Integrating Human Rights Considerations into Mergers & Acquisitions

21 April 2016 at 9 am ET
Agenda

1. Introductory Remarks
   - Shubha Chandra, UN Global Compact

2. Overview of the M&A process with a focus on human rights considerations, steps, and key lessons learned
   - Anna Triponel, Shift

3. Company experience: Total S.A. and Ericsson
   - Isabelle Salhorgne, Adebola Ogunlade, and Malvina Letellier, Total S.A.
   - Lisa Edblom & Camilla Goldbeck-Lowe, Ericsson

4. Q&A

5. Closing Remarks
   - Shubha Chandra, UN Global Compact
   - Anna Triponel, Shift
Questions

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Example: Question for John Doe: What are land rights?
United Nations Global Compact

Act Responsibly

**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.
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Integrating Consideration for Human Rights into Mergers and Acquisitions

Anna Triponel
April 21, 2016
How familiar are you with M&A?

1. Very familiar
2. Somewhat familiar
3. Not at all (but interested!)
Poll Question #2

Where is your company in integrating human rights into its M&A processes?

1. Very advanced
2. Somewhat advanced
3. Not at all (or just starting)
What does considering human rights during M&A mean?

In short, this refers to equipping the M&A team to:

1. **Identify** salient human rights issues in the course of due diligence

2. **Prioritize** the issues for action (along with other non-human rights related issues to be addressed)

3. **Address** the salient issues in contract negotiations (or pass on to others in the company to address)
Key Obstacles to Considering Human Rights in M&A

- Confidentiality constraints
- Short timing
- Legal compliance focus
- Silos
  - Within M&A team
  - Between M&A team and rest of the company
- Traditional allocation of risk solutions
Takeaway #1: Make the business case and tailor it to your company

- Adapt arguments to corporate strategy
  - Strategic expansions? Divestment strategy?
- Examples
  - Failed/ costly transactions
  - Internal company examples
- Legal risks
- Reputational risks
- Investment risks

→ M&A team leads the work, with input from sustainability/ CR/ HRTs function
Takeaway #2: Add human rights lens to company’s *existing* M&A processes

- Map out company’s M&A processes
- Identify gaps
  - What is different about human rights when it comes to (i) identifying, (ii) prioritizing and (iii) addressing issues?
- Risk to people
  - Beyond legal compliance
  - Different lens to existing information; new inputs
  - Severity of impact is factor in prioritization
  - Focus on putting right
- Translate the UNGPs’ modes of involvement to M&A
Takeaway #3: Agree on clear allocation of responsibilities

- What is the role of:
  - The M&A lawyer?
  - Others in the M&A team?
  - The sustainability/corporate responsibility/human rights team?
  - Others in the company?

- Dependent on a range of factors

- Leading practice:
  - Specific functions -> equipped to identify
  - Lawyers -> wise counselors
  - In-house expertise and/or external expertise
Takeaway #4: Build channels of communication in the company

- M&A lawyer ↔ M&A team
- M&A team ↔ sustainability/ CR/ HRTs team
- M&A team ↔ other departments
  - Insight into risks from other experiences
  - Take on responsibility after the transaction takes place
- M&A team / sustainability team ↔ business development
Takeaway #5: Build capacity & maintain strengthened capacity

Common questions M&A professionals have:

- What are the human rights implications of the information I commonly receive?
- What additional information do I need from the target company?
- When will I need additional information and where do I go to get it?
- Which human rights issues should be prioritized for contract negotiations?
- What kinds of actions can I suggest?

→ Combination of building capacity and revising documents and processes
Putting Principles into Practice
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Total S.A.
• Isabelle Salhorgne
• Adebola Ogunlade
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Ericsson
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United Nations Global Compact
Shift Putting Principles into Practice
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Resources

- What do Human Rights have to do with Mergers & Acquisitions? (Shift)
- Integrating Concerns for Human Rights into the Mergers & Acquisitions Due Diligence Process (UN Global Compact)
- Guide for General Counsel on Corporate Sustainability (UN Global Compact/Linklaters)
- Lawyers as Leaders: The Essential Role of Legal Counsel in Corporate Sustainability (UN Global Compact/IBA/LexisNexis)
- Portal on Engaging the Legal Profession (UN Global Compact)
- Lawyers as Professionals and as Citizens: Key Roles and Responsibilities in the 21st Century (Harvard Law School –Center on the Legal Profession)
Thank you!

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