

HOSPITALITYLAWYER.COM PRESENTS

**2013** THE **HOSPITALITY LAW**  
**CONFERENCE**  
FOCUSING ON LEGAL, SAFETY & SECURITY SOLUTIONS

FEBRUARY 11-13, 2013 • HOUSTON, TEXAS

# THE ATTORNEY'S ROLE IN MITIGATING HUMAN TRAFFICKING

# SPEAKER BIOS



- **Michelle Guelbart, MSW, Private Sector Project Coordinator, ECPAT-USA**
- **Manages ECPAT-USA's division for the travel and tourism industry**
- **Working on child protection in tourism since 2010**



- **Sarah A. Altschuller, Associate, Corporate Social Responsibility ("CSR") Practice, Foley Hoag LLP**
- **Member of Foley Hoag's CSR practice since 2003**
- **Member of ECPAT-USA's Board of Directors**
- **Previously worked with KLD Research & Analytics, a socially responsible investor firm, now part of MSCI, Inc.**

# OVERVIEW

## ■ Human trafficking

- The exercise of coercive control over persons for the purpose of exploitation
- Includes both sex trafficking and labor trafficking
- Second largest – and fastest growing – criminal industry in the world
- In September 2012 speech, President Obama called human trafficking “**one of the great human rights causes of our time.**”
- In 2012, the American Bar Association launched a Task Force on Human Trafficking in the United States to combat the sex and labor trafficking of adults and children.
  - The Task Force is developing **business conduct standards.**

# KEY STATISTICS

- **14,500 to 17,500** foreign nationals are trafficked into the U.S. each year.
- **100,000 – 300,000**: estimated number of children at risk for trafficking in the United States.
  - A 2008 study of prostitution in New York found that **44%** of sexually exploited youth reported using hotels in the city.
- At any given time, it is estimated that **10,000-17,000** forced laborers are working in the United States.
  - A 2004 study by the Human Rights Center at the University of California-Berkeley estimated that **4.8% of those laborers were working in restaurant or hotel jobs.**

# HUMAN TRAFFICKING & THE HOSPITALITY INDUSTRY

## Corporate Connections to Human Trafficking

- Traffickers may use a company's premises and/or services for trafficking activities.
- Employees may be hired through labor recruiters over which a company exercises limited oversight.
- Suppliers and/or sub-contractors may engage in unethical/illegal hiring and recruitment practices.

***"No country and few industries are untouched...Traffickers use airlines to move their victims, [and] hotels to exploit sex trafficking victims."***

**-Rep. Chris Smith (R-NJ), June 2011**

# PRESSURE ON THE INDUSTRY TO ADDRESS HUMAN TRAFFICKING

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**“[t]he airline and hotel industries should be on the front lines of the fight” against human trafficking - Congressman Christopher Smith, NJ, 2010**



**“Each of us has a role to play. We are all travelers. ...You can help by learning the basic indicators of human trafficking, and when you see something, taking action to report it.” - Ray LaHood, Secretary of Transportation, 2012**

**2012 Olympics: Celebration Without Exploitation**



**“It ought to concern every business, because it distorts markets....I’m talking about the injustice, the outrage, of human trafficking, which must be called by its true name — modern slavery.” – President Barack Obama, 2012**



**Consumers**

# WHAT ARE COMPANIES BEING ASKED TO DO?

- Draft policies against human trafficking and commercial sexual exploitation.
- Train employees how to spot and report signs of human trafficking and commercial sexual exploitation.
- Inform suppliers about policies against human trafficking and commercial sexual exploitation.





# THE CODE

Companies that have signed The Code include:

- Wyndham Worldwide
- Carlson Companies
- Hilton Worldwide
- Delta Air Lines
- Real Hospitality Group
- Sabre Holdings





# THE CODE

## Suppliers of tourism services adopting the code commit themselves to implement the following six criteria:

1. To establish an ethical policy regarding commercial sexual exploitation of children.
2. To train the personnel in the country of origin and travel destinations.
3. To introduce a clause in contracts with suppliers, stating a common repudiation of commercial sexual exploitation of children.
4. To provide information to travelers by means of catalogues, brochures, in-flight films, ticket-slips, home pages, etc.
5. To provide information to local "key persons" at the destinations.
6. To report annually.



# CONCERNS EXPRESSED BY COMPANIES

- Fear of legal liability
- Fear of associating brands with an uncomfortable topic
- Fear of upsetting customers
- Fear of engagement with advocates
- "This doesn't happen in hotels like ours."
- "This is only happening outside the United States."



# THE RISKS OF INACTION

- **Companies that don't proactively address the problem of human trafficking risk being perceived as unresponsive and/or uncaring.**
  - Employee perceptions
  - Law enforcement perceptions
  - Customer perceptions
- **Unresponsive companies face reputational risks when problems are identified. Strong management systems provide companies with the capacity to demonstrate that single incidents are aberrations.**

# BENEFITS OF TAKING ACTION

- Management of Risk
  - Legal
  - Reputational
  - Operational
- Employee morale
- Protection of your company's brand
- Access to industry and stakeholder knowledge
- Increased revenue



# RECENT LEGISLATIVE AND POLITICAL ACTIVITY

- **Legislators are focused on ways to address human trafficking:**
  - **State**
    - Civil and criminal liability
    - Anti-nuisance statutes
    - California Transparency in Supply Chains Act
  - **Federal**
    - Trafficking and Violence Protection Act (TVPA) reauthorization
    - HR 2759 - Business Transparency On Trafficking and Slavery Act
    - Executive Order re: Government Contractors
- **Congressional hearings on private sector best practices**
  - U.S. Department of State private sector engagement

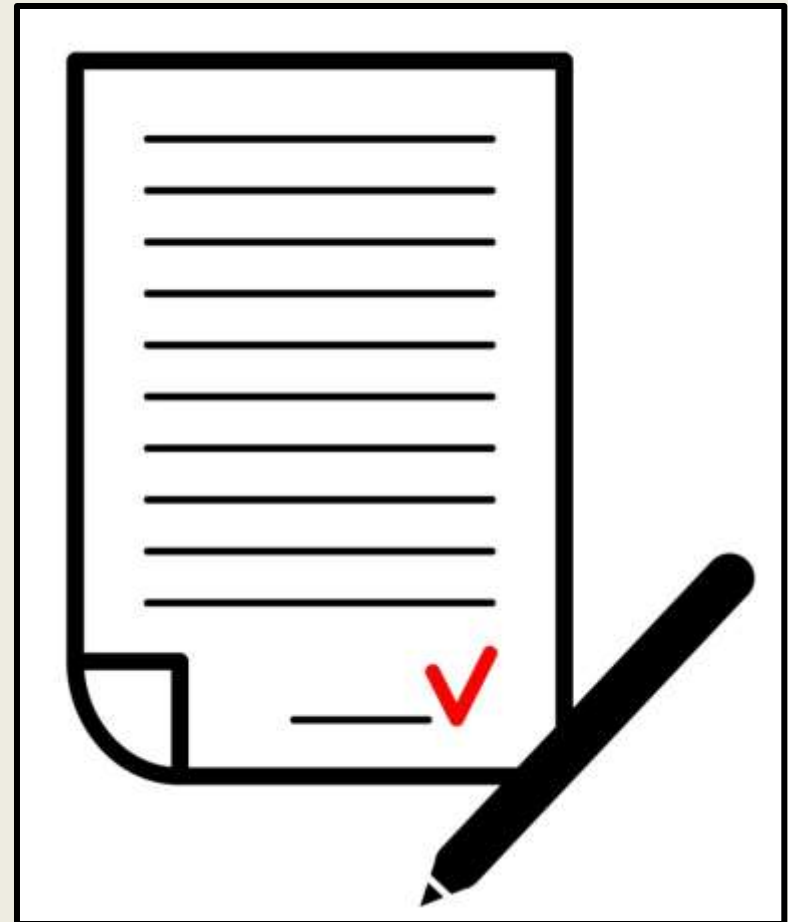
# THE ROLE OF THE ATTORNEY

- Attorneys should:
  - Understand and provide advice on how to mitigate current legal, reputational, and operational risks associated with human trafficking;
  - Help clients understand trends in the law in order to manage future risks;
  - Operate in an ethical manner; and
  - Work, within the scope of their responsibilities to mitigate the potential for human trafficking.



# THE ROLE OF THE ATTORNEY

- Attorneys should:
  - Advise on risk management and oversight policies and procedures;
  - Draft corporate policies and standards;
  - Ensure that corporate policies and standards are reflected in supplier/vendor guidelines; and
  - Assess and provide advice on developments in the law.





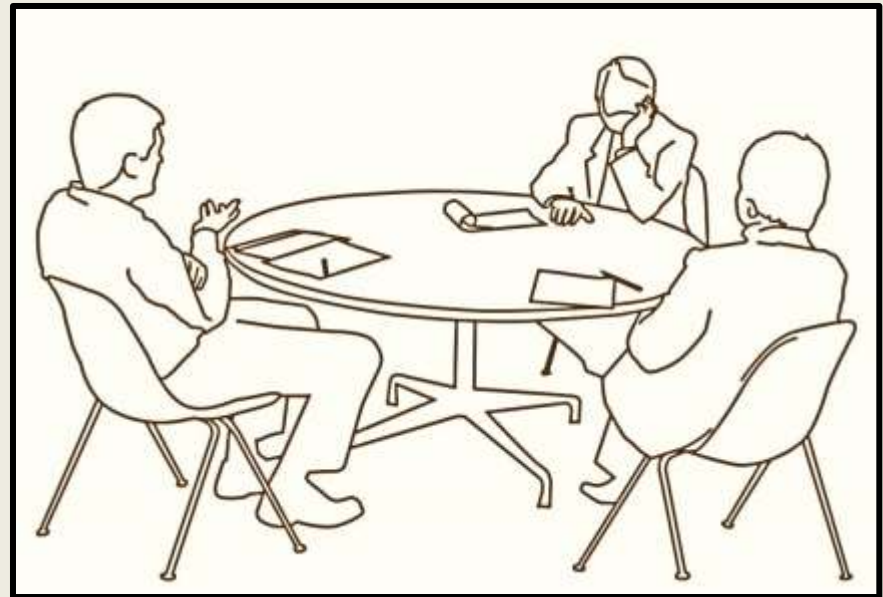
# ATTORNEY ETHICAL RESPONSIBILITIES

## ABA Model Rule 2.1

- In representing a client, a lawyer shall exercise independent professional judgment and render candid advice.
- In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.
  - **Comment 2** - It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. **Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.**

# MORAL AND ETHICAL CONSIDERATIONS RELEVANT TO ATTORNEY ADVICE ON HUMAN TRAFFICKING

- Scope of the problem
- Potential links between a company's operations and human trafficking activities
- Obligation to prevent harm to trafficking victims, and to protect employees and other personnel from harm
- Capacity of the company to exercise leverage to mitigate the problem



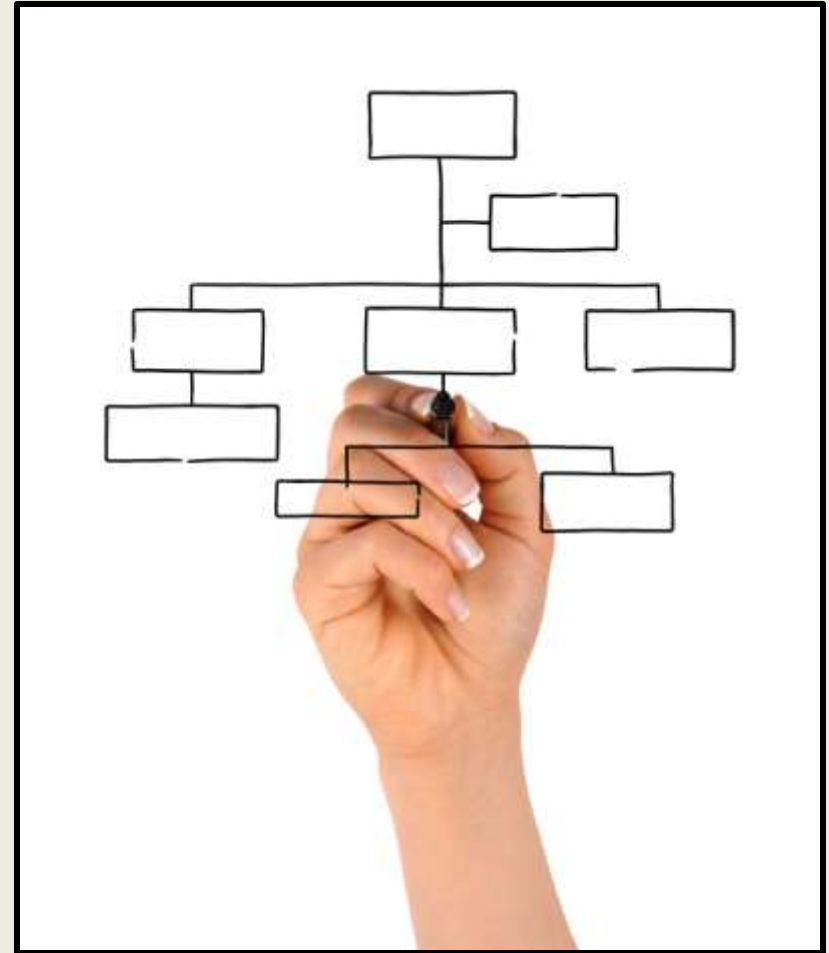
# THE SHIFTING CONTEXT FOR ATTORNEY'S ETHICAL RESPONSIBILITIES

- **U.N. Guiding Principles on Business and Human Rights (June 2011):**
  - Companies have a duty to operate with respect for human rights.
  - The Guiding Principles are "not just another set of voluntary standards vying for attention in an increasingly crowded space" but rather represent "authoritative UN standards around which the articulated expectations of many public and private institutions have already converged."
  - Expectations already incorporated into U.S. legislation, including the Dodd-Frank financial reform act and the California Transparency in Supply Chains Act.
- **OECD Guidelines for Multinational Enterprises (revised 2011):**  
*"Respect for human rights is the global standard of expected conduct for enterprises."*

# CORPORATE RESPECT FOR HUMAN RIGHTS

## Corporate Human Rights Due Diligence:

- Development of human rights policies
- Human Rights Impact Assessments ("HRIAs")
- Integration of findings into the management of the business
- Effective grievance mechanisms



# ABA'S ENDORSEMENT OF THE GUIDING PRINCIPLES

- **ABA's Endorsement of the "Protect, Respect, Remedy" Framework on Business and Human Rights, ABA House of Delegates Resolution 109, adopted 2012.**
  - FURTHER RESOLVED, That the [ABA] urges governments, **the private sector, and the legal community to integrate into their respective operations and practices the United Nations Framework and Guiding Principles** and the OECD Guidelines.
- In the report supporting the proposed resolution, the ABA Human Rights Committee noted that the "considerations" referenced in ABA Model Rule 2.1 may include applicable international standards, making specific reference to the Guiding Principles where corporate clients are concerned.

# QUESTIONS?

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