

The German Supply Chain Due Diligence Act

Factsheet for Taiwanese Companies

I) Introduction¹

The Supply Chain Due Dilligence Act (SCDDA)² comes into effect on **January 1st 2023**. It is aimed at diminishing human rights violations and environmental infringements along entire supply chains of products or services. For this purpose the Act binds all Germany-located enterprises, domestic or **foreign** in their origin, which employ at least **3.000 workers in Germany**³. From January 1st 2024 on, this threshold is reduced to only 1.000 employees. Companies equally bounded by the Act can be divided into two groups:

- ▶ Companies with their central administration, principal place of business, administrative headquarters **or statutory seat** in Germany
- ▶ **(Foreign) Companies** with a **branch office**⁴ in Germany

Furthermore, the Act **broadens the Company's circle of responsibility** immensely. The duties stated by the Act are not only triggered and affected by the company's own activities within its business area, but the activities of all direct⁵ and indirect⁶ suppliers within the company's supply chain. Whether suppliers are bounded by the Act themselves, is irrelevant.

II) Duty-triggering Circumstances (excerpt)

The Company's extensive duties imposed by the Act are linked to various humanitarian and environmental risks and violations - which for their part - are derived by numerous international agreements. Besides rather apparent and notorious human rights infringements such as child labour and the like, the following circumstances need to be addressed by companies as well:

¹ All listed websites lastly have been accessed on March 3rd 2022.

² In German: Lieferkettensorgfaltspflichtengesetz (LkSG).

³ For parent companies, all employees employed in Germany within its affiliated enterprise are included.

⁴ According to Section 13d Commercial Code (Handelsgesetzbuch - HGB); Note: A "branch office" (Group 2) does not have to be and cannot be a German legal entity by itself. Therefore, thresholds to constitute a "branch office" under German law can be fairly low. However, the unit needs to act independently to a certain degree. The mere execution of auxiliary business in the sense of a fully dependant extension of the Taiwanese company is not sufficient. If a Taiwanese company establishes a legal entity in Germany (for example in form of a GmbH), this legal entity falls under Group 1.

⁵ Suppliers with contractual ties to the company.

⁶ Suppliers with no contractual ties to the company, but whose supply is essential for the company's product or service.

- ▶ Disregard of **occupational safety** and health obligations
- ▶ Disregard of the freedom to organize in **labor unions**
- ▶ Discrimination, including **unequal pay** for equal labor
- ▶ Denial of adequate pay (not less than applicable minimum wage)
- ▶ Harmful soil changes, water pollution, air pollution, noise emissions or excessive water consumption, which have a certain impact on people (e.g. health effects or the inaccessibility to clean drinking water)
- ▶ Use of mercury compounds or persistent organic pollutants
- ▶ **Nonenvironmentally sound handling**, collection, storage and disposal of waste
- ▶ Prohibited Exports and Imports of **hazardous wastes**

III) What the addressed Companies need to do

The SCDDA includes a catalogue of obligations for the above mentioned companies. These duties can be far-reaching. Some duties apply equally to every company within the Act's scope. Others depend on the Company's influence, size or contribution to the violation. The level of risk and the severity of expected or occurred violations are taken into account as well.

Even though the Act comes into effect not until 2023, companies should already reflect on the following statutory obligations to ensure a smooth and orderly implementation for the upcoming year. These obligations can be laid out in a **7-step-plan**.

Step 1: Implementation of a risk management system and risk analyses

Companies need to implement an effective risk management system in all relevant business processes to detect potential risks and violations (II) within their supply chain and to allow for appropriate actions. This step also includes:

- ▶ **Appointing** one or more person(s) responsible for monitoring (“human rights officer”)
- ▶ Regular information-seeking by the senior management (**at least once a year**)
- ▶ Determining, weighing and prioritizing risks by influence/contribution of the company as well as level of risk and severity of violation (**once a year and on special occasions**, e.g. changes within supply chain)

- ▶ Transfer of information to the relevant decision-makers

Step 2: Issuing a **policy statement on company's human rights strategy**

Every company has to issue a declaration laying out its **strategy** and procedure to comply with the obligations (Step 1, 3 - 7) and point out the unique relevance of **individual risks** (II) within their supply chain. Furthermore **expectations** towards its employees and suppliers have to be described.

Step 3: Implementation of a **complaint procedure**

The company has to introduce an internal complaint procedure or participate in an adequate external complaint procedure. People shall be able to point out human rights-related or environment-related risk in the company's or direct supplier's business area. Noteworthy obligations include:

- ▶ Establishing a **written code of procedure** publicly available
- ▶ Ensure independence of persons in charge of the procedure
- ▶ **Publicly available information** on the competent body, accessibility and implementation of the procedure

The procedure needs to be re-examined **once a year and on special occasions**.

Step 4: **Preventive measures**

If risks have been detected (Step 1), the company has to react promptly by taking appropriate measures within its own area of business as well as laying down measures **within the direct supplier's area of business**. These actions may include:

- ▶ **Training** within the relevant business areas
- ▶ **Inspections and audits** within its own area of business
- ▶ Consideration of risks (II) when **selecting direct suppliers**
- ▶ **Contractual assurances** from a direct supplier to comply with human rights-related and environment-related expectations
- ▶ Reaching contractual agreements with direct suppliers on regular inspections and audits

These preventive measures need to be re-examined **once a year and on special occasions**.

Step 5: Remedial measures

If violations already occurred or are imminent, the company has to take appropriate actions. Within its own business area the company has to end violations. If violations within the business area of a direct supplier cannot be terminated by the company, it promptly has to establish and implement a **concept** to minimize violations. This concept has to include a **timeline**. Measures may include:

- ▶ Joining forces with other enterprises in **sector initiatives**
- ▶ **Temporary suspension** of business relations with suppliers
- ▶ Termination of business relations in severe cases

These remedial measures need to be re-examined **once a year and on special occasions**.

Step 6: Measures with regards to indirect suppliers

Should companies acquire **substantial knowledge** of possible violations by an indirect supplier, they are obligated to face these indications with individual actions laid out in Steps 1, 2, 4, 5. However the above mentioned catalogues of measures are slightly limited in favor of the company (section 9 paragraph 3 of the Act).

Step 7: Documentation and Reporting

An **up-to-date** and conclusive **documentation** of the above procedures and measures is not only obligatory, but will be crucial for monitoring due diligence in accordance to the Act. It also minimizes chances of any governmental intervention by authorities. The company's additional summarizing report needs to be handled as follows:

- ▶ Report regarding the fulfillment of due diligence has to be made on a **yearly bases** (record-keeping for 7 years)
- ▶ Report has to be issued **not later than 4 months from the end of the financial year**
- ▶ Report must be **publicly available** on the company's website at no charge

- ▶ Report must be **in German** and send to the **competent authority**⁷ electronically

IV) What other companies need to expect

Taiwanese companies not directly addressed by the Act may as well be indirectly affected by it. As Germany-located enterprises will be pressured by the SCDDA and examine their partners along the supply chain, business relations might be altered. Changes may include:

- ▶ Special inquiries by business partners
- ▶ Requests for audits conducted by the business partner
- ▶ Adaption of contractual agreements
- ▶ “Delegation” of SCDDA-obligations (inquiry by the business partner to adopt certain protocols or risk analyses)

V) Fines and administrative measures

Depending on the obligation violated, fines reach from a maximum of 100.000 € (TWD 3.107.159), 500.00€ (TWD 15.540.375), 800.000 € (TWD24.853.213) up to 2% of the average annual sales. However, fines **depend strongly on economic circumstances of the company, severity of the violation, pre-violation behavior and past-violation behavior**. Aside from imposed fines, violating companies can be excluded from the award of public contracts.

Preventive measures by the competent authority⁸ **towards companies directly addressed** and obligated by the act may include: inquiries and setting of deadlines, summon persons for interrogation, obligate the company to take certain actions , entering of business premises and review of documents

VI) Our Services - Disclaimer

In response to the SCDDA and its far-reaching consequences, we provide customized services. Feel free to [contact](#)⁹ us for any help. For any executive orders regarding the SCDDA, which are expected to be issued this year, visit the website of the Federal Ministry of Labour and Social Affairs¹⁰.

⁷ Federal Office for Economic Affairs and Export Control
(https://www.bafa.de/EN/Home/home_node.html).

⁸ Federal Office for Economic Affairs and Export Control
(https://www.bafa.de/EN/Home/home_node.html).

⁹ <https://taiwan.ahk.de/services/supply-chain-act-service>

¹⁰ <https://www.bmas.de/EN/Home/home.html>



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