

# UK Modern Slavery Act: Implications for Global Compact Participants

*19 April 2016 at 9 am ET*



**United Nations**  
Global Compact



**Freshfields Bruckhaus Deringer**

# Agenda

## 1. Introductory Remarks

- Shubha Chandra, *UN Global Compact*

## 2. Overview of the UK Modern Slavery Act

- Paul Bowden, Michelle Bramley, Paul Yates and Michael Quayle, *Freshfields Bruckhaus Deringer LLP*

## 3. Q&A

- Moderated by Paul Bowden, *Freshfields Bruckhaus Deringer LLP*

## 4. Closing Remarks

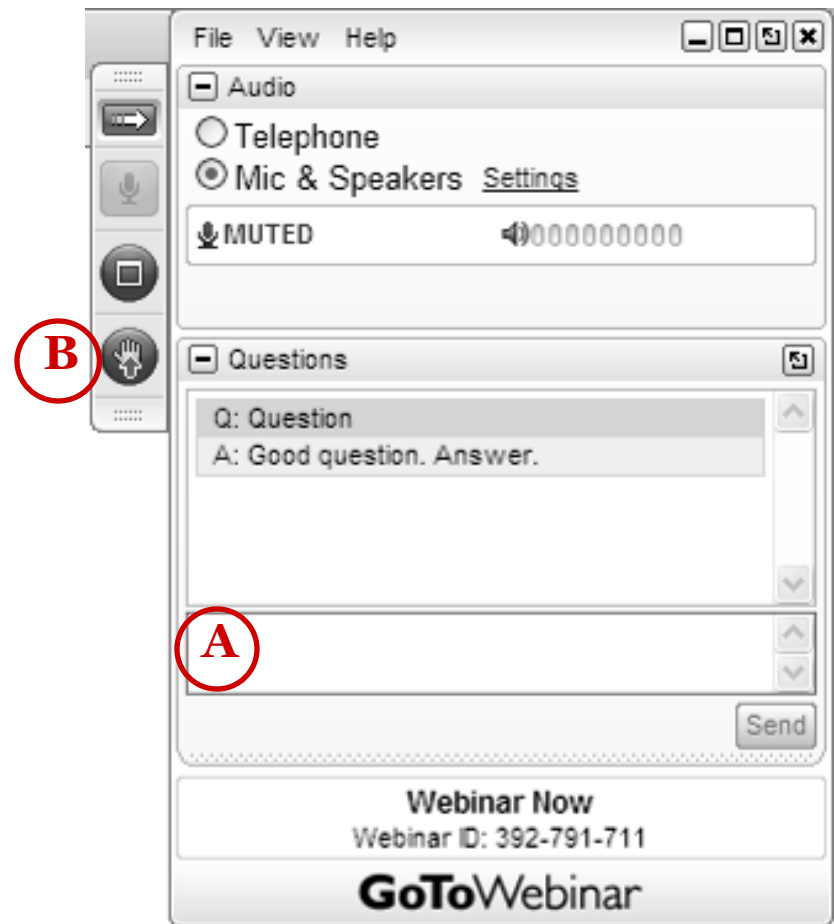
- Shubha Chandra, *UN Global Compact*

# Questions

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**Example:** *Question for John Doe: What are land rights?*



8,000+

Business participants

4,000+

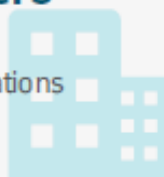
Non-business participants

28,000+

Disclosure reports submitted

## Stakeholders

Business  
Industry Associations  
Investors  
Civil Society  
Labour  
Academia  
Government



## Global Network

Europe  
Latin America  
North America  
Asia & Oceania  
Africa  
MENA

160+

Countries

85+

Local Networks



## Platforms & Programmes

- Human Rights & Labour
- Women's Empowerment Principles
- Children's Rights and Business Principles
- Child Labour Platform
- Caring for Climate
- CEO Water Mandate
- Food + Agriculture Business Principles
- Anti-Corruption
- Business for Peace
- Business for the Rule of Law
- Business and Education
- Supply Chain Sustainability
- Global Compact LEAD



## Business Partnership Hubs

- Water
- Climate and Energy
- Social Enterprise
- Anti-Corruption Collective Action
- UN-Business Partnership



## Sister Initiatives

- Global Compact Cities Programme
- Principles for Responsible Investment (PRI)
- Principles for Responsible Management Education (PRME)
- Sustainable Stock Exchanges (SSE)



# United Nations Global Compact

## Act Responsibly



## Find Opportunity

### HUMAN RIGHTS

- Principle 1 Businesses should support and respect the protection of internationally proclaimed human rights; and  
Principle 2 make sure that they are not complicit in human rights abuses.

### LABOUR

- Principle 3 Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;  
Principle 4 the elimination of all forms of forced and compulsory labour;  
Principle 5 the effective abolition of child labour; and  
Principle 6 the elimination of discrimination in respect of employment and occupation.

### ENVIRONMENT

- Principle 7 Businesses should support a precautionary approach to environmental challenges;  
Principle 8 undertake initiatives to promote greater environmental responsibility; and  
Principle 9 encourage the development and diffusion of environmentally friendly technologies.

### ANTI-CORRUPTION

- Principle 10 Businesses should work against corruption in all its forms, including extortion and bribery.



SUSTAINABLE DEVELOPMENT GOALS



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Freshfields Bruckhaus Deringer

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# Modern Slavery Act 2015

## *UN Global Compact*

# Today's speakers

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# Agenda

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1. Overview of the Modern Slavery Act (**MSA**)
2. Who is required to produce an MSA statement?
3. How should a company address modern slavery in its business and supply chains?
4. Q & A



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## Overview of the MSA

# Section 1

# What is the MSA?

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**Section 54:** obligation to report on “*steps taken during the financial year to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its own business, or a statement that it is taking no such steps*”



It is certainly not acceptable for organisations to put profit above the welfare and wellbeing of its employees and those working on its behalf.

*Rt Hon Theresa May MP,  
Foreward to the Transparency in Supply Chains  
guidance issued by the MoJ*



## Modern Slavery Act 2015

CHAPTER 30

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Explanatory Notes have been produced to assist in the understanding of this Act and are available separately

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# Background

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## UN Guiding Principles on Business and Human Rights

- Influential in development of MSA
- Requires businesses to:
  - conduct due diligence of business operations and supply chains worldwide
  - take steps to mitigate any impact on human rights linked to business operations
  - establish processes for on-going monitoring and compliance

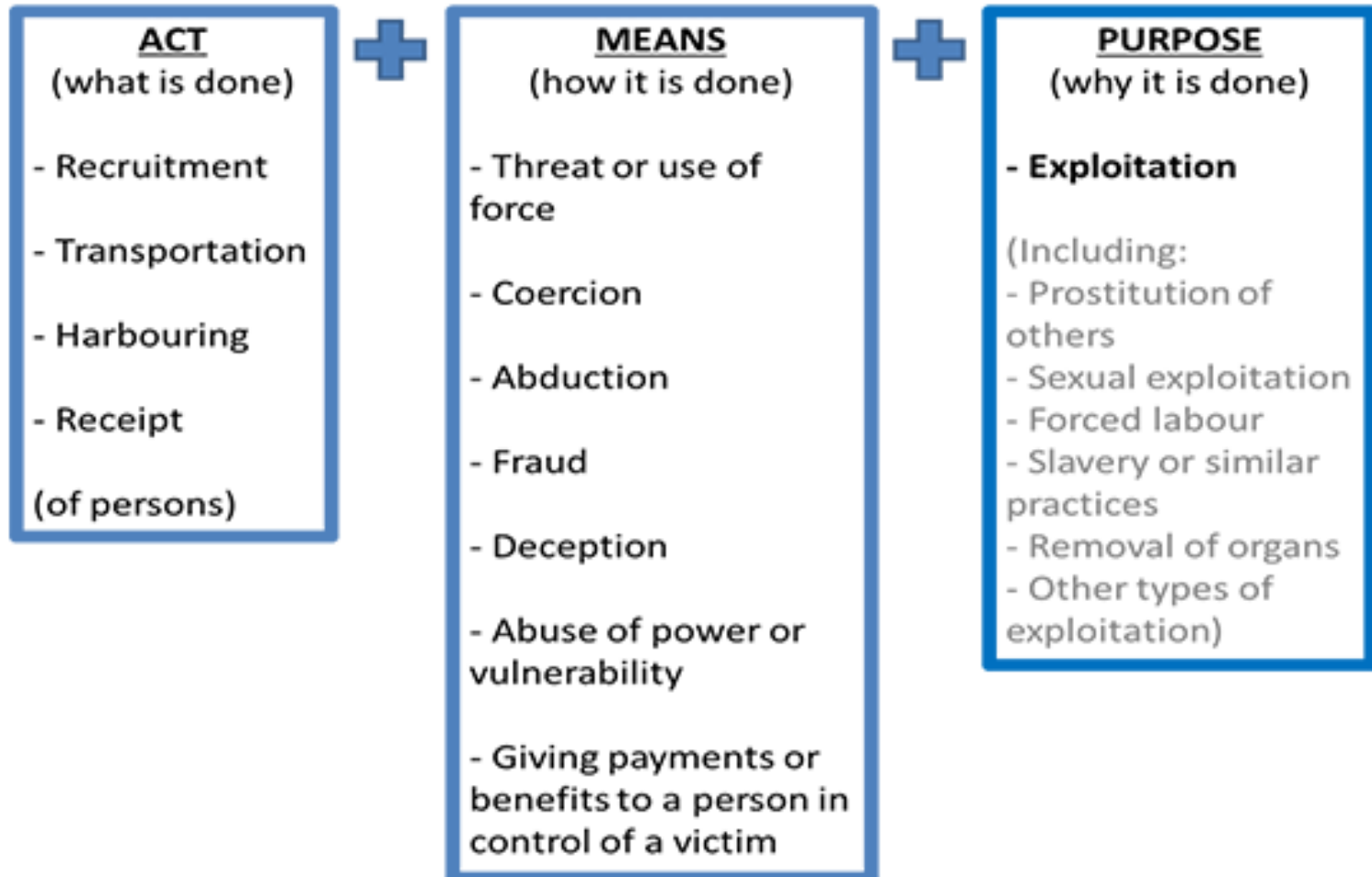
## Other human rights reporting obligations

- California Transparency in Supply Chains Act 2010
- Directive 2014/95/EU

# What is modern slavery?

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## Palermo Protocol



# What is modern slavery?

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## “Forced labour”

ILO definition:

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*work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily*

ILO indicators of forced labour:

1. Abuse of vulnerability
2. Deception
3. Restriction of movement
4. Isolation
5. Physical and sexual violence
6. Intimidation and threats
7. Retention of identity documents
8. Withholding of wages
9. Debt bondage
10. Abusive working and living conditions
11. Excessive overtime



# ILO forced labour estimates

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**ILO estimates 21m people in forced labour**



# How is modern slavery relevant to global businesses?

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**Exclusive** / British firms accused of migrant worker labour abuses in Qatar

**'Forced labour' of migrants in UK food industry**

**International Label Children's Clothing Made Under Slave-like Conditions in Bangladesh**

**How did these high street retailers fail to notice their beds were made by slaves?**

# Litigation actions

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Costco and CP Foods face lawsuit over alleged slavery in prawn supply chain

**The Morning Risk Report: Chocolatiers Face Child Slavery Liability**

**Poverty and Slave Labor in Florida's Corporate Farms, Ruthless Exploitation of Migrant Workers**



# National Contact Points

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- Many OECD countries, including the UK, several EU Member States, the US and Canada, have established National Contact Points (NCPs)
- Can hear complaints brought by individuals or NGOs against private enterprises regarding human rights violations



## Penalties

- Formal censure from NCP
- Reputational harm
- Potential litigation



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Who is required to produce an MSA statement?

Section **2**

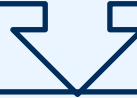
## s. 54 MSA– the four stage test

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1. Commercial organisation?



2. Supplies goods or services?



3. Total annual turnover of £36m or more?



4. Carries on a business, or part of a business, in the UK?



# “Carries on a business, or part of a business, in the UK”?

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## Not defined in the MSA and not yet considered by the courts

### Home Office Guidance

- Courts final arbiter
- Common sense approach
- Unlikely to be caught if no “demonstrable business presence” in the UK

### Courts’ interpretation of similar phases

- “Fact-intensive question”
- Foreign entities carrying on business in the UK?
- **“Part”** of a business?

# Reporting considerations

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Entity-by-entity?

Group-wide?

Reputational considerations

Pressure from customers

“

It is simply not acceptable for organisations to say, in the twenty-first century, that they did not know.

*Rt Hon Theresa May MP,  
Foreward to the Transparency in Supply Chains  
guidance issued by the MoJ*



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## Content of the MSA statement

*How should companies address modern slavery issues in their business and supply chains?*

# Section 3

# s. 54(5) MSA – the statement

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## s. 54(5) MSA

*An organisation's slavery and human trafficking statement may include information about—*

- (a) the organisation's **structure, its business and its supply chains**;*
- (b) its **policies** in relation to slavery and human trafficking;*
- (c) its **due diligence processes** in relation to slavery and human trafficking in its business and supply chains;*
- (d) the parts of its business and supply chains where there is a risk of slavery and human trafficking taking place, and the **steps it has taken to assess and manage that risk**;*
- (e) its **effectiveness** in ensuring that slavery and human trafficking is not taking place in its business or supply chains, measured against such performance indicators as it considers appropriate;*
- (f) the **training** about slavery and human trafficking available to its staff.*

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## Home Office Guidance

- UN Guiding Principles on Business and Human Rights





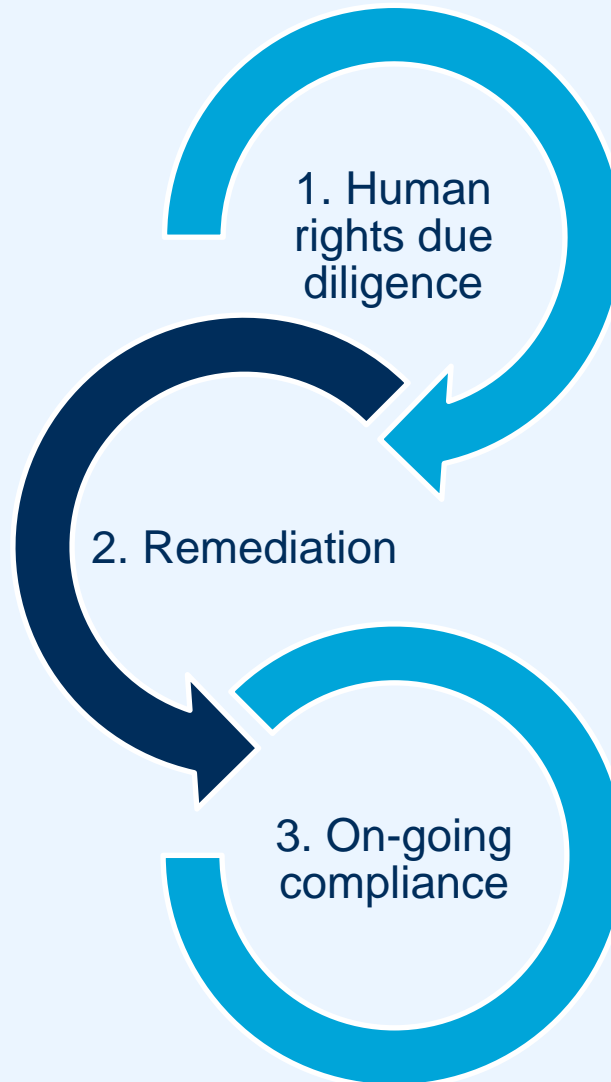
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# Practical steps towards compliance

## Section 4

# Three steps towards UNGP compliance

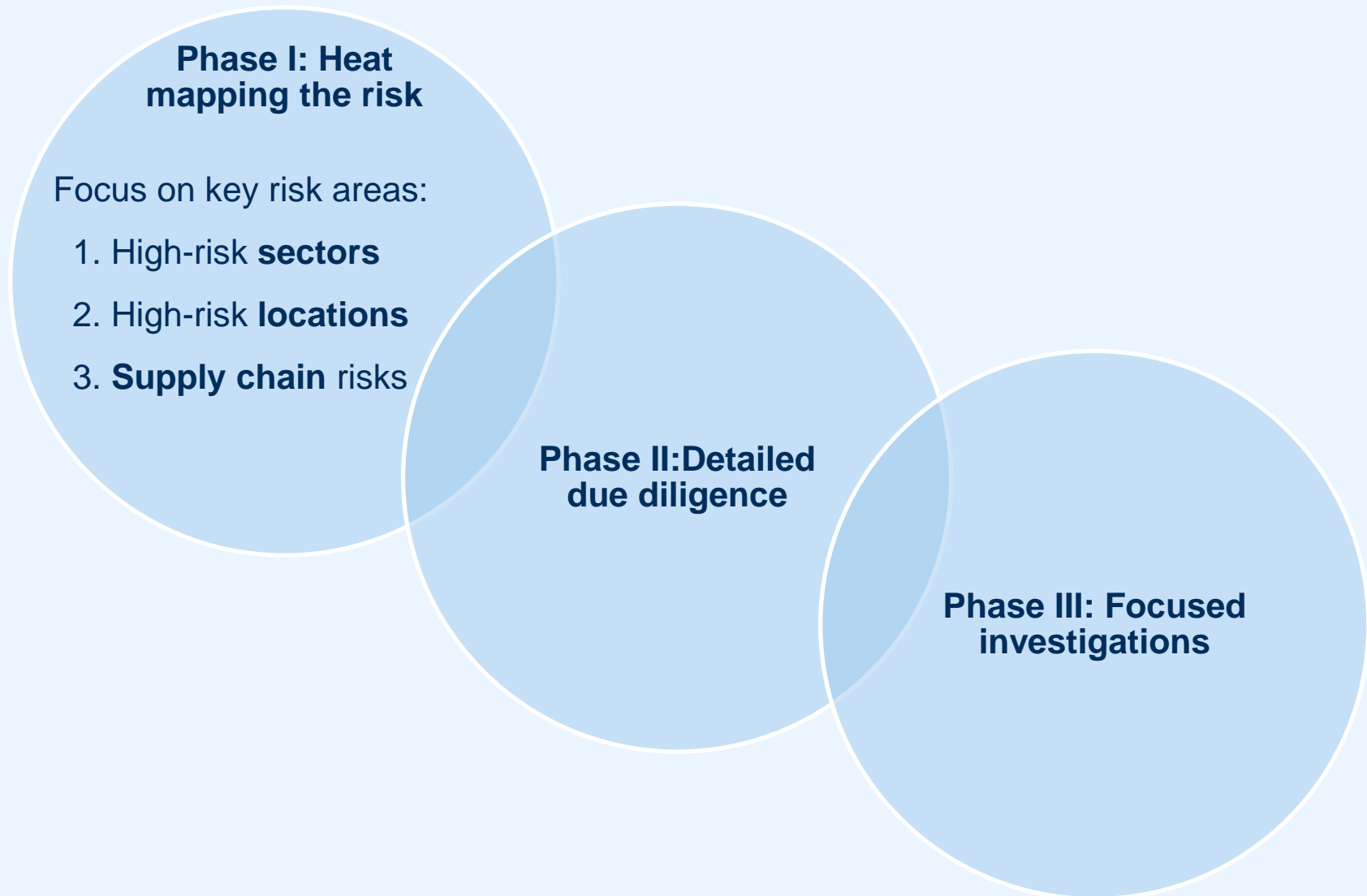
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# Human Rights due diligence

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# Cobalt supply chain – Amnesty investigation

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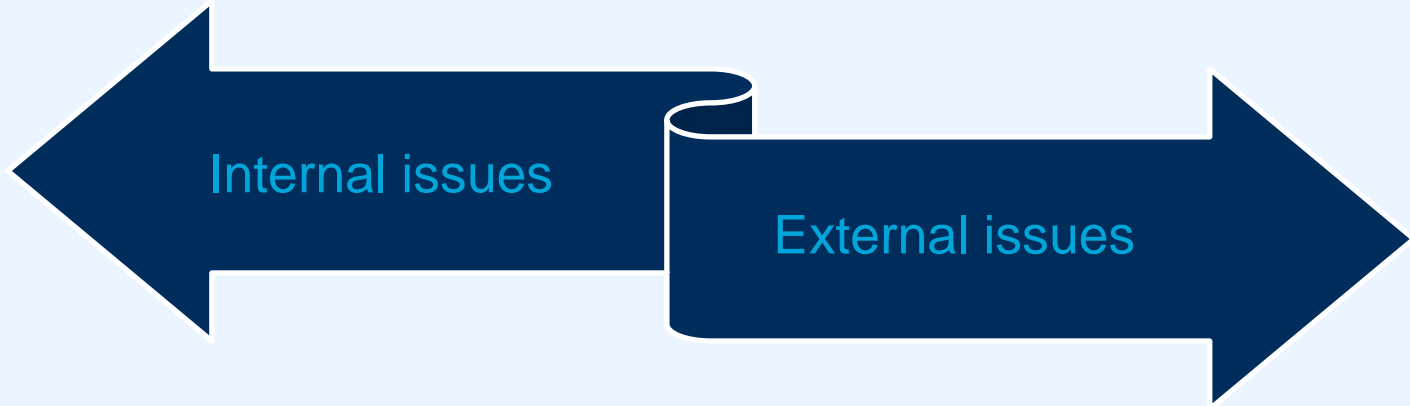
## **Amnesty International say batteries used in mobile phones may contain cobalt mined by minors**

- Technology firms accused of failing to adequately trace the source metals
- They may have unknowingly been cobalt from mines that use child labour
- Claims made in Amnesty International and African Resources Watch report

**Exposed: Child labour behind smart phone and electric car batteries**

# Remediation

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## Principle 19 UNGP:

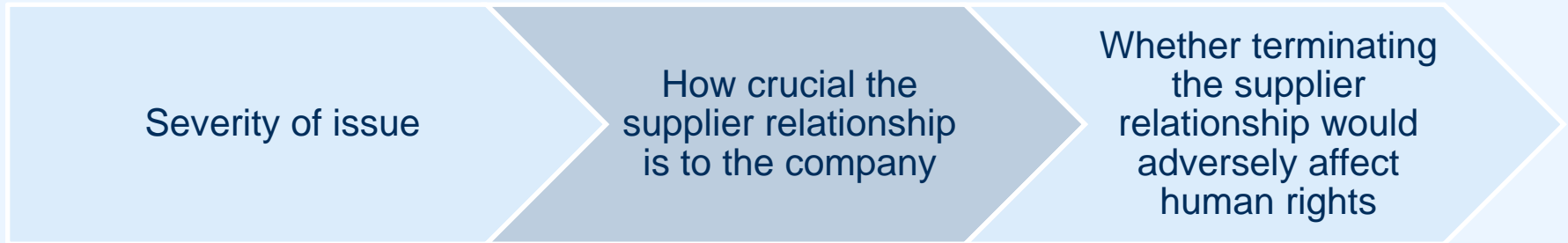
*Appropriate action will vary according to:*

- (i) Whether the business enterprise causes or contributes to an adverse impact, or whether it is involved solely because the impact is directly linked to its operations, products or services by a business relationship;*
- (ii) The extent of its leverage in addressing the adverse impact*

# Remediation

Appropriate action?

Will depend on:



Contractual protection in supplier contacts?

Termination of supplier relationships in certain circumstances?

# On-going compliance

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**Embedding change through internal policies and procedures**



# Thank you

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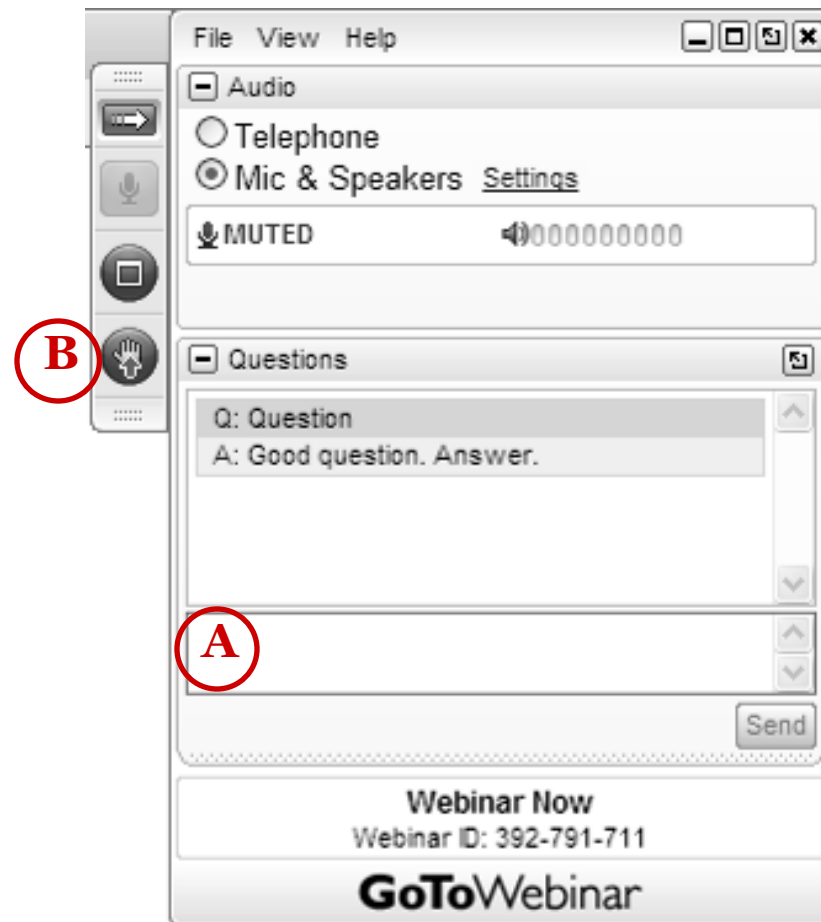
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# Resources

- [UN Guiding Principles on Business and Human Rights](#)
- [Global Compact Network UK's Modern Slavery Webinar](#)
- [Freshfields Modern Slavery Act briefing](#)
- [Freshfields Global Business and Human Rights blog](#)
- [Business & Human Rights Resource Centre: Registry of Slavery & Human Trafficking Statements under UK Modern Slavery Act](#)
- [Corporate Human Rights Benchmark](#)
- [Know the Chain](#)
- [Reporting and Assurance Frameworks Initiative](#)

# Thank you!

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