

Business Lawyers Are in a Unique Position to Help Their Clients Identify Supply-Chain Risks Involving Labor Trafficking and Child Labor

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The United States and other governments are actively passing legislation addressing labor trafficking and child labor practices. This legislation includes the Updated Federal Acquisition Regulation and Proposed Federal Supply Chain Transparency Act in the United States; supply-chain laws in the United Kingdom and France; and corporate social responsibility (CSR) laws in the European Union, Canada, and India. Similarly, the Southern Poverty Law Center and others in the plaintiffs' bar are experiencing increasing success in bringing suits against businesses allegedly engaging in illegal labor trafficking and child labor practices.

Against this backdrop of increasing regulatory action, business lawyers are well positioned to help their clients identify supply-chain risks involving labor trafficking and child labor. To assist them, a working group of the ABA Business Law Section developed four simple principles (since adopted by the ABA House of Delegates) to provide businesses and their lawyers with a risk-based compliance approach.

The ABA Model Principles and related Policies are consistent with the growing body of regulatory law and can help businesses comply and hopefully avoid compliance issue pitfalls, such as have occurred with the Dodd-Frank conflict-minerals provisions, and litigation from a growing number of potential plaintiffs, including the families of over 1,100 workers killed in the 2013 Rana Plaza tragedy in Bangladesh. From the perspective of CSR—the subject matter covered by one of the Business Law Section's newest task forces—the ABA Model Principles and related Policies can help justify a business case against labor trafficking and child labor economically, legally, ethically, and philanthrop-

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ically. This, in turn, helps both inside and outside counsel identify and navigate the human rights risks in the supply chains of the corporations they represent—corporations associated with products consumers buy and use every day.

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I. INTRODUCTION

Almost 20.9 million men, women, and children around the world are being exploited through labor trafficking and child labor, and some could be in the supply chain of your client’s business.² The U.S. government is committed to taking action against these supply-chain issues that Secretary of State John Kerry called “one of the greatest zones of impunity.”³

In early March 2015, Fortune 500 CEOs and general counsel received a letter from American Bar Association (ABA) President William C. Hubbard.⁴ This letter, and the accompanying press release,⁵ urged these companies and their suppliers to help the ABA:

fight the scourge of human trafficking, a form of modern day slavery that affects millions of men, women, and children worldwide. Specifically, we encourage your company to consider adopting and implementing business and supplier policies on labor trafficking and child labor—or to revisit its existing policies—consistent with the *Model Principles of the ABA Model Business and Supplier Policies on Labor Trafficking and Child Labor (ABA Model Principles)*.⁶

2. *Forced Labour, Human Trafficking and Slavery*, INT’L LABOUR ORG., <http://www.ilo.org/global/topics/forced-labour/lang-en/index.htm> (last visited July 26, 2015).

3. John Kerry, Sec’y of State, Remarks at the White House Forum on Combatting Human Trafficking in Supply Chains (Jan. 29, 2015), available at <http://www.state.gov/secretary/remarks/2015/01/236950.htm>.

4. See Letter from William C. Hubbard, President, Am. Bar Ass’n (Mar. 3, 2015), available at http://www.americanbar.org/content/dam/aba/administrative/business_law/hubbard_letter.authcheckdam.pdf.

5. See Press Release, Am. Bar Ass’n, ABA Urges Fortune 500 Companies to Help Fight Labor Trafficking and Child Labor (Mar. 3, 2015), available at abanews/aba-news-archives/2015/03/aba_urges_fortune50.html.

6. Letter from William C. Hubbard, *supra* note 4, at 1.

The Model Principles to which President Hubbard referred are as follows:

Principle 1—The business/supplier will prohibit labor trafficking and child labor in its operations.

Principle 2—The business/supplier will conduct a risk assessment of the risk of labor trafficking and child labor and continually monitor implementation of this policy.

Principle 3—The business/supplier should: (i) train relevant employees, (ii) engage in continuous improvement, and (iii) maintain effective communications mechanisms with its suppliers.

Principle 4—The business/supplier will devise a remediation policy and plan that addresses remediation for labor trafficking or child labor in its operations.⁷

As discussed in Part IV, the ABA Model Principles and their related Policies are consistent with the state of law today. A business that adopts and implements business and supplier policies on labor trafficking and child labor consistent with the ABA Model Principles will (1) increase the efficiency of the business's supply chain and related businesses, (2) facilitate the business's compliance with anti-trafficking and other laws and regulations, (3) help eradicate labor trafficking and child labor in its supply chain, and (4) enhance the business's general reputation, which will also lead to increased business opportunities with a growing number of socially conscious consumers and investors.

This article will move beyond the emotional and moral arguments against labor trafficking and child labor to focus on the potential business and legal liabilities and recommended actions regarding the serious issues of labor trafficking and child labor in the supply chain that business lawyers deal with every day. The corporate social responsibility (CSR) framework is used to further focus the issues discussed in this article. The CSR framework is defined by the well-recognized Carroll model as “the economic, legal, ethical and philanthropic expectations placed on organizations by society at a given point in time.”⁸

II. BACKGROUND

A. DEFINING HUMAN TRAFFICKING AND CHILD LABOR

1. Human Trafficking

Human trafficking is difficult to define. Entities seeking to define it—including governments, international organizations, and members of civil society—have attempted to clarify its meaning by restructuring the elements of its definition in slightly different ways, reflecting the vast scope of the offense.⁹ Nevertheless,

7. See ABA MODEL BUSINESS AND SUPPLIER POLICIES ON LABOR TRAFFICKING AND CHILD LABOR 4–5 (Feb. 2014) [hereinafter MODEL POLICIES], available at http://www.americanbar.org/dam/aba/administrative/business_law/aba_model_policies.authcheckdam.pdf.

8. ANDREW CRANE & DIRK MATTEN, BUSINESS ETHICS: MANAGING CORPORATE CITIZENSHIP AND SUSTAINABILITY IN THE AGE OF GLOBALIZATION 53 (3d ed. 2010).

9. Compare 22 U.S.C. § 7102 (2012) (defining trafficking under the Trafficking Victims Protection Act through the lens of coercion), with *What Is Human Trafficking?*, U.N. OFFICE ON DRUGS & CRIME, <http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html> (last visited July 26, 2015).

there remain three basic elements: the act, the means, and the purpose. First, the act refers to the “recruitment, harboring, transportation, provision, or obtaining” of human beings without requiring movement.¹⁰ People can literally be trafficked in their own homes or communities. For instance, they can be forced into prostitution or into performing labor or services.¹¹ Second, the means involve “force, fraud, or coercion.”¹² *Coercion* is defined as “(i) threats of serious harm to, or physical restraint against, any person; (ii) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to, or physical restraint against, any person; or (iii) the abuse or threatened abuse of the legal process.”¹³ Third, the purpose must be for “commercial sex or for labor or services.”¹⁴

These three essential elements are contained in the ABA Model Policies’ definition of labor trafficking, which was selected because of the Working Group’s focus on labor trafficking in the supply chain. *Labor trafficking* is defined as “the act of recruiting, harboring, transporting, providing, or obtaining a person for [the purpose of] involuntary labor or services by means of force or physical threats, fraud or deception, or other forms of coercion.”¹⁵

The Working Group included an endnote to further explain this definition:

Forms of Labor Trafficking can include forced labor in underground markets and sweatshops, as well as in legitimate businesses, including those in the manufacturing, travel, entertainment, hospitality, agricultural, service, and extractive industries. Movement of persons is not required for Labor Trafficking to exist; i.e., Labor Trafficking can occur without the victim leaving his or her hometown. People may be considered victims of Labor Trafficking regardless of whether they were born into a state of servitude, were transported to the exploitative situation, previously consented to work for the individual controlling them, or participated in a crime as a direct result of being trafficked, including the use of illegal substances. These facts become irrelevant once a person is compelled to work by force, fraud, or coercion, which can occur at any point within the employment cycle.¹⁶

(reasoning that human trafficking requires a means not limited to coercion), and U.S. DEP’T OF STATE, 2012 TRAFFICKING IN PERSONS REPORT 33 (2012) [hereinafter 2012 TIP REPORT], available at <http://www.state.gov/documents/organization/192587.pdf> (focusing on the exploitation of individuals rather than the method of exploitation).

10. Trafficking Victims Protection Act (TVPA), Pub. L. No. 106-386, § 103(8)(B), 114 Stat. 1464, 1470 (2000) (codified as amended at 22 U.S.C. § 7101 (2012)).

11. See 2012 TIP REPORT, *supra* note 9, at 8.

12. Trafficking Victims Protection Act § 103(8)(B).

13. 22 U.S.C. § 7102(3) (2012). Note also that “fraud” and “deception” are also in the definition of trafficking—and most dramatically broaden the definition. In contrast, “force” and “coercion” are most associated with trafficking but not always most prevalent in its definition. See, e.g., Modern Slavery Act, 2015, c. 30, § 3(5) (U.K.) (“The person is subjected to force, threats, or deception designed to induce him or her to provide services of any kind, to provide another person with benefits of any kind, or to enable another person to acquire benefits of any kind.”).

14. *What Is Human Trafficking?*, U.N. OFFICE ON DRUGS & CRIME, <http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html> (last visited July 26, 2015).

15. MODEL POLICIES, *supra* note 7, at 12.

16. *Id.* at 15 n.14.

As explained in *Human Trafficking Law and Policy*,¹⁷ the definitions of *human trafficking* and *trafficking in persons* in the Trafficking Victims Protection Act (TVPA) were designed to create a “definitional umbrella, which not only encompassed practices covered by pre-existing frameworks, but also practices that fell outside of those frameworks.”¹⁸ In other words:

all of the ways that people could be enslaved without legal ownership, physical force, absolute physical control, complete control of movement, kidnapping, abduction, domination or other indicia of total physical control, etc. Human trafficking or trafficking in persons would recognize the full spectrum of enslavement and severe exploitation based on non-physical coercion and control.¹⁹

The means element includes any behaviors intended to achieve control over another person. Consequently, this element can be satisfied by not only traditional physical coercion but also psychological or legal coercion. It also includes abuses of power over a vulnerable person, providing a benefit or paying money to obtain consent, and fraud and deceit.

The U.S. Department of State offers an alternative explanation: “[T]rafficking in persons’ or ‘human trafficking’ have been used as umbrella terms for activities involved when one person obtains or holds another person in compelled service. The Trafficking Victims Protection Act (TVPA) describes this compelled service using a number of different terms: involuntary servitude, slavery, debt bondage, and forced labor.”²⁰ Conversely, the International Labour Organization (ILO) uses *forced labor* as an umbrella term, much as *trafficking in persons* and *human trafficking* are used in the United States.²¹ The ILO has called attention to the importance of definitions in a recent article:

Certainly, to call something “slavery” helps to raise attention and to galvanize action. But will it help the world’s poor and distressed to end their misery? The answer is no. Ending slavery or forced labor requires targeted action to change laws, to bring offenders to justice, to protect victims, and to empower those at risk.²²

2. Child Labor

The original focus of the ABA Working Group was limited to labor trafficking. However, many companies have policies containing prohibitions against child labor, another significant human rights abuse that may be found in supply chains. Accordingly, the Working Group broadened the ABA Principles to also address child labor issues.

17. BRIDGETTE CARR ET AL., *HUMAN TRAFFICKING LAW AND POLICY* 136 (2014).

18. *Id.*

19. *Id.*

20. U.S. DEP’T OF STATE, *TRAFFICKING IN PERSONS REPORT 7* (2011), available at <http://www.state.gov/documents/organization/164452.pdf>. Note that *forced labor* is a term that is often not included in the United States’ definitions of human trafficking and trafficking in persons.

21. See, e.g., *The Meanings of Forced Labour*, INT’L LABOUR ORG. (Mar. 10, 2014), http://www.ilo.org/global/topics/forced-labour/news/WCMS_237569/lang-en/index.htm.

22. Beate Andrees, *Why Definitions Matter*, INT’L LABOUR ORG. (Feb. 3, 2014), http://www.ilo.org/global/about-the-ilo/newsroom/comment-analysis/WCMS_234854/lang-en/index.htm.

Like labor trafficking, child labor is subject to numerous definitions that vary in terms of both the applicable ages and activities permitted for children. The ILO, in an effort to bridge the gaps among these definitions, states, “One of the most effective methods of ensuring that children do not start working too young is to set the age at which children can legally be employed or otherwise work.”²³ The ILO Minimum Age Convention (No. 138), which has been separately endorsed by the ABA,²⁴ generally sets fifteen as the youngest age at which children can work.²⁵ There are exceptions for qualified developing countries where twelve- to fourteen-year-olds are allowed to perform light work.²⁶ Furthermore, eighteen is the youngest acceptable age for hazardous work, but children between sixteen and seventeen years old may perform hazardous work under strictly defined conditions.²⁷

The Working Group faced significant challenges in developing age limitations for child labor standards. They proved to be either too strict to implement for some or too lenient to be conscionable for others. Therefore, the Working Group adopted a definition that incorporates the position set forth in the ILO Minimum Age Convention (No. 138) allowing any business to set a higher minimum level:

“Child Labor”—Work performed by a person who is under the minimum legal working age to be employed as determined by (i) a Business’s or Supplier’s policy, (ii) the law of the jurisdiction in which the work will be performed, or (iii) the International Labour Organization Minimum Age Convention No. 138—whichever indicates the higher minimum age requirement.²⁸

B. WHY HUMAN TRAFFICKING AND CHILD LABOR ARE A BUSINESS LAW PROBLEM AS WELL AS A HUMAN RIGHTS PROBLEM

1. The Human Rights Problem

The ILO estimates that 20.9 million men, women, and children are subjected to human trafficking around the world.²⁹ Of these victims, 4.5 million are in sex

23. *Child Labour, World Day Against Child Labour*, UNITED NATIONS, <http://www.un.org/en/events/childlabourday/background.shtml> (last visited July 27, 2015).

24. American Bar Association Resolution 111, which was adopted by the House of Delegates in August 1996, urged the adoption and enforcement of “domestic laws that regulate the employment of persons under the age of eighteen in a manner consistent with the minimum age standards set forth in the Convention on the Rights of the Child and the Minimum Age Convention.” AM. BAR ASS’N, ECONOMIC EXPLOITATION OF PERSONS UNDER 18, at 1 (1996), available at http://www.americanbar.org/content/dam/aba/migrated/child/PublicDocuments/exploit_youth.authcheckdam.doc. Pages two and three of the report refer to the Minimum Age Convention of 1973 as “No. 138” and “Convention No. 138,” which seem to be the same as ILO Minimum Age Convention 138.

25. *C138—Minimum Age Convention, 1973 (No. 138)*, INT’L LABOUR ORG. (June 19, 1976), http://www.ilo.org/dyn/normlex/en/?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138.

26. *Id.* art. 7(4).

27. *Id.* art. 3.

28. MODEL POLICIES, *supra* note 7, at 12, 14 n.13.

29. *Forced Labour, Human Trafficking and Slavery*, INT’L LABOUR ORG., <http://www.ilo.org/global/topics/forced-labour/lang-en/index.htm> (last visited July 26, 2015). Slavery expert Professor Kevin Bales puts the number closer to 27 million, which exceeds the number of slaves transported to

trafficking and are forced into commercial sex industry activities ranging from pornography to prostitution.³⁰ Another 14.2 million are trafficked in economic activities including agriculture, construction, domestic work, and manufacturing.³¹ Human trafficking is a major criminal enterprise³² and a \$150 billion industry,³³ second only to drug trafficking in terms of criminal enterprises.³⁴ According to U.S. government reports, cases of human trafficking have been reported in all fifty states and the District of Columbia.³⁵

Child labor figures are even higher, despite the progress being made in curbing the problem. The ILO estimates that globally, although the number of children in child labor has declined by one-third since 2000, 168 million children³⁶ are still being exploited in this manner. More than half of them, 85 million, perform hazardous work (down from 171 million in 2000).³⁷ The hazardous work numbers remain the highest in Asia (almost 78 million, or 9.3 percent of the child population).³⁸ However, sub-Saharan Africa still has the highest incidence of child labor overall (59 million, or over 21 percent).³⁹ Finally, agriculture is the sector with by far the highest number of child laborers (98 million). It is followed by services (54 million) and industry (12 million), mostly in the informal (underground) economy.⁴⁰ As former U.N. Secretary General Kofi Annan stated regarding child labor, "Few human rights abuses are so widely condemned yet so widely practiced."⁴¹ According to the United Nations Office of Drugs and Crime, child trafficking is on the rise.⁴²

the west during the entire 400 years of the Atlantic slave trade. See KEVIN BALES & RON SOODALTER, *THE SLAVE NEXT DOOR* 3 (2009).

30. BALES & SOODALTER, *supra* note 29, at 3.

31. *Id.*

32. See LOUISE SHELLEY, *HUMAN TRAFFICKING: A GLOBAL PERSPECTIVE* 2, 83–138 (2010) (exploring the financial side of human trafficking and its insidious benefits).

33. Press Release, Int'l Labour Org., *Economics of Forced Labour: ILO Says Forced Labour Generates Annual Profits of US \$150 Billion* (May 20, 2014), available at http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_243201/lang-en/index.htm.

34. See Press Release, U.S. Dep't of Health & Human Servs., *HHS Fights to Stem Human Trafficking* (Aug. 15, 2006), available at <http://www.hhs.gov/news/factsheet/humantrafficking.html>.

35. *Human Trafficking of Children in the United States*, U.S. DEP'T OF EDUC., <http://www2.ed.gov/about/offices/list/oese/oshs/factsheet.html> (last visited July 27, 2015).

36. INT'L LABOUR OFFICE, *GLOBAL ESTIMATES AND TRENDS: MARKING PROGRESS AGAINST CHILD LABOUR* vii (2013) [hereinafter *ILO GLOBAL ESTIMATES*], available at http://www.ilo.org/wcmsp5/groups/public/—ed_norm/—ipecc/documents/publication/wcms_221513.pdf.

37. *Id.* at vii, 4.

38. *Id.* at 4.

39. *Id.*

40. *Id.* at 8.

41. *Resources for Speakers on Global Issues: Child Labour*, UNITED NATIONS, <http://www.un.org/en/globalissues/briefingpapers/childlabour/quotes.shtml> (last visited July 27, 2015).

42. See *Global: Child Trafficking on the Rise—UNODC*, INT'L INITIATIVE TO END CHILD LABOR (Nov. 24, 2014, 9:31 AM), <http://endchildlabor.org/?p=10517>.

2. The Business Law Problem

The role that businesses play in addressing human trafficking issues continues to be subject to questions beyond those arising from the many nongovernmental organizations (NGOs) that have long called attention to trafficking as a human rights tragedy. Consider, for example, what President Obama recently said while unveiling the Executive Order on Strengthening Protections Against Trafficking in Persons in Federal Contracts⁴³:

There are more than 20 million victims of human trafficking around the world. . . . It ought to concern every person, because it's a debasement of our common humanity. It ought to concern every community, because it tears at the social fabric. It ought to concern every business because it distorts markets. It ought to concern every nation because it endangers public health and fuels violence and organized crime. I'm talking about the injustice, the outrage, of human trafficking, which must be called by its true name—"modern slavery."⁴⁴

The president explicitly noted that slavery "ought to concern every business because it distorts markets." Americans typically fail to question why the goods they buy are so inexpensive, but a product's tag will more than likely identify it as one of the 136 goods in seventy-four countries that are on the Department of Labor's *List of Goods Produced by Child Labor or Forced Labor*.⁴⁵ This also applies to a significant number of products Americans consume, wear, and use regularly.⁴⁶ A graphic depiction of this is a fact sheet distributed by the State Department's Office to Monitor and Combat Trafficking in Persons. In narrative form, it shows that, from the time one gets out of bed until the moment one goes to sleep, trafficking may be responsible for producing common products such as clothes, smartphones, computers, electronics, coffee, food, bricks, tires, and even cotton sheets.⁴⁷

Today, as a leading business text points out, a business's purchasing activities and supply chains are critical for its success, especially given the competitive environment in which we live where the price for almost anything can be found on the Internet.⁴⁸ The wide availability of this information fuels consumer demand for lower prices. In order to meet this demand, businesses have increased the importance of supply-chain management, which can increase value and savings, build relationships and drive innovation, improve quality and reputation, reduce time to market, generate economic impact, and contribute to competitive

43. The executive order has now been codified into law within the Federal Acquisition Regulation, which is discussed below.

44. Barack Obama, President of the U.S., Remarks to the Clinton Global Initiative (Sept. 25, 2012), available at <https://www.whitehouse.gov/the-press-office/2012/09/25/remarks-president-clinton-global-initiative>.

45. *List of Goods Produced by Child Labor or Forced Labor*, U.S. DEP'T OF LABOR, <http://www.dol.gov/ilab/reports/child-labor/list-of-goods/> (last visited July 26, 2015).

46. U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 13 (2015), available at <http://www.state.gov/documents/organization/245365.pdf>.

47. U.S. DEP'T OF STATE, A DAY IN YOUR LIFE: TOUCHED BY MODERN SLAVERY FACT SHEET (June 20, 2014), available at <http://www.state.gov/j/tip/rls/fs/2014/233738.htm>.

48. ROBERT M. MONCZKA ET AL., PURCHASING & SUPPLY CHAIN MANAGEMENT 7 (6th ed. 2015).

advantage.⁴⁹ Regrettably, because this places more pressure on the supply chain, these global economic benefits may also contribute to the exploitation of men, women, and children through corrupt labor-sourcing practices such as labor brokers misleading workers, confiscating their IDs, making it more difficult for them to leave a job, and charging them exorbitant fees for recruitment and living expenses.⁵⁰ These corrupt labor-sourcing practices make corporate supply chains susceptible to the taint of slavery.

III. THE BUSINESS LAW SECTION'S INVOLVEMENT IN DRAFTING THE MODEL PRINCIPLES AND RELATED POLICIES

A. FORMATION OF THE WORKING GROUP AND INITIAL PLANNING

Given these modern-day realities, then ABA President-Elect Laurel Bellows prompted the ABA to form a Human Trafficking Task Force in 2012 to confront the labor-trafficking problem from a legal standpoint. Its efforts have included training law enforcement officials, who are often the first to respond to trafficking situations, and educating lawyers to strengthen pro bono networks and ensure all civil legal needs of trafficking victims are addressed. In addition, the task force has sponsored a media campaign on trafficking, including a video explaining how the legal community can help address trafficking issues.⁵¹

President-Elect Bellows realized that business enterprises also have a key role to play, and some are at the forefront of this fight against trafficking. Their market power has an effect that no regulator has. By taking simple steps within their operations, many businesses can have a significant impact on labor trafficking and child labor. Therefore, President-Elect Bellows asked the ABA's Business Law Section to develop best practices for business enterprises encountering human trafficking.

In response, the ABA Business Law Section readily identified a key need for the business community: the development of acceptable business policies or codes of conduct to address labor trafficking and child labor risk assessment and compliance issues. Although some business enterprises have policies for addressing these issues, many do not. Even those that do can benefit from emulating model policies that best reflect evolving practices. This is especially true given that there are currently no standards or widely adopted policies on these matters in the United States.⁵²

49. *Id.* at 7–10.

50. See INT'L LABOUR ORG., PROFITS AND POVERTY: THE ECONOMICS OF FORCED LABOUR 9–10 (2014), available at http://www.ilo.org/wcmsp5/groups/public/—ed_norm/—declaration/documents/publication/wcms_243391.pdf.

51. See Laurel Bellows, *Breaking the Shackles: More Must Be Done to End Human Trafficking and Help Victims*, ABA J. (Sept. 1, 2012, 9:50 AM), http://www.abajournal.com/magazine/article/breaking_the_shackles_more_must_be_done_to_end_human_trafficking_and_help_v/.

52. Am. Bar Ass'n House of Delegates Resolution 102B (Feb. 10, 2014), available at http://www.americanbar.org/content/dam/aba/administrative/business_law/hod_materials.authcheckdam.pdf.

The Business Law Section then created a working group comprised of more than fifty leading business law experts that adopted the following mission statement:

To coordinate with the ABA Human Trafficking Task Force in developing a recognized set of business conduct standards for companies to assist with human labor trafficking issues in an environment of increased knowledge and concern involving human labor trafficking and the implementation of international, federal, and state legislation addressing those concerns.⁵³

The aim was to create a set of voluntary business and ethical standards that would help combat human trafficking and child labor while avoiding unnecessary regulation or liability. The Working Group divided the project into three phases:

1. A drafting issues subgroup to set the scope of the Model Policies.
2. A drafting subgroup to draft the Model Policies.
3. A vetting subgroup to vet the Model Policies with the legal and business communities.

As this article was being written, the Working Group was reconstituted as the Task Force on Implementation of the ABA Model Principles on Labor Trafficking and Child Labor.

B. WORKING GROUP COMMITTEES

1. Drafting Issues Subgroup

The Drafting Issues Subgroup focused on the scope of the Model Policies. As discussed in more detail on the Model Policies website,⁵⁴ the group addressed and resolved many issues concerning those policies including defining human labor trafficking, defining the purpose of the Model Policies, identifying their geographical scope, identifying the legislation or proposed legislation impacting them, determining whether annotations would be needed, and deciding whether sector- or industry-specific provisions would be included. Some initial recommendations evolved during the drafting of the Model Principles and Model Policies.

2. Drafting Subgroup

The Drafting Subgroup reviewed numerous existing company policies, standards/guidelines, and applicable laws, such as the Department of Labor's

53. *Overview and Structure, ABA Model Business and Supplier Policies on Labor Trafficking and Child Labor*, AM. BAR ASS'N (Feb. 2014), available at http://www.americanbar.org/groups/business_law/initiatives_awards/child_labor/policies.html.

54. *ABA Model Business and Supplier Policies on Labor Trafficking and Child Labor*, AM. BAR ASS'N (Feb. 2014), available at http://www.americanbar.org/groups/business_law/initiatives_awards/child_labor/policies.html.

Bureau of International Labor Affairs Toolkit, the U.S. Department of Agriculture standards, the U.N. Guiding Principles, the Luxor Implementation Guidelines to the Athens Ethical Principles, the Trafficking Victims Protection Act, the Uniform Law Commission's Uniform Act to Combat Human Trafficking, California's Transparency in Supply Chains Act, the Executive Order Strengthening Protections Against Trafficking in Persons in Federal Contracts, and the Verité Help Wanted Toolkit. In addition, the Drafting Subgroup held numerous discussions and meetings to extensively refine (in close to 100 drafts) the Model Policies.

3. Vetting Subgroup

The Vetting Subgroup worked in coordination with the Drafting Subgroup and, on July 3, 2013, began to distribute its first exposure draft of the Model Policies for comment to a number of different entities: corporations, NGOs, governmental entities, and law firms. The full Working Group reviewed the results of the distribution at its August 11, 2013, meeting in San Francisco. By September 26, 2013, the second exposure draft went out to those who had commented on the first exposure draft and others. The second exposure draft was also posted on the ABA Human Trafficking Task Force website and was open for public comment. The third exposure draft was also posted on that website and was distributed on October 23, 2013. On November 20, 2013, the final draft of Resolution 102B was submitted to the ABA House of Delegates, the 560-member policymaking body of the ABA, for consideration during the 2014 ABA Midyear Meeting.⁵⁵

After the second exposure draft was distributed, one of the breakthroughs toward gaining more support from businesses was premising certain steps a business had to undertake on risk assessment. The ABA resolution concerning advice of counsel on money laundering used the same methodology.⁵⁶

Near the end of the vetting process it became clear that the Model Policies' detailed provisions would be unacceptable to the ABA's broad spectrum of interests. On one hand, certain pro-business members of the Working Group believed the Model Policies went too far in imposing more stringent requirements than those called for under the U.N. Guiding Principles. On the other hand, certain members of the human rights community believed that certain Model Policies did not go far enough in imposing requirements on businesses. However, all of those groups agreed that the Model Principles were acceptable because they did not go to the level of detail contained in the Model Policies. At that time it was decided that only the Model Principles would be submitted to the

55. *ABA House of Delegates Approval Materials Related to Resolution 102B*, AM. BAR ASS'N, http://www.americanbar.org/groups/business_law/initiatives_awards/child_labor/materials.html (last visited July 12, 2015).

56. AM. BAR ASS'N HOUSE OF DELEGATES, RECOMMENDATION 300, at 15 (Aug. 11–12, 2008), available at http://www.americanbar.org/content/dam/aba/directories/policy/2008_am_300.authcheckdam.pdf.

House of Delegates for adoption by the ABA and that the Model Policies would be submitted, along with the resource materials, as an appendix.

C. THE HOUSE OF DELEGATES

The final resolution was both to adopt the Model Principles as ABA policy and urge businesses to adopt and implement their own business and supplier policies on labor trafficking and child labor consistent with the Model Principles. The final resolution was publicly supported by over twenty ABA entities. In addition, the past and current leadership of the ABA publicly confirmed their support.⁵⁷ On February 10, 2014, the ABA House of Delegates adopted the resolution without any objection. The materials concerning this action can be found in the House of Delegates Approval Materials on the Model Policies website.

D. THE ABA MODEL PRINCIPLES, MODEL POLICIES, AND DATABASE OF RESOURCES

1. The Model Principles

The Model Principles are the core of the Model Policies. Businesses that adopt them articulate their high-level commitment to addressing labor trafficking and child labor. They are also the only part of the Model Policies adopted by the ABA as its official policy.

There are four Model Principles for businesses and four Model Principles for suppliers, and they are the same for both. As explained in the ABA House of Delegates Approval Materials, businesses are urged to adopt policies consistent with the Model Principles.

2. The Model Policies

As stated on the website, the Model Policies are not intended to be an off-the-shelf or one-size-fits-all product. Instead, the policies offer a toolkit of useful guidance and commentary that identify optional considerations for a business to take into account when developing its own policies. These options

57. ABA Resolution 102B was sponsored by the Business Law Section and cosponsored by the following seven ABA entities, groups, and affiliated organizations: Task Force on Human Trafficking; Section of Individual Rights and Responsibilities; Section of Criminal Justice; Section of Environment, Energy, and Resources; Section of Public Contract Law; Delaware State Bar Association; and Commission on Youth at Risk. In addition, the following twelve ABA entities, groups, and affiliated organizations expressed their public support for the resolution: Uniform Law Commission, Section of Litigation, Section of Science and Technology, Section of International Law, Young Lawyers Division, Judicial Division, Minority Caucus, ABA Representatives and Observers to the United Nations, National Conference of Specialized Court Judges, National Conference of State Trial Judges, National Conference of Federal Judges, and New York State Bar Association. Finally, numerous ABA officers—past, present, and future, with Past President Laurel Bellows, President Jim Silkenat, and President-Elect William Hubbard in the lead—expressed their public support, as did the ABA Board of Governors.

include adopting the general business and supplier policies based on the Model Principles, modifying existing policies in order to establish consistency with the Model Principles and the related commentary and guidance, and taking a more comprehensive approach that implements a detailed set of fine-tuned business and supplier policies in a manner consistent with the materials on the website. Additional options (including annotated model policies) can be found in the database of resources. In any case, the business enterprise is encouraged to use the Model Policies to fashion a corporate policy that fits its operating environment. Whether the business or supplier is creating a new company policy or revising an old one, it may adapt these materials based on its circumstances.

The Model Policies consist of six parts that are discussed in detail on the Model Policies website: (1) Part I—Introduction, (2) Part II—Model Principles, (3) Part III—Model Business Policies, (4) Part IV—Model Supplier Policies, (5) Part V—Model Glossary, and (6) Part VI—Endnotes.

3. Database of Resources

This database on the Model Policies website holds a wide range of resources for consultation when fashioning policies. Those resources include annotated model policies; law and policy updates; general resources containing links to governmental, NGO, and other resources; scholarly works; training materials; sample company policies; publicly available materials; and the Fortune 100 Report on Trafficking. Those materials will be continually updated so businesses will have a current, comprehensive resource for developing and implementing their own policies on labor trafficking and child labor.

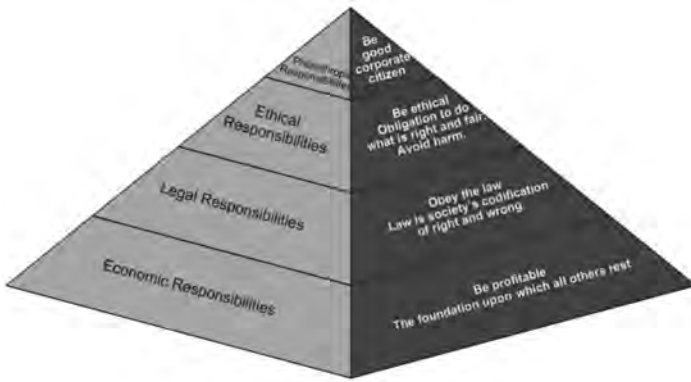
IV. CONSISTENCY OF THE MODEL PRINCIPLES AND MODEL POLICIES WITH OTHER BUSINESS, LEGAL, AND ETHICAL PRINCIPLES

A. CORPORATE SOCIAL RESPONSIBILITY

The widely recognized Carroll model defines CSR as “the economic, legal, ethical, and philanthropic expectations placed on organizations by society at a given point in time.”⁵⁸ It depicts CSR as a pyramid with the economic expectations to generate a profit at the base and with legal expectations to obey the law, ethical expectations to do what is right and fair, and philanthropic expectations to be a good corporate citizen above, as shown in Figure 1:

58. ANN BUCHHOLTZ & ARCHIE CARROLL, *BUSINESS AND SOCIETY: ETHICS, SUSTAINABILITY, AND STAKEHOLDER MANAGEMENT* 34 (9th ed. 2015).

Figure 1. Carroll's CSR Pyramid⁵⁹



Carroll's CSR Pyramid

An alternate way to conceptualize CSR also places economic/business expectations at the base but represents legal, ethical, and philanthropic expectations as overlapping ovals on that base. Whereas some CSR expectations fall squarely within one category, others overlap multiple categories.

Figure 2. Overlapping Categories of Expectations



59. John Dudovskiy, *Carroll's CSR Pyramid and Its Applications to Small and Medium Sized Businesses*, RES. METHODOLOGY (Oct. 25, 2012), <http://research-methodology.net/carrolls-csr-pyramid-and-its-applications-to-small-and-medium-sized-businesses/>.

Supply-chain efforts to address trafficking fall primarily within the ethical area because guides such as the ABA Model Principles and U.N. Guiding Principles are voluntary. However, the California Transparency in Supply Chains Act (California SC Transparency Act), one state supply-chain law already on the books, requires corporations to disclose what, if any, actions specified in the law—such as conducting an audit related to its supply chain—the company has taken.⁶⁰ The Business Supply Chain Transparency on Trafficking and Slavery Act of 2014 (Proposed Federal SC Transparency Act) does so as well.⁶¹ Those are in contrast to a law such as Dodd-Frank’s conflict minerals law that requires each company to conduct an audit related to its supply chain.⁶² However, human trafficking and child labor are illegal virtually everywhere, which is why these issues also fall squarely within the legal category.

What follows is a detailed discussion of the economic/business, legal, ethical, and philanthropic expectations of corporate citizenry.

B. ECONOMIC/BUSINESS EXPECTATIONS

1. The Critical Importance of the Supply Chain Indicates Disruptions Are Dangerous

The supply chain is a critical system in any business that wants to get its products to market. If the absence of a critical component (caused by a work stoppage) halts a business’s production, thereby preventing a product from reaching the market, then the business can lose market share and profit. Such a disruption could occur as a result of strikes or other work stoppages by people who have been trafficked into a situation and who, like many, are paid little or nothing for oppressive work hours.

For example, the Coalition of Immokalee Workers (CIW) that represents tomato pickers in Florida has implemented a Fair Food Program in which large retailers that buy the tomatoes pay a penny per pound more to fund better wages and improved working conditions.⁶³ Since 2001 CIW’s Campaign for Fair Food has combined on-the-ground and online organizing to win Fair Food Agreements with thirteen large food retailers including McDonald’s, Subway, Sodexo, and Whole Foods.⁶⁴ Those agreements call for better labor standards and wages for farmworkers in the suppliers’ operations.⁶⁵ The campaign’s position is that major corporate buyers overleverage their buying power in a manner that creates downward pressure on wages and working conditions, re-

60. CAL. CIV. CODE § 1714.43 (West, Westlaw through Ch. 132 of 2015 Reg. Sess.).

61. Business Supply Chain Transparency on Trafficking and Slavery Act, H.R. 4842, 113th Cong. § 3(1) (2014).

62. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 1502, 124 Stat. 1376, 2213 (2010) (codified at 5 U.S.C. § 78m (2012)).

63. *About*, FAIR FOODS STANDARDS COUNCIL, <http://www.fairfoodstandards.org/about.html> (last visited July 12, 2015).

64. *Partners*, FAIR FOOD PROGRAM, <http://www.fairfoodprogram.org/partners/> (last visited July 12, 2015).

65. *See id.*

sulting in human rights abuses from which workers lack legal protections.⁶⁶ Oxfam America's 2004 report, *Like Machines in the Fields: Workers Without Rights in American Agriculture*, concluded, "Squeezed by the buyers of their produce, growers pass on the costs and risks imposed on them to those on the lowest rung of the supply chain: the farmworkers they employ."⁶⁷

By 2005, following the CIW's four-year Campaign for Fair Food, Taco Bell met all of the coalition's demands. Reforms included a payment by Taco Bell to farmworkers in its supply chain that corrected substandard farm labor wages, nearly doubling the percentage of the final retail price that went to the workers who picked the produce.⁶⁸ The parties developed a code of conduct for agricultural suppliers in the fast food industry that included an investigative body for monitoring worker complaints.⁶⁹ They also created market incentives for agricultural suppliers willing to respect their workers' human rights, even when the law did not guarantee and protect those rights.⁷⁰ The coalition reached a similar agreement with McDonald's in 2007, establishing an industry-wide, third-party mechanism for monitoring conditions in the fields and investigating abuses.⁷¹ Despite some industry resistance, Burger King reached an agreement with the coalition in May 2008⁷² with Subway following in December.⁷³

The CIW's efforts were rewarded when, at a White House forum in January 2015, it received a Presidential Medal for Extraordinary Efforts in Combating Modern-Day Slavery.⁷⁴ Presently, the CIW is engaging in campaigns against Publix and Wendy's which, as of this writing, have not joined the Fair Food Program and are being criticized for it by customers.⁷⁵

66. See generally *About*, FAIR FOODS STANDARDS COUNCIL, <http://www.fairfoodstandards.org/about.html> (last visited July 12, 2015).

67. See OXFAM AMERICA, *LIKE MACHINES IN THE FIELDS: WORKERS WITHOUT RIGHTS IN AMERICAN AGRICULTURE* 36 (2004).

68. *Taco Bell Agreement Analysis*, COALITION IMMOKALEE WORKERS (Mar. 10, 2005), <http://ciw-online.org/blog/2005/03/agreement-analysis/>.

69. *Id.*

70. *Id.*

71. *CIW, McDonald's, McD's Suppliers Reach Agreement to Improve Farmworker Wages and Working Conditions!*, COALITION IMMOKALEE WORKERS (Apr. 9, 2007), <http://ciw-online.org/blog/2007/04/ciw-mcdonalds-mcds-suppliers-reach-agreement-to-improve-farmworker-wages-and-working-conditions/>.

72. *Burger King Corp. and Coalition of Immokalee Workers to Work Together*, COALITION IMMOKALEE WORKERS (May 23, 2008), http://ciw-online.org/blog/2008/05/bk_ciw_joint_release/.

73. *Subway Signs Agreement with the Coalition of Immokalee Workers (CIW) to Improve Tomato Harvester Wages, Working Conditions in Florida*, COALITION OF IMMOKALEE WORKERS (Dec. 2, 2008), http://ciw-online.org/blog/2008/12/ciw_subway_joint_press_release/.

74. *CIW Receives Presidential Medal for Extraordinary Efforts in Combatting Modern-Day Slavery at White House Forum!*, COALITION IMMOKALEE WORKERS (Jan. 30, 2015), <http://ciw-online.org/blog/2015/01/presidential-medal-combatting-slavery/>.

75. *Publix*, COALITION IMMOKALEE WORKERS, <http://ciw-online.org/publix/> (last visited July 12, 2015); *Wendy's*, COALITION IMMOKALEE WORKERS, <http://ciw-online.org/wendys/> (last visited July 12, 2015).

2. Knowing Who Is in Your Supply Chain Is Important for Reasons Other than Eliminating Slavery

The impact of a disruption at a major supplier could have a significant economic impact on a business as evidenced by the 2011 earthquake and resulting tsunami in Tohoku, Japan, that crippled the Fukushima nuclear plant and disrupted the supply of key electronics throughout the automotive industry, but mostly in Japan itself.⁷⁶

As reported in the trade journal *Automotive News*, Toyota lost more than \$3.2 billion in the year after the disaster, and Honda lost almost \$900 million.⁷⁷ Automakers thought they had addressed and avoided the risk of a large portion of the industry being affected by such a disaster by diversifying Tier 1 and Tier 2 suppliers.⁷⁸ They assumed the supply base beyond those tiers was like a tree's roots, spreading out farther down the supply chain.⁷⁹ But the supply chain structure turned out to be more diamond shaped than linear with multiple suppliers turning to the same Tier 3 and Tier 4 sub-suppliers for parts.⁸⁰ The industry did not know how much business it had with a relatively small number of suppliers, and when those suppliers went down, the impact was significant.⁸¹ This is similar to what happens in labor trafficking situations. Many businesses know little about the suppliers below Tiers 1 and 2; however, in view of the economic disruptions caused by the disaster in Japan, more businesses should improve their knowledge of suppliers in those lower tiers to hedge against such a risk. This example should facilitate more risk assessment for labor trafficking and child labor together with other risks at these lower tiers.

3. World Economic Forum: The Right Thing Can Also Be the Smart Thing

In another development, a January 2015 report by the World Economic Forum (WEF) showed how some companies have adopted what the WEF calls "the triple supply chain advantage" they use to achieve profitability while also benefiting society and the environment. The report, *Beyond Supply Chains*, details how companies have achieved fairly significant positive business results utilizing this strategy.⁸² Indeed, the results are promising; companies mentioned in the study are increasing revenues by up to 20 percent for responsible products.⁸³ Supply-chain costs are decreasing by 9 to 16 percent, and brand value is increasing by

76. MONCZKA ET AL., *supra* note 48, at 335.

77. Hans Greimel, *Tsunami: The Aftermath*, *AUTO. NEWS* (Mar. 12, 2012, 12:01 AM EST), <http://www.autonews.com/article/20120312/OEM01/303129960/tsunami:-the-aftermath>.

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*; see also Jerry Edgerton, *How the Japanese Tsunami Changed the Auto Industry*, *CBS MONEY-WATCH* (Mar. 9, 2012, 5:26 PM), <http://www.cbsnews.com/news/how-the-japanese-tsunami-changed-the-auto-industry/>.

82. See WORLD ECON. FORUM, *BEYOND SUPPLY CHAINS: EMPOWERING RESPONSIBLE VALUE CHAINS* (2015), available at http://www3.weforum.org/docs/WEFUSA_BeyondSupplyChains_Report2015.pdf.

83. *Id.* at 27.

15 to 30 percent.⁸⁴ Adopting the triple advantage can also shrink companies' carbon footprints by up to 22 percent while enabling them to contribute to local development.⁸⁵ Companies are also implementing codes of conduct.

4. Consumers and Investors Care About and Have an Increased Awareness of Exploitation in the Supply Chain

Positive results such as those reported by the WEF can increase sales among the growing number of socially conscious customers. This was indicated in part by a poll conducted by the Walk Free Foundation that showed 66 percent of U.S. customers would switch from a product they discovered was produced using slave labor to one that was not.⁸⁶ The growing consumer awareness of slavery's impact on daily life demonstrates that success awaits a business that invests in fair labor. A study in November 2005 by Harvard economists demonstrated that a 10 to 20 percent price premium could be acceptable to consumers in response to a retail brand's identifiable anti-trafficking efforts.⁸⁷ Companies are investing in fair labor practices and labeling products accordingly to improve conditions,⁸⁸ and consumers are buying products they know are fairly made. Similarly, organizations such as the Interfaith Center on Corporate Responsibility are challenging publicly held companies to address forced child labor and human trafficking for sexual and economic purposes.⁸⁹

More than two years after the disastrous collapse of the Rana Plaza building on the outskirts of Dhaka, Bangladesh, that killed more than 1,100 garment workers, a coalition of global investors representing \$2.5 trillion in assets sent letters to corporate members of the Bangladesh Accord for Fire and Building Safety (Accord) and the Alliance for Bangladesh Worker Safety (Alliance), requesting that they disclose their efforts to safeguard the lives of workers in Bangladesh garment factories.⁹⁰

The Accord and Alliance were established by apparel brands and retailers sourcing from Bangladesh in the wake of the collapse, considered one of the worst workplace disasters in history. The Accord and Alliance sought to implement needed fire, electrical, and building safety measures to prevent future garment-factory tragedies.⁹¹ In addition to asking companies to join the Accord,

84. *Id.*

85. *Id.* at 20.

86. WALK FREE FOUND., *SLAVERY ALERT: CONSUMER POLL, UNITED STATES* (2015), available at <http://assets.walkfreefoundation.org/2015/03/Consumer-Poll-USA.pdf>.

87. MICHAEL J. HISCOX & NICHOLAS F. B. SMYTH, *IS THERE CONSUMER DEMAND FOR IMPROVED LABOR STANDARDS? EVIDENCE FROM FIELD EXPERIMENTS IN SOCIAL LABELING* 14 (2011), available at <http://scholar.harvard.edu/files/hiscox/files/consumerdemandfairlaborstandardsevidencesocial.pdf>.

88. Luis CdeBaca, Ambassador-at-Large, Testimony Before the Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations of the House Committee on Foreign Affairs (June 13, 2011), available at <http://www.state.gov/j/tip/rls/rm/2011/166093.htm>.

89. See *Corporate Engagements*, INTERFAITH CTR. CORP. RESP., <http://www.iccr.org/our-issues/human-rights/corporate-engagements> (last visited July 14, 2015).

90. See Julie Wokaty, *Two Years After Rana Plaza Collapse, Investors Still Look to Apparel Brands and Retailers for Remediation*, INTERFAITH CTR. CORP. RESP. (Apr. 23, 2015), <http://www.iccr.org/two-years-after-rana-plaza-collapse-investors-still-look-apparel-brands-and-retailers-remediation>.

91. *Id.*

which has 200 members sourcing from 1,600 factories, the coalition requested that brands also contribute to the Rana Plaza Trust Fund for workers to help the more than 3,000 injured workers, their families, and families of the deceased.⁹² In June 2015, the ILO announced that the \$30 million target for the Rana Plaza Donors Trust Fund has been met to pay out the claims of all victims.⁹³

However, this accident is now being mentioned in the same breath as Three Mile Island, the Exxon Valdez, the Deepwater Horizon oil spill, and Fukushima as one of the worst industrial accidents ever.⁹⁴ Additional ramifications related to the accident are continuing to arise, including homicide charges brought by the government of Bangladesh against forty-one people where convictions could lead to the death penalty. Among other evidence used in making these charges, a 2013 state report found that the building was constructed with substandard materials in violation of building codes, and that owners of the factories urged employees to return to work despite the fact that an engineer who inspected the building the day before the collapse deemed the building unsafe.⁹⁵

A class action lawsuit has been filed against J.C. Penney, The Children's Place, and WalMart by families of the workers who were killed, alleging that the companies knew of unsafe conditions at Rana Plaza yet allowed workers to work there until the building collapsed.⁹⁶ Similar lawsuits were filed against the three companies earlier this year, as well as against other clothing manufacturers such as Canadian companies Joe Fresh and Loblaw Companies Limited.⁹⁷

5. Supply-Chain Monitoring Is Critical and Becoming Easier

The development of supply-chain monitoring, such as that called for by the ABA Model Principles, will help identify slavery in any setting, be it manufacturing, harvesting of raw materials, or commercial sex. Such monitoring can also help businesses ensure their chains are not vulnerable. Company initiatives are beginning to emerge in these areas, and among a number of promising initiatives is the Global Business Coalition Against Trafficking (gBCAT) that includes Cision, Coca-Cola, Delta Airlines, Ford Motor Company, Hilton Worldwide, LexisNexis, Manpower, Microsoft, NXP, and Travelport.⁹⁸

92. See *Donors, RANA PLAZA ARRANGEMENT*, <http://www.ranaplaza-arrangement.org/fund/donors> (last visited July 14, 2015).

93. Press Release, Int'l Labour Org., *Rana Plaza Victims' Compensation Scheme Secures Funds Needed to Make Final Payments* (June 8, 2015), available at http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_374239/lang-en/index.htm.

94. Naomi Hirose, *How Can Companies Take Responsibility for Major Accidents?*, YALE INSIGHTS (Aug. 4, 2015), <http://insights.som.yale.edu/insights/how-can-companies-take-responsibility-major-accidents>.

95. Julfikar Ali Manik & Nida Najar, *Bangladesh Police Charge 41 with Murder over Rana Plaza Collapse*, N.Y. TIMES (June 1, 2015), http://www.nytimes.com/2015/06/02/world/asia/bangladesh-rana-plaza-murder-charges.html?_r=0.

96. Nick Rummell, *Retailers Sued over 2013 Building Collapse*, COURTHOUSE NEWS SERV. (July 24, 2015, 8:43 AM PST), <http://www.courthousenews.com/2015/07/24/retailers-sued-over-2013-building-collapse.htm>.

97. See *id.*

98. See generally gBCAT, www.gbcat.org (last visited July 27, 2015).

Two other initiatives unveiled at the time of this writing are particularly promising in terms of helping companies monitor their supply chains and conduct the risk assessment called for by the ABA Model Principles. First, Made in a Free World introduced Forced Labor Risk Determination and Mitigation (FRDM[®]), software that locates specific hotspots of risk in any industry's supply chain.⁹⁹ Then, on January 29, 2015, Verité, while cohosting a White House forum on human trafficking with the State Department, released a report about the risk of trafficking in persons in federal and corporate supply chains.¹⁰⁰ Verité's report provides a comprehensive framework for evaluating trafficking risk, identifying eleven key sectors at heightened risk for human trafficking, and mapping federal spending in each sector.¹⁰¹ This will be particularly helpful to the government contract community in view of the Updated Federal Acquisition Regulation (Updated FAR) on trafficking, which is discussed below. More recent initiatives are discussed in the database of resources.

Former Ambassador Luis CdeBaca noted that initiatives like these could reduce demand for cheap goods that are tied to forced labor.¹⁰² Without this demand, the profit motive disappears. To the extent that a business has adopted one of these models or a similar one, this article is not suggesting that it should abandon its model in favor of the ABA Model Principles. Rather, the ABA Model Principles are meant to assist businesses that do not currently have policies in place, along with businesses that have already adopted policies relating to labor trafficking and child labor.

C. LEGAL EXPECTATIONS

Legally speaking, as noted above, human trafficking and child labor are illegal in virtually every country. In the case of human trafficking, 166 countries are parties to the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol).¹⁰³ More than 100 countries have passed anti-trafficking laws, and many have established specialized law enforcement units.¹⁰⁴ In the case of child labor, 168 countries have ratified the ILO Minimum Age Convention (No. 138).¹⁰⁵ However, violations of these laws are commonplace—particularly overseas, due to the demand for

99. For more information on FRDM, see the Made in a Free World website at <https://madeinafreeworld.com/business>.

100. See VERITÉ, STRENGTHENING PROTECTIONS AGAINST TRAFFICKING IN PERSONS IN FEDERAL AND CORPORATE SUPPLY CHAINS (2015), available at <http://www.state.gov/documents/organization/237137.pdf>.

101. See *id.* at 26–138 (agriculture, construction, electronics, mining, fishing, forestry, healthcare, hospitality, housekeeping, textile and apparel, and transportation and warehousing).

102. See CdeBaca, *supra* note 88.

103. *Protocol to Prevent, Suppress and Punish Trafficking in Persons*, UNITED NATIONS HUMAN RTS. (Nov. 15, 2000), <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>.

104. Testimony of Sarah Sewall, U.S. Dep't of State, Ending Modern Slavery: The Role of U.S. Leadership (Feb. 11, 2015), available at <http://translations.state.gov/st/english/texttrans/2015/02/20150213313580.html#axzz3ap8shszR>.

105. *Ratifications of C138—Minimum Age Convention, 1973 (No. 138)*, INT'L LABOUR ORG., http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312283 (last visited July 14, 2015).

cheap labor and services and the lack of meaningful law enforcement, as well as various other contributing factors.¹⁰⁶ If any business relies on lack of enforcement as a strategy for avoiding prosecution, it is taking a risk that the enforcement policy will change, thereby subjecting it to potential criminal liability.

In addition to criminal liability, newer laws are imposing civil liability based upon that conduct and are requiring public disclosure of efforts taken to address labor trafficking and child labor.¹⁰⁷ This goes beyond the Trafficking Victims Protection Act. For example, the proposed Federal SC Transparency Act in the House of Representatives would require disclosures similar to the California SC Transparency Act, although federal disclosure would be up to the U.S. Securities and Exchange Commission. The Updated FAR has now been implemented based on President Obama's Executive Order 13627, Strengthening Protections Against Trafficking in Persons in Federal Contracts. Potential Foreign Corrupt Practices Act (FCPA) liability also exists when a company uses a labor broker in another country.

Regarding the consistency of the Model Principles and Policies with various laws, of particular interest is the following commentary in a recent article in the *Compliance Journal*:

Earlier this year, seeking to provide a blueprint for human trafficking prevention programs, the American Bar Association released its "Model Business and Supplier Policies on Labor Trafficking and Child Labor." It is widely viewed as a blueprint for what will become regulatory requirements. It urges companies to adopt a risk-based approach that devotes greater attention and resources to detected hotspots of illegal activity. That risk assessment, the ABA suggests, should include the use of specially trained employees or third party monitors on the ground. Risk factors include the location of the business, the history of human trafficking in a given sector or industry, and the particular products or services involved. Employee training and outreach, monitoring, ongoing risk assessments, supply chain due diligence and safeguards, and a remediation program are other necessary ingredients for a program.¹⁰⁸

As demonstrated below, for each law discussed, implementing the ABA Model Principles and Policies will help a business comply with the applicable law.

1. United States

a. California Transparency in Supply Chains Act

Any business with \$100 million in gross worldwide revenues that is doing business in California is now subject to the California SC Transparency Act,

106. See LIANA SUN WYLER, *TRAFFICKING IN PERSONS: INTERNATIONAL DIMENSIONS AND FOREIGN POLICY ISSUES FOR CONGRESS* 1 (2013).

107. See MODEL POLICIES, *supra* note 7, at 1, 14 n.8 ("See for example Section 1502 of the Dodd Frank Act relating to conflict minerals; the 2008 amendments to the Trafficking Victims Protection Act relating to Fraud in Foreign Labor Contracting and Benefiting Financially from Peonage, Slavery, and Trafficking in Persons; the California Transparency in Supply Chains Act—SB 657; and President Obama's Executive Order 13627 and the National Defense Authorization Act for Fiscal Year 2013.").

108. Joe Mont, *Human Trafficking Prevention Disclosures May Be in the Offing*, COMPLIANCE WK. (June 17, 2014), <https://www.complianceweek.com/news/news-article/human-trafficking-prevention-disclosures-may-be-in-the-offing>.

one of the first state laws in the United States to specifically address slavery and human trafficking in supply chains.¹⁰⁹ It requires any business subject to the law to disclose its efforts to eradicate slavery and human trafficking from its direct supply chains for tangible goods offered for sale.¹¹⁰ It does not require those businesses to take any actions regarding their supply chains, and any business could comply with the law simply by saying it is doing nothing. However, a business that followed such a course might subject itself to intense scrutiny by NGOs.

Fortunately, the ABA Principles and Policies may assist a business in complying with the law and being able to report that it is undertaking the positive actions called for by the act. Below are the requirements for the California SC Transparency Act and indications of where those requirements are addressed in the Model Principles and Policies.

- California SC Transparency Act Requirement: disclosure of the business's efforts to eradicate slavery and human trafficking from its supply chain should be posted on its website through a "conspicuous" and "easily understood" link to required information.¹¹¹
 - *Applicable Model Principle/Policy: Model Business/Supplier Principle 3 (Model Business/Supplier Policy 3.D)*
- California SC Transparency Act Requirement: disclosure of what the business did to verify its supply chain in order to evaluate and address risks of human trafficking and slavery in the supply chain.¹¹²
 - *Applicable Model Principle/Policy: Model Business/Supplier Principle 2 (Model Business/Supplier Policy 2.A–D); Model Business/Supplier Principle 4 (Model Business/Supplier Policy 4.A–D)*
- California SC Transparency Act Requirement: should specify, prior to disclosures, if foregoing verification was not done by a third party.¹¹³
 - *Applicable Model Principle/Policy: Model Business/Supplier Principle 2 (Model Business/Supplier Policy 2.D.1)*
- California SC Transparency Act Requirement: disclosure of what the business did to audit suppliers in order to evaluate compliance with its standards for trafficking and slavery in supply chains.¹¹⁴
 - *Applicable Model Principle/Policy: Model Business/Supplier Principle 2 (Model Business/Supplier Policy 2.D.1–2)*

109. ARNOLD & PORTER LLP, NEW CALIFORNIA LAW REQUIRES DISCLOSURE REGARDING HUMAN TRAFFICKING/SLAVERY IN SUPPLY CHAINS 1 (2011), available at http://www.arnoldporter.com/resources/documents/Advisory-New_California_Law_Requires_Disclosure_Regarding_Human_Trafficking_010711.pdf.

110. CAL. CIV. CODE § 1714.43 (West, Westlaw through Ch. 132 of 2015 Reg. Sess.).

111. *Id.* § 1714.43(b).

112. *Id.* § 1714.43(c)(1).

113. *Id.* § 1714.43(b)(1).

114. *Id.* § 1714.43(c)(2).

- California SC Transparency Act Requirement: previous disclosure should indicate if the verification was not an independent, unannounced audit.¹¹⁵
 - *Applicable Model Principle/Policy: Model Business/Supplier Principle 2 (Model Business/Supplier Policy 2.D.1)*
- California SC Transparency Act Requirement: disclosure of what the business did to obtain direct supplier certification to ensure materials incorporated into goods comply with anti-trafficking and anti-slavery laws in the country, or countries, in which it is doing business.¹¹⁶
 - *Applicable Model Principle/Policy: Model Supplier Principle 1 (Model Supplier Policy 1.A.3)*
- California SC Transparency Act Requirement: disclosure of what the business/supplier did to maintain internal “accountability standards and procedures” for employees or contractors failing to meet company standards regarding slavery and trafficking.¹¹⁷
 - *Applicable Model Principle/Policy: Model Business Principle 1 (Model Business Policies 1B, 1D); Model Business Principle 4 (Model Business Policy 4.D.3); Model Supplier Principle 1 (Model Supplier Policy 1.F); Model Supplier Principle 4 (Model Supplier Policy 4.C.3); Model Business/Supplier Principle 2 (Model Business/Supplier Policy 2.D.1–3)*
- California SC Transparency Act Requirement: disclosure of what the business did to provide training to company employees and management of those with supply-chain responsibility regarding human trafficking and slavery, particularly with respect to mitigating risks within products’ supply chains.¹¹⁸
 - *Applicable Model Principle/Policy: Model Business/Supplier Principle 2 (Model Business/Supplier Policy 2.C); Model Business/Supplier Principle 3 (Model Policy 3.B)*

b. The Proposed Federal SC Transparency Act

The Proposed Federal SC Transparency Act (H.R. 4842), introduced by Representative Carolyn Maloney (D-NY), would require companies to file annual reports with the SEC to disclose their efforts to identify and address specific human rights risks in their supply chains.¹¹⁹ The bipartisan bill, cosponsored

115. *Id.*

116. *Id.* § 1714.43(c)(3).

117. *Id.* § 1714.43(c)(4).

118. *Id.* § 1714.43(c)(5).

119. See Sarah A. Altschuller, *H.R. 4842: New Bill Calls for Transparency on Trafficking and Slavery in Corporate Supply Chains*, CORP. SOC. RESP. & L. (June 20, 2014), <http://www.csrandthelaw.com/2014/06/20/h-r-4842-new-bill-calls-for-transparency-on-trafficking-and-slavery-in-corporate-supply-chains/>.

by Representative Chris Smith (R-NJ), is similar to the California law in that it applies only to companies with annual worldwide gross receipts exceeding \$100 million.¹²⁰ However, unlike the California law, it is not limited to manufacturers and retailers. It applies to any public or private company currently required to submit annual reports to the SEC.¹²¹ The SEC would issue regulations requiring companies to disclose whether they have taken any measures to identify and address the risks of forced labor, slavery, human trafficking, and the worst forms of child labor throughout their supply chains.¹²²

The inclusion of the “worst forms of child labor” broadens the scope of the proposed law as compared to the California law, but it is narrower than the scope of the Model Principles. “Worst forms of child labor” includes

(1) all forms of slavery or practices similar to slavery, such as the sale or trafficking of children, debt bondage, and serfdom, and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict; (2) the use, procuring, or offering of a child for prostitution, for the production of pornography, or for pornographic purposes; (3) the use, procuring, or offering of a child for illicit activities, in particular for the production and trafficking of drugs; and (4) work that, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety, or morals of children.¹²³

The bill also calls on the secretary of labor to publish a list of the companies required to comply with the legislation and a “Top 100” list of companies “adhering to supply chain labor standards as established under relevant federal and international guidelines.”¹²⁴ As mentioned, the bill is substantially modeled after the California Transparency SC Act, so the close alignment between the Model Principles and the California law would mirror the alignment between the Model Principles and H.R. 4842, as shown below. The one notable exception is the requirement in the federal law, like that contained in the FAR, that contractor employees are not permitted to engage in commercial sex acts with a minor.¹²⁵ Companies should consider adding this provision to every company’s policy, even for employees who do not work for the government, because it will apply if this bill becomes law.

On the next page are the requirements for the Proposed Federal SC Transparency Act and indications of where those requirements are addressed in the Model Principles and Policies.

- Proposed Federal SC Transparency Act Requirement: maintain policies to identify and eliminate risks of forced labor, slavery, human trafficking,

120. Business Supply Chain Transparency on Trafficking and Slavery Act, H.R. 4842, 113th Cong. § 3(3)(A) (2014) (definition of “covered issuer”).

121. See Altschuller, *supra* note 119.

122. See *id.*

123. *Frequently Asked Questions: Trade and Development Act Report: U.S. Department of Labor’s 2013 Findings on the Worst Forms of Child Labor*, U.S. DEP’T OF LABOR, 1 (2014), http://www.dol.gov/ilab/reports/child-labor/findings/2013TDA/TDA2013_FAQs.pdf.

124. H.R. 4842, 113th Cong. § 3(4)(B).

125. *Id.* § 3(1)(B).

and the worst forms of child labor within supply chains, and identify company actions taken pursuant to, or in the absence of, such policies.¹²⁶

- *Applicable Model Principle/Policy: Model Business/Supplier Principle 2 (Model Business/Supplier Policy 2.A–D); Model Business/Supplier Principle 4 (Model Business/Supplier Policy 4.A–D)*
- Proposed Federal SC Transparency Act Requirement: ensure that audits of suppliers within supply chains are conducted to investigate working conditions and labor practices and to verify whether suppliers have systems in place to identify risks of forced labor, slavery, human trafficking, and the worst forms of child labor within their own supply chains.¹²⁷
- *Applicable Model Principle/Policy: Model Business/Supplier Principle 2 (Model Business/Supplier Policy 2.A–D)*
- Proposed Federal SC Transparency Act Requirement: require suppliers to attest that product manufacturing and labor recruiting are carried out in compliance with applicable laws regarding forced labor, slavery, human trafficking, and the worst forms of child labor.¹²⁸
- *Applicable Model Principle/Policy: Model Supplier Principle 1 (Model Supplier Policy 1.A.3)*
- Proposed Federal SC Transparency Act Requirement: maintain internal accountability standards and procedures for employees or contractors who fail to meet company standards regarding forced labor, slavery, human trafficking, and the worst forms of child labor.¹²⁹
- *Applicable Model Principle/Policy: Model Business Principle 1 (Model Business Policies 1B, 1D); Model Business Principle 4 (Model Business Policy 4.D.3); Model Supplier Principle 1 (Model Supplier Policy 1.F); Model Supplier Principle 4 (Model Supplier Principle 4.C.3); Model Business/Supplier Principle 2 (Model Business/Supplier Policy 2.D.1–3)*
- Proposed Federal SC Transparency Act Requirement: provide training to employees and personnel with direct responsibility for supply-chain management on forced labor, slavery, human trafficking, and the worst forms of child labor.¹³⁰
- *Applicable Model Principle/Policy: Model Business/Supplier Principle 3 (Model Business/Supplier Policy 3.B)*

126. *Id.* § 1(A).

127. *Id.* § 1(D)(i)–(ii).

128. *Id.* § 1(D)(iii).

129. *Id.* § 1(E)(ii).

130. *Id.* § 1(E)(iii).

- Proposed Federal SC Transparency Act Requirement: ensure that labor recruitment practices comply with corporate policies or efforts to eliminate practices that contribute to forced labor, slavery, human trafficking, and the worst forms of child labor.¹³¹
 - *Applicable Model Principle/Policy: Model Business/Supplier Principle 3 (Model Policy 3.C.3)*; note also that the definition of Labor Trafficking includes Trafficking Related Activities from President Obama’s Executive Order, which includes most of the recruitment-related abuses.
- Proposed Federal SC Transparency Act Requirement: ensure that remediation is provided to those who have been identified as victims of forced labor, slavery, human trafficking, and the worst forms of child labor.¹³²
 - *Applicable Model Principle/Policy: Model Business/Supplier Principle 4 (Model Policy 4.A–D)*

c. Updated Federal Acquisition Regulation

In late January 2015 the Federal Acquisition Regulatory Council (FAR Council) published updates to the FAR as required by the president’s executive order titled Strengthening Protections Against Trafficking in Persons in Federal Contracts.¹³³

The government had already “prohibited contractors, subcontractors, and their employees from engaging in severe forms of trafficking, procuring commercial sex acts, and using forced labor in the performance of a U.S. government contract or subcontract.”¹³⁴ Other than the commercial sex acts discussed in connection with H.R. 4842, the Principles and Policies (specifically Principle 1) likewise prohibit these activities.

Under the new law, the following are prohibited practices for contractors (and their employees), subcontractors (and their employees), and their agents:

- destroying, concealing, confiscating, or otherwise denying access to the employee’s identity or immigration documents;¹³⁵
- using misleading or fraudulent recruitment practices, such as failing to disclose basic information in a “format and language accessible to the worker,” or making material misrepresentations during the recruitment of employees regarding the key terms and conditions of employment;¹³⁶
- using recruiters that do not comply with local labor laws;¹³⁷
- charging employees recruitment fees;¹³⁸

131. *Id.* § 1(E)(iv).

132. *Id.* § 1(F).

133. Exec. Order No. 13627, 77 Fed. Reg. 60029 (Sept. 25, 2012).

134. Michael Navarre & Michael Mutek, *Final Trafficking in Persons Rule Creates New Compliance Component for U.S. Government Contractors*, GOV’T CONTRACTOR, Mar. 18, 2015, at 1.

135. Federal Acquisition Regulation, Combating Trafficking in Persons, 80 Fed. Reg. 4990, 4991–92 (Mar. 2, 2015) (to be codified at 48 C.F.R. § 52.222-50(b)(4)).

136. *Id.* at 4992 (to be codified at 48 C.F.R. § 52.222-50(b)(5)(i)).

137. *Id.* (to be codified at 48 C.F.R. § 52.222-50(b)(5)(ii)).

138. *Id.* (to be codified at 48 C.F.R. § 52.222-50(b)(6)).

- under certain circumstances, failing to provide return transportation or pay for the cost of return transportation upon the end of employment (for example, for an employee who is not a national of the country in which the work is taking place and who was brought to the country to perform work on a U.S. government contract or subcontract);¹³⁹
- providing or arranging for housing that fails to meet the host country's housing and safety standards;¹⁴⁰
- “[i]f required by law or contract,” failing to provide an employment agreement or similar work documents in writing, in a language the employee understands, and, if the employee is relocating, at least five days prior to the relocation;¹⁴¹ and
- if a written employment agreement is required, failing to include in the employee's agreement details about work conditions, including such things as wages, work locations, living accommodations, grievance processes, and the content of applicable laws and regulations that prohibit trafficking in persons.¹⁴²

Although there is not an exact correlation between the foregoing list and the list of trafficking-related activities in the ABA Policies,¹⁴³ the lists relate to the same types of fraudulent recruitment practices. In addition, the trafficking-related activities list is not an exclusive list and will probably be amended to correspond to the FAR list because the original was derived from the executive order that set the precedent for the FAR. Another article advocating the Model Principles, written before the final trafficking rules were promulgated, states:

The regulations, currently still in draft form, will create new requirements for contractors and subcontractors to create and maintain effective anti-trafficking compliance programs.

While the details of the new regulations are being finalized, companies may wish to review the comprehensive American Bar Association's (ABA) Model Business and Supplier Policies on Labor Trafficking and Child Labor (Model Policies), issued in February 2014. The ABA's clear and coherent guidelines can help companies review their labor supply chains to help prepare for compliance with the forthcoming acquisition regulations. While multinational companies should conduct a more targeted evaluation once the final text of the new rules is promulgated, all will benefit from a careful review of the ABA guidelines as they review their compliance programs.

The ABA guidelines include helpful commentary and concrete guidance on how to implement each of the above four principles. The Model Policies are designed to allow businesses the flexibility to tailor a compliance plan and policies that make sense for their particular circumstances given their size, location, products sold, sources, and risks of the business.

139. *Id.* (to be codified at 48 C.F.R. § 52.222-50(b)(7)).

140. *Id.* (to be codified at 48 C.F.R. § 52.222-50(b)(8)).

141. *Id.* (to be codified at 48 C.F.R. § 52.222-50(b)(9)).

142. *Id.*

143. MODEL POLICIES, *supra* note 7, at 12 n.15.

The risk-based approach advocated by the ABA is designed to facilitate meaningful measures to address trafficking and child labor connected with identified risks. Such risks might include being in a labor-intensive industry, particularly one with a history of labor rights violations; relying heavily on subcontracted, unskilled, temporary, or migrant workers; or sourcing from countries known to have a high level of human trafficking. As in most effective compliance programs, the sources of greater risk should receive more attention, allowing for the most efficient allocation of a company's resources. For example, this could mean more monitoring of suppliers from high-risk regions or more intense auditing of suppliers in high-risk industries or supplying high-risk products. While this approach may sound like common sense, many companies are tempted to try to save costs by skipping the risk assessment needed to identify the greatest risks. This orientation toward the greatest risks is therefore a smart way both to minimize a company's risks and to prioritize scarce resources.

Given the broad provisions already in U.S. law prohibiting trafficking in supply chains, companies of all sizes, sectors, and operating locations can benefit from the guidance provided by the ABA in its Model Policies. Government contractors and subcontractors will benefit from a careful review of these principles as they comply with the final federal regulations.¹⁴⁴

The FAR has more stringent rules for overseas contracts over \$500,000¹⁴⁵:

- FAR Requirement: must have a compliance plan for prevention, monitoring, and detection of trafficking in persons.¹⁴⁶
 - *Applicable Model Principle/Policy: Model Business/Supplier Principles 1–4 (Model Business/Supplier Policies 1–4)*
- FAR Requirement: due diligence to determine potential violations in the contractor's supply chain.¹⁴⁷
 - *Applicable Model Principle/Policy: Model Business/Supplier Principle 2 (Model Business/Supplier Policy 2.A–D)*
- FAR Requirement: certification of no violations in the supply chain that apply to contracts.¹⁴⁸
 - *Applicable Model Principle/Policy: Model Supplier Principle 1 (Model Supplier Policy 1.A.3)*
- FAR Requirement: an awareness program to inform contractor employees about the government's policies prohibiting trafficking-related activities,

144. Sam Witten et al., *ABA Guidelines May Help Companies Prepare for New Federal Rules on Human Trafficking*, SELLER BEWARE BLOG (May 20, 2014), <http://www.consumeradvertisinglawblog.com/2014/05/aba-guidelines-may-help-companies-prepare-for-new-federal-rules-on-human-trafficking.html>.

145. See Navarre & Mutek, *supra* note 134, at 3.

146. *Id.*

147. *Id.*

148. *Id.*

the activities prohibited, and the actions that will be taken against the employee for violations.¹⁴⁹

- *Applicable Model Principle/Policy: Model Business/Supplier Principle 3 (Model Business/Supplier Policy 3.C)*
- FAR Requirement: a process for employees to report, without fear of retaliation, activity inconsistent with the policy prohibiting trafficking in persons, including the use of the Global Human Trafficking Hotline.¹⁵⁰
- *Applicable Model Principle/Policy: Model Business/Supplier Principle 3 (Model Business/Supplier Policy 3.E)*
- FAR Requirement: a recruitment and wage plan that permits the use of recruitment companies only with trained employees and prohibits charging the employee recruitment fees.¹⁵¹
- *Applicable Model Principle/Policy: Model Business/Supplier Principle 2 (Model Business/Supplier Policy 2.A–D); concerning recruitment fees, note that under the definition of labor trafficking, charging a recruitment fee constitutes trafficking*
- FAR Requirement: either wages meet applicable host country legal requirements or any variance is explained.¹⁵²
- *Applicable Model Principle/Policy: Model Business/Supplier Principle 1 (Model Business/Supplier Policy 1.A.3)*
- FAR Requirement: a housing plan, if the contractor or subcontractor intends to provide or arrange for housing, that ensures the housing meets the host country's housing and safety standards.¹⁵³
- *Applicable Model Principle/Policy: Model Business/Supplier Principle 1 (Model Business Policy 1.D, Model Supplier Policy 1.E)*
- FAR Requirement: monitor, detect, and terminate any agents, subcontractors, or subcontractor employees who have engaged in trafficking in persons.¹⁵⁴
- *Applicable Model Principle/Policy: Model Business/Supplier Principle 1 (Model Business Policy 1.D, Model Supplier Policy 1.E)*

149. *Id.*

150. *Id.*

151. *Id.* at 3–4.

152. *Id.* at 4.

153. *Id.*

154. *Id.*

d. *Foreign Corrupt Practices Act*

The FCPA anti-bribery provisions prohibit any U.S. person from corruptly paying, offering to pay, or promising to pay anything of value to a foreign official, political candidate, or public institution, directly or indirectly, to influence any act or decision made by that individual to obtain or retain business or secure an unfair advantage.¹⁵⁵ The classic paradigm is an illegal quid pro quo: a company representative pays a bribe overseas to a foreign official in exchange for that official awarding the company a lucrative contract or granting a critical license.¹⁵⁶

Enforcement of this law has led to billions of dollars in fines and penalties levied by the federal government. The U.S. Securities and Exchange Commission and U.S. Department of Justice, in their recent FCPA Guidelines, state that corruption:

1. **Impedes** economic growth by diverting public resources from important priorities such as health, education, and infrastructure;
2. **Undermines** democratic values and public accountability and weakens the rule of law;
3. **Threatens** stability and security by facilitating criminal activity within and across borders, such as the illegal **trafficking of people**, weapons, and drugs; and
4. **Undercuts** good governance and impedes U.S. efforts to promote freedom and democracy, end poverty, and combat crime and terrorism across the globe.¹⁵⁷

The mention of trafficking in persons in this guidance is interesting. There is exposure for businesses in trafficking, given how the elements of an FCPA violation compare to a typical hiring transaction involving a labor broker. Assume the following scenario:

Company A is a U.S. business headquartered in the United States and that has a subsidiary with a manufacturing facility in Malaysia (“Company A Sub”). Company A Sub retains a labor broker (“Malaysian Labor Broker”) to hire workers for its Malaysian manufacturing facility. That Malaysian Labor Broker will work with a broker from another country, such as Vietnam (“Vietnamese Labor Broker”), to find workers. The Vietnamese Labor Broker recruits workers (“Vietnamese Workers”) for Company A Sub’s plant. The labor brokers engage in activities, such as requiring the Vietnamese workers to pay a recruitment fee to the brokers; confiscating, destroying, or concealing identity documents; or not fully disclosing or misrepresenting key terms of employment such as pay, benefits, location, or living conditions. As a result, the Malaysian Labor Broker must bribe officials in Malaysia who control, for example, immigration, labor, or public health (“Malaysian Officials”) in order to get the workers into Malaysia.

155. O’MELVENY & MYERS LLP, FOREIGN CORRUPT PRACTICES ACT HANDBOOK 2 (7th ed. 2013).

156. See generally Andrew S. Boutros & T. Markus Funk, “Carbon Copy” Prosecutions: A Growing Anticorruption Phenomenon in a Shrinking World, 2012 U. CHI. LEGAL F. 259, 261–62.

157. CRIMINAL DIV., U.S. DEP’T OF JUSTICE & ENFORCEMENT DIV., U.S. SEC. & EXCH. COMM’N, FCPA: A RESOURCE GUIDE TO THE US FOREIGN CORRUPT PRACTICES ACT 2–3 (2012) (emphases added), available at <http://www.justice.gov/criminal/fraud/fcpa/guidance/guide.pdf>.

Reviewing these facts under the FCPA yields the following elements of a violation:

- **U.S. Person** – This would be Company A Sub.
- **Corrupt Payments** – The bribes paid by the Malaysian Labor Broker (agent of Company A Sub) to Malaysian Officials to get the Vietnamese Workers into Malaysia.
- **Anything of Value** – Monetary gifts or other tangible benefits passed on to the Malaysian officials as bribes.
- **Foreign Official** – This term is broadly defined under the FCPA, but clearly Malaysian officials would qualify.
- **Directly/Indirectly** – This is satisfied by the Malaysian Labor Broker acting as an agent of Company A Sub.
- **Unfair Advantage** – The unfair advantage is that labor-trafficked workers were provided to Company A Sub.

Clearly, the potential for FCPA liability exists. However, that risk is substantially reduced or eliminated by following the Model Principles and Policies and first subjecting all labor brokers to due diligence to help confirm they are not engaging in labor trafficking or child labor, and then continually subjecting them to this process and ongoing training on proper labor recruiting practices in their industry.

e. Civil Litigation

Litigation on behalf of trafficking victims is increasing as more trafficking victims are identified. The Southern Poverty Law Center (known for its litigation against hate groups)¹⁵⁸ is now one of the leading plaintiffs' firms handling trafficking victims' civil cases against their traffickers, and it has coauthored a litigation manual to explain its strategy.¹⁵⁹

These cases include, for example, an EEOC lawsuit involving Henry's Turkey Service of Texas, which led to \$240 million in damages based on findings involving the alleged abuse of thirty-two mentally disabled turkey plant workers whom employers, for decades, had paid hourly rates as low as forty-one cents.¹⁶⁰ Another recent class action lawsuit involved 350 Filipino teachers whom corrupt labor recruiters allegedly lured, charging exorbitant fees in the process, to

158. 1990s, S. POVERTY LAW CTR., <http://www.splcenter.org/who-we-are/splc-history/1990s> (last visited July 16, 2015).

159. DANIEL WERNER & KATHLEEN KIM, CIVIL LITIGATION ON BEHALF OF VICTIMS OF HUMAN TRAFFICKING (2008), available at http://www.splcenter.org/sites/default/files/downloads/splc_human_trafficking.pdf.

160. Clark Kauffman, *Abused Disabled Iowa Workers Awarded \$240M*, USA TODAY (May 1, 2013, 1:41 PM), <http://www.usatoday.com/story/money/business/2013/05/01/abused-disabled-iowa-plant-workers-awarded-240m/2126651/>.

teach in Louisiana public schools.¹⁶¹ The case resulted in \$4.5 million in damages paid to the teachers.¹⁶²

In addition, traffickers can be liable under the following laws: the TVPA's private right of action, the Thirteenth Amendment prohibition on involuntary servitude, the Ku Klux Klan Act, the Civil Rights Act of 1866, RICO, the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, common law causes of action for intentional tort, negligence, and contract law, state labor codes, and other statutes. The Alien Tort Claims Act was also used extensively in this area until the U.S. Supreme Court's decision in *Kiobel v. Royal Dutch Petroleum Co.*¹⁶³ limited its extraterritorial reach, although some questions remain concerning the extent of this limitation.¹⁶⁴

2. International

a. United Kingdom—Modern Slavery Act of 2015

Similar to U.S. efforts to fight slavery and human trafficking as discussed above, the United Kingdom enacted the Modern Slavery Act (“UK Slavery Act”) on March 26, 2015.¹⁶⁵ Part 6 of the Act—Transparency in Supply Chains Disclosures—imposes certain disclosure requirements on any business that (1) supplies goods and/or services; (2) is a corporation or partnership (wherever incorporated or formed) carrying on “a business, or part of a business”¹⁶⁶ in any part of the United Kingdom; and (3) has a total annual turnover exceeding an amount to be determined by secretary of state regulations.¹⁶⁷ The UK Slavery Act broadly applies to any business operating in the United Kingdom regardless of the place of incorporation; hence, it applies to foreign businesses as well.

To comply with the act, businesses must prepare either a statement detailing steps taken during the past financial year to ensure slavery and human trafficking are not taking place in (1) any of its supply chains or (2) any part of its business,¹⁶⁸ or a statement asserting that the business has taken no such steps.¹⁶⁹ Disclosure statements may include information concerning:

161. *Mairi Nunag-Tañedo et al. v. East Baton Rouge Parish School Board et al.*, S. POVERTY L. CTR., <http://www.splcenter.org/get-informed/case-docket/mairi-nunag-tanedo-et-al-v-east-baton-rouge-parish-school-board-et-al> (last visited July 16, 2015).

162. *Id.*

163. *Kiobel v. Royal Dutch Petroleum Co.*, 133 U.S. 1659 (2013).

164. *See, e.g.*, Katie Redford, *Commentary: Door Still Open for Human Rights Claims After Kiobel*, SCOTUS BLOG (Apr. 17, 2013, 6:48 PM), <http://www.scotusblog.com/2013/04/commentary-door-still-open-for-human-rights-claims-after-kiobel/>.

165. Modern Slavery Act, 2015, c. 30 (U.K.).

166. *Id.* § 6(12)(a). Similar to the Model Policies, “business” includes a trade or profession.

167. *Id.* § 6(2)(b).

168. *Id.* § 6(4)(a).

169. *Id.* § 6(4)(b).

- The company's structure/business/supply chains¹⁷⁰
 - *Applicable Model Principle/Policy: Model Principle 2 (Model Principle/Policy 2.A–D)*. The company would have to undertake this disclosure in part to decide which areas should be subject to the risk assessment; however, since other requirements are aligned with Principle 2 and Policy 2, this disclosure is broader.
- Anti-trafficking and antislavery policies¹⁷¹
 - *Applicable Model Principle/Policy: Model Business/Supplier Principle 1 (Model Business/Supplier Policy 1.A)*
- Anti-trafficking and antislavery due diligence processes¹⁷²
 - *Applicable Model Principle/Policy: Model Business/Supplier Principle 2 (Model Business/Supplier Policy 2.A–D)*
- Identification and management of higher-risk areas in business/supply chains¹⁷³
 - *Applicable Model Principle/Policy: Model Business/Supplier Principle 2 (Model Business/Supplier Policy 2.A–D)*
- Effectiveness assessment, based on the performance measures the company considers appropriate¹⁷⁴
 - *Applicable Model Principle/Policy: Model Business/Supplier Principles 1–4 (Model Business/Supplier Policies 1–4)*
- Anti-trafficking and antislavery training made available to staff¹⁷⁵
 - *Applicable Model Principle/Policy: Model Business/Supplier Principle 3 (Model Business/Supplier Policy 3.B)*

To ensure compliance with the act, such disclosures may be enforced by high court injunction (a civil action brought by the secretary of state) or, in Scotland only, by action for specific performance of a statutory duty.¹⁷⁶

b. France's Draft Law on the Duty of Parent and Outsourcing Company Care

France has proposed a more generalized approach to combating human trafficking in businesses and supply chains. Recognizing that businesses' actions may contribute to human rights violations, corruption, and environmental damage ("appli-

170. *Id.* § 6(5)(a).

171. *Id.* § 6(5)(b).

172. *Id.* § 6(5)(c).

173. *Id.* § 6(5)(d).

174. *Id.* § 6(5)(e).

175. *Id.* § 6(5)(f).

176. *Id.* § 6(11).

cable risks”), France proposed the Draft Law on the Duty of Care of Parent and Outsourcing Companies (“Draft French SC Act”).¹⁷⁷ While the scope of applicable risks is broader than the supply chain risks contemplated by the Model Policies, the type of business subject to its provisions is much more restricted than its U.S. counterparts. Unlike the Proposed Federal SC Transparency Act, which applies to any business that has global sales greater than \$100 million, the Draft French SC Act applies only to domestically based companies (according to the registered or head office) with at least 5,000 employees or a foreign-based company with at least 10,000 employees¹⁷⁸—a high threshold considering even smaller supply-chain intensive companies like Smashburger¹⁷⁹ and Batteries Plus Bulbs¹⁸⁰ can earn well over \$100 million with well under 5,000 employees.

The French drafters further narrowed the duties considerably by requiring that a business address only its own activities and those of other companies it “controls directly or indirectly”; furthermore, any business must address only the activities of subcontractors or suppliers over which it exercises “decisive influence.”¹⁸¹ Presumably, these businesses would not have obligations to disclose activities of a subcontractor or supplier for which its only recourse was to switch to another subcontractor or supplier.

This calls to mind the language in the introduction to the Model Policies that limits their applicability to any business and its first-tier suppliers:

These Model Policies are specifically intended to apply to only the Business and its first-tier Suppliers, unless:

1. After conducting a Risk Assessment, or upon receipt of other credible information as a result of Monitoring, Due Diligence, Verification, or other activities, the Business or Supplier determines there is a material risk of Labor Trafficking or Child Labor with a specific Supplier, or elsewhere in the Supply Chain;
2. Taking appropriate action (e.g., Monitoring, Verification, or Remediation) with respect to the finding of a material risk of Labor Trafficking or Child Labor is practicable and not cost prohibitive in comparison to the value of the materials purchased from those Suppliers. This could also be done through broader industry initiatives; and
3. The product or service involved is material to the Business, Supplier, or their Operations.

However, consistent with UN Guiding Principle 19, even if the Business or Supplier does not have an obligation under these Model Policies to cause a business enterprise lower in the Supply Chain to Remedy a Labor Trafficking or Child Labor

177. See Roel Nieuwenkamp, *Legislation on Responsible Business Conduct Must Reinforce the Wheel, Not Reinvent It*, OED INSIGHTS (Apr. 15, 2015), <http://oecdinsights.org/2015/04/15/legislation-on-responsible-business-conduct-must-reinforce-the-wheel-not-reinvent-it/>.

178. See *id.*

179. *Smashburger*, Inc., <http://www.inc.com/profile/smashburger> (last visited July 16, 2015) (reporting \$109 million revenue in 2013 with 2522 employees).

180. *Batteries Plus Bulbs*, Inc., <http://www.inc.com/profile/batteries-plus-bulbs> (last visited May 27, 2015) (reporting \$202 million revenue in 2013 with 505 employees).

181. See generally Nieuwenkamp, *supra* note 177.

impact, the Business or Supplier should still use whatever leverage it does have with that business enterprise or others dealing with this enterprise to encourage the business enterprise that caused the impact to Remedy the impact.¹⁸²

Some of the Working Group members and commenters believed this language went too far in limiting business accountability to first-tier suppliers. Another way to look at this provision is to see it as representing one way a company could make a risk assessment decision.

The comparison of the one substantive provision—that a business must implement and publicize an effective action plan to identify and prevent all applicable risks from its activities—to the Model Principles and Policies suggests that the provision is consistent with Model Business/Supplier Principles 1, 2, and 3 and Model Policies 1, 2, and 3. However, in making that comparison, all of the scope variations need to be taken into account.

D. ETHICAL EXPECTATIONS

According to the Carroll model, ethical expectations require doing what is right and fair while avoiding harm, even when not required to do so by law.¹⁸³

1. U.N. Guiding Principles on Business and Human Rights (U.N. Guiding Principles)

In terms of what is right and fair, the U.N. Guiding Principles are the globally recognized guidelines for the roles of states and business enterprises in addressing human rights issues.¹⁸⁴ They were developed by Professor John Ruggie, who was the U.N. Secretary General's Special Representative on Business and Human Rights from 2005 to 2011. In 2008 Ruggie recommended a three-part framework: "Protect, Respect, and Remedy." Clearly stated, the principles are:

1. To preserve a state's duty to protect against human rights abuses by third parties, including corporations;
2. To require corporate respect for human rights under a due diligence standard; and
3. To enhance access to remedies for victims of human rights violations.¹⁸⁵

In 2011 Ruggie further expanded the framework by creating the Guiding Principles on Business and Human Rights that were unanimously endorsed by the U.N. Human Rights Council in 2011.¹⁸⁶ They were also endorsed by the ABA House of Delegates in February 2012.¹⁸⁷

182. MODEL POLICIES, *supra* note 7, at 3.

183. CRANE & MATTEN, *supra* note 8, at 54.

184. JOHN RUGGIE, REPORT OF THE SPECIAL REPRESENTATIVE OF THE U.N. SECRETARY-GENERAL, GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS: IMPLEMENTING THE UNITED NATIONS "PROTECT, RESPECT AND REMEDY" FRAMEWORK (Mar. 21, 2011) [hereinafter U.N. PRINCIPLES], available at http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

185. Robert C. Blitt, *Beyond Ruggie's Guiding Principles on Business and Human Rights: Charting an Embrasive Approach to Corporate Human Rights Compliance*, 48 TEX. INT'L L.J. 33, 42–43 (2012).

186. *Id.*

187. AM. BAR ASS'N HOUSE OF DELEGATES, RESOLUTION 109 (Feb. 6, 2012).

With respect to the obligations of business enterprises, the U.N. Guiding Principles state:

The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfill their own human rights obligations and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights. Addressing adverse human rights impacts requires taking adequate measures for their prevention, mitigation and, where appropriate, remediation. Business enterprises may undertake other commitments or activities to support and promote human rights, which may contribute to the enjoyment of rights. But this does not offset a failure to respect human rights throughout their operations.¹⁸⁸

John Sherman, a former senior corporate counsel who was part of Professor Ruggie's team that helped to shape the U.N. Guiding Principles, explains that this respect obligation requires the following,¹⁸⁹ which are consistent with the ABA Model Principles:

- High-level policy commitment to respect human rights¹⁹⁰
 - *Applicable Model Business/Supplier Principle(s): Principle 1*
- Assessment of businesses' impacts on human rights¹⁹¹
 - *Applicable Model Business/Supplier Principle(s): Principle 2*
- Integrated and coordinated actions in response to the findings from that assessment¹⁹²
 - *Applicable Model Business/Supplier Principle(s): Principles 2, 4*
- Monitoring of the effectiveness of a company's efforts to address how it affects human rights¹⁹³
 - *Applicable Model Business/Supplier Principle(s): Principle 2*
- Communication of these efforts to affected stakeholders and, when appropriate, publically reporting them, particularly when impacts are severe¹⁹⁴
 - *Applicable Model Business/Supplier Principle(s): Principle 3*

188. See MODEL POLICIES, *supra* note 7, at 1 n.9 ("Commentary to Pt. II(A)11, 18, UN Guiding Principles on Business and Human Rights.").

189. John F. Sherman III, *The UN Guiding Principles: Practical Implications for Business Lawyers*, IN-HOUSE DEF. Q., Winter 2013, at 50.

190. U.N. PRINCIPLES, *supra* note 184, princ. 16(a) (Policy Commitment in Operational Principles to the Corporate Responsibility to Human Rights).

191. *Id.* princ. 17 (Human Rights Due Diligence).

192. *Id.* princ. 19.

193. *Id.* princ. 20.

194. *Id.* princ. 21.

- Cooperation in legitimate processes, including non-judicial grievance mechanisms, to remedy human rights harms that they caused or contributed to¹⁹⁵
- *Applicable Model Business/Supplier Principle(s): Principles 3 and 4*

The processes used under the U.N. Guiding Principles in ascertaining whether a company is respecting human rights are very similar to the internal controls and risk management systems that are the core features of corporate governance standards as embodied in both section 404 of the U.S. Sarbanes-Oxley Act and the U.S. Sentencing Guidelines.

2. ABA Model Principles and Policies

Although the ABA Model Principles are relevant to human trafficking laws discussed previously, they also fit into the ethical prong of CSR because they are not specifically required by law. However, adopting them will help companies comply with all major laws in this area, and the Business Law Section will continue to modify the guidance related to the ABA Model Policies, which have not been adopted by the ABA and can be changed to keep abreast of the rapidly evolving law in this area.

V. RAMIFICATIONS FOR BUSINESS LAWYERS

A. CLIENT ADVICE

The issues discussed herein require the attention of boards of directors from multiple perspectives—risk oversight, strategy, sustainability, and reporting—because they affect reporting, due diligence, and pricing in merger and acquisitions transactions, labor and employment issues, securities offerings, and other forms of financing and reputational issues.

Business attorneys are often called upon to counsel clients on how to protect their reputations and brands as well as to help protect them from civil and criminal liability. Encouraging clients to integrate the U.N. Guiding Principles into their business culture is directly in line with each of those goals. Regarding the protection of reputation and brand, clients should be advised of the importance of being proactive in adopting and implementing policies and procedures to eliminate labor trafficking and child labor in their supply chains lest tragedies like a factory fire or the building collapse in Bangladesh cause the public and shareholders to view the business as contributing to conditions that result in the loss of life. In addition, it may be preferable for businesses to take the initiative in approaching the ILO by saying something to this effect: “We want to clean this up. This factory is in all of our supply chains, and we want to continue to source from here to help this local economy, but we need to make sure these goods are provided by workers who are paid fairly and work in safe and healthy

195. *Id.* princ. 22 (Remediation).

working conditions.” This links somewhat to the ethical arguments above, but in addition, a proactive approach could lead to some reputational upsides that also could result in business upsides in terms of the growing number of socially conscious consumers and investors, including the millennials who will be the client’s future workforce, customer base, and shareholders.¹⁹⁶

In the same way, this attention to the supply chain helps protect clients from running afoul of the complex web of government regulations, including anti-trafficking laws both at home and abroad (e.g., UK, France), the FCPA, the FAR, and a potential new federal law requiring disclosure to the SEC (H.R. 4842). Moreover, even though the ABA Principles and Policies are not mandatory, they can help clients comply with all applicable laws.

Depending on a particular industry or business model, labor trafficking and child labor risks in a supply chain may be high for a particular company. Labor trafficking and child labor are illegal, and regulation in this area is increasing. A change in government may tighten the current enforcement policies, or another Dodd-Frank conflict minerals situation may evolve with the law focusing, for example, on cotton, pig iron, or shrimp. It may be civil liability under old law (the Thirteenth Amendment, the Civil Rights Act of 1866, or even the Ku Klux Klan Act), or some newer ones including the EEOC, Title VII, and the Fair Labor Standards Act.

CSR also is becoming more mainstream, and accounting for economic, legal, ethical, and philanthropic considerations can help a company navigate these uncertain and dangerous waters. An easy way for a company to stay current with the law is to adopt the ABA Principles and work with its inside or outside counsel to modify those principles to remain consistent with the business’s policies or code of conduct. The business may also build a compliance plan to fix any existing problems and prevent new ones from cropping up.

The ABA Principles could help a company develop its compliance program with respect to the applicable laws because, as demonstrated, the principles target the right issues in the supply-chain arena. Proceeding in an organized and methodical manner should also provide companies an effective shield from litigation because, if they actually follow the principles, they will be doing all the things they should be doing. Therefore, even if sued over a particular issue, a company may at least mitigate damages if the supply chain issue was not one that reasonably should have been monitored from a risk assessment perspective.

On the economic side of CSR, there are numerous reasons for companies to follow the principles, the most important being to gain an understanding of their supply chains, which will not only help them root out any illegal slavery and child labor practices but also protect them from a supply-chain meltdown in the event of a natural or man-made disaster that compromises a major sup-

196. See, e.g., Christine Barton, Christine Beauchamp & Lara Koslow, *How Millennials Are Changing the Face of Marketing Forever*, BCG PERSPS. (Jan. 15, 2014), https://www.bcgperspectives.com/content/articles/marketing_center_consumer_customer_insight_how_millennials_changing_marketing_forever/?chapter=3.

plier. The economic benefits of CSR are also supported by the business case made by WEF, showing potential results of CSR leading to a more profitable and sustainable supply chain.

B. PERSONAL ACTION

What can you do as a member of the Business Law Section? First, you can join the Task Force on Implementation of the Model Policies. The Business Law Section has another task force (which may be a committee by the time this article is published) on CSR that provides the business case for the client to understand why action must be taken in this and similar areas. For more information, see the *Business Law Today* January 2015 mini-themed edition.¹⁹⁷

Beyond that, you can visit the Model Policies website. Organizations listed there are dealing constructively with these issues both here and around the world, and most states (if not all) have organizations addressing these issues on a local level. The website of the ABA Task Force on Human Trafficking also offers some wonderful materials.¹⁹⁸

VI. CONCLUSION

Lawyers play a critical role for business clients. Lawyers discern the legal, financial, ethical, and moral risks of noncompliance with the rule of law including local, state, and federal laws and international norms and rules. Lawyers help corporate boards and CEOs recognize both the risks of potentially violating laws and the long-term rewards of acting within those laws, even when others might pursue short-term rewards while tolerating unacceptable risks. Further, through the lens of CSR, a cogent business case helps business leaders communicate to shareholders a broad and lasting value, the kind that builds sustainable equity.

Business lawyers are information gatekeepers. Clients come to us before they do the deal, before they make the big move, or when the big case comes in. We need to be faithful, effective gatekeepers. Understanding the purpose of the ABA Model Principles and Policies and engaging with our clients on the issues surrounding them is proactive, and it is expected of us in our roles as trusted advisors.

197. *Business Law Today—January 2015*, AM. BAR ASS'N (Jan. 2015), <http://www.americanbar.org/content/dam/aba/publications/blt/2015/01/full-issue-201501.authcheckdam.pdf>.

198. *Anti-Trafficking*, AM. BAR ASS'N, http://www.americanbar.org/groups/human_rights/projects/task_force_human_trafficking.html (last visited July 12, 2015).