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Corporate protection of human rights

Due to multiple reports of human rights violations in the business sector, both against individuals and the environment, the National Human Rights Commission (CNDH) issued General Recommendation No. 37 for the observation and respect of human rights in business activities, the synthesis of which was published in the Federal Official Gazette on July 1 (“Recommendation”).

The fundamental purpose of the Recommendation is to consider public and private entities as new subjects responsible for respecting human rights, either internally, regarding their members, or externally, towards consumers and users of products, services or goods provided by companies, as well as communities with which they interact.

The CNDH identifies two main situations of negative impact on human rights in businesses.

- 1. Direct impact:** company’s activities lead to human rights violations.
- 2. Indirect impact:** company contributes with another company or individual in the violation of human rights.

According with the CNDH, the most common violations of human rights within companies concern irregular conditions in recruitment and wages, forced labor, human trafficking and child labor. Externally, the CNDH has established as main violations those that threaten the environment, public health and legal certainty of individuals.

I. Human rights and business policy regulatory framework

To date, there is no uniform legislation in Mexico that meets international standards for the observation of human rights in companies. The most relevant document on the subject is the “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework”, a nonbinding instrument ratified in 2011 (“Guiding Principles”). However, the UN Human Rights Committee stated that the Guiding Principles should be included in public policies of Member States, something that has not happened in Mexico.

II. Elements in the observation and respect of human rights

In terms of the Recommendation, any business respectful of human rights meets the following:

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1. Fulfils its legal obligations

Whether they are fiscal, labor or environmental obligations or any specific regulation for each sector and industry, the company must comply with all of them.

2. Adopts the corporate commitment to respect human rights

The company must release a public statement (through the media or the Internet) in which it expressly points out that within all its commercial and operational relations, it respects human rights. It must also provide contact information for any clarification or communication from interested parties.

3. Enforces due diligence processes

Such processes should focus on risk prevention, mitigation and control, both within the company and regarding third parties. According to the Recommendation, the due diligence process should consist of four stages:

- a) Assessment of the impact of business activities on human rights.
- b) Measures to mitigate human right risks.
- c) Monitoring of risk mitigation measures.
- d) Publication of the results.

4. Develops remediation measures

Through practical-operational mechanisms of complaint and damage repair, the company is able to identify and investigate any possible violation of human rights, as well as to correct or compensate affected parties.

III. Private companies compelled to respect human rights

The Recommendation classifies obliged private businesses according to the following parameters:

1. Economic dimension

This group includes companies listed on the Mexican stock exchanges, which should include, as part of their independent external audit, an assessment of its performance regarding the observation and respect of human rights.

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2. Legal relationship with the government

Companies related to the government due to contracts, licenses, permits, authorizations, concessions or public financing.

In such cases, the Recommendation states that the government must ensure that such companies respect human rights through legal-contractual formulas comprising, at the very least, a mandatory human rights clause.

3. Businesses in general

In order to align themselves with the Guiding Principles regarding human rights, companies in general may, according to the CNDH:

- a) Integrate a human rights clause in its bylaws.
- b) Submit an annual statement on respect for human rights in businesses, which should be made available to the general public.

The Recommendation is addressed, among other offices, to the Ministry of Finance and Public Credit and the Ministry of Economy, the National Banking and Securities Commission, the National Insurance and Bonds Commission and the National Bank for Foreign Trade.

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