

Pay Your Workers Agreement - Guidance for Investors

April 2023

Introduction

In March 2021, over 1,000 Thai garment workers were left without jobs after Brilliant Alliance Thai, a factory supplying Victoria's Secret, closed due to bankruptcy. The factory failed to provide the 1,250 laid-off workers with their legally mandated severance pay-outs. After several months of protests and negotiations, the workers finally received an unprecedented \$8.3 million settlement, with Victoria's Secret contributing through a loan arrangement with the factory's owners.¹ About a year later, the closure of Vald'or, a garment factory in Haiti, left over 1,100 workers unemployed and without severance pay. The factory produced clothes for brands such as Tommy Hilfiger and Calvin Klein, owned by PVH. After the Worker Rights Consortium (WRC) intervened, PVH agreed to pay \$1 million in compensation to cover missed severance pay, as well as pension contributions for the workers, and the government pension fund. As a result, most former Vald'or workers received the equivalent of more than six months' wages, with some obtaining over a year's pay.²

The Victoria's Secret and PVH cases are examples of a growing trend of brands addressing wage-related issues at suppliers. Wage and severance theft is a widespread issue and has become one of the key ESG risks to take into account in the Textile, Garment, Shoe and Leather (TGSL) industry. Wage theft refers to the illegal withholding of wages or benefits owed to workers, while severance is the compensation paid to workers who have been laid off due to business closures or restructuring. Wage and severance theft is endemic to the TGSL industry. Trade unions and labour rights groups have documented dozens of cases in countries where textiles, garments, shoes and leather are produced.³

Countering wage and severance theft, as well as supporting freedom of association, is highly relevant for Article 9 Funds. Funds that pursue a sustainable investment objective, as defined by the European Union's Sustainable Finance Disclosure Regulation (SFDR), have a responsibility to ensure their investments contribute to ESG objectives.⁴ Wage and severance theft is unlawful, and therefore a key ESG risk for investors. The Pay Your Workers-Respect Labour Rights (PYW-RLR) Agreement aims to address this risk by establishing a legally binding and enforceable agreement between brands,

¹ The Guardian (2022). Victoria's Secret pays sacked Thai workers \$8.3m in 'wage theft' settlement. [online] the Guardian. Available at: <https://www.theguardian.com/global-development/2022/may/28/victorias-secret-thai-garment-workers-wage-settlement#:~:text=9%20months%20old-,Victoria's%20Secret%20pays%20sacked%20Thai,m%20in%20'wage%20theft'%20settlement&text=More%20than%201%2C000%20sacked%20Thai,labour%20rights%20activists%20have%20said.> [Accessed 28 Mar. 2023].

² Butler, S. (2023). Haiti garment workers share \$1m payout after factory closure a year ago. [online] the Guardian. Available at: <https://www.theguardian.com/world/2023/feb/05/haiti-garment-workers-share-1m-payout-a-year-after-factory-closure> [Accessed 28 Mar. 2023].

³ Cf. Worker Rights Consortium (2023). Factory Investigations - Worker Rights Consortium. [online] Worker Rights Consortium. Available at: https://www.workersrights.org/our-work/factory-investigations/?fwp_issues=wage-theft [Accessed 28 Mar. 2023], Worker Rights Consortium. (2021). Fired, Then Robbed: Fashion brands' complicity in wage theft during Covid-19 - Worker Rights Consortium. [online] Available at: <https://www.workersrights.org/research-report/fired-then-robbed-fashion-brands-complicity-in-wage-theft-during-covid-19/> [Accessed 28 Mar. 2023].

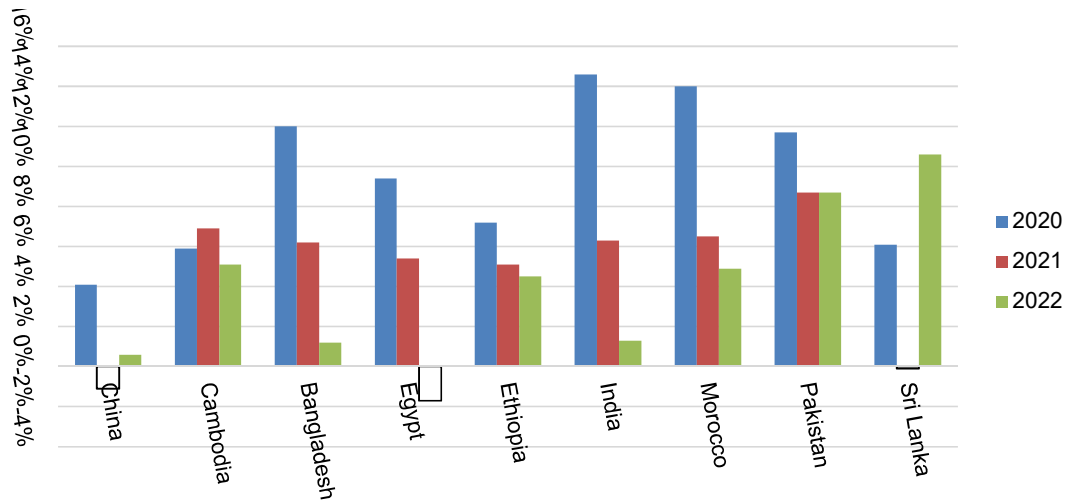
⁴ J.P. Morgan (2023). SFDR explained | J.P. Morgan Asset Management. [online] Available at: <https://am.jpmorgan.com/gb/en/asset-management/institutional/investment-strategies/sustainable-investing/understanding-SFDR/> [Accessed 28 Mar. 2023].

employers, and unions. In this guidance document we explain how companies in the TGSL sector can use the PYW-RLR Agreement as an effective due diligence instrument to identify and mitigate risks related to wage and severance theft, and why investors should support and promote the Agreement.

The magnitude of the problem

The Covid-19 pandemic brought to the forefront the issue of wage and severance theft. Many factories in the TGSL industry had to close or downsize due to cancelled orders and delayed payments by brands, and reduced demand during the pandemic. This led to widespread job losses, making it difficult for workers to organise, voice their concerns, or demand better working conditions. In addition, workers suffered income losses as factories suspended production or cut hours.⁵ According to ILO estimates, TGSL producing countries such as Bangladesh, India and Pakistan experienced significant losses in working hours, particularly in 2020 (see 0).

Figure 1 - Working hours lost due to the COVID-19 crisis in selected TGSL producing countries, ILO modelled estimates (%)⁶



The pandemic and the ensuing income loss has exacerbated an already serious labour rights deficit. In production countries where labour rights are generally under pressure, lockdowns and other restrictive measures made it difficult for workers to gather, meet, and protest, curbing their right to freedom of association.

⁵ ILOSTAT. (2023). COVID-19 - ILOSTAT. [online] Available at: <https://ilostat.ilo.org/topics/covid-19/#> [Accessed 28 Feb. 2023].

⁶ ILO (2023). ILO Data Explorer. [online] Available at: https://www.ilo.org/shinyapps/bulkexplorer31/?lang=en&id=HOW_2LSS_SEX_RT_A [Accessed 21 Mar. 2023]. Given the exceptional situation, including the scarcity of relevant data, these estimates are subject to a substantial amount of uncertainty. This is the percentage of hours lost compared to the baseline (the latest pre-crisis quarter, i.e., the 4th quarter of 2019, seasonally adjusted), adjusting for population aged 15-64 and expressed in full-time equivalent employment losses. This measure is constructed by dividing the number of weekly hours lost due to COVID-19 and dividing them by 48 (hours).

In some production countries, the pandemic was used as an opportunity to target union leaders and members, either by dismissing them under the pretext of pandemic-related economic hardships or by using the crisis as an excuse to crack down on union activities. This has weakened the bargaining power of unions and undermined workers' rights, given that the right to freedom of association and collective bargaining is crucial to protect all other labour rights.

While it is difficult to quantify the magnitude of wage and severance theft globally, studies and reports have highlighted the widespread nature of the issue in the TGSL industry.

- In a 2021 report, the Clean Clothes Campaign (CCC) found that globally garment workers were owed \$11.85 billion in unpaid income and severance, for the period from March 2020 to March 2021.⁷
- A study conducted in 2021 by the WRC among garment workers in Ethiopia, Honduras, India, and Myanmar showed that 13 percent of the surveyed workers had their pre-pandemic contracts terminated, with nearly 80 percent of them not receiving full severance pay and over two-thirds receiving nothing at all. According to the WRC, brands shifted damage and potential losses onto suppliers and workers who could least afford it.⁸
- Another study published in 2021 by the WRC found that tens of thousands of garment workers, who had been laid off due to the pandemic's impact on factory orders, were owed millions of dollars in severance pay. The study discovered that 31 factories supplying clothes to global brands owed about \$40 million in severance pay to 40,000 laid-off workers. The WRC estimated that garment workers in factories worldwide missed out on at least \$500 million in severance during the pandemic.⁹
- The Asia Floor Wage Alliance (AFWA) conducted a survey in 2020 of over 2,000 garment workers from six countries: Bangladesh, Cambodia, India, Indonesia, Sri Lanka, and Pakistan. The survey revealed that workers lost an estimated \$164 million in wages in 2020 due to the economic impact of COVID-19 on the fashion industry. According to AFWA, 1 in 10 workers lost their job permanently, 7 in 10 were laid off, and 7 in 10 fell into poverty. Workers lost approximately three months of pay on average, putting many into debt. In 2022, AFWA revisited 41 factories from their original 2020 survey. They found that 9 in 10 factories had not resolved wage claims from 2020, while more than half of the factories were not paying workers their owed overtime.¹⁰

⁷ Clean Clothes Campaign. (2021). Still Un(der)paid. [online] Available at: <https://cleanclothes.org/file-repository/ccc-still-underpaid-report-2021-web-def.pdf/view> [Accessed 30 Mar. 2023].

⁸ Worker Rights Consortium. (2021). The Unequal Impacts of Covid-19 on Global Garment Supply Chains - Worker Rights Consortium. [online] Available at: <https://www.workersrights.org/research-report/the-unequal-impacts-of-covid-19-on-global-garment-supply-chains/> [Accessed 30 Mar. 2023].

⁹ Karim, N. (2021). Garment workers owed millions in pandemic severance pay, study finds. [online] U.S. Available at: <https://www.reuters.com/article/us-fashion-workers-pay-idUSKBN2BT24Y> [Accessed 30 Mar. 2023].

¹⁰ Asia Floor Wage Alliance. (2023). Big Fashion & Wall Street Cash in on Wage Theft – Asia Floor Wage Alliance. [online] Available at: <https://asia.floorwage.org/big-fashion-and-wall-street-cash-in-on-wage-theft/> [Accessed 30 Mar. 2023].

It is important to note that the figures above are likely an underestimate, as many instances of wage and severance theft go unreported or undocumented. Wage and severance theft is a widespread problem affecting millions of workers around the world, particularly in the TGSL industry.¹¹

The solution

To ensure workers in the global TGSL industry receive the wages and benefits they are entitled to, a binding and enforceable agreement between brands, employers and unions is needed.¹² The PYW-RLR Agreement, endorsed by over 260 organisations worldwide, is an initiative aimed at reducing and mitigating wage and severance theft risks in the TGSL sector, as well as protecting workers' right to freedom of association and collective bargaining.¹³ This legally binding and enforceable agreement will support stronger social protections for workers related to severance benefits, in line with the relevant ILO conventions, through the establishment of a Severance Guarantee Fund (SGF).

Workers who were employed in the supply chain of a signatory brand or employer will be eligible to file a claim if they are denied severance when their factory closes or they are fired in a mass dismissal. The SGF will take up claims from workers whose direct employer cannot be compelled to pay and in cases where national legislation falls short of the international standard. It will also provide financial support to improve social protection systems at the national level, and set up dedicated accounts for this purpose which can be accessed by national committees that will include government, employers, unions, and civil society representatives. As social protection systems improve, the brand premiums will be reduced accordingly.

Brands and retailers will contribute through a fee based on volume sourced from each country, and employer fees will be a percentage of their wage bill in each country. This is part of the larger movement to establish more sustainable and resilient industries in the near future, consisting of supply chains with better planning and pricing models, which includes a costing model that covers fair payment schedules, and financial space for living wages, safe factories, and social benefits.

Company signatories must agree to respect workers' rights, including the right to organise and bargain collectively. The agreement will include a mechanism to identify and investigate non-compliance and worker grievances in cases of failure of payment and in cases of anti-union action or harassment, or violations of other basic labour rights. The agreement will be enforced through a similar mechanism as the Accord on Fire and Building Safety in Bangladesh: a dispute resolution mechanism, where the union signatories can ultimately take the brands to court if they fail to uphold the Agreement and an escalation protocol where brands will ultimately have to cease sourcing from employers who fail to uphold the Agreement.

¹¹ Cornell Chronicle. (2022). ILR outlines global severance pay programme | Cornell Chronicle. [online] Available at: <https://news.cornell.edu/stories/2022/05/ilr-outlines-global-severance-pay-programme> [Accessed 19 Apr. 2023].

¹² Jason Judd, Sarosh Kuruvilla and J. Lowell Jackson (2022). Security for Apparel Workers: Alternative Models. NCP Working Paper No. 3 | April 2022, Cornell University. Available at: <https://www.ilr.cornell.edu/sites/default/files-d8/2022-05/NCP%20IndustriALL%20Severance%20042222.pdf> [Accessed 1 Mar. 2023].

¹³ Clean Clothes Campaign. (2023). Pay Your Workers agreement to end wage & severance theft. [online] Available at: <https://cleanclothes.org/campaigns/pay-your-workers/covid-19-wage-assurance> [Accessed 27 Feb. 2023].

Brands will be asked to pay a premium of 0.5 percent of their annual FOB.¹⁴ The fee can be reduced if a brand sources from countries that establish credible and effective social protection programmes covering unemployment and/or severance benefits, or if its suppliers sign on and contribute to the Fund. If all of a brand's suppliers sign on, or if the brand is exclusively sourcing from countries that have fully functioning social protection programmes, its fee will go to zero. To put this in perspective: the total premium, along with the estimated cost for brands to cover unpaid wages and benefits, will not cost brands more than ten cents per t-shirt.¹⁵

Legally binding agreements between brands, suppliers and trade unions produce results for workers, but are also good for business. An example of a similar, very successful initiative is the International Accord for Health and Safety in the Textile and Garment Industry, a legally binding agreement between global trade unions and more than 190 garment brands and retailers to make textile and garment factories safe. It came into effect on September 1, 2021, as the successor to the 2013 and 2018 Accord on Fire and Building Safety in Bangladesh (Accord). The agreement promotes workplace safety through independent inspections, remediation, and training programmes and recognises the rights of workers to organise, refuse unsafe work and raise health and safety concerns. The Accord produced significant results in Bangladesh in the aftermath of the Rana Plaza collapse in 2013, in which over 1,132 people died. The Accord made the garment industry safer, contributing to the growth and competitiveness of the Ready-Made Garment (RMG) sector. Bangladesh's garment industry saw a 79 percent increase in annual revenue between 2013 and 2020, with the country becoming the second largest exporter of garments globally. Better labour regulations and safety conditions, brought about by the Accord, played a major role in this success, attracting international brands. Factory managers in the Bangladeshi RMG industry reported that Accord inspections helped build a competitive advantage over factories in other countries not covered by the Accord. Furthermore, there has been a dramatic decrease in fatal accidents and fires since the establishment of the Bangladesh Accord, resulting in lower costs and increased employee satisfaction.¹⁶ For garment brands, the Accord has proven to be an effective and efficient due diligence measure.

¹⁴ FOB stands for "Free On Board" and it is a term used in international trade and shipping agreements. FOB is a type of Incoterm (International Commercial Term), which defines the responsibilities of buyers and sellers in the transportation of goods. In the context of pricing, FOB is often used to describe the cost of goods at the point of origin (e.g., the factory), excluding the costs of transportation, insurance, and other fees associated with shipping the goods to their final destination. Buyers then pay for the transportation costs and any additional charges incurred during the shipping process. By quoting a price FOB, buyers and sellers can clearly understand their respective responsibilities and the costs involved in the shipping process.

¹⁵ PayYourWorkers (2020). #PayYourWorkers. [online] #PayYourWorkers. Available at: <https://www.payyourworkers.org/faq> [Accessed 2 Mar. 2023].

¹⁶ Cf. IFC (2021). Safety First: Bangladesh Garment Industry Rebounds. [online] Available at: https://www.ifc.org/wps/wcm/connect/news_ext_content/ifc_external_corporate_site/news+and+events/news/insights/bangladesh-garment-industry#:~:text=In%20the%20last%20seven%20years.of%20Bangladesh's%20total%20export%20earnings. [Accessed 30 Mar. 2023], Berg, A., Harsh Chhaparia, Hedrich, S. and Magnus, K.-H. (2021). What's next for Bangladesh's garment industry, after a decade of growth? [online] McKinsey & Company. Available at: <https://www.mckinsey.com/industries/retail/our-insights/whats-next-for-bangladeshs-garment-industry-after-a-decade-of-growth> [Accessed 23 Mar. 2023], IFC (2021). Op. cit., Ahmed, M. (2020). Correlation Between Social Compliance and Export Competitiveness in the RMG Industry of Bangladesh. *Journal of Economics and Sustainable Development*, [online] 11(9), pp.17–30. Available at: <https://iiste.org/Journals/index.php/JEDS/article/view/52767> [Accessed 23 Mar. 2023], Healthy DEvelopments (2021). Costs and benefits of programmes to prevent occupational accidents and diseases in Bangladesh's ready-made garment (RMG) sector – Healthy DEvelopments. [online] Available at: <https://health.bmz.de/studies/costs-and-benefits-of-programmes-to-prevent-occupational-accidents-and-diseases-in-bangladeshs-ready-made-garment-rmg-sector/> [Accessed 23 Mar. 2023].

Risks associated with wage and severance theft

Most brands and retailers are required to conduct due diligence in accordance with the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights. Their due diligence approach should include identifying and addressing adverse risks of their business activities on the pay of workers in global supply chains. The adverse risks may be related to a lack of social dialogue, irresponsible purchasing practices, unrealistic lead times, and unfair pricing, among other issues.

In several European countries, such as France and Germany, human rights and environmental due diligence is now required by law. The German Supply Chain Due Diligence Act requires companies with headquarters, main branches, administrative seats, statutory seats, or branches in Germany to carry out due diligence. An important aspect of this is setting up a risk management system to identify, prevent, or reduce risks of human rights violations and environmental damage. The law specifies what preventive and remedial measures are necessary, requires complaints procedures, and regular reporting. Due diligence applies to the company, trading partners, and (in)direct suppliers. The German law applies to companies with at least 3,000 employees in Germany and from 2024 also to companies with at least 1,000 employees. The French Duty of Vigilance law requires companies to take measures to limit the impact of their activities on human rights and the environment. Companies must also be transparent about their efforts and report on their performance. This law applies to companies in France with at least 5,000 employees.

Due diligence is about to become mandatory for many more businesses in Europe. The European Commission is working on a directive that lays down due diligence obligations for companies in the EU. The directive will also include rules on penalties and civil liability for violating those obligations. It will apply to large EU companies and non-EU companies active in the EU, with criteria based on the number of employees and the company's net worldwide turnover. Initially, the rules would apply to companies with over 1,000 employees and €300 million net worldwide turnover, or €300 million net turnover generated in the EU, three years from the entry into force of the directive.¹⁷ In the current draft of the directive, the right to a “fair wage and an adequate living wage” is referred to as a human right.¹⁸ This means companies must identify and address risks in relation to wages and severance pay, as well freedom of association, in their supply chains to be able to comply with the new directive.

Brands and retailers with cases of wage and severance theft in their supply chains now face several legal risks, particularly in jurisdictions where due diligence laws have been enacted or are being considered. Some of these legal risks include:

- **Fines and penalties**

¹⁷ Europa.eu. (2022). Council adopts position on due diligence rules for large companies. [online] Available at: <https://www.consilium.europa.eu/en/press/press-releases/2022/12/01/council-adopts-position-on-due-diligence-rules-for-large-companies/#:~:text=The%20due%20diligence%20directive%20lays,out%20by%20their%20business%20partners> [Accessed 27 Feb. 2023].

¹⁸ Ibid., p. 118.

Companies that fail to comply with the due diligence requirements under laws such as the German Supply Chain Due Diligence Act or the French Duty of Vigilance law are liable to fines and penalties. Under the German Supply Chain Due Diligence Act, for instance, fines can amount to up to €8 million or 2 percent of the company's global annual turnover.

- **Exclusion from public contracts**

In some jurisdictions, like Germany, companies that do not comply with due diligence requirements can be barred from participating in public procurement contracts for a certain period, which can result in lost business opportunities.

- **Civil liability**

Companies may face civil liability for failing to fulfil their due diligence obligations. This may result in lawsuits and financial compensation to affected parties.

- **Regulatory action**

Non-compliant companies may face increased scrutiny from regulatory authorities and may be subject to enforcement actions, including investigations, injunctions, and other legal proceedings.

These risks highlight the importance of companies conducting thorough due diligence to identify, prevent, and remediate wage and severance theft in their supply chains, in order to mitigate potential legal and reputational consequences.

Box: Adidas faces legal risks in Germany due to inadequate due diligence measures to counter wage and severance theft

During the Covid-19 pandemic, garment workers in Cambodia producing goods for international brands, including Adidas, faced significant wage losses. Research by Public Eye shows that the losses inflicted on workers across eight Adidas suppliers since the beginning of the pandemic add up to \$11.7 million, or \$387 per worker. Despite accumulating \$650 million in profits in the first quarter of 2021 alone, Adidas did not ensure that all workers in its supply chain received their regular wages during the pandemic, and instead downplayed its individual responsibility to ensure proper payment to all workers.¹⁹ By not taking strong action to address these issues, Adidas continues to contribute to the financial hardships faced by workers and their families, attracting criticism from trade unions, human rights groups, and activists who demand fair wages and labour rights for workers in the global supply chain. Moreover, Adidas runs serious legal risks:

- **Legal action by affected workers**

Workers who have experienced wage and severance theft may seek legal recourse, potentially leading to lawsuits, financial compensation, and negative publicity for Adidas.

- **Violation of labour laws in producing countries**

Wage and severance theft violates labour laws in countries where Adidas's suppliers operate, resulting in fines, penalties, or other legal action against the suppliers or, indirectly, against Adidas.

- **Fines under the German Supply Chain Due Diligence Act**

If Adidas does not comply with the requirements of the Act and fails to take appropriate preventive and remedial measures to address wage and severance theft risks in its supply chain, it may ultimately

¹⁹ Publiceye.ch. (2021). Fashion brands fail to address pandemic-era wage theft in Cambodia: Garment workers deprived of \$109 million. [online] Available at: <https://www.publiceye.ch/en/topics/fashion/fashion-brands-fail-to-address-pandemic-era-wage-theft-in-cambodia-garment-workers-deprived-of-109-million> [Accessed 28 Mar. 2023].

face fines of up to two percent of its average annual global turnover.²⁰ This could have a significant financial impact on the company.

- **Future legal risks from EU Directives and other international regulations**

As more countries adopt laws related to supply chain due diligence, Adidas could face additional legal risks and requirements to address wage and severance theft. Proactively addressing these issues would help Adidas stay compliant with future legislation.

Using the PYW-RLR Agreement to comply with due diligence requirements

The PYW-RLR Agreement can be used by companies in the TGSL sector as an instrument to comply with due diligence regulations, as it provides a comprehensive framework to address wage and severance theft in global supply chains, and to stop union repression. By signing the PYW-RLR Agreement, companies commit to ensuring all workers in their supply chain receive their legally mandated regular wages and benefits. This proactive approach helps identify and mitigate risks related to wages and income, which is an essential aspect of all due diligence regulation. Also, the PYW-RLR Agreement requires companies to contribute to a guarantee fund for severance and outstanding wages. These measures demonstrate a company's commitment to preventing and addressing adverse human rights impacts in their supply chain, in line with due diligence requirements. The Agreement will commit brands to ending union busting and the undermining of freedom of association and collective bargaining rights in their supply chain, which will in turn bolster all other worker rights. The PYW-RLR Agreement is a collaborative effort between brands, manufacturers, unions and labour rights organisations, fostering open dialogue and engagement with relevant stakeholders. This aligns with the expectations of due diligence regulations, which often emphasise the importance of working with stakeholders to identify, address, and remedy potential risks and impacts. Moreover, by signing the Agreement, companies signal their commitment to paying wages and severance in their supply chains, and improving transparency regarding their efforts. This can be integrated into their reporting on human rights due diligence, showcasing their compliance with regulations and commitment to responsible business practices.

The PYW-RLR Agreement is enforceable and in line with international labour standards, such as ILO Recommendation 202, Convention 95, and Convention 76. Adopting the agreement as part of a company's due diligence strategy ensures that it is aligned with global labour standards, reducing the risk of non-compliance. The agreement provides a practical framework for companies to address wage and severance theft in their supply chains. By adopting the agreement as part of their due diligence strategy, companies can better comply with existing and forthcoming due diligence regulations.

The business case for brands in the TGSL sector

As regulations related to supply chain due diligence become more common, particularly in Europe, signing the PYW-RLR Agreement can help companies fulfil their obligations under these laws, mitigating legal risks such as fines, penalties, and exclusion from public contracts. For brands, the PYW-RLR agreement is a cost-effective due diligence solution that addresses several critical aspects

²⁰ See, for instance: Dr Andreas Fillmann and Schmucker, M. (2023). German Supply Chain Act. [online] Lexology. Available at: <https://www.lexology.com/library/detail.aspx?g=e8d94e6e-899f-45a7-96b5-2f184b9adc17> [Accessed 29 Mar. 2023].

of supply chain management, risk mitigation, and legal compliance in a systematic and comprehensive manner. By joining the PYW-RLR Agreement, companies can demonstrate their commitment to social responsibility and fair labour standards, which can enhance their reputation, attract ethically conscious consumers, and differentiate them from competitors who do not prioritise workers' rights.

Identifying and redressing wage and severance theft on a case-by-case basis can be resource-intensive, time-consuming, and often reactive, rather than proactive. Participating in the PYW-RLR Agreement is more cost-effective for several reasons:

- **Economies of scale**
The Agreement allows brands to address multiple wage and severance theft cases collectively, leveraging economies of scale. This reduces the costs and resources associated with managing individual cases, such as legal fees, administrative expenses, and time spent on negotiations.
- **Consistency and predictability**
It provides a clear and consistent set of guidelines for all parties involved, making it easier to anticipate and resolve issues. This results in a predictable and streamlined process, saving time and resources for brands and stakeholders.
- **Proactive approach**
The agreement encourages brands to take a proactive stance on wage and severance theft, allowing them to identify and address issues before they escalate into costly disputes. This reduces the likelihood of brand damage, negative publicity, and the need for expensive crisis management.
- **Learning and improvement**
A standardised approach on wage and severance theft enables brands to learn from past experiences and apply best practices across their supply chains. This can lead to more efficient and effective interventions, as well as continuous improvement in addressing wage and severance theft issues, ultimately lowering costs.
- **Risk mitigation**
The Agreement helps brands mitigate risks associated with non-compliance, legal disputes, and reputational damage. By reducing the likelihood of these costly outcomes, the Agreement saves brands both time and money.
- **Collaboration and shared responsibility**
The PYW-RLR Agreement promotes collaboration among brands, suppliers, and other stakeholders, fostering a sense of shared responsibility. This can lead to more effective solutions and cost sharing, reducing the burden on individual brands and making the process to identify, prevent and redress wage and severance theft more cost-effective overall.

The value of the PYW-RLR Agreement for investors in Article 9 funds

From a social perspective, wage and severance theft is a material ESG risk. It has a significant impact on the workforce, affecting their ability to meet their basic needs, pay for healthcare and education, and save for retirement. In addition, it may lead to social unrest and political instability. Retailers and brands with wage and severance deficits in their supply chains face reputational risks, including negative publicity and potential boycotts, which can damage a brand and lead to a loss of customers

and investors. Furthermore, wage related issues can also impact employee productivity, morale, and retention, which can have a negative effect on a supplier's performance.

Investors can use their leverage to encourage companies in the TGSL sector to address wage and severance theft, as well as directing finance towards those companies that commit to signing the PYW-RLR Agreement. They can also introduce assessments of company performance in relation to the payment of wages and severance, and integrate these concepts into ESG metrics, modelling frameworks and rankings.

Wage and severance theft is particularly relevant for Article 9 funds because the issue falls under the social objective of sustainable investments. An Article 9 fund is a type of investment fund that has sustainable investment as its objective, according to the EU Sustainable Finance Disclosure Regulation (SFDR).²¹ The SFDR makes it clear that "sustainable investment" can mean investment in economic activities that contribute to an environmental objective, but also to social objectives, in particular investments that "contribute to tackling inequality or that foster social cohesion, social integration and labour relations."²² Investee companies should follow good governance practices, in particular with respect to sound management structures, employee relations, remuneration of staff and tax compliance.²³

According to a recent assessment of 15,000 funds and their SFDR classifications, many Article 9 funds might not be complying with the "do no significant harm" criteria of the SFDR. Official guidance suggests that Article 9 funds should be comprised of nearly 100 percent sustainable investments. However, the study found that nearly 20 percent of the Article 9 funds analysed had more than 10 percent exposure to companies that have violated the UN Global Compact (UNGC) principles or the OECD Guidelines for multinational enterprises. Additionally, 40 percent had more than 5 percent exposure. The research also showed that Article 9 funds invested in 166 different companies that violated the UNGC or OECD Guidelines, for instance due to bribery and corruption convictions, anti-competitive practices, and environmental impacts.²⁴

Wage and severance theft is a form of labour exploitation and inequality, and investment in companies that are linked to these practices do not align with the social objectives of Article 9 Funds. Investees that do not address this risk should not be included in Article 9 funds. Investors in Article 9 funds should consider supporting the PYW-RLR Agreement because it aligns with the sustainable investment objectives of these funds. The PYW-RLR Agreement successfully addresses the problem of wage and severance theft, which is a human rights issue that can negatively impact the social objectives of Article 9 Funds. By supporting the PYW-RLR Agreement, investors demonstrate their

²¹ European Commission (2023). Sustainability-related disclosure in the financial services sector. [online] Available at: https://finance.ec.europa.eu/sustainable-finance/disclosures/sustainability-related-disclosure-financial-services-sector_en [Accessed 23 Mar. 2023].

²² Europa.eu. (2019). L_2019317EN.01000101.xml. [online] Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019R2088&from=EN> [Accessed 23 Mar. 2023].

²³ Matheson (2019). Specific Requirements for Article 9 Dark Green Funds. [online] Available at: <https://www.matheson.com/insights/detail/specific-requirements-for-article-9-dark-green-funds> [Accessed 23 Mar. 2023].

²⁴ Amorim, V. (2022). Article 9 funds might be noncompliant with 'do no significant harm' criteria. [online] IPE. Available at: [https://www.ipe.com/news/article-9-funds-might-be-noncompliant-with-do-no-significant-harm-criteria/10063145.article#:~:text=In%20the%20SFDR%2C%20there%20are,good%20governance%20processes%20\(GG\).](https://www.ipe.com/news/article-9-funds-might-be-noncompliant-with-do-no-significant-harm-criteria/10063145.article#:~:text=In%20the%20SFDR%2C%20there%20are,good%20governance%20processes%20(GG).) [Accessed 23 Mar. 2023].

commitment to responsible investing that takes into account the impact of investments on society and the environment. Furthermore, supporting the PYW-RLR Agreement can also help mitigate the financial risks associated with wage and severance theft. Companies may face reputational and legal risks when violations are uncovered in their supply chains, which can lead to negative financial performance.

The Difference from Private Insurance Schemes

Using private insurance schemes may seem like a viable alternative to address some of the issues related to wage and severance theft in the TGSL sector. However, they do not offer the level of protection and comprehensive framework that the PYW-RLR Agreement provides. Private insurance schemes are voluntary, and employers typically purchase them to protect themselves from potential lawsuits or other legal claims related to wage and severance theft. While these insurance schemes might cover some of the financial losses incurred by workers, they do not address the underlying issue of labour rights violations and do not provide a mechanism for monitoring or enforcing compliance with labour standards.

The PYW-RLR Agreement, on the other hand, is a collaborative, legally binding agreement between brands, suppliers, trade unions, and civil society organisations, which aims to prevent wage and severance theft and provide support to workers when these issues arise. The Agreement is designed to be in line with ILO standards and recommendations, ensuring that it promotes and protects workers' rights. It establishes a governance and enforcement mechanism for ensuring compliance with labour standards and includes provisions for independent monitoring, reporting, and dispute resolution.

Moreover, the PYW-RLR Agreement provides a mechanism for workers to make claims for unpaid wages or severance and requires brands and employers to contribute to funds that will cover expected severance costs and the costs of administering and enforcing the Agreement. This collaborative approach encourages stakeholder involvement, enhancing transparency and accountability throughout the entire process. In contrast, private insurance schemes usually lack the necessary stakeholder involvement and oversight to ensure that labour rights violations are addressed and that companies comply with labour standards. Being voluntary, not all employers or brands will participate in private insurance schemes, leaving gaps in protection for workers in the global supply chain.

The PYW-RLR Agreement offers a more comprehensive and enforceable solution that addresses the root causes of wage and severance theft and promotes fair labour practices in the TGSL industry. By engaging multiple stakeholders, establishing enforceable mechanisms, and providing a transparent and accountable system, the PYW-RLR Agreement goes far beyond the limited protection offered by private insurance schemes.

Investors' support for the PYW-RLR Agreement

Investors can do the following to support the PYW-RLR Agreement:

- Sign an investor statement expressing support for the PYW-RLR Agreement and share it with their investee companies. This can help to demonstrate the investor's commitment to social

responsibility and ethical investing, and encourage companies to take concrete steps towards fair and sustainable labour practices.

- Invest in companies that are signatories to the PYW-RLR Agreement. This will provide assurance that these companies are committed to ensuring compliance with labour standards, and will help to mitigate reputational and financial risks associated with wage and severance theft in their supply chains.
- Include participation in the PYW-RLR Agreement as a criterion or indicator when appraising a (potential) investee's ESG performance.
- Support initiatives that aim to raise awareness and support for the PYW-RLR Agreement among companies and consumers. This can include engaging with companies to encourage them to become signatories to the Agreement, as well as educating their clients and investees about the importance of fair and sustainable labour practices in the TGSL industry.
- Support resolutions promoting workers' rights.
- Engage with workers' rights organisations and campaign groups to gain a deeper understanding of the issue of wage and severance theft and the importance of freedom of association.

By taking these steps, investors can help to promote labour rights, support sustainable development, build a more transparent and robust capital market that benefits all stakeholders, and make the S in ESG more concrete.