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FROM OUR DESK

SUPPLY CHAIN MANAGEMENT FOR SMEs

The Danish based "Planteskole-Ringen", a corporation which supplies garden centres with products from leading Danish nurseries, engaged Lawhouse.dk in order to develop and formulate a sustainable code of conduct. Planteskole-Ringen chose to adopt a code of conduct that explicitly covers human rights in order to clarify its position to suppliers, staff, and other stakeholders. With an enormous number of suppliers and lack of transparency in the value-chain, Planteskole-Ringen wanted to minimise the risk of becoming complicit in violations. Their responsible attitude is commendable and demonstrates increased sector progressiveness towards working with human rights in the Danish context.

GHANA BUSINESS CODE PART II

The assignment from Danida to prepare a Ghana Business Code with guidelines specifically aimed at small and medium enterprises is in its final phase. The last visit to Ghana was postponed but will take place at the end of August 2006.

The aim of this trip is to engage participating stakeholders in preparing and adopting the final version of The Ghana Business Code. Furthermore, recommendations made in a legal review conducted to ensure that the code is in line with current Ghanaian legislation will be incorporated. Lawhouse.dk will also propose ways to promote the unique initiative nationally as well as internationally, starting with its inclusion in the UN Global Compact event in Ghana in November.

Finally, Lawhouse.dk will continue to work on guidelines specifically directed at Small and Medium sized Enterprises (SMEs). The guide will explain the business case for adopting the code, provide advice on how to enhance compliance and give examples of non-compliance.

NEWS

EQUATOR PRINCIPALS RELAUNCHED JULY 2006

The Equator Principles Financial Institutions (EPFIs) engaged in a substantive review of the Equator Principles (EPs), from March-May 2006. The revision of the EPs was undertaken to 1) reflect the lessons learned during the last 2 ½ years of implementation, 2) incorporate comments from various stakeholders received throughout this period, and 3) to ensure incorporation of, and consistency with, the IFC Performance Standards. The revised Equator Principles were launched on July 6th 2006. The new Equator Principles have increased the scope of application, strengthened and improved social and environmental standards, particularly in the area of public consultation. They have also introduced performance and progress-reporting requirements for adopting institutions. The revised principles reflect the experience of the 40 financial institutions around the world that currently apply the Principles.

<http://www.equator-principles.com/>

Comments:

The Equator Principles have been improved. However, considering that the Equator Principles influence the financing of a wide range of projects which receive extensive public criticism all over the world, it is puzzling that they do not adopt a human rights based approach. Nonetheless, the principles indirectly reference human rights by prescribing that projects should abide by applicable international treaties and agreements in the countries of operation and hence ensure, inter alia:

- Protection of human rights and community health,
- Safety and security (including risks, impacts and management of project's use of security personnel)
- Protection of cultural property and heritage,
- Management and assessment of major hazards
- Labor issues (including the four core labor standards), and occupational health and safety
- Fire prevention and safety
- Due process by involuntary resettlement
- Impact assessment in relation to affected communities, and disadvantaged or vulnerable groups, and
- Protection of indigenous peoples

Thus, human rights are actually included in the principals, despite apparent apprehension about naming them beyond the general term 'international law' in the community context. However, progressive corporations and institutions would have preferred that the document acknowledged universal rights as indivisible, interdependent and interrelated.

OECD COUNCIL APPROVES TOOL FOR INVESTORS IN WEAK GOVERNMENT ZONES

The OECD Council adopted the *OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones* in June 2006.

The main idea promoted by the *Tool* is that multinational enterprises investing in countries characterised by a weak or non-existent government need to take special care in handling a range of risks and ethical dilemmas not usually encountered in countries with stronger public sectors. The *Risk Awareness Tool* is designed to help companies consider risks and dilemmas they may encounter in such zones and how they can best respond to them. Multinational enterprises have influence, and the Risk Awareness Tool can help them avoid actions that may hinder efforts to build better governance, while at the same time encouraging them to consider whether there is a positive role they can play.

Consistent with the objectives and principles of the OECD Guidelines for Multinational Enterprises, which are voluntary rather than binding, the Risk Awareness Tool is non-prescriptive. Instead, it sets out a range of factors which companies should consider in such areas, including: 1) obeying the law and observing international instruments; 2) taking extra care in managing investments; 3) knowing business partners and clients; 4) dealing with public sector officials; and 5) speaking out about wrongdoing.

The Risk Awareness Tool has benefited from contributions from business, trade unions and civil society representatives from both OECD and non-OECD countries and economies. It has also drawn from the work of other OECD bodies, notably in the areas of public governance, anti-corruption and conflict prevention. In the next phase, business and stakeholders will work with the OECD to identify sources of practical experience in meeting the challenges that it addresses.

<http://www.oecd.org/dataoecd/26/21/36885821.pdf>

Comments:

In many circles awareness is growing on how to conduct business in conflict zones. This growth is a natural response to the increase of communication and reports, which instantly deliver images from conflict zones, be it Congo, Sudan, Iraq, Lebanon, Palestine or other troubled regions. The chief prosecutor of the International Criminal Court has stated that heads of corporations may be subjected to investigation for complicity in international crimes, thus giving a special risk profile to business conduct in such areas.

Guidelines detailing correct conduct for businesses in conflict areas are vital and fall in line with the increased awareness of Corporate Responsibilities. UN Global Compact, International Alert, the World Bank and other important actors have also produced similar guidelines. The Business Leaders Initiative on Human Rights, the members of which include ABB, Statoil and Barclays Bank, has also initiated a program that focuses on this matter and outlines the advantages of including human rights in the equation.

The OECD guidelines appear thorough on the surface but they do not provide practical guidance in relation to human rights and humanitarian law, even though clear guidance is provided in relation to economic crimes such as corruption and money laundering. When it comes to human rights the guidelines tend only to provide actual guidance in relation to the usual (but important) suspects; the use of security forces and indigenous peoples rights. Finally, as with most other tools, the guidelines are very risk focussed. Business has the potential to become a major catalyst for sustainable peace in such areas and the potential for collaborative initiatives and genuine human rights based corporate strategies should be explored further.

US SURVEY; THE MAJORITY OF LESBIAN, GAY, BISEXUAL AND TRANSGENDER (LGBT) WORKERS PREFER

COMPANIES WITH ANTI-DISCRIMINATION POLICIES

The survey, conducted by Deloitte Financial Advisory Services found that 54 percent of respondents replied that gay friendly non-discrimination and anti-harassment policies were 'critical' to their decision on where to work. Moreover, it revealed that an additional 38 percent appreciated gay friendly policies and believed that they contributed to their happiness. The survey was carried out for Lambda Legal and was administered online through an invitation to Lambda Legal's nationwide online membership between September 22 and November 4, 2005. The survey had 1,205 respondents.

Seventy-four percent of those surveyed were at work. Thirty-nine percent of respondents reported experiencing some form of anti-gay discrimination or harassment in the workplace and 19 percent complained of barriers to promotion because of sexual orientation. There is no federal law that bars discrimination against employees based on sexual orientation or gender identity in the United States and only 18 states have legal protections.

www.lambdalegal.org

Comment

It is likely that this survey would have received a similar result had it been conducted anywhere else in the world. The message it sends to employers is clear: if

they do not commit to offer justice and equality for all of their employees, they risk losing talent. Evidently, it is good business to protect against discrimination and even though legislation exists in the field, an explicit manifestation from the employers is necessary. This survey demonstrated the reality of discrimination in the workforce as faced by LGBT employees.

In Denmark, it is taken for granted that no one is discriminated against on the basis of his or her sexual orientation, gender or race. However, no efforts have been made to test this presumption.

CASE STORIES

CHINA; CORRUPTION & "QUANXI"

According to a 2006 survey conducted by PERC (Political and Economic Risk Consultancy, Ltd), corruption in China is declining. However, on a 0-10 scale in which zero is the best and 10 is the worst, China is still rated among the most corrupt in the world. According to this recent survey, China received a rating of 7.58 in 2006, declining from a rating of 7.68 in 2005.

Considering China's gradual movement towards market economy, and the high rate at which international firms are entering the Chinese market due to the slashing of tariffs and other trade barriers, increasing market potential and lucrative growth rates, it is evident that the challenges in relation to corruption are appreciable.

Corrupt practices in China are claimed to be most widespread in the provinces where the central government finds it hard to affect the old leaders and where interpretation of legislation is left to public officials. Moreover, the Chinese government has recognised the problems in the

current legal system associated with, for example, the protection of civil rights and the lack of judicial independence, which is highlighted by the State's appointment of judges and a lack of an independent judicial budget. Even though the government acknowledges that these practices have led to corruption and the abuse of administrative power and that there is a need for reform, it has yet to agree upon a method to resolve these issues. Despite the lack of control, much central effort has been put into eradicating and combating corruption. Consequently, China ratified the United Nations Convention Against Corruption (UNCaC) with reserve to paragraph 2 of article 66, on January 13, 2006. However, the means for implementation and enforcement of this convention are questionable given China's laxity with previously ratified human rights conventions.

When corruption is a cultural practice

A weak judicial system coupled with an inherent lack of good governance and the rule of law may have contributed to the development of the cultural and implicit "Chinese way of doing

business" based on personal relationships and contacts. "Quanxi" is a central concept in Chinese culture. It refers to the building of relationships through informal networks rather than organizations per se. Through favours ("Renqing"), gifts and personal affiliations, strong business network constellations evolve. It is deeply rooted in Chinese culture that one good turn deserves another. Since corruption is defined as "*Any person who directly or indirectly accepts, agrees or offers to accept any gratification from any other person to benefit him-/herself or any other person is guilty of the crime of corruption*", it is clear that the concept of Quanxi represents a possible impediment to the maintenance of business integrity.

It has been argued that corruption is a western construct and that what constitutes corruption and bribery in economically developed countries is no more than a traditional and cultural practice in non-western, economic developing countries. In addition to this view, the traditional practices of giving presents and favours have been practised openly, unlike the secret and shady business

practices in the west. However, it is obvious that Quanxi practice causes grey zones to exist and implies that business should devote special attention to defining what constitutes corrupt practice in a Chinese context.

Provisions

UNCaC requires states to establish acts of corruption as criminal offences, and criminalizes not only basic forms of corruption, such as bribery and embezzlement of public funds, but also trading in influence and the concealment of laundering of the proceeds of corruption. Since participation, instigation, preparation, assistance, attempt, and intent or knowledge of corruption and bribery are all subject to punishment, there is a need for businesses that venture into China to clearly formulate corporate policy and to explicitly put into place global and local guidelines.

With specific regards to China and the cultural practice of Quanxi, companies might find it useful to support a broader corporate code of conduct, and to develop a local chapter in order to translate global values into Chinese practice. Such an approach will ensure consistency but at the same time will aid adaptation to and appreciation of Chinese cultural traditions. At the corporate level it must be stated that giving or accepting bribes, accepting facilitation payments, channelling of money laundering, accepting or giving token value gifts or directing financial political contribution is against corporate policy. Such a broad policy formulation would leave room for local interpretation. Local chapters should then address local cultural traditions by clarifying the definitions of undue advantage, token value gifts etc. Only detailed local clarification will enable employees to know what is in line with corporate policy and thereby expected of them.

Economies in Transition

In order to root out corrupt practices there is a need for the establishment of rule of law with functioning implementation mechanisms and effective and fair enforcement institutions. In a vast area like China, with an

incomprehensible number of people, such precondition will take time to establish. In addition, a trust in market mechanisms will need to be established, which in time may replace the trust surrounding the tradition of "Quanxi"

CSR IN CHINA

Corporate responsibility is a moral imperative, a strategic business decision and, increasingly, a market necessity. It allows companies to move beyond traditional rules or conventions, to innovate and establish proactive approaches. In a well-developed free market economy, companies are put under pressure to create a corporate identity. The adoption of CSR is increasingly becoming the corporate strategy for western companies with solid economic foundations to differentiate themselves from the rest.

As for China, companies have traditionally been owned and managed by state. However, since the 1990s, partial privatisation has taken place in relation to the policy of "Zhuada Fangxiao". Market-oriented reforms and the open-door-policy have led to a rapid development of the non-state sector, including privately owned companies, foreign-funded firms, Township and Village enterprises. However, privatisation, corporatisation and consequently, fierce competition, has pushed companies in China to make profit maximization and financial survival the primary objectives. Accordingly, research has shown that there is a lack of a global vision, which encompasses socially responsible considerations in China.

Nevertheless, the central Chinese Government is motivated to work with CSR. A wish to retain a prosperous investment and export climate, coupled with the desire to obtain a positive image and to rebut frequent criticisms on human rights violations are among obvious motives. Consequently, the Chinese Government is working on CSR

standards for domestic companies. A number of large State-owned and private companies in China, such as Baosteel Group and Mengniu, have already taken action in this field by issuing reports on social and environmental responsibilities. In spite of these developments, as well as the push from government towards improving corporate governance, and CSR issues being on the agenda of the 11th five-year plan in October 2005, CSR performance varies greatly across sectors and types of firms. Efforts from the central government have been made to establish a regulatory regime over big state firms.

As a result of the privatisation of a large number of SMEs and a claimed unwillingness of local government to regulate these firms, human rights protection will increasingly become the voluntary obligation of SME non-state actors. Due to local protectionism and lack of enforcement of regulations, violations of human rights, especially labour rights violations, are claimed to be widespread in domestic private firms, Township, and Village enterprises. Moreover, firms owned by Hong Kong Chinese, Taiwanese and South Korean entrepreneurs allegedly tend to have more serious labour rights violations, because they are able to develop Quanxi relations with Chinese local governments, which embolden them to violate workers' rights and compromise regulations.

A Chinese environment for CSR?

It is obvious that economic globalisation with its heavy investment from Western businesses will enhance CSR focus in China. Decades of human rights scepticism from the West towards China now challenges the reputation of the large number of corporations that seek to reap the benefits of the enormous Chinese market, its sudden growth in wealth and its well educated and hardworking population.

By 2005, 80 percent of the world's top 500 largest companies and top 100 Information Technology firms have set up business in China. Consequently, international standards have been introduced and not all companies are taking advantage of the loopholes caused by weak enforcement mechanisms. Many bring capital, technology, management know how and socially responsible business practices to the country and thus pave the way forward for prosperity. They influence CSR performances among domestic companies, strengthening international competitiveness. According to a report released earlier this year by the Transnational Corporation Research Centre under the Chinese Ministry of Commerce, the awareness of CSR was extended to China through multinational firms imposing global standards on their branches in China, and in particular imposing strict policies on key issues such as security and the environment.

However, multinational pressure in relation to international best practice and extensive legislation in the area of workers' rights may not in itself bear fruit. The challenges to effective monitoring

and moving away from poor local implementation and enforcement will continuously pose fundamental impediments to progress. Such challenges obviously lower the incentives, especially among economically fragile corporations, to incorporate CSR measures. As such, regionalisation may pose a barrier for effective implementation of nationwide regulations, thereby producing arbitrary outcomes.

The future looks bright

China only ratified the covenant on Economic, Social and Cultural rights in 2001, however, for decades, efforts have been made to ensure basic economic and social rights of citizens and the rise in Chinese standard of living can be seen as an indicator of improvement of the human rights situation.

China has worked hard to develop job training with a view to enhancing workers' job skills and quality, as well as improving their capabilities of finding employment and adapting to job changes. The state has worked hard to guarantee workers' rights to obtain payment for labour, and wages have been on the increase. To safeguard the social

security rights of workers, China has preliminarily established a social insurance system, mainly covering basic pension insurance, basic medical insurance and unemployment insurance for workers in cities and towns. Finally, China has increased its investment in education to create favourable conditions for citizens to exercise their right to education. Considering the national focus on education, incremental change will pave the way forward and in time create a basis for enhancing the quality of reinforcement mechanisms.

China's tradition of ensuring basic economic and social rights for its citizens creates an obvious opportunity for China to become a leader within CSR. The International Bill of Human Rights are the only values accepted and recognized by the vast majority of nations in the world and create as such an obvious international frame of reference for CSR. Since economic, social and cultural rights are rights, which are more closely related to the business sphere of influence than civil and political rights, the foundation for corporate CSR practice is already established in the Chinese cultural mindset.

UP-COMING EVENTS

September 11-12, 2006, Milan, Italy
5th EABIS Annual Colloquium: Corporate Sustainability, Strategic Management
<http://www.eabis.org/csrplatform/colloquium/2006/>

September 17-20, 2006, Dubai, UAE
3RD CSR SUMMIT
<http://www.iirme.com/csr>

September 21-22, 2006, London, UK
3rd Annual Conference Corporate Responsibility in the food industry
www.agra-net.com/CR06

October 2-3, 2006, Lausanne, Switzerland
IMD – CSM Open Forum – Human Rights and Business: A New Agenda?
<http://www01.imd.ch/news/newshome/index.cfm?art=3211>

October 4-6, 2006, Amsterdam, The Netherlands
Reporting: A Measure of Sustainability; The Amsterdam Global Conference on Transparency and Sustainability
www.AmsterdamGRIConference.org

November 20-21, 2006, Shenzhen, China

The Supply Chain Talks Back 2006, Capacity Building—Rhetoric or Reality?

http://www.csr-asia.com/upload/SCTB2006_English.pdf#search=%22November%2020-21%2C%202006%2C%20Shenzhen%2C%20China%22

December 8-9, 2006, Lausanne, Switzerland

Swiss master class in CSR 2006 – Corporations as political actors? Facing the postnational constellation

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