BMA ADVOGADOS

Environmental and human rights due diligence obligations in the supply chain

29.06.2022 3 min read

Authors

Márcio Pereira

Marlus Oliveira

Related areas

Environmental, Climate and Mining

Topics

ESG Environmental, Climate and Mining BMA Review

For some time now, the European community has adopted strict environmental and human rights standards for activities developed within its borders. Recent legislation, however, has created a compliance obligation with those standards directed to supply chains, including foreign vendors. There is a clear trend toward requiring companies to implement ESG policies, and consequently, increasing the due diligence requirements in their business relationships.

Germany's Act on Corporate Due Diligence Obligations in Supply Chains (*Lieferkettensorgfaltspflichtengesetz* – LkSG, 2021), following the direction set by France's Corporate Duty of Vigilance Law (Loi 2017-399) and the Netherland's Child Labor Due Diligence Law (*Wet zorgplicht kinderarbeid*, 2019), requires companies that have global supply chains to monitor, prevent and mitigate risks related to the environment and human rights, and imposes liability for failure to do so. The Law also requires German companies which employ more than 3,000 people to adopt measures to fulfill their duty of care throughout their supply chains, beginning in January 2023. Some of the outcomes of such a Law can already be seen in Brazil.

As per the Law, risks related to human rights encompass child and slave labor, occupational safety, freedom of association, equal treatment, and excessive use of force. On the environmental front, the German legislation shows particular concern over risks associated with hazardous products (such as mercury) and solid waste, while other forms of pollution were treated as human rights risks by the Law.

The German Act on Corporate Due Diligence Obligations in Supply Chains requires that companies ensure, through a distinctive set of measures, that their direct suppliers do not violate human rights or damage the environment. For indirect suppliers, companies must conduct risk analyses in the event of a complaint or other indication of a violation being committed. As part of their compliance with these requirements, German companies that import Brazilian products may require their to suppliers present proof of compliance, such as reports, audits, and periodic due diligence investigations.

As foreign suppliers under the German legislation, Brazilian companies will have to be aware of the new legal requirements, as failure to comply with the standards could be incorporated in contracts as subject to penalties such as fines or obligations to remedy their practices and procedures. In addition, contracts between German and Brazilian partners could be revised to accommodate provisions regarding indemnification clauses, reporting obligations, and contract termination due to failure to comply with environmental and human rights standards. The German legislation may also trigger lawsuits in European jurisdictions concerning environmental and human rights violations in Brazil, which has already happened in lawsuits currently under trial in the Netherlands, England, and France.

In short, Brazilian exporters that intend to keep or increase their commercial relations with European business partners should be more vigilant than ever to the new requirements and be ready to demonstrate they comply with European standards and regulations. Moreover, the European Community is currently debating a new directive on human rights and environmental due diligence requirements, which would be more comprehensive them the regulations currently in force. As for the German legislation, its repercussions for the Brazilian market will probably be noticeable over this year, through requests for information and proof of compliance as German companies prepare for the first report under the Law, in 2023.

› PROFESSIONALS

Professionals who combine legal insight and market perspective

Márcio Pereira

Marlus Oliveira