

# Certification Red Flags

Review Phase, April 2024

## Introduction

Rights CoLab, together with its partners EIRIS Foundation, Interfaith Center on Corporate Responsibility (ICCR)/Investor Alliance for Human Rights (IAHR), the Responsible Contracting Project of Rutgers Law School, and Workforce Disclosure Initiative, are developing a set of precision tools to help investors to discern the quality of human right and environmental due diligence (HREDD) of the enterprises they invest in. Certifications Red Flags is one such tool.

While social certifications can provide helpful indications of companies that have put systems in place to measure and manage human rights risks, they are not always reliable proxies for responsible business conduct. The 2022 report, "[A Piece, Not a Proxy](#)" by the non-profit SOMO, emphasizes the limitations of these certifications:

*Flaws in design, governance and funding, weak or misleading standards, failures in monitoring and verification, lack of transparency, and an overall absence of effective oversight and accountability make these initiatives unsuitable for detecting risks or preventing harm in a reliable and systematic way.*

Disclosure standards have started to build in risk management indicators, but designing decision-useful metrics surrounding certifications has proven to be tricky since the measure of a good certification depends upon multiple factors related to implementation.

Tailor-made for investors, Certifications Red Flags provides warning signs that a certification may not be a reliable indicator of corporate performance, as well as positive signs that investors can look for in certifications that they are capable of reducing social-related risks in supply chains.

## Background and Approach

In January 2022, as SASB researchers were updating the Raw Materials Sourcing in Apparel, Footwear and Accessories industry standard, Rights CoLab, a knowledge partner to the Value Reporting Foundation, convened its Expert Group of labor rights specialists to advise the SASB research team on how to treat certifications, a key issue that the Standards Board was grappling

with.<sup>1</sup> Eventually, the Standards Board approved an indicator that asks reporters to "provide a rationale for why third-party standards or certifications are selected for each priority raw material." The Expert Group agreed with the Standards Board that defining a set of principles would be insufficient, since the strength of a certification cannot be assessed without also understanding how a given certification operates in practice. At the same time, the Expert Group reasoned that investors would benefit from additional guidance to judge the information that companies disclose against the indicator and to support their corporate engagement on this topic.

The idea of Certifications Red Flags, inspired by Shift's Business Models Red Flags,<sup>2</sup> was born out of this conversation. To develop an initial draft concept, Expert Group members brainstormed red flags and shared the resulting matrix with SASB research staff as the potential starting point for guidance that could support the standard. Building off of this concept, in early 2023, Rights CoLab conducted a comprehensive literature review, including NGO reports and judicial and non-judicial complaints involving certifications, and created an initial prototype of Certification Red Flags. To test the prototype, we co-led a workshop at ICCR's 2023 Fall Conference, where participants were invited to engage in a role play using the Red Flags and provide feedback. The prototype was then revised to reflect this feedback. Throughout the process, we drew from our deep experience working with human rights defenders as well as their documentation of certification risks and opportunities within their published articles and reports. We provide these "key resources" as a supplement to the tool.

From October 2023 to January 24, we held four separate meetings with investors to solicit input into its use case and ways to enhance its usability for diverse investors: 1) In October, we held a roundtable discussion with investor members, as part of the Interfaith Center on Corporate Responsibility (ICCR) Fall Conference, featuring an early version of the tool. In December 2023, we conducted two online small-group beta testing sessions with 15 European and North American investors. Subsequently, in January 2024, we held a session in Melbourne Australia with Investors Against Slavery and Trafficking in the Asia Pacific (IAST APAC) with 20 investor members. A key purpose of these sessions was to understand the use case and gather feedback on how to improve it for investor use. In March of 2024, we shared the full tool with knowledgeable experts to validate the content.

Certifications Red Flags will be made public on the HREDD Precision Tools for Investors website to be launched in April 2024. Throughout 2024, we plan to hold interactive training sessions for investors on Certifications Red Flags and other precision tools as we release them.

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<sup>1</sup> Beginning in January 2020, Rights CoLab worked as a knowledge partner to the SASB research team, assembling a group of labor rights experts – the Expert Group – to support recommendations. This later developed into an MOU with the Value Reporting Foundation. For more on the work, see <https://rightscolab.org/measuring-and-manag>

<sup>2</sup> <https://shiftproject.org/resource/business-model-red-flags/red-flags-about/>

# What the Tool Offers

Certifications Red Flags provides investors with specific and easily identifiable markers, or “Red Flags,” so that they are actionable and practical for use during their due diligence. Red Flags are organized by topic, and each Red Flag answers three questions:

## **What does this mean?**

This section explains the significance of the red flag and provides context on how it relates to the certification’s effectiveness in protecting rights holders.

## **Why investors should care**

Through a financial materiality lens, this section explains how the Red Flag relates to potential risks to companies, and provides examples of the consequences that occurred when a certification scheme had the red flag.

## **What to look for?**

This section provides good practice examples that illustrate how a particular feature of a certification identified by the flag can manifest as a risk or opportunity. Most of these features are emergent and not yet widespread among certification schemes.

*Disclaimer: This tool contains examples that highlight the presence or absence of a good or bad feature of a certification. In doing so, we are not making judgements about the certification scheme as a whole.*

# Certifications Red Flags

## **Alignment with International Standards**

1. No explicit reference to international human rights standards.
2. No requirement of brands to share responsibility with suppliers.

## **Scope**

3. Does not adequately account for the most marginalized people.
4. Does not adequately account for gender.
5. Covers some but not all human rights.

## **Audits**

6. Certification granted despite only a small portion of a company's supply chain being audited.
7. Audits not carried out in person or are announced in advance, among other procedural weaknesses.
8. Certification allows for the company or supplier being audited to pay for the audit.
9. No requirement for auditors to have human rights competencies and knowledge of the local context.

## **Grievance Mechanisms**

10. No grievance mechanism and/or no requirement for a grievance mechanism in the certification standard.
11. No controls to ensure the effectiveness of the grievance mechanism in providing remedy.

## **Governance and Accountability**

12. No or poor communication of the certification requirements to the chain of custody participants.
13. No process to suspend or withhold certification until corrective action plans are adopted.
14. Does not make information on audits, complaints, or compliance public.

# Certification Red Flags

## Alignment with International Standards

### 1. No explicit reference to international human rights standards.

#### What does this mean?

Certifications that explicitly reference the Universal Declaration of Human Rights (UDHR) and the International Labour Organization's (ILO) core labor standards, present a higher likelihood that the certification is designed as a risk management system that prevents and mitigates all relevant human rights risks. When certifications do not reference international human rights or labor standards, it can be a red flag.

A fundamental principle of international human rights law, as enshrined in the UDHR is indivisibility - meaning that human rights are interdependent and that the enjoyment of one right often depends on the fulfillment of other rights. Therefore all human rights enumerated in the UDHR are part of a comprehensive framework that supports human dignity, equality, and well-being. The UN Guiding Principles on Business and Human Rights (UNGPs), under Guiding Principle 24, recognize that it is necessary for enterprises to address first the most severe risks, requiring that they prioritize some impacts on rights over others - and this principle also applies to audits. (See Flag 5, below.) The certification scheme itself should take a broad scope towards human rights, while also demonstrating that the most salient rights are addressed through the scheme.

#### Why investors should care

A [lawsuit brought by Corporate Accountability Lab \(CAL\) against the Hershey Company](#) and Rainforest Alliance for deceptive marketing alleged that Rainforest Alliance's certification was "inherently inadequate," noting that the certifier has its own standards, which do not fully align with international labor standards.

In another example, in 2019, the Brumadinho Dam at the Córrego do Feijão mine in eastern Brazil collapsed resulting in 12 million cubic meters of hazardous mudslides engulfing neighboring communities. The Municipality of Brumadinho and six individual victims of the disaster filed a claim before the Munich Regional Court against TÜV SÜD, the German parent company of the entity that certified the dam, TÜV SÜD A.G. They argued that TÜV SÜD A.G. "applied safety verification standards that did not match international standards. They used safety standards that were described as 'market adjustments', meaning that, compared to

international standards, lower safety standards were applied.”<sup>3</sup> Vale, the company managing the mine, took a financial hit: immediately following the collapse, it lost 22% in market capitalization and its default swap spread increased 65%. Three court orders froze \$2.9 billion of Vale’s assets and the company had to agree to pay a \$290 million fine.<sup>4</sup>

→ **Demonstrates:** Legal risk, reputational risk, and direct financial loss

## What to look for

Investors can look at the website of the certification scheme to see if the reference to international human rights and labor standards is clearly indicated in the code of conduct or standards documents.

- [SA 8000](#) includes this statement on its homepage: “The SA8000 Standard is based on internationally recognized standards of decent work, including the Universal Declaration of Human Rights, ILO conventions, and national laws.”

We are beginning to see cases of certification or labeling schemes that provide an explicit role for rights holders to contribute significant input into the design of the scheme. In such cases, the absence of a reference to international human rights standards may not be a red flag.

- The Fair Food Program [About page](#) reads:

*Unlike many traditional Corporate Social Responsibility models, and even many multi-stakeholder certification programs that rely on social auditing, the Fair Food Program is a human rights program that is designed, monitored, and enforced by the very workers whose rights it is intended to protect.*<sup>5</sup>

## 2. No requirement of brands to share responsibility with suppliers.

### What does this mean?

In addition to including rights holders in the design of the scheme, an important sign that a certification is [aligned with human rights standards](#) is whether its standards adequately incorporate the UNGP requirement ([GP 13](#)) that enterprises take responsibility for impacts occurring throughout their operations. This entails conducting ongoing due diligence that is

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<sup>3</sup> Jason Rodgers, “Three Years on from Brumadinho Dam Disaster TÜV SÜD Face €400 Million Lawsuit,” Pogust Goodhead (blog), February 1, 2022, <https://pogustgoodhead.com/three-years-on-from-brumadinho-dam-disaster-tuv-sud-face-e400-million-lawsuit/>.

<sup>4</sup> Witold J. Henisz, and James McGlinch, “ESG, Material Credit Events, and Credit Risk.” *Journal of Applied Corporate Finance* 31, no. 2 (2019): 105–17, <https://doi.org/10.1111/jacf.12352>.

<sup>5</sup> “About – The Fair Food Program,” Accessed February 29, 2024, <https://fairfoodprogram.org/about/>.

participatory, transparent, and timely.<sup>6</sup> Certification schemes should encourage their users to correct past adverse impacts and remediate harms.

A root cause of social auditing failures, particularly for manufacturing and raw materials sourcing, is the power imbalance between suppliers and brands.<sup>7</sup> A brand's purchasing practices can have an outsized impact on whether a supplier can meet human right standards. When buyers make last-minute changes to orders, change payment terms, demand short turnaround times, set prices below production costs, or take other measures to keep costs low,<sup>8</sup> they set in motion a dynamic that can lead to unpaid wages, poor working conditions, and forced or child labor.<sup>9</sup> Moreover, in such situations buyers often do not share the financial burden of implementing strong human right measures. This dynamic creates an incentive for suppliers to conceal violations to maintain the relationship with the buyer, which means that the problems remain unaddressed.

Yet the brand's purchasing practices are typically outside of the scope of certifications and auditing schemes.<sup>10</sup> To combat the power imbalances that lead suppliers to conceal violations, buyers need to share responsibility with suppliers for minimizing human rights risks. Shared responsibility, a term coined by the [Responsible Contracting Project](#), entails setting buyer-supplier contract terms that lock in responsible purchasing practices, such as ensuring

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<sup>6</sup> "Responsible Purchasing Code of Conduct: Schedule Q - Version 1.0" Accessed March 5, 2024, [https://www.americanbar.org/content/dam/aba/administrative/human\\_rights/contractual-clauses-project/scheduleq.pdf](https://www.americanbar.org/content/dam/aba/administrative/human_rights/contractual-clauses-project/scheduleq.pdf).

<sup>7</sup> Ana Perez Adroher, "From Policies to Impacts: Analyzing Modern Slavery Risks in Portfolio Companies," FIDH, no. 768a, May 2021, [https://www.fidh.org/IMG/pdf/from\\_policies\\_to\\_impacts\\_analysing\\_modern\\_slavery\\_risks\\_in\\_portfolio\\_companies.pdf](https://www.fidh.org/IMG/pdf/from_policies_to_impacts_analysing_modern_slavery_risks_in_portfolio_companies.pdf); Genevieve LeBaron et. al., "Forced Labour Evidence Brief: Social Auditing and Ethical Certification," Re:Structure Lab, July 2022, [https://static1.squarespace.com/static/6055c0601c885456ba8c962a/t/62d746146f5dc5205a17621c/1658275349325/ReStructureLab\\_SocialAuditingandEthicalCertification\\_July2022.pdf](https://static1.squarespace.com/static/6055c0601c885456ba8c962a/t/62d746146f5dc5205a17621c/1658275349325/ReStructureLab_SocialAuditingandEthicalCertification_July2022.pdf); MSI Integrity, "Not Fit-for-Purpose – The Grand Experiment of Multi-Stakeholder Initiatives in Corporate Accountability, Human Rights and Global Governance," July 2020, [https://www.msi-integrity.org/wp-content/uploads/2020/07/MSI\\_Not\\_Fit\\_For\\_Purpose\\_FORWEBSITE.FINAL.pdf](https://www.msi-integrity.org/wp-content/uploads/2020/07/MSI_Not_Fit_For_Purpose_FORWEBSITE.FINAL.pdf).

<sup>8</sup> "Investor Guidance on Responsible Contracting," Accessed on March 5, 2024.

[https://docs.google.com/document/d/19FpCvf5\\_w994-Ng-3\\_QUHftdyrZrWtsW/edit](https://docs.google.com/document/d/19FpCvf5_w994-Ng-3_QUHftdyrZrWtsW/edit).

<sup>9</sup> Daniel Vaughan-Whitehead, and Luis Pinedo Caro, "Purchasing Practices and Working Conditions in Global Supply Chains: Global Survey Results," Issue Brief No. 10, (Geneva: ILO, INWORK, 2017), 1–2, [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_56336.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_56336.pdf).

<sup>10</sup> Ana Perez Adroher, "From Policies to Impacts: Analyzing Modern Slavery Risks in Portfolio Companies" fidh, no. 768a, May 2021, [https://www.fidh.org/IMG/pdf/from\\_policies\\_to\\_impacts\\_analysing\\_modern\\_slavery\\_risks\\_in\\_portfolio\\_companies.pdf](https://www.fidh.org/IMG/pdf/from_policies_to_impacts_analysing_modern_slavery_risks_in_portfolio_companies.pdf); Genevieve LeBaron et al., "Forced Labour Evidence Brief: Social Auditing and Ethical Certification," Re:Structure Lab, July 2022, [https://static1.squarespace.com/static/6055c0601c885456ba8c962a/t/62d746146f5dc5205a17621c/1658275349325/ReStructureLab\\_SocialAuditingandEthicalCertification\\_July2022.pdf](https://static1.squarespace.com/static/6055c0601c885456ba8c962a/t/62d746146f5dc5205a17621c/1658275349325/ReStructureLab_SocialAuditingandEthicalCertification_July2022.pdf); MSI Integrity, "Not Fit-for-Purpose – The Grand Experiment of Multi-Stakeholder Initiatives in Corporate Accountability, Human Rights and Global Governance," July 2020, [https://www.msi-integrity.org/wp-content/uploads/2020/07/MSI\\_Not\\_Fit\\_For\\_Purpose\\_FORWEBSITE.FINAL.pdf](https://www.msi-integrity.org/wp-content/uploads/2020/07/MSI_Not_Fit_For_Purpose_FORWEBSITE.FINAL.pdf).

fair pricing and reasonable lead times. Buyers must then go further by supporting suppliers in implementing good working conditions, and exiting contracts responsibly so that worker rights are protected in the process.<sup>11</sup>

**For more on the role of Responsible Contracting in HREDD, visit the Responsible Contracting Guide, a separate tool in the HREDD Precision Toolset for Investors.**

### Why investors should care

The failure of brands to share responsibility for mitigating manufacturers' human rights risks – and of certifications to mandate these principles – is exemplified by the Rana Plaza factory collapse in Bangladesh, which killed over 1,100 garment workers, mostly young women and girls, on April 24, 2013.<sup>12</sup>

Despite the glaringly visible structural cracks in the Rana Plaza building and the closure of the shops and bank on the ground level, factory managers pressured reluctant workers to work that day. A 2019 investigative report on the tragedy by NYU Stern Center for Business and Human Rights found that low profit margins in the single digits worsened a tendency among the suppliers to compromise on safety measures.<sup>13</sup> Ultimately, 29 brands were publicly exposed for having open contracts with garment factories within Rana Plaza, including Benetton, Mango, Primark, among others.<sup>14</sup> Besides the problem that building safety was not part of the auditor standard, amfori's Business Social Compliance Initiative (BSCI), which had passed the factory,<sup>15</sup> shared responsibility between the brand and the factories would have provided greater assurance that the buyer would have been alerted to building safety risks as well as a decision to keep the workers safe.

Arguably any certification scheme that certifies a fast fashion company is a red flag, as it indicates that the certification allows brands to demand that their suppliers deliver products on [short lead times at low cost](#), a practice that creates risks to workers. This practice may soon be a legal risk. In March 2024, the French National Assembly [voted unanimously in favor of a bill](#) to crack down on fast fashion by preventing apparel companies from advertising fast fashion and requiring them to pay penalties to cover their environmental impacts.

→ **Demonstrates:** Reputational, operational, and legal risk

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<sup>11</sup> "Responsible Contracting Project," RCP, accessed April 5, 2024, <https://www.responsiblecontracting.org>.

<sup>12</sup> Amy Kazmin, "How Benetton Faced up to the aftermath of Rana Plaza," *Financial Times*, April 20, 2015, <https://www.ft.com/content/f9d84f0e-e509-11e4-8b61-00144feab7de>.

<sup>13</sup> Paul M. Barrett, and Dorothee Baumann-Pauly, "REPORT: Five Years After Rana Plaza: The Way Forward," NYU Stern, Center for Business and Human Rights (April 2018): 9, <https://bhr.stern.nyu.edu/blogs/2019/1/30/five-years-after-rana-plaza-the-way-forward>.

<sup>14</sup> Clean Clothes Campaign, "Rana Plaza," Accessed March 5, 2024, <https://cleanclothes.org/campaigns/past/rana-plaza>.

<sup>15</sup> Human Rights Watch, "Decade After the Rana Plaza, Safety Flaws Persist," April 17, 2023, <https://www.hrw.org/news/2023/04/17/decade-after-rana-plaza-safety-flaws-persist>; Clean Clothes Campaign, "BSCI 10th Anniversary Shame over Rana Plaza," June 25, 2013, <https://cleanclothes.org/news/2013/06/25/bsci-10th-anniversary-shame-over-rana-plaza>.



## What to look for

The following initiatives require that brands share responsibility with suppliers:

- The [Responsible Contracting Project](#) toolkit contains several resources that can support contracting practices for better human rights and environmental outcomes. It comprises the Model Contract Clauses 2.0 (MCCs 2.0), The Responsible Purchaser Code of Conduct (Buyer Code), The Supplier Model Contract Clauses, and the European Model Clauses. Each provides template contractual provisions designed to help buyers and suppliers better respect human rights in their supply chain. They are designed to give the parties and their counsel a starting point to contractually codify HREDD processes in their supply chains, by translating the shared-responsibility principles enshrined in the UNGPs and OECD Guidance. The clauses are modular, meaning that they are designed to be selected, edited, and adapted by adopting companies.
- [Fair Wear](#) conducts performance checks on member companies, which includes a criterion that members share responsibility with suppliers, such that “factory conditions cannot be separated from the purchasing practices of brands.”<sup>16</sup>
- [The International Accord for Health and Safety in the Textile and Garment Industry](#) is a legally binding framework agreement between garment brands and trade unions to ensure the safety and health of workers in the textile and garment industry. It requires brands to contribute to the cost of operating the program and to financially support factories when remediation is necessary.<sup>17</sup>

## Scope

### 3. Does not adequately account for the most marginalized people.

#### What does this mean?

The certification scheme needs to address the potential for abuse when workers are hired by labor contractors or do not have a formal employment relationship. For example, the standard should require documentation of employment relationships, cover seasonal and contract workers and recruitment processes, include commercial indicators that predictably give rise to

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<sup>16</sup> MSI Integrity, “Not Fit-for-Purpose – The Grand Experiment of Multi-Stakeholder Initiatives in Corporate Accountability, Human Rights and Global Governance,” July 2020, 110, [https://www.msi-integrity.org/wp-content/uploads/2020/07/MSI\\_Not\\_Fit\\_For\\_Purpose\\_FORWEBSITE.FIN\\_AL.pdf](https://www.msi-integrity.org/wp-content/uploads/2020/07/MSI_Not_Fit_For_Purpose_FORWEBSITE.FIN_AL.pdf).

<sup>17</sup> International Accord, “Signatories - Join brands promoting safer workplaces within their supply chains,” Accessed March 6, 2024, <https://internationalaccord.org/signatories/>.

forced labor such as sourcing below the production cost,<sup>18</sup> and require that employers cover the full cost of recruiting.<sup>19</sup>

Migrant workers, day laborers, seasonal employees, workers hired through labor intermediaries, and non-employee workers without contracts are among the most vulnerable workers in supply chains. They are typically marginalized due to their migratory or worker status and lack financial security. In some cases, these workers travel long distances from their homes and live in employer-provided housing, leaving them isolated, without resources and dependent on the employer or labor contractor. In some industries, it is common that they bring their children, which leads to further risks of child exploitation as children are unable to attend schools, helping their parents instead. The precarity these workers face means they may be more easily intimidated, prone to accept dangerous working conditions, and are more likely to experience confiscation of identity documents, debt bondage, wage theft or forced labor.

A robust certification scheme should expect that certified entities know and report on the number or percentage of vulnerable workers in their workforce and institute procedures and safeguards to enable auditors to speak directly with these workers in a trusted space.

**Related Flag:** [Red Flag 4: Does not adequately account for gender.](#)

### Why investors should care

It is well-documented that enterprises with high levels of subcontracting face a high risk of forced labor.<sup>20</sup> Certification schemes that do not account for the most vulnerable workers cannot effectively diminish the presence of forced labor, and can leave companies exposed to legal, financial, and reputational risks to companies and investors.

Subcontracting is a pervasive practice across industries that often takes place under the table and cannot be detected through usual audits, even when audits are conducted on site. Garment industry workers may do embroidery or other piecework at home or at an uncertified subcontracting facility. In construction, day laborers may be hired off site and on terms agreed to verbally. In agriculture, a labor contractor or “crew boss” may recruit, hire, transport, and pay workers directly, putatively outside of the purview of the farm owner.

A 2023 investigation by Repórter Brasil revealed that 17 workers, including a 15-year-old girl and two boys aged 16 and 17, were rescued from modern slavery on coffee farms that held the

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<sup>18</sup> Genevieve LeBaron et al., “Forced Labour Evidence Brief: Social Auditing and Ethical Certification,” Re:Structure Lab, July 2022, 23–24, [https://static1.squarespace.com/static/6055c0601c885456ba8c962a/t/62d746146f5dc5205a17621c/1658275349325/ReStructureLab\\_SocialAuditingandEthicalCertification\\_July2022.pdf](https://static1.squarespace.com/static/6055c0601c885456ba8c962a/t/62d746146f5dc5205a17621c/1658275349325/ReStructureLab_SocialAuditingandEthicalCertification_July2022.pdf).

<sup>19</sup> Verité, “Despite ‘No Fees to Workers’ Policies, Workers Are Still Paying.” August 18, 2023, <https://verite.org/despite-no-fees-to-workers-policies-workers-are-still-paying/>.

<sup>20</sup> Genevieve LeBaron et al., “Forced Labour Evidence: Commercial Contracts and Sourcing,” Re:Structure Lab, 2021, [https://static1.squarespace.com/static/6055c0601c885456ba8c962a/t/61f9d3eaf800aa5cc72766cd/1643762668092/ReStructureLab\\_CommercialContracts\\_July2021.pdf](https://static1.squarespace.com/static/6055c0601c885456ba8c962a/t/61f9d3eaf800aa5cc72766cd/1643762668092/ReStructureLab_CommercialContracts_July2021.pdf).

C.A.F.E. Practices (Coffee and Farmer Equity) seal and a Rainforest Alliance certification.<sup>21</sup> The workers rescued had come far from home to perform seasonal coffee harvesting and reported to a middleman who illegally recruited them and then withheld their wages.<sup>22</sup>

Even when standards do account for vulnerable workers, a lack of specificity around how it should be implemented can result in a failure to mitigate risk and ensure that marginalized people are protected. The Bonsucro Smallholder Production Standard introduced in 2017<sup>23</sup> specifically accounts for vulnerable farmworkers in one of its core indicators required of participating sugar processors:

*Special care shall be taken on the treatment of vulnerable groups subject to discrimination such as female workers, migrant workers or contracted workers, underrepresented ethnic or social groups, union representatives, union members, or non-unionised workers. (Indicator 2.1.3)<sup>24</sup>*

It is positive that the standard focuses on farmworkers; many standards only focus on the farmer and not the farmworker. Yet, according to an independent study of the implementation of the standard,<sup>25</sup> despite this provision, Bonsucro certified mills relied on contingent workers, including migrants,<sup>26</sup> and did not commonly carry out formal identification checks or provide written contracts and pay slips that can provide essential protection for workers.<sup>27</sup>

→ **Demonstrates:** Reputational and legal risk

### What to look for

- The [Fair Food Program Code of Conduct](#) requires that participating farms directly hire workers as employees and that workers complete registration and receive time cards before beginning work in the fields. In addition, in relation to migrant workers, the Program specifies the Mexican National Employment Service (SNE) as the sole

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<sup>21</sup> Repórter Brasil, “Behind Starbucks Coffee,” October 2023, 4, [https://reporterbrasil.org.br/wp-content/uploads/2023/11/monitor\\_starbucks\\_coffee\\_slave\\_labor\\_ENG.pdf](https://reporterbrasil.org.br/wp-content/uploads/2023/11/monitor_starbucks_coffee_slave_labor_ENG.pdf).

<sup>22</sup> Repórter Brasil, 11–12.

<sup>23</sup> Bonsucro, “Production Standard for Smallholder Farmers,” Accessed March 6, 2024, <https://bonsucro.com/production-standard-for-smallholder-farmers/>.

<sup>24</sup> Business and Human Rights Clinic at the School of International and Public Affairs, Columbia University, “The Impact of Bonsucro on Human Rights in the Sugarcane Sector,” Columbia SIPA, 2019, 61, <https://www.sipa.columbia.edu/sipa-education/capstone-workshops/impact-bonsucro-human-rights-sugar-cane-sector>.

<sup>25</sup> Since Bonsucro’s Smallholder Production Standard was originally introduced, it has been revised and the concerns highlighted in this example have been addressed.

<sup>26</sup> Business and Human Rights Clinic at the School of International and Public Affairs, Columbia University, “The Impact of Bonsucro on Human Rights in the Sugarcane Sector,” Columbia SIPA, 2019, 61, <https://www.sipa.columbia.edu/sipa-education/capstone-workshops/impact-bonsucro-human-rights-sugar-cane-sector>.

<sup>27</sup> Ibid, 7.

recruitment channel for guestworkers on H-2A visas to the United States and verifies compliance with U.S. law on guestworker working conditions and pay.<sup>28</sup>

- [Good Weave International Generic Standard](#) requires compliance at different levels of production: exporters, subcontractors, and home-based workers. To ensure the absence of child labor for home-based workers, the certifying body ensures workers understand the parameters for how children can contribute to their work. This includes protections for the child's participation in school, physical and mental well-being, and parental supervision while the work is performed.<sup>29</sup>

#### 4. Does not adequately account for gender.

##### What does this mean?

Many of the vulnerable workers and community members referred to in [Red Flag 3 “Does not adequately account for the most marginalized people”](#) are women and girls. They face unique challenges including low pay, job precarity, denial of land (inheritance) rights, and sexual harassment and gender-based violence. These issues cannot be addressed adequately within a certification scheme without accounting for the particular circumstances facing women.

A gender lens is critical for conducting effective audits, which need to be designed with awareness that women are often reluctant to come forward with evidence of sexual harassment and assault for fear of reprisals and stigmatization within their workplace or community. Building affected stakeholders' trust in auditors and the standard, and putting in place procedures for them to report harms without reprisals is therefore essential.

Ways that certification schemes can build trust in these circumstances include improving auditor human rights competencies, training a sufficient number of women auditors, and providing anonymity, for example through anonymous survey mechanisms. However, no single measure is sufficient to reduce the risk of faulty audits. Rather a comprehensive strategy grounded in gender awareness is essential.

##### Why investors should care

A 2018 report on two palm oil certification schemes, Indonesia Sustainable Palm Oil (ISPO) and Roundtable on Sustainable Palm Oil (RSPO), identified significant gender gaps within the standards and governance of both.<sup>30</sup> The report cites Amnesty International's 2016 investigation of RSPO revealing that “women are forced to work long hours under threat of having their pay

<sup>28</sup> The Fair Food Program, “Results: 2021 State of the Program Report,” 2021, <https://fairfoodprogram.org/results/>.

<sup>29</sup> Goodweave International, “Goodweave International Generic Standard,” May, 1, 2021, <https://goodweave.org/wp-content/uploads/2020/07/GoodWeave-International-Generic-Standard.pdf>.

<sup>30</sup> Retno Kusumaningtyas, “External Concerns on the RSPO and ISPO Certification Schemes,” profundo, January 21, 2018, 2, 25, [https://www.foeeurope.org/sites/default/files/eu-us\\_trade\\_deal/2018/report\\_profundo\\_rspos\\_ipo\\_external\\_concerns\\_feb2018.pdf](https://www.foeeurope.org/sites/default/files/eu-us_trade_deal/2018/report_profundo_rspos_ipo_external_concerns_feb2018.pdf).

cut. They are paid below minimum wage and kept in insecure employment without pension or healthcare.” In the case of ISPO, the report notes that the standard lacks indicators related to harassment or violence against women in the workplace. As a result, some palm-oil plantations, which companies such as U.S. giants and RSPO members Colgate-Palmolive and Procter & Gamble source from, were granted certification despite harms to women and girls in their operations.

Similarly, in 2011 Unilever faced allegations of sexual harassment and abuse of female workers at its Rainforest Alliance-certified Kericho tea plantation in Kenya following an investigation by the Center for Research on Multinational Corporations (SOMO).<sup>31</sup> A subsequent [analysis](#) found that Rainforest Alliance certification lacked [auditor training and sensitivity](#) to the specific challenges of reporting sexual abuse,<sup>32</sup> and in 2023 a BBC Panorama report documented that the problem continues.<sup>33</sup> This example highlights that in addition to gender blind spots in the certifications standard and governance, weaknesses can also be due to inadequate auditor training.

→ **Demonstrates:** Reputational and legal risk

**Related flag:** [Red Flag 10: No requirement for auditors to have human rights competencies and knowledge of the local context.](#)

### What to look for

To gain insight into whether a scheme’s auditing procedures are gender-aware, investors and companies can ask investees or the certification scheme itself the following questions:

- Does the scheme make specific provisions for the presence of women auditors?
- Do those auditors speak the local language?
- Do they conduct interviews privately?
- Do they promote the use of technologies that allow for affected women to respond anonymously?

Fundamentally, gender awareness means that participants in the scheme recognize the trauma women face and the need to develop means of creating trust with women and girls facing a high risk of GBVH. Several good resources exist, such as:

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<sup>31</sup> Sanne van der Waal, “Precarious work in certified tea production for Unilever,” SOMO, October 31, 2011, 16-17, <https://www.somo.nl/precarious-work-in-certified-tea-production-for-unilever/>; SOMO and ICN statement to reactions by Rainforest Alliance and Unilever following publication of the SOMO report: Sanne van der Waal, “Certified Unilever Tea: Small cup, big difference?” October 1, 2011, <https://www.somo.nl/certified-unilever-tea/>

<sup>32</sup> Libby Abbott, “Allegations of sexual harassment and abuse in Unilever’s Kericho plantation, Kenya: A case study of due diligence and certification processes,” February 2012, 24, <https://media.business-humanrights.org/media/documents/abbott-papper-re-unilever-somo-report-feb-2012.pdf>.

<sup>33</sup>

<https://www.business-humanrights.org/en/latest-news/true-cost-of-our-tea-sexual-abuse-on-kenyan-tea-farms-revealed/>

- The Performance Standard of the [Aluminum Stewardship Initiative](#), a multi-stakeholder initiative striving to “foster responsible production, sourcing and stewardship” within the aluminum value chain, requires members to “implement a program which promotes gender equity and women’s empowerment.” It also requires gender analysis as part of organization’s human rights impact assessments and a gender-sensitive impact plan.
- [The Agreement to End Gender-Based Violence in Lesotho](#), between three brands purchasing from Nien Hsing Textile Co., Ltd, labor unions, and women’s rights organizations, has strong protections for freedom of association and is lauded by women’s rights advocates.<sup>34</sup> The agreement requires:
  - ◆ The involvement of women’s rights organizations and trade unions or other workers’ representatives in the scheme.
  - ◆ A non-profit investigative body “with the power to issue findings and direct Nien Hsing to implement remedies, up to and including termination of harassers.”<sup>35</sup>
  - ◆ A toll-free information line run by a women’s organization
  - ◆ An oversight body with equal representation of brands and civil society
  - ◆ A binding obligation on signatory brands to use their economic leverage to ensure that Nien Hsing addresses any non-compliance with its commitments.
  - ◆ Applying a definition of GBVH found in ILO Convention 1906 on Eliminating Violence and Harassment in the World of Work

Finally, investors can ask if the certification encourages the use of worker voice technologies, such as the [Worker Sentiment Survey](#) of the Apparel Supply Chain Advisory, ELEVATE, that enable workers to report anonymously and in a secure way. One application of this survey with Bangladeshi workers unveiled that as many as 30 percent of workers experience GBVH, as opposed to traditional audits undertaken during that same period that surfaced GBVH in just 0.18 percent of cases.<sup>36</sup>

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<sup>34</sup>Solidarity Center, “2021–2022 Agreements to Eliminate Gender-Based Violence and Harassment in Lesotho” (Solidarity Center, March 14, 2023), <https://www.solidaritycenter.org/publication/2021-2022-agreements-to-eliminate-gender-based-violence-and-harassment-in-lesotho/>.

<sup>35</sup> Solidarity Center, “2021–2022 Agreements to Eliminate Gender-Based Violence and Harassment in Lesotho” (Solidarity Center, March 14, 2023), <https://www.solidaritycenter.org/publication/2021-2022-agreements-to-eliminate-gender-based-violence-and-harassment-in-lesotho/>.

<sup>36</sup> ELEVATE, “Worker Engagement.” Accessed March 6, 2024. <https://www.elevatelimited.com/services/advisory/worker-engagement/>; Aruna Kashyap, “Obsessed with Audit Tools, Missing the Goal.” *Human Rights Watch*, November 15, 2022, <https://www.hrw.org/report/2022/11/15/obsessed-audit-tools-missing-goal/why-social-audits-cant-fix-labor-rights-abuses>.

## 5. Covers some but not all human rights.

### What does this mean?

Companies sometimes point to the presence of certifications as evidence of due diligence on issues for which the standards are not actually designed to address. Before turning to a certification to mitigate salient human rights risks, investors and companies need to ensure that the certification's purpose is to address those risks. For example, many certifications do not require prices or wages to meet local living incomes or living wages or have time bound requirements for buyers to pay corresponding prices, yet brands make many claims based on these certifications that suggest such a standard is being met.

A good certification scheme should clearly indicate the topics within scope. According to the ISEAL Alliance [principles](#) for credible sustainability schemes:

*A credible sustainability system has a clear purpose to drive positive social, environmental, and economic impacts and to eliminate or remediate negative impacts. It defines and clearly communicates its scope, its specific sustainability objectives, and its strategies for achieving these objectives (its theory of change).<sup>37</sup>*

When a certification does not cover the most salient actual or potential human rights risks associated with a raw material, product, or sector, it can create the false appearance that it protects human rights. Moreover, in some cases, such as those described below, the certification standard may be *lower* than the relevant national law.

**For a definition of human rights see [Red Flag 1 No explicit reference to international human rights standards](#).**

### Why investors should care

One of the earliest social certifications, the [Kimberley Process Certification Scheme](#), was established in 2003 to certify diamonds as conflict free. Beyond [serious highlights](#) questions that stakeholders have raised about the independence and effectiveness of the scheme, [Human Rights Watch](#) has noted that the Kimberley Process does not provide assurances against child labor and a host of other human rights abuses.<sup>38</sup>

Some certifications give companies the appearance of good stewardship when in fact they cover mostly environmental harms and not labor issues. In the seafood sector, large seafood companies have joined the Marine Stewardship Council (MSC) to ensure the traceability and

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<sup>37</sup> ISEAL, "ISEAL Credibility Principles - Version 2," ISEAL Alliance, June 2021, [https://www.isealalliance.org/sites/default/files/resource/2021-06/ISEAL-Credibility-Principles-V2-2021\\_EN\\_ISEAL\\_June-21.pdf](https://www.isealalliance.org/sites/default/files/resource/2021-06/ISEAL-Credibility-Principles-V2-2021_EN_ISEAL_June-21.pdf).

<sup>38</sup> Human Rights Watch, "Human Rights Watch Statement on the Kimberley Process," June 6, 2016, <https://www.hrw.org/news/2016/06/06/human-rights-watch-statement-kimberley-process>.

sustainability of their catch. Yet the MSC is not designed to address labor issues. [As an investigative report on modern slavery in the seafood sector revealed,](#)

*Jackie Marks, an MSC spokesperson, said that the program is primarily meant to prevent environmental crimes and tracking where fish came from, not what labor concerns might exist on ships. The program does not do inspections on fishing ships to check for crimes like wage theft, beatings, debt bondage or human trafficking. Instead, MSC focuses primarily on determining whether processing plants are hygienic, labeling is accurate and all ships and plants in supply chains are identifiable.<sup>39</sup>*

→ **Demonstrates:** Reputational, operational, and legal risk

### What to look for

→ ICoCA example (to come)

In their engagement with portfolio companies, investors can ask the company whether it has conducted a saliency assessment and whether it has checked with the certification scheme that they are considering joining to be sure the scheme covers the company's identified salient risks.

### Audits

6. Certification granted despite only a small portion of a company's supply chain being audited.

### What does this mean?

Most certification schemes audit conditions at only a small percentage of worksites, focus only on Tier 1 suppliers, or exclude upstream businesses, such as commodity growers.<sup>40</sup>

A study conducted by researchers at the University of Sheffield documenting widespread human rights abuses in the cocoa industry revealed that ethical certification schemes either depend upon farmers self-reporting to cooperatives that they are meeting the certification standards, or audit a sample of only 5% of the farms within a cooperative.<sup>41</sup>

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<sup>39</sup> Ian Urbina, "From bait to plate – tracking the Chinese fishing ships linked to rights and labour abuses at sea," *Daily Maverick*, November 19, 2023, 4, <https://www.dailymaverick.co.za/article/2023-11-19-bait-to-plate-tracking-chinese-fishing-ships-linked-to-a-buses/>.

<sup>40</sup> Genevieve LeBaron et al., "Forced Labour Evidence Brief: Social Auditing and Ethical Certification," Re:Structure Lab, July 2022, 13, [https://static1.squarespace.com/static/6055c0601c885456ba8c962a/t/62d746146f5dc5205a17621c/1658275349325/ReStructureLab\\_SocialAuditingandEthicalCertification\\_July2022.pdf](https://static1.squarespace.com/static/6055c0601c885456ba8c962a/t/62d746146f5dc5205a17621c/1658275349325/ReStructureLab_SocialAuditingandEthicalCertification_July2022.pdf).

<sup>41</sup> Genevieve LeBaron, "The Global Business of Forced Labor: Report of Findings," Sheffield: SPERI, 2018, 44-45



At another level, whole segments of the supply chain may be left out. In the garment industry, for example, a factory may be audited, but the cotton growers and textile workers may fall outside of the certification scheme. As a result, a company may claim participation in a certification scheme, or its products may bear a certification label, despite a large portion of its operations not being audited.

### Why investors should care

When certifications require that only a small portion of a company's operations be audited, they leave gaps in due diligence. These gaps not only hide material risks, but can also subject the participating company to allegations of deceptive marketing or on-product labels.

The lawsuit filed by Corporate Accountability Lab (CAL) against the Hershey Company and the Rainforest Alliance for deceptive marketing ([also discussed in Red Flag 1](#)) demonstrates the inherent risk of relying upon a certification that audits only a small portion of the supply chain. CAL alleged that the Rainforest Alliance's certification system was fundamentally flawed. One of the reasons given was that third party cocoa certification inspections "are only required to visit about 10 percent of the cocoa farms that companies such as Hershey source from."<sup>42</sup>

When the SASB Standards Board revised its [Raw Material Sourcing in Apparel, Accessories & Footwear](#) disclosure standard in 2022, it added a new metric that aimed to provide investors with information about the "amount of each priority raw material that is certified to a third-party environmental or social standard, by standard."<sup>43</sup> It's a good attempt to capture the question of coverage of the certification in the metric.

→ **Demonstrates:** Reputational and legal risk

### What to look for

The fact is that it is not reasonable to expect that all operations in a complex supply chain can be audited, and therefore audits are necessarily partial. Nonetheless, investors can engage with their portfolio companies on whether the certification covers their most salient supply chain risks. ([ADD HYPERLINK to Engagement Questions](#)). There are, however, two examples of certifications that have high coverage in simpler supply chains:

- The [GoodWeave International licensing and certification policy](#) applies to both exporters and importers of GoodWeave-certified products. For exporters, it requires that all of their facilities be disclosed, including subcontractors and home-based production, and that all

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<sup>42</sup> "Complaint Demand for Jury Trial," Superior Court of the District of Columbia Civil Division, October, 2021, 15, [https://static1.squarespace.com/static/5810dda3e3df28ce37b58357/t/618167d28dd7f307c90da0e4/1635870679248/CAL+v.+Hersheys+and+RA\\_Stamped+Complaint.pdf](https://static1.squarespace.com/static/5810dda3e3df28ce37b58357/t/618167d28dd7f307c90da0e4/1635870679248/CAL+v.+Hersheys+and+RA_Stamped+Complaint.pdf).

<sup>43</sup> SASB, "Download SASB Standards," Accessed March 6, 2024, <https://sasb.ifrs.org/standards/download/>.

facilities producing products eligible for the GoodWeave label are included in the inspection and monitoring process. Importers are required to keep documentation to ensure every GoodWeave certification label can be traced to the individual importer and exporter licensees to which they were issued.

- Fairtrade International has a [Trader Standard](#) that is comprehensive in that it applies to all portions of the supply chain. Specifically the standard specifies that it:

*applies to all who trade (buy, sell or process) Fairtrade certified products, up to the point where the product is in its final packaging. In other words this means that within this scope all operators who take legal ownership of Fairtrade certified products must be audited and certified against these standards.*<sup>44</sup>

Additionally, the standard requires all traders be audited to ensure compliance with the standard, applicable environmental and labor law, and the ILO Core Convention.<sup>45</sup>

## 7. Audits not carried out in person or are announced in advance, among other procedural weaknesses.

### What does this mean?

Weaknesses in the audit procedures that govern how worksites are inspected for compliance with standards can increase the likelihood that infractions will go undetected. Deceptive or incomplete reviews are more likely when audit procedures allow companies to self-report compliance. Even with in-person audits, deception is a widespread problem that has been documented in various countries and sectors.<sup>46</sup> For example, when auditors announce site visits in advance, site managers often “prepare” by falsifying records of worker ages, payroll, safety logs, or other relevant documents, or by coaching workers on how to respond to audit questions. Even when audits are on site and unannounced, without a requirement for auditors to interview a sufficient number of rights holders or for interview protocols to protect rights holders from reprisal, the reliability of the audit findings is undermined.

### Why investors should care

Deficiencies in audit procedures leave companies exposed to the legal risks that certification is meant to address. A [report published by the European Center for Constitutional and Human Rights \(ECCHR\) and its partners](#) that critically analyzes the role of auditing in four cases where severe standards violations went undetected demonstrates how poor auditing procedures can

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<sup>44</sup> Fairtrade International, “Explanatory Document for the Fairtrade Trader Standard,” August 2015, 4, [https://files.fairtrade.net/standards/2015-09-04\\_Explan\\_Doc\\_GTS\\_EN.pdf](https://files.fairtrade.net/standards/2015-09-04_Explan_Doc_GTS_EN.pdf).

<sup>45</sup> FloCERT, “Trader Certification Compliance Criteria,” 68, Accessed March 6, 2024. <https://www.flocert.net/fairtrade-compliance-criteria/>.

<sup>46</sup> Transparentem, “Hidden Harm: Audit Deception in Apparel Supply Chains and the Urgent Case for Reform,” 2021, 8–10, <https://transparentem.org/project/hidden-harm/>.

increase human rights risks. In the case of the 2019 collapse of the Brumadinho Dam in eastern Brazil, for example, the authors found indications that the auditor “did not carry out any on-site visits and neither collected raw data independently nor double-checked the reliability of the raw data provided by the client.”<sup>47</sup>

A lack of unannounced safety audits in a separate case allowed a French breast implant manufacturer’s use of industrial grade instead of medical grade silicone to escape detection because it temporarily switched production to medical grade prior to inspections. The fraud continued for years, until the French regulatory authority intervened after increasing reports of breast implant ruptures and cancer in France and Germany.

It is noteworthy that some studies have shown that announced audits can be helpful in monitoring rights like health and safety, but not issues with clearer prohibitions, such as child labor. An [empirical study](#) of thousands of audits conducted by a single auditor found greater improvements in occupational safety and health issues following announced audits whereas compliance with child labor prohibitions improves significantly *less* following announced audits compared with unannounced audits. The authors posited that announced audits allow for better communication between the auditor and supplier that can foster improved compliance, whereas factory managers are already aware that child labor is a zero-tolerance violation, such that auditor support to prevent violations is not needed. Other scholars have noted that “the risk of losing contracts from buyers with zero tolerance policies creates an incentive to conceal” labor violations.<sup>48</sup>

→ **Demonstrates:** Reputational risk, operational risk, legal risk, and direct financial loss

## What to look for

Investors can check the website of the certification scheme to see if it publishes the audit requirements online, and if so, check for the following: Once the investor locates the audit requirements, look for the following:

- Whether audits are conducted on-site
- The duration of the audit, which should be more than one day.
- A policy of adequate compensation for the auditor.
- Whether at least 50 percent of rights holders are interviewed at each site

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<sup>47</sup> European Center for Constitutional and Human Rights, Brot für die Welt, and Bischöfliches Hilfswerk MISEREOR, “Human Rights Fitness of the Auditing and Certification Industry?” 2021, 13, <https://www.ecchr.eu/en/publication/human-rights-fitness-audits/>.

<sup>48</sup> Genevieve LeBaron et al., “Forced Labour Evidence Brief: Social Auditing and Ethical Certification,” Re:Structure Lab, July 2022, 17, [https://static1.squarespace.com/static/6055c0601c885456ba8c962a/t/62d746146f5dc5205a17621c/1658275349325/ReStructureLab\\_SocialAuditingandEthicalCertification\\_July2022.pdf](https://static1.squarespace.com/static/6055c0601c885456ba8c962a/t/62d746146f5dc5205a17621c/1658275349325/ReStructureLab_SocialAuditingandEthicalCertification_July2022.pdf).

- Whether procedures are in place, such as off-site interviews, to protect interviewees from reprisal,<sup>49</sup> noting that taking the interview off site could be more challenging at a plantation or mine than it is for a factory.

Investors can also look to this additional guidance on good practices that companies can adopt or encourage certifications to adopt:

- GoodWeave International publishes its [policies and procedures](#), including its [certification requirements](#). To comply with the standard, organizations are subject to regular and unannounced inspections at all of their production sites. Worker interviews are conducted within the community member surroundings, and include interviews with family members of children and workers.<sup>50</sup>
- [The Fair Food Program's annual report](#) describes its audit procedures, which include full access to farm payroll records, presence in the fields and worker housing through announced and unannounced audits, and interviews with farm management and supervisors and at least 50% of workers present at farm locations.<sup>51</sup>

## 8. Certification allows for the company or supplier being audited to pay for the audit.

### What does this mean?

Conflict of interests are prevalent within the auditing industry. Auditing firms have financial incentives to prioritize the customer interest, which can result in poor audits.<sup>52</sup> Some studies have found outright instances of collusion between auditors and suppliers.<sup>53</sup> In other cases, highly competitive market conditions between auditing firms means that auditors cut corners to reduce costs, keep clients happy, and compete effectively within the industry.<sup>54</sup>

<sup>49</sup> Genevieve LeBaron, and Sharon Lister, "Ethical Audits and Supply Chains of Global Corporations," Sheffield: SPERI, 2016, 3.

<sup>50</sup> GoodWeave, "GoodWeave Certification System Overview," April 2023, 4-5, <https://goodweave.org/wp-content/uploads/2023/05/Appendix-B-Certification-System-Overview-APRIL-2023.pdf>.

<sup>51</sup> Fair Food Standards Council, "Fair Food Program State of the Program Report 2021," 2021, 11, <https://indd.adobe.com/view/2e8c5302-3772-4122-a6a7-f345d4801a16>.

<sup>52</sup> Human Rights Watch, "Obsessed with Audit Tools, Missing the Goal," November 15, 2022, p. 14, <https://www.hrw.org/report/2022/11/15/obsessed-audit-tools-missing-goal/why-social-audits-cant-fix-labor-rights-abuses>.

<sup>53</sup> Genevieve LeBaron et al., "Forced Labour Evidence Brief: Social Auditing and Ethical Certification," Re:Structure Lab, July 2022, 10, [https://static1.squarespace.com/static/6055c0601c885456ba8c962a/t/62d746146f5dc5205a17621c/1658275349325/ReStructureLab\\_SocialAuditingandEthicalCertification\\_July2022.pdf](https://static1.squarespace.com/static/6055c0601c885456ba8c962a/t/62d746146f5dc5205a17621c/1658275349325/ReStructureLab_SocialAuditingandEthicalCertification_July2022.pdf).

<sup>54</sup> Joseph Wilde-Ramsing, and Grabele Quijano, "A piece, not a proxy," SOMO, November 25, 2022, <https://www.somo.nl/a-piece-not-a-proxy/>.

Studies have shown that when companies pay for their own audits their quality decreases.<sup>55</sup> Human Rights Watch conducted interviews with auditors who described the tensions they feel when hired directly by suppliers or companies. Specifically, companies prefer to hire “friendly” auditors, often pressure them for lenient audits, and demand to hide damaging findings.<sup>56</sup> These realities severely harm the credibility of audits when paid for directly by a company or a supplier.

The draft Corporate Sustainability Due Diligence Directive (CSDDD) and other international standards state that certifications should be “free from any conflicts of interests and from external influence.” While conflicts of interests are difficult to root out, auditors can be insulated from profit interests when there is a firewall between the organization being audited and the one that pays for it. Without a firewall the risk that auditors will overlook labor abuses in order to keep its business with the company increases.

Another way to ensure that the conflict of interests is minimized is through comprehensive quality control processes that can assess the validity of audit reports. Dedicated auditing bodies within a certification often produce more reliable audits because they do not have the same financial incentives.

These conflicts of interests also present themselves when there is an auditor monopoly in certain regions. In these cases, absence of competition reduces auditor performance, and ultimately leads to insufficient oversight during the auditing process. For instance, stakeholders told researchers studying [the implementation of the Bonsucro Smallholder production standard](#) in India were critical of the quality checks carried out by the sole auditor servicing the region, Control Union, leading researchers to conclude that “the dependency on Control Union and lack of competition creates little incentive for the auditor to improve, or for more competitive pricing.”<sup>57</sup>

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<sup>55</sup> John Jiang, Mary Harris Stanford, and Yuan Xie, “Does It Matter Who Pays for Bond Ratings? Historical Evidence,” *Journal of Financial Economics* 105, no. 3 (2012): 607–21.; Esther Duflo, Michael Greenstone, and Nicholas Ryan, “Truth-Telling by Third-Party Auditors and the Response of Polluting Firms: Experimental Evidence from India,” *The Quarterly Journal of Economics* 128, no. 4 (2013): 1499–1545.; Jodi L. Short, Michael W. Toffel, and Andrea R. Hugill, “Monitoring Global Supply Chains,” *Strategic Management Journal* 37(9) (2016): 1878–97.

<sup>56</sup> Aruna Kashyap, “OBSESSED WITH AUDIT TOOLS, MISSING THE GOAL,” *Human Rights Watch*, 2022, 14-16, [https://www.hrw.org/sites/default/files/media\\_2022/11/Social\\_audits\\_brochure\\_1122\\_WEBSPREADS\\_0.pdf](https://www.hrw.org/sites/default/files/media_2022/11/Social_audits_brochure_1122_WEBSPREADS_0.pdf).

<sup>57</sup> Business and Human Rights Clinic at the School of International and Public Affairs, Columbia University, “The Impact of Bonsucro on Human Rights in the Sugarcane Sector,” Columbia SIPA, 2019, 69-70, <https://www.sipa.columbia.edu/sipa-education/capstone-workshops/impact-bonsucro-human-rights-sugar-cane-sector>.

## Why investors should care

In 2012, a fire at the Ali Enterprises Factory in Pakistan killed over 250 workers and injured hundreds more.<sup>58</sup> Three weeks prior to this horrific tragedy RINA, an Italian social auditing firm had certified the factory to be compliant with the SA8000 standard set by Social Accountability International. For factories to be SA8000 certified, they directly contract with an SA8000 certified auditor that performs the necessary audits to achieve accreditation.<sup>59</sup> RINA had ignored multiple safety requirements set both by international standards and the Pakistani government, such as the need for a working fire alarm system and an adequate number of functional emergency exits.<sup>60</sup> The catastrophe resulted in lawsuits against the German retailer KiK and the auditing body RINA.<sup>61</sup> Specifically, the plaintiffs in [Ali Enterprises Affectees v. RINA](#) claimed that RINA had breached the OECD Guidelines by not refusing “to perform factory audits that are paid for by the factory owner,” and instead establish “a payment system for social audits that avoids conflicts of interest.”<sup>62</sup> In its report, [“Human rights fitness of the auditing and certification industry.”](#) ECCHR and its partners further explains how these conflicts of interests are exacerbated by poor quality control processes: “Although the SA8000 scheme provides elaborate methodological guidance, its accreditation body SAAS does not appear to have ensured that its substantive and methodological standards were actually applied in this case.”<sup>63</sup>

The conflict of interest of auditors is implicated in the catastrophic collapse of the Brumadinho talings dam at the Córrego do Feijão mine in 2019, which unleashed a torrent of hazardous mud into surrounding communities. A report by [ECCHR](#) and its partners revealed that dam owner Valedirectly engaged TÜV SÜD to certify the safety of the dam and that Vale pressured TÜV SÜD to issue a favorable report or face the prospect of losing their contract. The report alleges that at that time, TÜV SÜD was also engaged in negotiations for an additional consulting

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<sup>58</sup> Zia ur-Rehman, Declan Walsh and Salman Masood, “More Than 300 Killed in Pakistani Factory Fires,” *The New York Times*, September 12, 2012,

<https://www.nytimes.com/2012/09/13/world/asia/hundreds-die-in-factory-fires-in-pakistan.html>.

<sup>59</sup> SAI, “SA8000 Certification: Getting Started,” Accessed March 7, 2024,

<https://sa-intl.org/resources/sa8000-getting-started/>; Worker-Driven Social Responsibility Network, “SA8000: The ‘Gold Standard’ for Failing Workers?” July 17, 2018, <https://wsr-network.org/resource/sa8000-the-gold-standard-for-failing-workers/>.

<sup>60</sup> Clean Clothes Campaign, “Justice for the Ali Enterprises Victims,” Accessed March 7, 2024, <https://cleanclothes.org/campaigns/past/ali-enterprises>; Worker-Driven Social Responsibility Network, “Case Study: Ali Enterprises (Pakistan),” Accessed March 7, 2024, <https://wsr-network.org/what-is-wsr/csr-and-msis/msi-case-study-ali-enterprises-pakistan/>.

<sup>61</sup> ECCHR, “KiK: Paying the Price for Clothing Production in South Asia,” Accessed March 7, 2024, <https://www.ecchr.eu/en/case/kik-paying-the-price-for-clothing-production-in-south-asia/>; OECD Watch, “Ali Enterprises Factory Fire Affectees Assoc. v. RINA S.p.A.,” September 11, 2018,

<https://www.oecdwatch.org/complaint/ali-enterprises-factory-fire-affectees-assoc-v-rina-s-p-a/#printing-Ali%20Enterprises%20Factory%20Fire%20Affectees%20Assoc.%20v.%20RINA%20S.p.A.>

<sup>62</sup> OECD Watch, “Ali Enterprises Factory Fire Affectees Assoc. v. RINA S.p.A.” 2018, 23,

<sup>63</sup> European Center for Constitutional and Human Rights, Brot für die Welt, and Bischöfliches Hilfswerk MISEREOR, 46.

contract with Vale, which was contingent upon securing a positive audit.<sup>64</sup> The Brumadinho Dam catastrophe came with a huge financial cost to the operators: a court-ordered \$290 million fine, as we note above in [Red Flag No. 1](#).<sup>65</sup>

In another case, *The New York Times* chronicled the case of auditing firm UL Solutions, which disciplined one of its auditors after he failed three Walgreens suppliers for abusive working conditions in 2017 and 2018. (The report cites the auditor’s “communication style” as the official reason for the punishment.) In 2023, when the same auditor flagged labor issues at a warehouse supplying Costco, UL Solutions barred him from returning, citing the warehouse’s complaints that he was demanding and argumentative. *The New York Times* reports that the auditor “believed that the supplier objected to his finding 21 violations when the previous audit had found none.”<sup>66</sup> This example, once again, demonstrates that certification schemes that allow buyers or suppliers to pay for auditing, create a conflict of interest, and deter auditors from carrying out thorough inspections and accurate reporting, thereby compromising audit quality.

→ **Demonstrates:** Reputational, operational, legal, and direct financial risk

### What to look for

An advantage of relying upon certification schemes with third party auditors - as opposed to buyers commissioning audits of supplies is that the audit report typically goes directly to the certification scheme, as opposed to the entity being audited.

To ensure the quality of audits, investors can look through a certification scheme’s policy documents to understand whether audit reports are shared with affected workers or community members who can verify or dispute report findings. Rights holders have unique insight into the intricacies of their work environments, and are well positioned to validate or contest the findings of auditing reports. ReStructure Lab’s Social Auditing and Ethical Certification brief notes that, “Researchers have highlighted the need for workers to have access to audit reports, as well as feedback mechanisms to report disputes and ideally seek remedy.”<sup>67</sup>

→ Fair Trade International’s [Standard for Hired Labour](#) requires audit results to be shared with workers. It mandates that “company shares audit results with workers following each audit in a format and language accessible to workers.”

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<sup>64</sup> European Center for Constitutional and Human Rights, Brot für die Welt, and Bischöfliches Hilfswerk MISEREOR, 14.; Jason Rodgers, “Three Years on from Brumadinho Dam Disaster TÜV SÜD Face €400 Million Lawsuit,” *Pogust Goodhead*, February 1, 2022, <https://pogustgoodhead.com/three-years-on-from-brumadinho-dam-disaster-tuv-sud-face-e400-million-lawsuit/>.

<sup>65</sup> Witold J. Henisz, and James McGlinch, “ESG, Material Credit Events, and Credit Risk,” *Journal of Applied Corporate Finance* 31, no. 2 (2019): 105–17, <https://doi.org/10.1111/jacf.12352>.

<sup>66</sup> Hannah Dreier, “They’re Paid Billions to Root Out Child Labor in the U.S. Why Do They Fail?” *The New York Times*, December 28, 2023, <https://www.nytimes.com/2023/12/28/us/migrant-child-labor-audits.html>.

<sup>67</sup> Genevieve LeBaron et al., “Forced Labour Evidence Brief: Social Auditing and Ethical Certification,” Re:Structure Lab, July 2022, 25, [https://static1.squarespace.com/static/6055c0601c885456ba8c962a/t/62d746146f5dc5205a17621c/1658275349325/ReStructureLab\\_SocialAuditingandEthicalCertification\\_July2022.pdf](https://static1.squarespace.com/static/6055c0601c885456ba8c962a/t/62d746146f5dc5205a17621c/1658275349325/ReStructureLab_SocialAuditingandEthicalCertification_July2022.pdf).

Other good examples of certifications with quality controls:

- [Good Weave’s Licensing and Certification Policy](#) requires an oversight mechanism for auditors. The policy reads:

*The GWI Secretariat shall develop and implement an oversight mechanism in order to ensure the competence and consistent performance of the GWI-CD with respect to the relevant provisions of this policy, as well as ISO/IEC Guide 17065 and the ISEAL Assurance Code, as applicable. The oversight mechanism may be in the form of an accreditation audit or similar procedure, to be conducted by a third party independent of the GWI-CD itself. This oversight mechanism shall include a full assessment of the performance of GWI-CD at least once every four years*

- [Electronics Watch](#), a Dutch independent monitoring organization, trains and works directly with local organizations and independent researchers who serve as their monitoring partners to monitor compliance and “protect the rights of workers in global supply chains.”<sup>68</sup>

## 9. No requirement for auditors to have human rights competencies and knowledge of the local context.

### What does this mean?

Auditors’ human rights and language competencies and their knowledge of the industry and local context influence the effectiveness of the monitoring process. Without adequate training in human rights or the local context, an auditor may fail to distinguish “between an actual absence of violations and interviewees’ perception that violations were either inevitable or so common as to be normalized.”<sup>69</sup> Auditors who lack human rights training may conduct rights holder interviews poorly or in unethical ways,<sup>70</sup> and an auditor’s inability to speak the local language may make interviewees more reticent to report issues, especially if the interpreter is supplied by the company being audited.<sup>71</sup> Auditors unaware of the occupational hazards in a particular

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<sup>68</sup> “Monitoring Partners,” Electronics Watch, accessed March 14, 2024, [https://electronicswatch.org/en/monitoring-partners\\_2544003](https://electronicswatch.org/en/monitoring-partners_2544003).

<sup>69</sup> MSI Integrity, “Not Fit-for-Purpose: The Grand Experiment of Multi-Stakeholder Initiatives in Corporate Accountability, Human Rights and Global Governance,” July 2020, 129, [https://www.msi-integrity.org/wp-content/uploads/2020/07/MSI\\_Not\\_Fit\\_For\\_Purpose\\_FORWEBSITE.FINAL.pdf](https://www.msi-integrity.org/wp-content/uploads/2020/07/MSI_Not_Fit_For_Purpose_FORWEBSITE.FINAL.pdf).

<sup>70</sup> Genevieve LeBaron et al., “Forced Labour Evidence Brief: Social Auditing and Ethical Certification,” Re:Structure Lab, July 2022, 9, [https://static1.squarespace.com/static/6055c0601c885456ba8c962a/t/62d746146f5dc5205a17621c/1658275349325/ReStructureLab\\_SocialAuditingandEthicalCertification\\_July2022.pdf](https://static1.squarespace.com/static/6055c0601c885456ba8c962a/t/62d746146f5dc5205a17621c/1658275349325/ReStructureLab_SocialAuditingandEthicalCertification_July2022.pdf).

<sup>71</sup> MSI Integrity, “Not Fit-for-Purpose,” 129–31.



sector and geography may overlook known safety hazards.<sup>72</sup> Thus, certification schemes that do not require auditors to have human rights competencies or knowledge of the local context are more likely to fail to detect abuses.

In addition, investors should be aware of the prevalence of unauthorized subcontracting<sup>73</sup> of auditing to auditors with weak human rights competencies due to a lower accreditation standard or auditors who are not accredited at all.

### Why investors should care

Three recent reports highlight lack of auditor human rights competencies and knowledge of the local context as significant risk inherent in some social auditing schemes.

- An [empirical study](#) by Cornell University's School of Industrial and Labor Relations, drawing on thousands of audits conducted by a major social auditor, found that visits by highly trained auditors lead to significant improvements in wages and occupational health and safety scores and a decrease in incidences of child labor.
- The [report published by ECCHR and its partners](#) concluded that auditors' "lack of understanding of the human rights perspective, and a lack of normative specifications in this regard led to mistakes in their work and probably directly contributed to human rights violations of others, in some cases with disastrous consequences."<sup>74</sup>
- Amnesty International attributed failures by the Roundtable on Responsible Palm Oil (RSPO) to detect widespread human rights abuses in the palm oil industry, in part due the fact that audit teams lack "specific expertise and experience of detecting labor rights abuses."<sup>75</sup>

The 2013 Rana Plaza factory collapse in Bangladesh demonstrates the risk when auditors fail to account for the local occupational health and safety context. According to an analysis by the Clean Clothes Campaign, at the time of the collapse it was widely known that government supervision of building safety was severely lacking, there had been earlier incidents of factory collapses after the illegal construction of extra floors, and the illegal construction of extra floors was underway in Rana Plaza during an audit of the Phantom Apparel factory on the plaza's

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<sup>72</sup> Clean Clothes Campaign, "Fig Leaf for Fashion: How Social Auditing Protects Brands and Fails Workers," 2019, 73, <https://cleanclothes.org/file-repository/figleaf-for-fashion.pdf>.

<sup>73</sup> Aruna Kashyap, "Paying for a Bus Ticket and Expecting to Fly," *Human Rights Watch*, April 23, 2019, <https://www.hrw.org/report/2019/04/24/paying-bus-ticket-and-expecting-fly/how-apparel-brand-purchasing-practices-drive>.

<sup>74</sup> European Center for Constitutional and Human Rights, Brot für die Welt, and Bischöfliches Hilfswerk MISEREOR, 19.

<sup>75</sup> Amnesty International, "The Great Palm Oil Scandal: Labour Abuses Behind the Big Brand Names," 2016, 93, <https://www.amnesty.org/en/documents/asa21/5184/2016/en/>.

fourth floor.<sup>76</sup> An auditor familiar with the Bangladeshi context should have been attentive to these aspects and known that further scrutiny of the building was warranted.<sup>77</sup>

→ **Demonstrates:** Reputational, operational, and legal risk

## What to look for

Investors should look for whether the certification scheme publishes online:

- information about the requirements for auditor competency or training; and
- the name of the auditor.

In addition, the scheme should require that at least one auditor on the audit team who:

- has training on the relevant human rights issues in the industry and has knowledge of the local context; and
  - speaks the local language or, at a minimum, uses an independent interpreter.<sup>78</sup>
- The Forest Stewardship Council publishes the [requirements for its auditors](#) (“accredited certification bodies”) as part of its [online document center](#), and requires that, when a certification “will raise questions regarding indigenous or community rights and/or land tenure issues, then the audit team must have an expert with knowledge of those issues, local dialects and experience interacting with those communities in the region.”<sup>79</sup>
- Some certifications work with only one dedicated auditing body that has a depth of expertise on the standard, the risks in the sector, and what to look for during inspections. Milk With Dignity, a program striving to improve working conditions in dairy supply chains, has a [Code of Conduct](#) which specifies the [Milk With Dignity Standards Council](#), an independent non-profit, as the auditor, “whose sole function is oversight of the MD Program—working with farmers and farmworkers to understand, participate in and achieve compliance with the standards in the Code.”
- Some certifications work with local organizations that conduct the auditing. The [Electronics Watch Monitoring Policy](#) provides that local organizations and independent researchers serve as [monitoring partners](#) and requires that they: 1) have expertise in labor rights, health and safety, and monitoring methodologies; 2) be located near

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<sup>76</sup> Clean Clothes Campaign, “Fig Leaf for Fashion: How Social Auditing Protects Brands and Fails Workers,” 72–73.

<sup>77</sup> Ibid

<sup>78</sup> MSI Integrity, “Not Fit-for-Purpose – The Grand Experiment of Multi-Stakeholder Initiatives in Corporate Accountability, Human Rights and Global Governance,” July 2020, 129, [https://www.msi-integrity.org/wp-content/uploads/2020/07/MSI\\_Not\\_Fit\\_For\\_Purpose\\_FORWEBSITE.FINAL.pdf](https://www.msi-integrity.org/wp-content/uploads/2020/07/MSI_Not_Fit_For_Purpose_FORWEBSITE.FINAL.pdf).

<sup>79</sup> Requirements for Certification Bodies: FSC, “FSC-STD-20-001 - General requirements for FSC accredited certification bodies v4.0,” 2016, <https://connect.fsc.org/document-centre/documents/resource/280>.

workers' communities; and 3) have established relationships with workers through educational or other service programs such that they can meet with workers in conditions that minimize fear of reprisals.

## Grievance Mechanisms

### 10. No grievance mechanism and/or no requirement for a grievance mechanism in the certification standard.

#### What does this mean?

The right to remedy is a fundamental human right, found in every major international human rights instrument. In pillar three on Access to Remedy, the UN Guiding Principles on Business and Human Rights specifically provides that, “industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available” ([GP 30](#)).

Certification schemes commonly require participating companies and processors to have a complaints mechanism, which should meet the standards of the effectiveness criteria of UNGP 31 and include [rights holders in their design and implementation](#). However, certification schemes need a grievance mechanism of their own to ensure that there is a check on a certified entities' handling of complaints. The absence of a scheme-level grievance mechanism could “green light” a certified company that has harmed a community and can undermine efforts of the community to seek remedy.

#### Why investors should care

Grievance mechanisms are critical means for detecting breaches of a certification scheme's standards and ensuring accountability. Audits alone are insufficient because, even when done well, they provide only a snapshot of conditions at a part of the operations and at a certain point in time. In addition, audit deception – efforts to hide human rights and labor abuses – is common.<sup>80</sup> Moreover, when audits do uncover violations, there may be corrective actions, but typically no remedy for rights holders.

A 2018 report on Indonesia Sustainable Palm Oil (ISPO) and Roundtable on Sustainable Palm Oil (RSPO) by Netherlands-based research organization Profundo found that the ISPO “standards contain no grievance mechanism for workers. The only grievance mechanism is related to land disputes and compensation. Indonesian national law does provide protection to

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<sup>80</sup> Transparentem, “Hidden Harm.”

workers, but this is not referenced in the standard.”<sup>81</sup> The report recommended that ISPO set up a grievance mechanism.

→ **Demonstrates:** Reputational and legal risk

### What to look for

Investors can check the certification standard to see if the certification requires that certified entities maintain a grievance mechanism. Information on whether the certification scheme itself has a grievance mechanism is typically found on its website.

- Fair Wear’s [Brand Performance Check](#) indicators require that member companies actively support operational-level internal grievance mechanisms, and its [website explains](#) that its grievance mechanism serves as a safety net when other options fail or are not trusted by workers.
- [Bonsucro](#) updated its Code of Conduct to include a provision that “members agree to be bound by the terms of Bonsucro's Grievance Mechanism.”<sup>82</sup> The grievance mechanism is available in Spanish, Portuguese, and English, and aligned with the [UNGPs Effectiveness Criteria](#).<sup>83</sup>

## 11. No controls to ensure the effectiveness of the grievance mechanism in providing remedy.

### What does this mean?

While having a grievance mechanism is an important first step in protecting human rights, the mere existence of one is not sufficient to ensure that those rights are respected and upheld in practice.<sup>84</sup> The UNGPs set out the minimum requirements for an effective grievance mechanism, outlining that a grievance mechanism be accessible, equitable, legitimate, predictable, transparent, a source of continuous learning, and rights-compatible ([Access to Remedy in Cases of Business-Related Human Rights Abuse: An Interpretive Guide](#)).

Additionally, GP 31 states that “A grievance mechanism can only serve its purpose if the people it is intended to serve know about it, trust it and are able to use it,” OHCHR (Office of the United

<sup>81</sup> Retno Kusumaningtyas, “External Concerns on the RSPO and ISPO Certification Schemes,” profundo, January 21, 2018, 2, 25, [https://www.foeeurope.org/sites/default/files/eu-us\\_trade\\_deal/2018/report\\_profundo\\_rspo\\_ispo\\_external\\_concerns\\_feb2018.pdf](https://www.foeeurope.org/sites/default/files/eu-us_trade_deal/2018/report_profundo_rspo_ispo_external_concerns_feb2018.pdf).

<sup>82</sup> Bonsucro, “Bonsucro Code of Conduct v2,” April 2020, <https://bonsucro.com/wp-content/uploads/2020/11/Bonsucro-Code-of-Conduct.pdf>

<sup>83</sup> Bonsucro, “Bonsucro Grievance Mechanism,” Accessed March 8, 2024, <https://bonsucro.com/bonsucro-grievance-mechanism/>.

<sup>84</sup> James Harrison and Mark Wielga, “Grievance Mechanisms in Multi-Stakeholder Initiatives: Providing Effective Remedy for Human Rights Violations?,” *Business and Human Rights Journal* 8, no. 1 (February 2023): 43–65, <https://doi.org/10.1017/bhj.2022.37>.

Nations High Commissioner for Human Rights) emphasizes that the grievance mechanisms “should be at the service of rights holders, who should be consulted meaningfully in creating, designing, reforming and operating such mechanisms.”<sup>85</sup> Therefore, grievance mechanisms should be designed with input from rights holders. (In international human rights law, “rights holders” are individuals or communities who are owed a “duty of care” by more powerful actors who are infringing upon their human rights. They are also referred to as “affected stakeholders.”) The ensuing practice guidance has encouraged co-design<sup>86</sup> and proactive engagement “with those seeking to develop and implement worker-driven and community-driven grievance mechanisms.”<sup>87</sup>

Rights holders need to know about the certification scheme and how to overcome barriers to accessing it and reporting. Grievance mechanisms must be both fair and effective in their outcomes as well as their procedures. With regard to procedure, the responsibility to assess complaints should fall to an independent reviewer who can impartially, reliably, and efficiently evaluate the validity of each complaint. Once it's established that a harm occurred, to be effective a grievance mechanism must provide safeguard against repetition, remedy the harm, and restore victims to their situations prior to the harm.<sup>88</sup>

### Why investors should care

Without an effective grievance mechanism, affected stakeholders, or rights holders (those who are owed a duty of care by more powerful actors infringing upon their rights), might not even know that the certification exists, or may not report abuses due to fear of reprisal.

In 2015, allegations against Colombian RSPO member and palm-oil company Poligrow surfaced because it displaced local communities and took ownership of more than 10,000 hectares of land without conducting a formal Free, Prior, and Informed Consent (FPIC) process, or submitting New Planting Procedures (NPP) notification, among other processes.<sup>89</sup> Later that year RSPO's complaints panel asked the RSPO Secretariat to follow-up on these allegations

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<sup>85</sup> Secretary General, “Human rights and transnational corporations and other business enterprises,” United Nations General Assembly, July 18, 2017, [21], <https://documents.un.org/doc/undoc/gen/n17/218/65/pdf/n1721865.pdf?token=7HwoAnmq4Fix2hPUkA&f e=true>.

<sup>86</sup> Int'l Comm'n of Jurists, “Effective Operational-Level Grievance Mechanisms,” November 2019, <https://www.icj.org/wp-content/uploads/2019/11/Universal-Grievance-Mechanisms-Publications-Reports-Technical-reports-2019-ENG.pdf>.; Int'l Council on Mining and Metals (ICMM), “Handling and Resolving Local-Level Concerns and Grievances,” 2019, <https://www.icmm.com/grievance-mechanism>.; UN General Assembly, “Rep. of the Working Group on the Issue of Hum. Rts. and Transn'l Corp. and Other Bus. Enter,” July 18, 2017, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/218/65/pdf/N1721865.pdf?OpenElement>.

<sup>87</sup> Hum. Rts. Council, “Rep. of the Working Group on the Issue of Hum. Rts. and Transnat'l Corp. and Other Bus. Enters,” May 19, 2020.

<sup>88</sup> Katherine McDonnell, Morvarid Bagheri and Shauna Curphey, “Addressing Corporate Activity that Negatively Impacts Natural Resources: Community-Led Engagement as a path to Rights Compatible Remedies,” Just Ground, January 11, 2024, <https://www.justground.org/insights/aba-njgms-negotiation>.

<sup>89</sup> environmental investigation agency, “Who Watches the Watchmen? 2” November 5, 2019, 19, <https://eia-international.org/report/who-watches-the-watchmen-2/>.

and opened a complaint case against Poligrow. However, it took four years for an action plan to be agreed upon, and the closed-door agreement did not publicly provide stakeholders with the outcomes of the remedy process.<sup>90</sup> In its report “Who Watches the Watchmen? V. 2,” the Environmental Investigation Agency highlights that in 2017, while these accusations were investigated, Poligrow “was sanctioned by the regional environmental authority of Colombia (CORMACARENA) for environmental damage with recommendations issued to it.”<sup>91</sup> Separately, the Profundo Report, which conducted an analysis of complaints against RSPO and ISPO, found that RSPO’s complaints panel is “unreliable and inefficient (the process often takes years without reaching a satisfactory solution; the panel’s independence is often challenged; transparency of the process remains an issue).”<sup>92</sup>

In another case, the Clean Clothes Campaign (CCC) filed a complaint on behalf of Turkish garment factory workers against fashion company Next, a member of the Ethical Trading Initiative (ETI).<sup>93</sup> CCC contends that Neo Trend Textile, a supplier for Next, suspended workers employment during the pandemic, then sold assets and closed the factory without notice, legally owed severance, or other worker protections required in Turkey.<sup>94</sup> After 14 months, ETI failed to hold Next accountable, and the workers did not receive compensation or other forms of remedy. The Worker-Driven Social Responsibility Network (WSR) reported on this issue, and found that ETI among other multi-stakeholder initiatives (MSIs) “lack the means to make good on those [ethical] claims.”<sup>95</sup>

→ **Demonstrates:** Reputational and legal risk

### What to look for

When assessing the quality and effectiveness of a certification’s grievance mechanism, investors can look for the following elements:

- Whether the scheme requires that information on complaints and resolutions are publicly available ([See RF 14](#))

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<sup>90</sup> environmental investigation agency, “Who Watches the Watchmen? 2” November 5, 2019, 19, <https://eia-international.org/report/who-watches-the-watchmen-2/>.

<sup>91</sup> environmental investigation agency, “Who Watches the Watchmen? 2” November 5, 2019, 19, <https://eia-international.org/report/who-watches-the-watchmen-2/>.

<sup>92</sup> Retno Kusumaningtyas, “External Concerns on the RSPO and ISPO Certification Schemes,” profundo, January 21, 2018, 2, 25, [https://www.foeeurope.org/sites/default/files/eu-us\\_trade\\_deal/2018/report\\_profundo\\_rspo\\_ispo\\_external\\_concerns\\_feb2018.pdf](https://www.foeeurope.org/sites/default/files/eu-us_trade_deal/2018/report_profundo_rspo_ispo_external_concerns_feb2018.pdf).

<sup>93</sup> Clean Clothes Campaign, “Former Workers of Neo Trend Remain Empty-Handed after 14-Month-Long Engagement with Ethical Trading Initiative and Member Brand Next,” Accessed March 7, 2024. <https://cleanclothes.org/blog/former-workers-of-neo-trend-remain-empty-handed/>.

<sup>94</sup> Worker-Driven Social Responsibility Network, “Engagement with Ethical Trading Initiative over Member Conduct Leaves Garment Workers Empty-Handed,” December 4, 2023, <https://wsr-network.org/resource/engagement-with-ethical-trading-initiative-over-member-conduct-leaves-garment-workers-empty-handed/>.

<sup>95</sup> Worker-Driven Social Responsibility Network, “Engagement with Ethical Trading Initiative over Member Conduct Leaves Garment Workers Empty-Handed,” December 4, 2023, <https://wsr-network.org/resource/engagement-with-ethical-trading-initiative-over-member-conduct-leaves-garment-workers-empty-handed/>.

- A credible statement about the independence of reviewers
- For each complaint, a statement of the time until complaint resolution
- Whether there are statements on the website attesting to genuine participation of rights holders in the design of the grievance mechanism

Investors can also look to additional guidance on good practice grievance mechanisms that companies can adopt or encourage certifications to adopt:

- Fair Wear’s [complaints procedures](#) outline criteria for ensuring independence of reviewers: “The criteria for selecting an investigation team include: accessibility, ability to speak the local language, expertise on labor standards and local law, and independence.”<sup>96</sup> Additionally, the foundation’s website has a [public tracker](#) detailing complaints received, timeline, and the resolution, including whether remedy was provided.
- Milk with Dignity (MD), a program striving to improve working conditions in dairy supply chains, publicizes information regarding complaints in their [annual report](#), including time until complaint resolution and whether remedy was provided.

Rights holder participation in the design and implementation of the grievance mechanism is important for enterprise risk management. Rights holders have firsthand knowledge of the impacts of business operations as well as efforts to address the impacts, and whether those efforts in fact address or further exacerbate the marginalization, intimidation, and fear of reprisal that often prevent reporting of abuses. Some initiatives provide a clear statement about the role of rights holders in the development of the grievance mechanism.

- The [About page](#) of MD states
  - ◆ “The MD Program is rooted in the Code of Conduct, which was created by the very workers it intends to protect.”
  - ◆ The MD Standards Council monitors the complaint channels, which “brings farmers and farm workers together and ensures compliance with workers’ human rights.”
- The [2021-2022 Annual Report](#) of the Program to End Gender-Based Violence and Harassment in Lesotho (Anti-GBVH Program) involving trade unions, women’s rights organizations and U.S.-based workers’ rights organization explains how implementation includes a confidential, toll-free information line, run by a women’s rights organization, that workers can use to access information and bring complaints of GBVH.

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<sup>96</sup> Fair Wear, “Fair Wear Complaints procedure v2.0,” 2018, 16, <https://api.fairwear.org/wp-content/uploads/2020/09/Fair-Wear-Complaints-procedure-V2.0.pdf>.

## Governance and Accountability

### 12. No or poor communication of the certification requirements to the chain of custody participants.

#### What does this mean?

For a certification to be effective, various actors throughout the supply chain – including, but not limited to, farmers, farmworkers, processor workers, and managers – need to understand the purpose and expectations of the certification. This awareness is necessary to build a culture of accountability to ethical standards and best practices across the supply chain.

ISEAL's 10 Credibility Principles, which “define the core values of credible and effective sustainability systems,” captures this idea through the Transparency principle. This principle points to the need for the initiative to enable “stakeholders to understand and evaluate the system’s processes, decision-making, results, and impacts,” because “stakeholders should have the information they need to actively participate in decisions or raise concerns.”<sup>97</sup>

#### Why investors should care

Where chain of custody participants do not understand the certification requirements, they may not understand the priority of changing practices to meet the standards established to prevent negative impacts. We see this characteristic in certification schemes as well: A [Corporate Accountability Lab \(CAL\) report](#) on the Mexican produce industry, which exposed retaliation for reporting abuses, wage theft, and signs of forced labor on farms certified by the Equitable Food Initiative and Fair Trade USA, asserts that the certifications lacked adequate worker training on their human and labor rights.

This failure to communicate the fact of the certification to chain of custody participants is spotlighted in a 2021 [lawsuit](#) CAL brought against the Hershey Company and Rainforest Alliance for deceptive marketing alleging that, “Farmers that sold their cocoa to certified cooperatives were often unable to explain what labor standards they were supposed to be complying with and how these standards differed from the standards for non-certified cooperatives.”

The problem of participants not having knowledge of the certification system that they are a part of echoes a similar problem for worker rights protections more generally: the workers need to know their rights in order to claim them.

→ **Demonstrates:** Reputational and legal risk

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<sup>97</sup> ISEAL, “ISEAL Credibility Principles Version 2,” June 2021, [https://www.isealalliance.org/sites/default/files/resource/2021-06/ISEAL-Credibility-Principles-V2-2021\\_EN\\_ISEAL\\_June-21.pdf](https://www.isealalliance.org/sites/default/files/resource/2021-06/ISEAL-Credibility-Principles-V2-2021_EN_ISEAL_June-21.pdf).



## What to look for

Investors can look for a statement on the website of the certification scheme that details how certification requirements are explained or shared with chain of custody participants. For example,

- Education sessions are a central part of the [Fair Food Program](#). [The Coalition of Immokalee Workers](#) (CIW) conducts education sessions for workers at all of the growers' farms throughout the season. The sessions, held on all of the growers' farms throughout the season, are led by farm workers for farm workers using the curriculum they developed. Workers also receive a booklet and video training in either English, Spanish or Haitian Creole detailing their rights and responsibilities as part of new employee orientation.
- Lesotho-based trade unions and women's rights organizations and U.S.-based workers' rights organizations worked together to create the Program to End Gender-Based Violence and Harassment in Lesotho (Anti-GBVH Program). As detailed in the Program's [2021-2022 annual report](#), implementation includes a two-day worker education workshop, jointly facilitated by union leadership and women's rights advocates, focused on GBVH and the program's complaint process, with payment for the workers time.

## 13. No process to suspend or withhold certification until corrective action plans are adopted.

### What does this mean?

ISEAL's Credibility Principle on "Reliability" states that a successful certification "ensures assessment of users' sustainability performance are competent and accurate, and that these assessments support any claims it allows users to make."<sup>98</sup> Credible certifications have mechanisms in place to hold their members accountable when significant deviations from the standard are identified. In these cases, the scheme should suspend the certification, or withhold granting it, and encourage or work with companies to adopt corrective action plans in order to regain or be granted the certification.

### Why investors should care

In 1995, palm company Mitra Austral Sejahtera (MAS) took land from the Dayak indigenous communities to cultivate palms without informing the communities of the project. In 2007, Sime Darby, a Malaysian trading company, acquired MAS after the Dayak villages had been trying to regain their cultivation rights. TuK Indonesia, a community rights group, filed a complaint against

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<sup>98</sup> ISEAL, "ISEAL Credibility Principles Version 2," June 2021, [https://www.isealalliance.org/sites/default/files/resource/2021-06/ISEAL-Credibility-Principles-V2-2021\\_EN\\_ISEAL\\_June-21.pdf](https://www.isealalliance.org/sites/default/files/resource/2021-06/ISEAL-Credibility-Principles-V2-2021_EN_ISEAL_June-21.pdf).

RSPO before the Swiss NCP, for RSPO's failure to address the community's complaints despite meeting with the company "over 25 times."<sup>99</sup> An analysis of the complaint by ECCHR and its partners states that "studies have shown that instances of non-compliance with RSPO requirements bore practically no consequences, and that complaint procedures were inefficient and certification bodies were not suspended."<sup>100</sup>

In another case, the Rainforest Action Network (RAN), Organisasi Penguatan dan Pengembangan Usaha-usaha Kerakyatan (Oppuk), and the International Labor Rights Forum (ILRF) found multiple labor rights violations within Indofood's Lonsum RSPO-certified plantations in North Sumatra, Indonesia. As a result, they filed a complaint against Indofood PT before RSPO's secretariat. While the process took over two years, ultimately, they requested the panel to suspend Indofood's certification "until transparent actions are taken to resolve the violations outlined herein."<sup>101</sup>

→ **Demonstrates:** Reputational and legal risk

### What to look for

One critique of certification standards is that because they are depending on the fees from companies seeking certification, there is a disincentive for certification schemes to punish member companies for breaching the standard.<sup>102</sup> In these cases, the goal is to support the company in remediating the harm done and prevent it from occurring again. Initiatives that are legally binding can better hold participating companies accountable when they fail to adhere to the standards.

Investors can look to see if the certification scheme has a legally binding provision to ensure that when violations are found, companies will be required to remediate and prevent future violations. For example,

→ A key feature of the [Fair Food Program](#) is the presence of enforceable contracts between the [Coalition of Immokalee Workers](#) and major purchasers of tomatoes globally.

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<sup>99</sup> OECD Watch, "TuK Indonesia vs. Roundtable on Sustainable Palm Oil (RSPO)," January 23, 2018, <https://www.oecdwatch.org/complaint/tuk-indonesia-vs-roundtable-on-sustainable-palm-oil-rspo/>.

<sup>100</sup> European Center for Constitutional and Human Rights, Brot für die Welt, and Bischöfliches Hilfswerk MISEREOR, "Human Rights Fitness of the Auditing and Certification Industry?" 2021, 17, <https://www.ecchr.eu/en/publication/human-rights-fitness-audits/>.

<sup>101</sup> RAN, OPPUK, ILRF, email to the RSPO Complaints Panel Members, "Submission of Complaint," October 11, 2016, 2, [https://www.ran.org/wp-content/uploads/2018/06/RAN\\_OPPUK\\_ILRF%27s\\_Complaint\\_Submission\\_to\\_RSPO.pdf](https://www.ran.org/wp-content/uploads/2018/06/RAN_OPPUK_ILRF%27s_Complaint_Submission_to_RSPO.pdf); MSI Integrity, "Not Fit-for-Purpose – The Grand Experiment of Multi-Stakeholder Initiatives in Corporate Accountability, Human Rights and Global Governance," July 2020, [https://www.msi-integrity.org/wp-content/uploads/2020/07/MSI\\_Not\\_Fit\\_For\\_Purpose\\_FORWEBSITE.FINAL.pdf](https://www.msi-integrity.org/wp-content/uploads/2020/07/MSI_Not_Fit_For_Purpose_FORWEBSITE.FINAL.pdf).

<sup>102</sup> MSI Integrity, "Not Fit-for-Purpose: The Grand Experiment of Multi-Stakeholder Initiatives in Corporate Accountability, Human Rights and Global Governance," July 2020, 146, [https://www.msi-integrity.org/wp-content/uploads/2020/07/MSI\\_Not\\_Fit\\_For\\_Purpose\\_FORWEBSITE.FINAL.pdf](https://www.msi-integrity.org/wp-content/uploads/2020/07/MSI_Not_Fit_For_Purpose_FORWEBSITE.FINAL.pdf).

Its website highlights that “Participating Buyers are required to suspend purchases from growers who have failed to comply with the Code of Conduct.”<sup>103</sup>

When certifications are not legally binding, investors should ensure that certifications schemes decertify members who do not meet their requirements:

- In 2021, [The Forest Stewardship Council](#) (FSC) severed ties with Korindo Group, a conglomerate involved in the production of wood chips, paper, palm oil, and various other products, due to allegations of deforestation and human rights violations. Despite efforts to monitor and enforce compliance, the FSC terminated Korindo's certification when progress and adherence to certification requirements fell short.

## 14. Does not make information on audits, complaints, or compliance public.

### What does this mean?

Public disclosure of audit methodology and audit compliance, as well as complaints, enables public monitoring and generates accountability and trustworthiness of the certification scheme. The International Organization for Standardization (ISO) maintains transparency within its Conformity Assessment: Requirements for bodies providing audit and certification of management systems (ISO 17021) to minimize the negative effects generated by the conflict of interests between the company and the auditor.

Unfortunately, transparency has yet to become a standard across the certification industry. In 2019, the Clean Clothes Campaign reported on multiple standards that did not have the necessary transparency mechanisms.<sup>104</sup> One of those was Social Accountability Accreditation Services (SAAS), a division of Social Accountability International (SAI), the owner of the SA8000 standard. The Clean Clothes Campaign highlighted that SAAS “does not reveal the number of workers per facility. Furthermore, audit reports, including identified and documented risks and any corrective actions taken, are not accessible to the public, workers, unions or labour rights organisations.”<sup>105</sup> This lack of transparency means that the validity of external audits cannot be corroborated, nor can progress and improvements be measured.<sup>106</sup>

However, publicly sharing individual audits and complaints is only one way to ensure a certified company is complying with its commitments. For example, members of the Worker-Driven Social Responsibility (WSR) Network provide detailed annual reports that include data on

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<sup>103</sup> “The Fair Food Program,” Accessed March 7, 2024, <https://fairfoodprogram.org/>.

<sup>104</sup> Clean Clothes Campaign, “Fig Leaf for Fashion: How social auditing protects brands and fails workers,” Social Accountability International (SAI), Worldwide Responsible Accredited Production (WRAP), and Amfori BSCI are named in this report. (Clean Clothes Campaign, “Fig Leaf for Fashion – How Social Auditing Protects Brands and fails Workers”, 2019, p. 31)

<sup>105</sup> Clean Clothes Campaign, “Fig Leaf for Fashion. How Social Auditing Protects Brands and Fails Workers,” September 2019, 19, <https://cleanclothes.org/file-repository/figleaf-for-fashion.pdf/view>.

<sup>106</sup> Joseph Wilde-Ramsing, and Grabele Quijano, “A piece, not a proxy,” SOMO, November 25, 2022, 17, <https://www.somo.nl/a-piece-not-a-proxy/>.

complaint volume and resolution time frames, overall supplier compliance levels over time, and qualitative worker feedback on the program's effectiveness.<sup>107</sup>

## Why investors should care

After a 2012 fire at the Ali Enterprises factory in Pakistan killed nearly 300 workers three weeks after it passed a SA 8000 inspection, several organizations [filed a complaint](#) against the auditor RINA S.p.A before the Italian OECD NCP. Ali Enterprises Affectees, the complainants, called upon RINA, among other measures, to provide for the “public disclosure of audit reports, at least to the workers and the relevant trade unions and government agencies.”<sup>108</sup> The NCP's final statement recommended that RINA make a humanitarian gesture to the victim's families, conduct thorough due diligence in high-risk areas, and improve certification mechanisms in high risk areas.<sup>109</sup>

→ **Demonstrates:** Reputational and legal risk

## What to look for

While care needs to be taken to ensure that making audits public does not harm rights holders, some level of transparency is necessary for stakeholders to know how well the certification is working to improve human rights protections in workplaces. For example, the certification should make public complaints made and remedy provided.

- The [World Wildlife Fund's Certification Assessment Tool](#) (WWF CAT) includes the following stipulations:
- ◆ Certification bodies post information about upcoming scheduled certification and surveillance audits on a common national and/or international scheme-operated website or mailing list.
  - ◆ Summary reports of certification and surveillance audits (including dates, locations and scope of auditing, team composition, main findings and corrective action requests) are publicly available in a UN language and a common local language on a website.
  - ◆ Summary reports of certification and surveillance audits are made publicly available within 90 days after completion of the audit ([See RF 11](#)).<sup>110</sup>

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<sup>107</sup> Antonella Angelini, and Shauna Curphey, “The Overlooked Advantages of the Independent Monitoring and Complaint Investigation System in the Worker-Driven Social Responsibility Model in US Agriculture,” *Business and Human Rights Journal* 7, no. 3 (October 2022): 497. <https://doi.org/10.1017/bhj.2022.25>. <https://www.cambridge.org/core/journals/business-and-human-rights-journal/article/overlooked-advantages-of-the-independent-monitoring-and-complaint-investigation-system-in-the-workerdriven-social-responsibility-model-in-us-agriculture/B2FA243E5ACD6F4CBEBCDF0C500BFC4A>.

<sup>108</sup> OECD, “Ali Enterprises Factory Fire Affectees Assoc. v. RINA S.p.A.” September 11, 2018, 23, <https://www.oecdwatch.org/complaint/ali-enterprises-factory-fire-affectees-assoc-v-rina-s-p-a/>.

<sup>109</sup> OECD, “Ali Enterprises Factory Fire Affectees Assoc. v. RINA S.p.A.” September 11, 2018, 23, <https://www.oecdwatch.org/complaint/ali-enterprises-factory-fire-affectees-assoc-v-rina-s-p-a/>.

<sup>110</sup> WWF, “WWF Certification Assessment Tool V3,” 2015, 4, [https://wwfint.awsassets.panda.org/downloads/cat\\_fsc\\_14\\_5\\_15\\_final.pdf](https://wwfint.awsassets.panda.org/downloads/cat_fsc_14_5_15_final.pdf).

- [The Fair Labor Association](#) publishes “the results of these assessments [audits] to encourage an open and honest dialogue about the conditions that workers face, ensure brand accountability, and help consumers make more informed decisions about the products they buy.”

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