

Maturing your UFLPA Program:  
Standardizing Processes and Proactively  
Mitigating Risk

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# Agenda

**1. Recap: Compliance Program Basics**

**2. Maturing your Program**

**3. UFLPA Procedure Design**

**4. Strategic Considerations and Common Challenges**

**5. Q&A**

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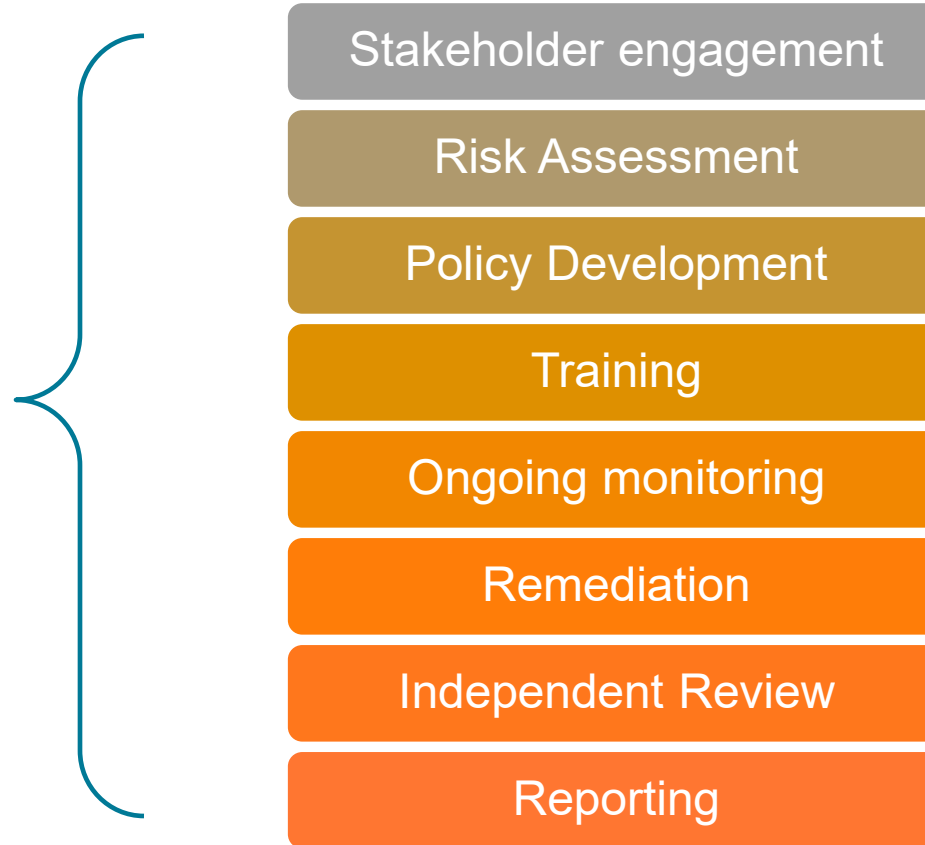
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# Elements of a Forced Labor Compliance Program

**UFLPA  
Enforcement  
Strategy:**  
Elements of an  
Effective Due  
Diligence System



# Elements of a Forced Labor Compliance Program



# UFLPA Compliance Programs - Expectations

- ▶ CBP expects importers to “Have full visibility into [their] supply chains”

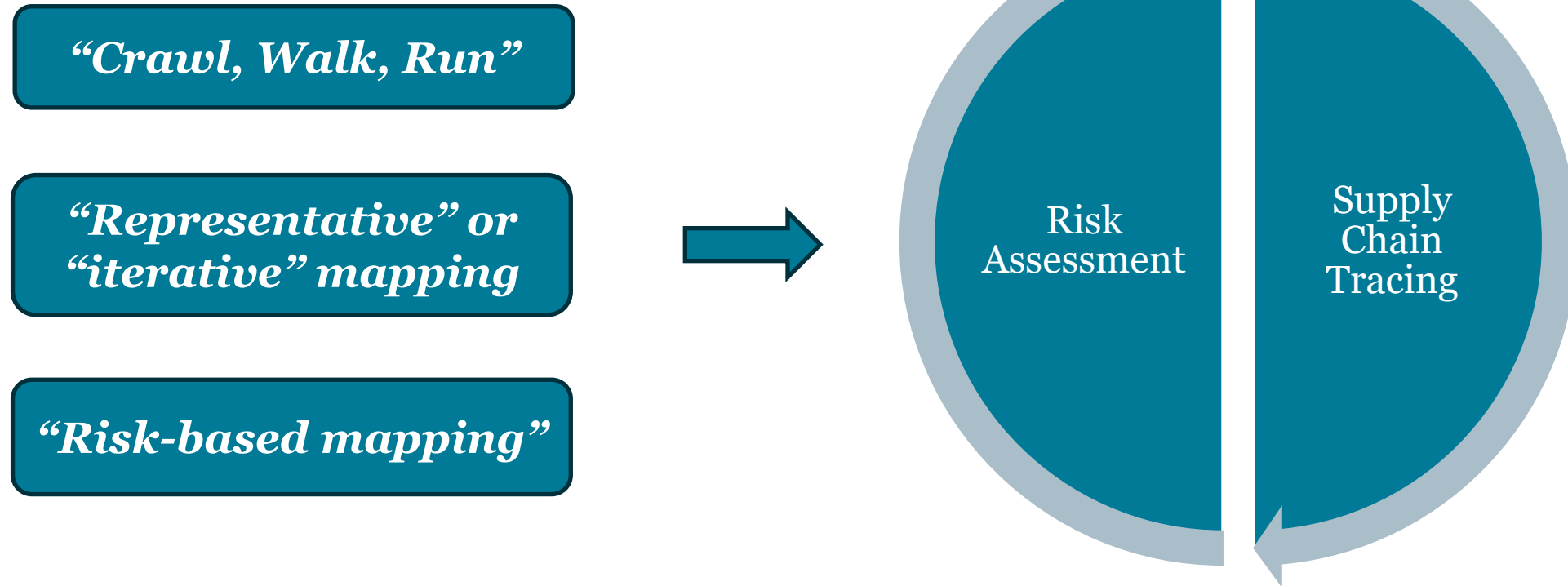
*“The first step in conducting supply-chain tracing is ‘mapping’ the entire supply chain, up to and including suppliers of raw materials used in the production of the imported good or material.”*

[UFLPA Enforcement Strategy \(DHS.gov\)](#)

- ▶ Full supply chain mapping is considered a foundational step in the process for risk mitigation, regardless of industry or supply chain complexity
- ▶ While CBP has acknowledged the difficulties of full supply chain mapping, there is:
  - No formal acknowledgement of risk-based approach to mapping as acceptable practice
  - No established pathway for leniency akin to other corporate enforcement regimes
  - Persistent gap between expectations for effective risk mitigation and actual capabilities

# UFLPA Compliance Programs in Practice

- ▶ Importers in most industries – and particularly those with complex supply chains – have taken a staged approach to enable immediate risk management of higher-risk imports



# UFLPA Compliance Programs in Practice

- ▶ Risk-based mapping is typically the most practical means of risk mitigation when launching your program
  - Exception: Importers with simple supply chains and/or low number of SKUs/PNs
- ▶ However, CBP's expectation is still full supply chain mapping – and in the case of detention, a well-designed, risk-based program will not lessen the consequences of enforcement

“In-person meetings between Committee staff, automakers, and their suppliers revealed ***substantial blindspots in compliance programs intended to prevent forced labor exposure***. Companies confirmed that they ***lacked full visibility into their supply chains*** with the exception of a select few that traced specific high-risk materials back to mines.”

“The details of these disclosures heightened the Chairman's concerns that automakers ***do not possess adequate visibility and compliance procedures to keep their supply chains free of forced labor***.”



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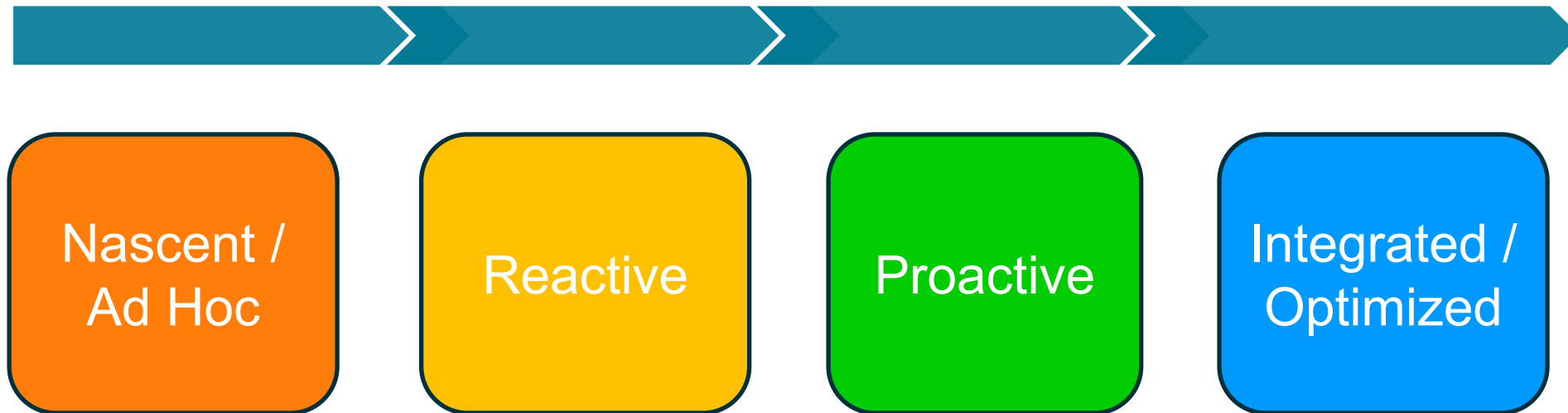
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# Maturing your Program



- *How do you mature an **ad hoc** or a **reactive** program to an **evolving** program that **proactively** mitigates risk?*

# Maturing your Program

▶ Early compliance-program building has included:

- Policy Development
- Contractual Terms
- Mapping/Tracing
- Risk Assessment
- Due Diligence
- Detention Prep

▶ Maturing the program requires stepping back to assess the program's:

- Actual effectiveness
- Longer-term goals
- Deeper “hard-wiring” – full adoption and integration into other business processes



*developing a plan to enable improvement.*

# Taking your Compliance Program to the Next Level

1. Define your program's goals
2. Establish a defined procedure
3. Test the system
4. Train, train, and re-train
5. Integrate with business processes
6. Future-proof



## GOAL DEFINITION

**Risk tolerance** - Is the company's goal to have a best-in-class program – or minimum requirements to mitigate material risk (financial, reputational)?

**Scope** - Does the program focus only UFLPA – versus addressing forced labor, human rights, other legal/compliance third-party risks more broadly?

**Reporting** - What are the required reporting outputs?

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# Due Diligence Procedure

Document Title:

**Global Business Partner Due Diligence Process**

## ► *How can a Procedure further your program?*

- Reiterates leadership buy-in (and mandate)
- Formalizes roles and responsibilities among departments
- Makes all relevant parties aware of the details of their role, workload
- Requires thought-out, written consensus on scoping
- Lays out clear criteria for supplier risk, determined by Legal:
  - Inherent risk
  - What constitutes a Red Flag (e.g., history of sourcing from XUAR) 
  - Enhanced due diligence/investigation steps required to mitigate the risk
- Useful for auditors, regulators in assessing the sufficiency of your process
- Provides a concrete basis to link to other business processes
- Serves as a reference point for diligence team, tool providers

*Enables  
scalable risk  
assessment*

# Due Diligence Procedure

## ► *What should a Procedure include?*

- **Purpose**
- **Scope**
- **Responsibilities**
- **Definitions**
- **Process for Conducting Due Diligence**
- **Escalations and Approvals**
- **Documentation Requirements**
- **Ongoing Monitoring and Refreshing of Due Diligence**
- **Violations of Procedure**
- **Training**
- **Contact**

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- **Roles and responsibilities** for supplier screenings, risk adjudication, approvals
- Include pipelines for **risk mitigation vs remediation**
- Escalation to **cross-functional team** equipped to act when remediation, supply chain changes are necessary
- **Risk assessment and decisions clearly documented**; tool capable of generating appropriate outputs
- **Go back to your goals**: Will your process meet auditability and reporting requirements?



# Due Diligence Procedure

## 1.0 DEFINITIONS / ABBREVIATIONS

**Applicant** – Means the Employee or Department that has identified the Business Partner for potential relationship with Company and/or is requesting approval to engage with the Business Partner. Generally, the Applicant will be Purchasing.

**Business Partners** – Means all third-party entities or individuals that currently have or are being considered for a business relationship with any [Company name] entity. Business Partners include any natural or legal person (except Employees) that the Company may hire in the normal course of business, including but not limited to:

- Direct Materials suppliers
- Indirect Materials Suppliers / service providers
- Subcontractors
- Consultants
- Customers
- Recipients of donations or Charitable Contributions by Company

**Business Partner Due Diligence**” or **“BPDD”** – Means a risk-based process that involves:

- i. A review of the Business Partner to gather relevant information;
- ii. A preliminary assessment of the Business Partner to determine their level of risk (Low, Medium, or Low Risk) (“Risk-Ranking”);
- iii. Based on the Risk-Ranking, completion by the Business Partner of a questionnaire and conduct of a risk-appropriate level of screening and/or other due diligence on the Business Partner, including Supply Chain Mapping for Direct Materials suppliers;
- iv. Assessment of the screening and questionnaire results and other information collected regarding the Business Partner to identify any Red Flags and assess the appropriateness of conducting business with them;
- v. Where appropriate in light of the nature and likelihood of the Red Flags identified, remediation of any Red Flags and implementation of other risk mitigation measures prior to and over the course of the business relationship with the Business Partner; and
- vi. Ongoing monitoring of the Business Partner periodically and when changes in circumstances warrant.

**Due Diligence Provider** – Refers to a vendor that Company uses to conduct screenings and risk assessment of its Business Partners.

**Due Diligence Tool** – Means the platform hosted by a Due Diligence Provider into which Employees must input Business Partner information to initiate and carry out Business Partner Due Diligence, review due diligence results, and record approvals, any applicable conditions on engaging the supplier, and risk mitigation activities where applicable.

## 2.1 Preliminary Risk-Ranking

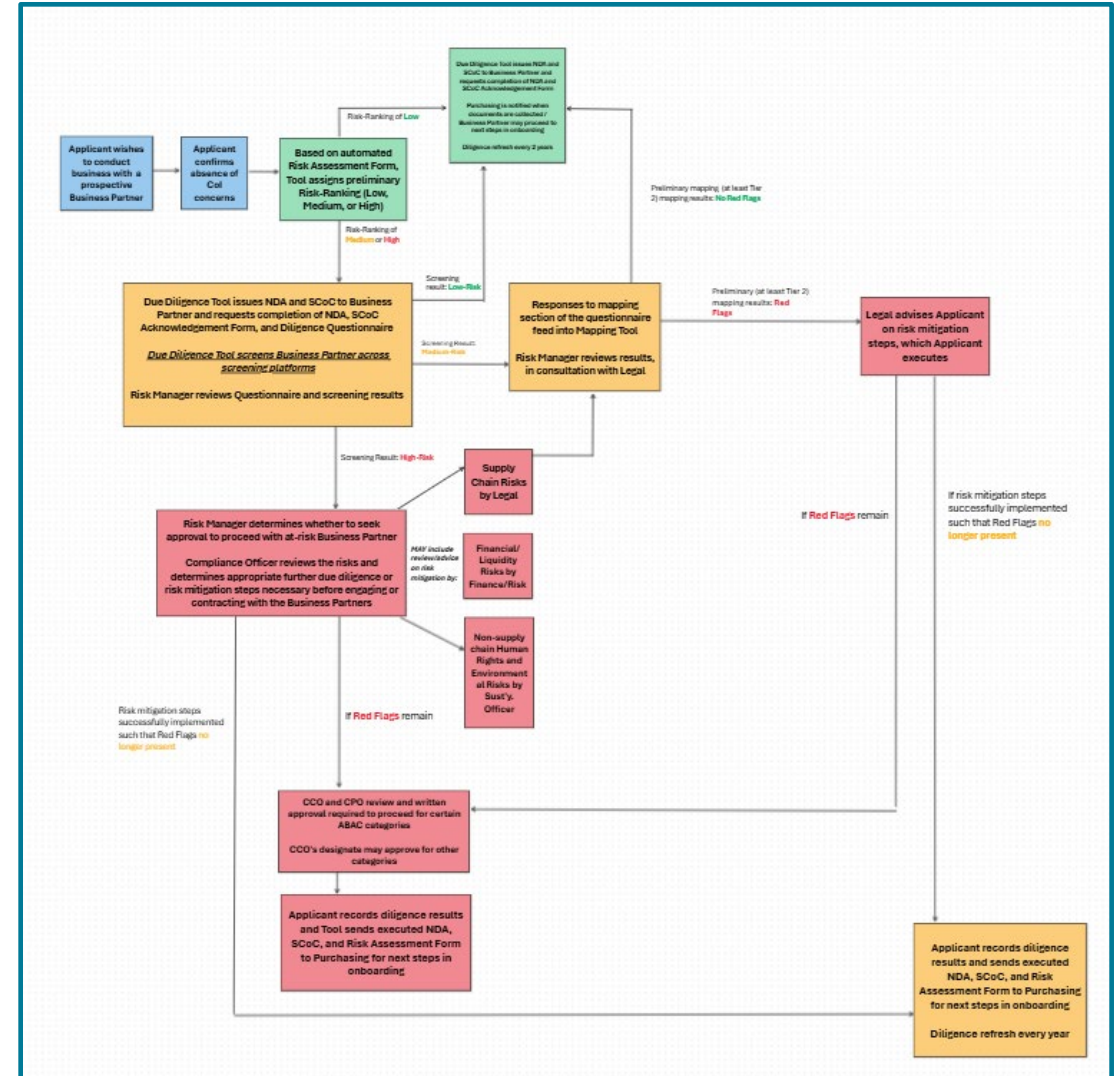
2.1.1 For purposes of the due diligence process as set forth below, all potential Business Partners must receive a Preliminary Risk-Ranking (Low, Medium, or High-Risk) which shall determine (a) the level of due diligence which must be conducted and (b) the approvals required for Company to engage or otherwise do business with the potential Business Partner. The Preliminary Risk-Ranking will be determined based on the following criteria:

- Type of Business Partner;
- Location of Business Partner;
- Historical relationship / track record of compliance with Company Policies;
- Anticipated annual spend by Company with Business Partner; and
- Importance of Business Partner / Difficulty of changing Business Partner after engaging.

# Due Diligence Procedure

## ► Tips:

- Don't reference or design your process around a specific diligence tool
- Do utilize appendices for fluid aspects that are subject to change (e.g., based on enforcement)
  - **“High-Risk Business Partner”** definition
  - **“Red Flags”**
  - **High-risk countries**
  - **Mapping protocol/data template)**
  - **User manuals** for tool
- Do accompany with visual process flow



# Due Diligence Procedure - Appendices

2.1.2 High-Risk Business Partners: The following Business Partners will be considered High-Risk for purposes of the Preliminary Risk-Ranking:

Type of Business Partner	<ul style="list-style-type: none"> <li>• Technological Development and Research and Development Business Partners</li> <li>• Direct materials suppliers of goods containing any amount of:             <ul style="list-style-type: none"> <li>- Aluminum or aluminum products (including aluminum alloys)</li> <li>- Beryllium</li> <li>- Chromium</li> <li>- Cobalt</li> <li>- Copper</li> <li>- Cotton or cotton products</li> <li>- Gold</li> <li>- Leather</li> <li>- Lithium</li> <li>- Manganese</li> <li>- Nickel</li> <li>- Palm oil</li> <li>- Polysilicon/Silicon Metal (including semiconductor chips)</li> <li>- PVC or PVC products</li> <li>- Rubber</li> <li>- Soya or soya products</li> <li>- Steel or steel products</li> <li>- Tantalum</li> <li>- Tin</li> <li>- Tungsten</li> <li>- Wood or wood products</li> <li>- Zinc</li> </ul> </li> </ul>
Location of Business Partner	<ul style="list-style-type: none"> <li>• Any Business Partner located in a location with a Transparency International Corruption Perception Index ("TI CPI") score of 39 or less</li> <li>• Any Business Partner located in or sourcing from a Conflict-Affected and High-Risk Area (see Appendix B).</li> </ul>
Historical relationship / track record of compliance with Company Policies	<ul style="list-style-type: none"> <li>• Business Partners with a history of non-compliance with Company Policies or that have failed to comply with Company requests related to due diligence and/or risk mitigation</li> </ul>
Annual spend	<ul style="list-style-type: none"> <li>• Business Partners on which Company has in previous year spent or plans in the coming year to spend more than \$0.5 million USD</li> </ul>
Importance of Business Partner / Difficulty of changing Business Partner after engaging	<ul style="list-style-type: none"> <li>• Direct materials suppliers that are single source suppliers</li> <li>• Direct materials suppliers that would require 9 months or more time to replace</li> <li>• Direct materials suppliers that supply Company with products used in X or more SKUs / PNs</li> </ul>

2.1.3 Medium-Risk Business Partners: The following Business Partners will be considered Medium-Risk for purposes of the Preliminary Risk-Ranking:

# Due Diligence Procedure - Appendices



## APPENDIX A – EXAMPLES OF RED FLAGS

### Forced Labor Red Flags

- The Business Partner is alleged to have used or contributed to any form of forced or compulsory labor, modern slavery or human trafficking;
- The Business Partner is alleged to have been involved in or otherwise contributed to other human rights abuses (including physical, sexual, or verbal abuse; corporal punishment, bullying; retaliation; or harassment);
- The Business Partner is alleged to have employed children who are under 15 years of age or under the applicable legal minimum working age, or to have employed children under the age of 18 without protecting them against conditions of work which are harmful for their health, safety, or development;
- If requested for review, the Business Partner's policies do not include prohibitions on child labor and forced labor/modern slavery;
- The Business Partner is affiliated with (owned by, owns, or has another corporate family relationship with) a company alleged to have been involved in serious human rights abuses;
- The Business Partner is alleged to have been involved in or otherwise contributed to environmental violations (including violations of local law);
- If requested, the Business Partner has not provided requested licenses and permits demonstrating compliance with applicable environmental laws and regulations;
- If requested, the Business Partner has not provided information regarding its environmental performance (including carbon emissions);
- The Business Partner is alleged to pay its workers below the minimum wage;
- Information indicates that the Business Partner does not provide a safe and healthy working environment for its workers;
- The Business Partner charges or allows third parties to charge its workers any fees in connection with recruitment, retains workers' identity documents, restrains worker movement, or uses deceptive recruiting practices;
- The Business Partner does not have any grievance or complaint mechanism for workers to report concerns; or
- The Business Partner forces its workers to work overtime or does not comply with laws on minimum wage or maximum working hours.

#### *Additional Red Flags related to recruitment agencies/labor providers:*

- The Business Partner is alleged to use coercion, threats or intimidation in recruitment;
- The Business Partner cannot demonstrate it has systems in place to verify compliance with legal requirements on labor rights / with the SCoC; or
- The Business Partner uses sub-contractors to recruit workers and cannot demonstrate it has systems in place to verify those sub-contractors' compliance with legal requirements on labor rights / with the SCoC.

### Supply Chain Red Flags

- The Business Partner sources from suppliers that are sanctioned for, alleged to have been involved in, or otherwise contributed to serious human rights abuses or environmental violations;
- The Business Partner is located in or sources from (directly or indirectly) a Conflict-Affected or High-Risk Area;
- The Business Partner refuses to provide information regarding its sub-tier suppliers / Supply Chain Mapping data;
- The Business Partner refuses to respond to other due diligence requests, including requests for Conflict Minerals or Extended Minerals Reporting Templates ("CMRT" and "EMRT") or for Product Carbon Footprint data;
- The Business Partner is a supplier of products containing tin, tantalum, tungsten, gold, mica, or cobalt, and in the last year has sourced from smelters or refiners that do not meet Company requirements; or
- The Business Partner sources (directly or indirectly) from a supplier affiliated with (owned by, owns, or has another corporate family relationship with) a company alleged to have been involved in serious human rights abuses.

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# Strategic Considerations

- ▶ Company's footprint → Scoping decisions
- ▶ Internal resources → Goals, tool selection

*Don't set yourself up for failure by selecting tools or committing to targets that require more resourcing than leadership will commit*

- ▶ Maturity of company's data governance and compliance programs
  - How to manage data flow among tools in your process, integrate into company's other systems/tools
- ▶ Appropriate team to conduct due diligence
- ▶ Distinctions in process between new versus existing suppliers
  - Change management
- ▶ Messaging
  - Tone from the Top
  - Internal marketing



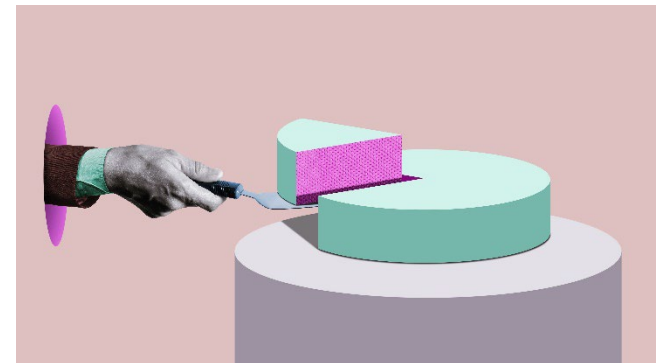
# Key Questions: UFLPA Process + Tool Design

- + What are the program's goals, and do you have the staffing and expertise to meet them?
- + What are the use cases for the data?
- + Does your tool help meet those specific needs?
  - + Enable consistent decision-making at scale?
  - + Create auditable and reportable record?
  - + Prepare you for detentions?
- + Does data flow in, out of tool in consistent format and at appropriate points in other business processes?
- + Are you equipped (staff, tool, and procedure) to quickly identify Red Flags in ongoing monitoring?
- + Does the tool meet your program where it's at?



# Final Tips

- ▶ Incorporate IT / Business Analytics / Data Management team early
- ▶ Set appropriate expectations with leadership
- ▶ Develop a written Procedure approved by relevant executives
- ▶ Use visuals to workshop, document your data and process flows
- ▶ Design flexibility into your program so you can “crawl, walk, run” *and* adapt to changes in enforcement, new laws
- ▶ Test and train repeatedly – including linkages to other business processes
- ▶ Utilize metrics and reporting to drive full adoption & improvement





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**Virginia Newman** is Assistant General Counsel at Joyson Safety Systems (JSS), a global Tier 1 automotive supplier. Virginia's work at JSS has focused on designing and building a responsible sourcing compliance program to meet new mandatory supply chain due diligence requirements, including relating to forced labor. She was previously Counsel at D.C.-based law firm Miller & Chevalier, where she advised companies on forced labor and anti-corruption compliance matters and represented companies before U.S. government authorities, including before Customs and Border Protection (CBP) to release goods detained due to concerns of forced labor in the supply chain.



Before joining Miller & Chevalier, Virginia practiced in New York and Hong Kong at U.S. law firm Gibson Dunn, where she worked on anti-corruption and human trafficking enforcement matters, litigation, and internal investigations. She speaks, reads and writes Mandarin Chinese and has deep experience advising multinationals headquartered in or with operations, supply chains, or business partners in China and throughout Asia.