



*Mandate of the Secretary-General's Special Representative
for Business & Human Rights (SRSG)*

**PRELIMINARY TEMPLATE FOR THE CORPORATE LAW TOOLS PROJECT
MAY 2009**

In early 2009, the UN Special Representative on Business and Human Rights announced that 19 law firms from around the world would help him to identify whether and how national corporate law principles and practices in over 40 jurisdictions currently foster corporate cultures respectful of human rights. The Press Release announcing this project is available at: <http://www.reports-and-materials.org/Corporate-law-firms-advise-Ruggie-23-Mar-2009.pdf>.

In keeping with the Special Representative's efforts to remain as transparent as possible in fulfilling his mandate, set out below is the preliminary research template the firms have been asked to fill out for each jurisdiction.

The SRSG hopes to make all of the firms' reports available in a compilation in September 2009 along with a summary of key trends. As featured in the initial press release, the Special Representative will then, in consultation with relevant stakeholders, consider what, if any, recommendations he might make to states and businesses. To this end, in November 2009, York University's Osgoode Hall Law School in Toronto is set to convene a multi-stakeholder expert consultation, held in support of the corporate law tools project.

THE TEMPLATE

Setting the legal landscape

1. Briefly explain the broader legal landscape regarding business and human rights.

Regulatory Framework

2. To what legal tradition does the jurisdiction belong, i.e. civil/common law, mixed?
3. Are corporate/securities laws regulated federally, provincially or both?
4. Who are the government corporate/securities regulators and what are their respective powers?
5. Does the jurisdiction have a stock exchange(s)?

Incorporation and listing

6. Do the concepts of "limited liability" and "separate legal personality" exist?
7. Did incorporation or listing historically, or does it today, require any recognition of a duty to society, including respect for human rights?
8. Do any stock exchanges have a responsible investment index, and is participation voluntary? (See e.g. the Johannesburg Stock Exchange's Socially Responsible Investment Index.)

Directors' Duties

9. To whom are directors' duties generally owed?
10. Are there duties to avoid legal risk and damage to the company's reputation? If so, are they duties in their own right or are they incorporated into other duties?
11. More generally, are directors required or permitted to consider the company's impacts on non-shareholders, including human rights impacts on the individuals and communities affected by the company's operations? Is the answer the same where the impacts occur outside the jurisdiction? Can or must directors consider such impacts by subsidiaries, suppliers and other business partners, whether occurring inside or outside the jurisdiction? (See e.g. s. 172 UK Companies Act 2006)
12. If directors are required or permitted to consider impacts on non-shareholders to what extent do they have discretion in determining how to do so?
13. What are the legal consequences for failing to fulfill any duties described above; and who may take action to initiate them? What defenses are available?
14. Are there any other directors' duties which might encourage a corporate culture respectful of human rights?
15. For all of the above, does the law provide guidance about the role of supervisory boards in cases of two tier board structures, as well as that of senior management?

Reporting

16. Are companies required or permitted to disclose the impacts of their operations (including human rights impacts) on non-shareholders, as well as any action taken or intended to address those impacts, whether as part of financial reporting obligations or a separate reporting regime?
17. Do reporting obligations extend to such impacts outside the jurisdiction; to the impacts of subsidiaries, suppliers and other business partners, whether occurring inside or outside the jurisdiction?
18. Who must verify these reports; who can access reports; and what are the legal consequences of failing to report or misrepresentation?

Stakeholder engagement

19. Are there any restrictions on circulating shareholder proposals which deal with impacts on non-shareholders, including human rights impacts?
20. Are institutional investors, including pension funds, required or permitted to consider such impacts in their investment decisions?
21. Can non-shareholders address companies' annual general meetings?

Other issues of corporate governance

22. Are there any other laws, policies, codes or guidelines related to corporate governance that might encourage companies to develop a corporate culture respectful of human rights, including through a human rights due diligence process?
23. Are there any laws requiring representation of particular constituencies (i.e. employees, representatives of affected communities) on company boards?
24. Are there any laws requiring gender, racial/ethnic representation; or non-discrimination generally, on company boards?

In answering the template the firms were also asked to do the following:

- Provide examples of how the law has been applied, whether by the courts, regulators or any other relevant authority.

- Highlight where the law might vary for different types of companies, including privately owned v listed companies; and state owned enterprises.
- Indicate whether related regulatory reform has been debated in the last 10 years - whether by the government, law reform commissions, prominent civil society or interest groups etc - even if reform proposals have not been accepted.
- Highlight where possible if the government has provided or intends to provide supplementary guidance materials regarding compliance with relevant laws, including through voluntary corporate governance codes and guidelines.
- Highlight which international human rights standards have been referenced by courts, regulators or other relevant bodies, in a corporate law context, if at all.

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