

## HUMAN RIGHTS CONSIDERATIONS DURING M&A AND JOINT VENTURE(S) (JV(S)) DUE DILIGENCE

### GUIDELINES

#### 1. INITIAL CONSIDERATIONS

- 1.1 Sasol has publicly committed in its human rights policy to upholding and respecting human rights in all of our operations. In addition, Sasol has a Business and Human Rights Framework which outlines its approach to incorporate and embed human rights into its business processes. Compliance with international human rights standards is becoming increasingly important and attracted more attention in light of the various legislations that have been enacted throughout the European Union, including from an M&A as well as JV perspective. A failure to respect human rights by Sasol or its associates can lead to a range of legal, financial, operational and reputational risks. Legal risks tend to manifest in the form of claims by rights holders and non-governmental organisations. Operational risks can occur if rights-holders (e.g. local communities or workers) air grievances by disrupting business activity, or if regulatory operating licences are revoked or refused on account of human rights concerns. Reputational risks also arise which impact on how investors in Sasol view the company. This can impact Sasol's environmental, social and governance (ESG) ratings which are an increasingly important consideration for financiers.
- 1.2 Human rights issues will have to be considered in the execution of buy-side and sell-side M&A as well as JV mandates. In the context of acquisitions, there has been a recent increase in human rights related claims (usually in the form of group actions) brought directly against parent companies in a number of jurisdictions for the acts of their subsidiaries. As regards disposals, a number of multi-national groups have been subject to criticism for divesting without taking precautions to ensure ongoing respect for human rights (e.g. by selling to "irresponsible" buyers). Depending on the circumstances, it may also be difficult to obtain regulatory approval for a transaction if the buyer presents particular human rights concerns.
- 1.3 Sasol may also be exposed to reputational, operational, financial and legal risks if its JV partner violates human rights e.g. its operations affect local communities and environment, and there are issues relating to, inter alia, land use, relocation and resettlement of local communities, security, employment of skilled and unskilled workers, recruitment of migrant workers and access to basic services such as water and sanitation.

#### 2. KEY CONCEPTS

- 2.1 The United Nations Guiding Principles on Business and Human Rights (**UNGPs**) are the global authoritative standard on business and human rights. The UNGPs provide a framework for managing human rights risks. To comply with the UNGPs, businesses must conduct human rights due diligence (**HRDD**) by assessing their actual or potential human rights impacts, taking steps to cease or (as appropriate) mitigate such impacts, and monitoring the effectiveness of these measures on an ongoing basis. Under the UNGPs, the extent of a company's responsibility to respect human rights through HRDD extends to its own operations and its business

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relationships. Companies are also required to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services provided by their business relationships.

2.2 The UNGPs clarify that this responsibility to respect human rights extends to (at a minimum) the rights set out in the International Bill of Rights and the eight “core conventions” of the International Labour Organization. The following issues have been prioritised by Sasol for risk mitigation given the nature, location and scale of our activities:

- Respecting and embracing diversity and inclusion;
- Freedom of association and collective bargaining;
- Safe, secure and healthy work environments;
- Fair and competitive conditions of employment;
- Rights of fence line communities and indigenous people;
- Human rights in supply chain;
- Responsible management of environmental footprint;
- Stakeholder engagement and collaboration;
- Caring for our people in challenging time to ensure their safety and wellbeing;
- Protecting the rights of employees with disabilities;
- The Sasol Ethics Line which is the primary grievance mechanism for use by employees, service providers and local communities; and
- The Whistle-Blower Policy and Ethics Investigation Policy which support the reporting, investigation and management of unethical conduct.

2.3 Though the UNGPs are non-binding, business and human rights laws are emerging which are informed by the UNGPs. These include the: (i) UK Modern Slavery Act which requires certain businesses to report on the steps that they have taken to address modern slavery risk in their businesses and supply chains (note that Sasol publishes an annual modern slavery statement); (ii) German Supply Chains Act, which from January 2023 will require certain companies to conduct HRDD extending to their supply chains and (iii) Duty of Vigilance which was adopted in France in 2017 and requires companies to devise, publish and implement a “vigilance plan” to identify human rights and environmental risks resulting from their activities and introduce measures to prevent those risks.

### **3. BUY SIDE CONSIDERATIONS**

#### **3.1 Threshold Considerations**

3.1.1 Have a clear understanding of:

- (a) the human rights legal framework or requirements applicable to the target;
- (b) the differences (and potential key gaps) between Sasol’s human rights framework and that of the target;

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- (c) any known, specific human rights risks associated with the target based on initial enquiries into the target, the target's sector(s) and the jurisdictions where the target operates;
- (d) whether the target or any of its subsidiaries, employees, agents or other persons who perform or have performed services for or on behalf of the target company or any of its subsidiaries is/are subject to any pending investigations or legal claims (e.g. group actions) where the allegations pertain to breaches of human rights;
- (e) how the target (or its current parent company) compare to their competitors in relevant industry-specific human rights benchmarks<sup>1</sup> (e.g. the Corporate Human Rights Benchmark or Renewable Energy & Human Rights Benchmark) and participation in multi-stakeholder initiatives (e.g. the Voluntary Principles on Security and Human Rights and the UN Code of Conduct); and
- (f) the degree to which the target (and its senior leadership) are willing to engage with Sasol on human rights issues and understand where the target's key risks and challenges may arise.

3.1.2 Depending on the context of the deal, it may be necessary to call upon specialist external human rights expertise to support with due diligence, particularly if the potential risks are such that on-the-ground due diligence is deemed an appropriate step. Whether or not such specialist expertise is required should be considered with Legal Services Department.

## 3.2 Due Diligence

3.2.1 Due diligence should extend to:

- (a) the target's human rights policies and procedures including policies and procedures relating to the different categories of workers;
- (b) the target's process to identify involvement in adverse human rights impacts;
- (c) the steps that the target has taken to prevent, mitigate or remedy adverse human rights impacts;
- (d) the targets report on human rights performance;
- (e) any criticism that the target has been subject to in relation to human rights impacts arising from its business activities, products or services;
- (f) mechanisms that the target has in place to receive and resolve grievances with workers and local communities;

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<sup>1</sup> Note that as things stand only larger companies tend to be included in industry benchmarks.

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- (g) workers and local community engagement with respect to human rights issues related to the target's operations;
- (h) structure of supply chains and key destinations within the supply chain;
- (i) compliance with supply chain related human rights laws;
- (j) geographic footprint (subsidiaries and branch offices, including small and in remote locations); and
- (k) interface with sanctions legislation (noting that sanctions are often imposed in response to human rights concerns).

3.2.2 Key questions to consider during due diligence may include the following, depending on the initial assessment of the target's specific human rights risk profile:

- (a) Does the target have a human rights policy (or public human rights statement) relating to its commitment to respect human rights? If so, does the policy or statement assign responsibility for managing human rights issues to particular functions and / or members of the target's senior leadership?
- (b) Does the target operate in high risk countries, such as conflict zones or jurisdictions with poor human rights records where it is well-documented that the laws are incompatible with key international human rights standards, or where the law offers significantly reduced protections (e.g. regarding worker welfare)?
- (c) Is the target's management team willing to engage on human rights issues?
- (d) Is the target required to comply with any legislation which requires it to conduct HRDD, report on its human rights policies and procedures (e.g. the French Duty of Vigilance Law, UK Modern Slavery Act 2015 etc.), or include information relating to human rights matters in its corporate filings (e.g. non-financial disclosures in its annual return)?
- (e) If the target is required by applicable laws to publish reports or statements addressing human rights matters, or elects to do so voluntarily, what degree of disclosure is given with respect to: (i) the key human rights risks in the target's business and supply chain; and (ii) how these risks are managed? Hallmarks of a company with more advanced human rights procedures include:
  - (i) Evidence that key risks have been identified and prioritised with due regard to the target's operating context (and supply chain risk profile);

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- (ii) Evidence that ownership for implementing the target's human rights procedures is clearly documented within governance processes;
  - (iii) Evidence of senior management leadership on human rights matters;
  - (iv) Evidence that the target actively monitors the overall effectiveness of its procedures in mitigating human rights risks; and
  - (v) Evidence that the target engages external human rights expertise as required, including for the purposes of monitoring / auditing higher risk suppliers, service providers and other counterparties.
- (f) Has the target committed to complying with any relevant voluntary standards and frameworks, e.g. the UN Global Compact, or the Voluntary Principles on Security and Human Rights / International Code of Conduct for Private Security Providers (if the target engages security personnel to protect its assets)? Where such standards require annual reporting, are the reports up to date?
- (g) Has the target (or its current parent company) been included in any corporate benchmarks (e.g. the Corporate Human Rights Benchmark)? If so, how does the target / seller compare to their peers?
- (h) In the last five years has the target / seller or any of their officers, employees, agency workers or consultants been the subject of any investigation, inquiry, claim or enforcement proceedings by any governmental or regulatory authority or any other third party in connection with any human rights abuses involving the target, target's suppliers or business partners or relating to the target's operations including slavery, forced or compulsory child labour or purchase of raw materials from suppliers using child labour or disrespect of gender equality or wage differences due to discriminatory practices or negative social impact on local communities or reprehensible environmental practices or human trafficking?
- (i) Has target/seller or any of their officers or employees been convicted of any offence involving slavery, servitude, forced or compulsory child labour or human trafficking?
- (j) What, if any, processes and systems does the target have in place to promote regular and effective communication to convey its human rights policy to employees, suppliers, business partners and stakeholders? In particular:
  - (i) Has the target carried out an impact assessment in the last three years?
  - (ii) What contractual protections with suppliers are in place?
  - (iii) Does the target carry out supplier audits?

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- (iv) Are there mechanisms in place to receive complaints about adverse human rights impacts from individuals and communities (e.g. help lines, grievance procedures or whistle blowing mechanisms)?
- (k) Does the target monitor and identify human rights red flags including in relation to slavery, forced or compulsory child labour or human trafficking?
- (l) How is responsibility for day-to-day implementation of the target's human rights policy embedded in the target's governance structure?
- (m) Has the target implemented any human rights training?
- (n) Is there a process for handling and investigating reports of adverse human rights impacts?
- (o) Has the target implemented grievance mechanisms to ensure the remediation of adverse human rights impacts?
- (p) Does the nature of target's operations create potential for negative human rights impacts or disputes with local communities?
- (q) What are the actual and potential human rights impacts of the target's operations?

### 3.3 Contractual Protections

3.3.1 Assuming the due diligence on the target does not reveal any human rights related issues which present an unmanageable risk (meaning the transaction can proceed) contractual protections to consider including in the transaction documents may include those set out below:

- (a) conditions to closing;
- (b) appropriate pre-completion undertakings, a breach of which might entitle Sasol to terminate the relevant agreement;
- (c) human rights warranties and/or assurances with respect to human rights performance; and
- (d) indemnities in respect of a breach of human rights warranties or in respect of any specific identified risks or exposures such as remediation costs.

3.3.2 Warranties will usually be incorporated into the transaction documents. Conditions, pre-completion undertakings and indemnities may be deemed appropriate depending on the risk profile of the target. The inclusion of such additional protections should be considered on a case-by-case basis in consultation with Legal.

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**3.3.3 Conditions to closing – e.g.:**

- (a) The closing of the transaction conditional upon resolution of existing claims or disputes with local communities and other stakeholders?
- (b) Sasol not having become aware of any facts or matters concerning the target that amounts to evidence of a human rights impact; and
- (c) If any specific human rights impacts are identified (e.g. through due diligence or adverse media) the seller may be required by Sasol to provide evidence that such issues have been (or are being) mitigated or remediated by the target / seller to Sasol's satisfaction.

**3.3.4 Pre-completion undertakings – e.g.:**

- (a) to refrain from conduct that gives rise to a breach of international human rights standards, and national laws and standards relevant to the target's operations, including with regard to the treatment of workers and local communities;
- (b) to notify Sasol of any non-compliance with such laws and standards by either the target or entities within the target's supply chain;
- (c) to ensure that any human rights impacts (including any identified in the target's supply chain) are discontinued and remedied prior to completion;
- (d) to ensure proportionate procedures designed to manage the target's human rights impacts are implemented, maintained and / or remedied if necessary;
- (e) to assist Sasol with its ongoing HRDD of the target; and
- (f) to take such actions as are reasonably requested by Sasol in order to address any serious deficiencies in the target's human rights policies and procedures.

**3.3.5 Warranties – e.g.**

- (a) the target is compliant with applicable international human rights standards, and all national laws and regulations relevant to the target's operations, including with regard to the treatment of workers and local communities;
- (b) the target has implemented and maintains effective, proportionate procedures to ensure respect for human rights (extending to the target's supply chain);

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- (c) no adverse human rights impacts have occurred, including in the supply chain (so far as the seller is aware);
- (d) neither the target, nor any entities in the target's supply chain (so far as the seller is aware), are subject to ongoing investigations or legal proceedings in connection with potential human rights impacts; and
- (e) neither the target, nor any entities in the target's supply chain (so far as the seller is aware), have been found to have breached any international human rights standards, national laws or applicable regulations by any court, regulator or administrative body.

#### 4. SELL SIDE CONSIDERATIONS\

- 4.1 Whilst successor liability issues do not per se arise in a sell-side mandate, the pre-transaction due diligence will need to consider if a potential acquirer has a poor human rights track record as reputational impacts can arise if the acquired Sasol business would face significant human rights violations (alleged or real) post-closing. This could also become a stumbling block when stakeholders such as organized labour or certain regulators would attempt to block a deal from closing because the new owner is not seen credible from a human rights perspective.
- 4.2 Post-sale, Sasol will invariably have little leverage over the buyer and acquired company. It is therefore important to conduct pre-acquisition due diligence on the buyer, though this will generally be less extensive than due diligence on the target/seller in the acquisition context.

##### 4.3 Threshold considerations

The key 'threshold considerations' in the sell side scenario will include ascertaining:

- the degree to which the buyer (and its senior leadership) are willing to engage on human rights issues and understand the target's key risks and challenges;
- whether the buyer has in place its own human rights framework and procedures which: (i) are commensurate with its activities and risks; (ii) appear to be well-resourced (e.g. internal expertise); and (iii) are given due priority by the senior leadership;
- how the buyer ranks in ESG ratings and industry benchmarks, and whether the buyer has signed up to multi-stakeholder initiatives (e.g. UN Global Compact); and
- whether the buyer's track-record gives any cause for concern – e.g. based on media reports, benchmarking, adverse judicial or regulatory findings, pending investigations or legal claims etc. Note, however, that any findings need to be considered in context, as the largest companies with the most advanced human rights programmes are more susceptible to public criticism and litigation given their size and profile.

##### 4.4 Due diligence

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A number of the due diligence questions set out for the buy-side scenario will help to address the threshold sell-side considerations listed above. However, the focus of such questions will be on the potential buyer rather than the company being sold. Not all of these will be relevant, and the appropriate questions to raise should be considered with Legal Services Department.

#### **4.5 Commitments from the buyer**

In specific circumstances, it may be appropriate to seek commitments or assurances from the buyer regarding the ongoing management of human rights risks associated with the buyer's operations. Incorporating such commitments in the transaction documentation should be considered with Legal Services Department where, for example, the buyer's operations and the jurisdiction(s) where it operates present a specific risk of potentially serious human rights impacts.

#### **4.6 Ongoing minority interest post-sale**

4.6.1 If Sasol is to retain a minority stake in the company post-sale, this will generally justify a greater level of due diligence on the buyer as the potential for ongoing reputational and legal risks are greater.

4.6.2 Sasol can seek to increase its leverage post-sale by, for example, securing the right to nominate directors to the company's board as a minority shareholder. This will help to ensure that human rights issues continue to be raised at the board level, and that the company continues to allocate sufficient resource to its human rights programme.

### **5. SPECIFIC ASPECTS TO BE CONSIDERED FOR JVS**

If a transaction is structured as a JV, consider the following:

- conducting a due diligence review on the JV based on the appropriate elements in terms of the buy-side M&A process;
- historical human rights record of the JV partner;
- the JV's capacity to address any potential human rights risks including systems that it has in place for the management of human rights risks;
- the scope of the JV's operation including location i.e. whether the JV is located in a high-risk country and the potential for involvement in adverse human rights impacts;
- the JV's human rights policies and procedures and audit rights in relation to these policies to ensure that the JV is implementing its commitments. Such audit rights should allow access for inspection of premises including inspections conducted by independent third parties. Consideration should also be given to how access may be granted to premises of sub-contractors;
- taking a particular role or obtain relevant management or key positions within the JV;
- JV agreement(s) to be drafted in such a way that they consider human rights explicitly and effective on-going contract management will also be required;
- JV partner to make representations and warranties regarding its human rights records and compliance efforts
- include a termination in the JV agreement if there is a serious human rights breach;

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- advance human rights through JV's board or committees and the design of voting rules can also create further opportunities to advance human rights.
- does the JV provide human rights training;
- JV to report to the JV partners on its human rights performance and also provide opportunities to discuss human rights challenges/concerns; and
- does the JV have a grievance mechanism for alleged human rights abuses to be used by employees or local communities?

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