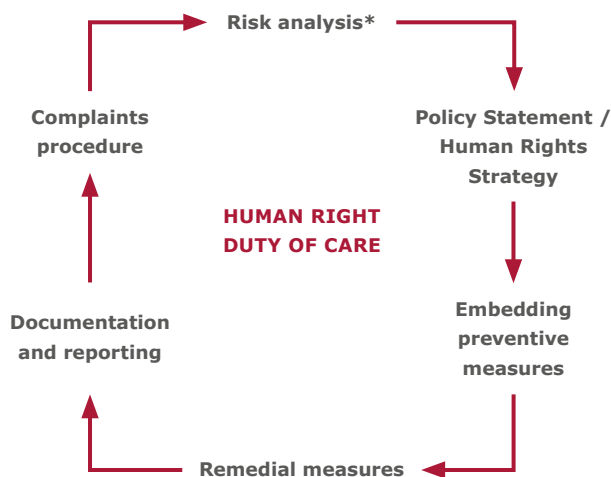
### SCOPE OF PROTECTION:

The **legal positions protected** by the Supply Chain Act ensue from the international conventions explicitly referred to. Apart from a fall-back provision for particularly serious impairments of these protected legal positions, the Supply Chain Act itself primarily defines specific **human rights and environmental prohibitions**.

### DUE DILIGENCE AND RISK MANAGEMENT:

The target groups of the regulation must observe the human rights and environmental due diligence obligations laid down in the Supply Chain Act **in an appropriate manner** with the **aim** of preventing or minimising human rights or environmental risks or ending the violation of human rights or environmental obligations.

The required risk management can be summarised in the following process cycle:



**\*Start in the own business area and with direct suppliers. In case of substantiated knowledge of possible violations additionally with indirect suppliers.**

### IMPLEMENTATION:

In concrete terms, **ten steps for the implementation** of the Supply Chain Act are reasonable and necessary:

1. Definition of the personal and material **scope of application**
2. **Gap analysis** actual/target
3. Establishment of the **complaints procedure**
4. Appointment of a **human rights officer**
5. Adaptation of **Code of Conduct, Supplier Code of Conduct, Supply Agreements**
6. Establishment of the **process for identifying, weighting and prioritising risks**
7. Embedding of appropriate **preventive and remedial measures**
8. Preparation and publication of the **policy statement**
9. Internal **documentation** of processes and process results
10. **Reporting** (after the end of the financial year)

Our experts will be pleased to support you with all their experience in carrying out these steps.

### CONTROL AND SANCTIONS:

Compliance with the Act is monitored by the Federal Office of Economics and Export Control (BAFA). Non-compliance may result in severe **fin**es and **exclusion from the award of public contracts**.

Pursuant to section 3 (3) of the Supply Chain Act, a breach of the obligations under the Act does not give rise to civil liability. However, any civil liability established independently of this remains unaffected. It is thus discussed that non-compliance with the requirements of the Supply Chain Act could, according to general principles, increase the risk of external liability of the company and/or internal liability of the board of directors or the managing directors.

## Our experts

For any further questions on the Supply Chain Act, please contact our experts:



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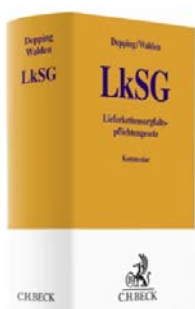
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Dr Depping and Dr Walden are the editors of a commentary on the Act on Corporate Due Diligence in Supply Chains which was published in 2022. A review in the IWRZ (issue 4/2023, p. 192) describes the commentary as “the most reliable and knowledgeable of the various commentaries” and as a “stimulating, highly inspiring read” with “new insights”.



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