A Global Labour Relations Strategy: is yours fit for purpose?

Section 1

Introduction
In a globalised world, labour relations have no borders. National and global trade unions, non-governmental organisations (NGOs), consumers and investors are increasingly turning against multinationals suspected of ignoring international labour rights. Household names have been subjected to trial by media and the internet, accused of anti-union practices and failing to live up to their CSR codes of conduct, particularly in their supply chains. Many other companies have been pressurised into agreeing International Framework Agreements (IFAs) with global trade unions, giving commitments to enforcing minimum labour rights (such commitments including contractors) and guaranteeing rights of access and monitoring to trade union representatives.

The reputational, sales and costs impact which flow from adverse global labour relations can be huge. European companies working in the US and all multinationals reliant on supply chains in the developing world are particularly vulnerable.

Section 1 of this briefing considers the increasing global nature of trade union organising and the risks for employers. In section 2, we consider the main players, the nature of international labour standards, recent developments, including IFAs and what employers should do to respond.

How are trade unions organising globally?
National trade unions and global trade union organisations are increasingly:

- Collaborating or merging to mobilise resources globally;
- Pressurising companies to agree IFAs;
- Campaigning for union-friendly laws across borders;
- Mounting corporate global campaigns, for example, around anti-union practices;
- Fighting casualisation of the workforce, including the use of agency workers;
- Actively growing membership in new countries, particularly developing countries;
- Using "soft law" as a lever against companies (e.g. bringing complaints under the OECD guidelines).

The audit by the Fair Labour Association of Apple’s supplier, FoxConn, the 2012 creation of IndustriALL (a new global union to represent workers in manufacturing, energy, mining, and textile sectors at the global level), the increasing number of employers entering into framework agreements with global union federations (e.g. Ford in April 2012) and the attendance of US, UK and international unions at a recent National Express AGM, to put pressure on the company’s US labour relations, are all recent examples.

What are the risks for multinational employers?
It is a mistake to view global labour relations as just a facet of corporate social responsibility (CSR) or to assign it low priority due to the largely non-binding nature of international labour standards. Times have changed and the roll-call of well-known employers who have stumbled in this area is growing fast. Getting it wrong risks:

- Negative PR
- Adverse consumer/client and investor reaction
- Supply chain disruption
- Risk of disclosing sensitive information (e.g. if supply chain audited for labour standards)
- Increased costs
- Becoming the focus of a global union and/or NGO campaign (see further below)
- Being pressurised to agree an IFA with a global union (see further below)
• Unions building a credible global industrial action capacity and seeking global collective bargaining.

Section 2

Who are the key global trade union players?
There are a number of different global trade union organisations and, to avoid confusion, the key players are listed below:
• ITUC – International Trade Union Confederation. It has 308 national affiliates, such as the UK’s TUC, and claims to represent 175 million workers. It works closely with ETUC, a separate organisation, at the European level.
• GUFs – Global Union Federations. GUFs coordinate national and regional trade unions by sector; there are at least nine GUFs in existence including the newly merged IndustriALL, representing 55 million workers across manufacturing.
• TUAC - The Trade Union Advisory Committee is an interface for trade unions with the OECD. It has consultative status with the OECD and its various committees.

ITUC and the GUFs, in particular, have similar aims involving global campaigning and international cooperation between trade unions to increase worker power in multinationals. Recent mergers are helping them to gain a monopoly position as the global voice of trade unionism.

Other global players?
NGOs, voluntary organisations and alliances between charities, trade unions and NGOs (sometimes including employers) are also active in this area, for example, the Ethical Trading Initiative, the Fair Labour Association, Worker Rights Consortium, Worldwide Responsible Accredited Production (WRAP) and many more.

What global labour standards exist?
While labour laws continue to derive, in the main, from national laws, there are exceptions, for example, international treaty obligations such as the European Convention on Human Rights. These are sometimes called “hard laws” due to their binding, enforceable nature, in contrast to certain “soft laws” which are not legally binding but carry considerable reputational and other pressures to comply. The following “soft laws” (in relation to companies as they may be enforceable against a state) are typically encountered in relation to global labour standards:

• ILO Conventions
The ILO is an international organisation responsible for drawing up and overseeing international labour standards. It is a tripartite United Nations agency that brings together representatives of governments, employers and workers. ILO conventions are international treaties, aimed at governments, and create binding obligations in those countries which give effect to them. With the adoption of the Declaration on Fundamental Principles and Rights at Work in 1998, ILO member states decided to uphold a set of core labour standards regardless of whether they had ratified the relevant conventions. An ILO supervisory system monitors their implementation. Freedom of association, rights to collective bargaining and to strike sit alongside commitments to eliminate child labour and other labour standards. They are relevant to businesses because trade unions frequently “name and shame” individual companies when taking complaints to the ILO. In addition, many IFAs refer to upholding ILO standards.

• OECD Guidelines for Multinational Enterprises
The Guidelines are recommendations addressed by governments to multinational enterprises operating in their countries. They provide a global framework for responsible business conduct covering all areas of business ethics, including labour and human rights (plus tax, competition, disclosure, anti-corruption and the environment).
While observance of the Guidelines by employers is voluntary and not legally enforceable, adhering governments are committed to promoting them. Despite their voluntary nature, NGOs and trade unions can bring a complaint against an employer under the Guidelines which would be subject to a non-judicial review procedure, the outcome of which can be published. As such, many companies have settled complaints, sometimes agreeing to enter into an IFA as part of the settlement.

- **UN Guiding Principles for Business and Human Rights**

  In 2011, the UN endorsed a new set of global guiding principles for all businesses designed to ensure that companies do not violate human rights in the course of their transactions and that they provide redress when infringements occur. The guiding principles outline how states and businesses should implement the UN “Protect, Respect and Remedy” Framework (also known as the “Ruggie Framework”) in order to better manage business and human rights challenges. The Framework is based on three pillars:
  - the state duty to protect human rights;
  - the corporate responsibility to respect human rights;
  - the need for greater access to remedy for victims of business-related abuse.

  The “Corporate Responsibility to Respect” principle provides a blueprint for companies on how to know and show that they are respecting human rights by auditing their activities for compliance. There is no mechanism within the Framework which allows complaints against a company to be lodged with the UN. As with the ILO Standards, some companies agree to apply the principles, for example, in an IFA.

- **The UN Global Compact**

  The UN Global Compact is an initiative for businesses that are committed to aligning their operations and strategies with ten principles in the areas of human rights, labour, environment and anti-corruption. With over 8700 corporate participants, the Compact incorporates a transparency and accountability policy known as the Communication on Progress (COP). Participating companies are required to make an annual COP, as a commitment to transparency. Disclosure is regarded as critical to the success of the Compact and failure to communicate results in a change in participant status and possible expulsion.

**Recent developments in global labour relations**

Often ignored, GUFs are now playing a leading role in the reinvention of trade unions on the global stage. Through a combination of global campaigns and a drive for IFAs, they are increasingly successful at targeting individual multinational employers. Currently, Deutsche Post/DHL, Walmart, Accor hotels, Deutsche Telekom and Nestle and many others are being systematically targeted, often to enter into an IFA, by means of interrupting shareholder meetings, creating critical internet sites, Facebook and Twitter campaigns, making complaints under the OECD and other international standards, raising consumer awareness of their complaints and pressuring suppliers, clients and investors.

Given a growing tendency to see labour issues through a “human rights” lens, an increased ethical awareness amongst consumers and investors and the recent updating of UN and OECD labour guiding principles, it is expected that global trade unions will continue to gain more traction with their labour campaigns.

**What is an IFA?**

Also sometimes known as global framework agreements (GFA), international framework agreements (IFAs) are typically agreements between a multinational company and one or more GUFs, on behalf of local country unions representing employees anywhere in the world. Their scope is flexible but an IFA often involves a commitment to:


- observe international (eg ILO) standards for the recognition of the right to join a trade union, to bargain collectively and to non-discrimination in employment;
- never use child labour or forced labour;
- observe decent working conditions;
- adhere to good environmental standards;
- extend these commitments to contractors;
- permit trade union officials to monitor compliance.

IFA agreements may go further, for example, to include a commitment that any off-shoring must be the subject of prior discussion with employee representatives, guarantees of no compulsory redundancies and clauses addressing training, working hours and overtime. An agreement may also provide for union access to the workplace, as well as neutrality in union organising campaigns. Their scope is global although they sometimes specify the exclusion of some countries. Companies party to an IFA include G4S (following a union-led campaign which included multiple OECD complaints and shareholder lobbying), Ford, Adecco, Carrefour, Bosch, BMW, Renault, H&M. There are at least 80 IFAs across a range of sectors, most post-date 2000 and the overwhelming majority have been concluded with companies headquartered within the European Union. The recent growth in IFAs has been prompted by a mixture of company globalisation, disenchantment with company codes of conduct and CSR initiatives and a renewed push on international minimum labour standards outlined above.

**Enforcement of an IFA**

Ordinarily, IFAs are voluntary agreements and there are no legal mechanisms or penalties for non-compliance although reputational issues are a considerable lever for unions. However, some agreements may be binding, for example, where they are ratified by local law, or, written in terms which provide for a jurisdiction or an international arbitration clause for disputes or where an agreement is part-EWC and part-global agreement.

**Why do companies and trade unions agree IFAs?**

Some companies agree to an IFA in response to trade union campaigning. Others agree an IFA as part of their global labour strategy. In either case, companies have an expectation that an IFA might improve their reputation and risk management (e.g. by avoiding “sweatshop” scandals by driving up labour standards) while also improving labour relations and social dialogue. As a “soft law” agreement, companies hope to control the IFA, not be controlled by it. However, IFAs can also result in costly administration (including monitoring and auditing), strains on supplier relationships, pressure for neutrality in union organising campaigns, negative PR in the event of non-compliance or non-renewal and potential legal complications.

Trade unions see IFAs as a way to strengthen the application of international labour standards, particularly where western brands outsource production to countries where there is little employment and health and safety regulation. IFAs also provide a way to build local union membership and the potential to evolve the relationship into negotiation and collective bargaining across the world.

**What should employers do to respond?**

Implementing a global labour relations audit to identify high risk countries, operations and contractors is an important first step. Such an audit could use the UN Guiding Principles and other international standards as a benchmark.

Using the audit to understand strengths and weaknesses puts an employer in a better position to develop a global labour relations strategy. As a minimum, this should include a communications plan (externally and internally focussed – to decrease the influence of the unions and other pressure groups), training middle and line managers, engaging with senior managers as well as risk scenario and mitigation planning and implementing an early warning system. A good strategy will strike the right balance between local issues,
needing local answers, and those needing a global, corporate response. It should involve experts from HR, Legal, PR, CSR, Investor Relations as well as operational management. Integrating the labour strategy with the business strategy, plus regular reviews, will also boost its chances of success.

For more information on these topics, please contact:

Martin Warren  
Head of Eversheds' Human Resources Practice Group  
Tel: 0845 498 7559  
Intl: +44 29 2047 7559  
martinwarren@eversheds.com

Marc Meryon  
Head of Industrial Relations  
Tel: 0845 497 0900  
Intl: +44 20 7919 0900  
marcmeryon@eversheds.com

Thomas Player  
Partner  
Tel: 0845 498 7574  
Intl: +44 29 2047 7574  
thomasplayer@eversheds.com

Please note this material is not intended to be exhaustive or a substitute for legal advice. Application of the law turns upon specific facts, there are often considerable legal uncertainties and court decisions frequently change the law. You are advised to seek specific advice upon any given problem.

© Eversheds LLP, May 2012