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Ethical due Diligence across Borders: Why Contract Clauses are not Enough

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Abstract. This article examines the extent to which contractual mechanisms with overseas distributors, commercial agents and other intermediaries can discharge, or credibly support, human-rights and environmental due-diligence duties in global value chains. Using a doctrinal and normative analysis that brings agency and distribution law into conversation with the UN Guiding Principles on Business and Human Rights and Directive (EU) 2024/1760, it distinguishes the forms of leverage available across subsidiaries, suppliers, distributors, agents and other intermediaries. The article argues that contractual clauses remain indispensable for defining standards, generating information, creating procedural leverage, shaping incentives and structuring remediation, but that their capacity to shift legal responsibility is structurally limited by information asymmetry, enforceability constraints and mandatory law. It therefore rejects a model of ethics clauses as standalone devices for downstream risk transfer. Instead, it proposes an integrated model in which risk-based partner selection, calibrated contractual controls, continuous monitoring, corrective action and responsible exit operate as a continuous governance cycle. The main conclusion is that contract can operationalise due diligence, but cannot substitute for it.

Keywords: Corporate Sustainability Due Diligence, Global Value Chains, Contract Law, Commercial Agents, Distributors, Human Rights, Business Ethics.

JEL: K12, K22, M14, F23.

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1. Introduction

Global trade is increasingly conducted through networks of distributors, agents and other intermediaries rather than solely through wholly owned subsidiaries, which places significant commercial, legal and ethical risk at arm's length from the principal firm. Growing scrutiny around corruption, human rights and modern slavery has led many multinationals to embed extensive ethical obligations in their contracts with business partners. In practice, however, emerging mandatory due-diligence regimes, including Directive (EU) 2024/1760 on corporate sustainability due diligence, indicate that contractual clauses on their own do not reliably control conduct and cannot simply transfer responsibility to suppliers or intermediaries.

This article asks to what extent contractual mechanisms with overseas distributors and agents can discharge, or credibly support, human-rights and environmental due-diligence duties in global value chains. It argues that contractual clauses remain important, but their ability to shift legal responsibility is structurally limited, and their legitimate use depends on integration into a wider governance framework of due diligence, monitoring and remediation.

The analysis addresses a gap between black-letter treatments of agency and distribution law, on the one hand, and the expanding business-and-human-rights literature, on the other. Mandatory due-diligence regimes such as the EU's Corporate Sustainability Due Diligence Directive (CSDDD) sharpen this gap by concentrating primarily on parent companies, subsidiaries and direct suppliers, and by treating contractual arrangements with business partners mainly as one element within a broader "chain of activities". At the same time, practical guidance on intermediaries often treats ethics clauses largely as devices for allocating risk and responsibility downstream (United Nations 2011), without examining how far those clauses can actually support a company's due-diligence duties in intermediary-heavy distribution structures. This article responds by treating overseas distributors and commercial agents as legally distinct but strategically important choke points in cross-border trade, and by asking what contract design can realistically achieve in that setting once CSDDD-style due-diligence expectations are taken seriously.

2. Methodology and Contribution

Methodologically, this is a doctrinal and normative analysis combining agency and distribution law with business-and-human-rights standards. It draws in particular on Directive (EU) 2024/1760, the UN Guiding Principles on Business and Human Rights, and model contractual guidance developed to align contracts with human-rights due diligence (Office of the United Nations High Commissioner for Human Rights 2012, 46–51). The article also relies on practice-based examples as illustrations of how contractual tools work in real cross-border relationships, while treating those examples as analytical rather than empirical evidence.

The article makes three contributions. First, it clarifies the distinctions between suppliers, distributors, commercial agents, other intermediaries and subsidiaries, and shows why those distinctions matter for contractual leverage and regulatory exposure. Second, it identifies the structural limits of contract-based control in light of enforcement problems, information asymmetry and mandatory legal protections. Third, it proposes an integrated due-diligence model in which contract clauses operate as one governance tool among several, rather than as standalone risk-transfer devices.

3. Terminology and Distinctions

Conceptual precision matters because the extent of contractual leverage depends heavily on the type of intermediary involved (Ruggie 2013, 10). In cross-border practice, lawyers and commercial teams often use the language of “partner”, “channel”, “representative” or “local affiliate” loosely, yet each label conceals materially different questions of control, attribution, mandatory protection and due-diligence design. A distributor generally buys and resells in its own name and on its own account, whereas a commercial agent typically negotiates or concludes transactions on behalf of the principal without taking title to the goods. A subsidiary, by contrast, falls within the parent’s corporate group and raises different issues of control and attribution than an independent intermediary. Commentary on commercial agency and distribution has long emphasised that mixing agency and distribution elements in one relationship has significant consequences for legal risk and practical control (Jones 1972). The core distinctions relevant to ethical due diligence and contractual leverage can be summarised as follows:

Counterparty type	Legal / commercial position	Due-diligence focus
Subsidiary	Within the corporate group; stronger structural control.	Labour, safety and environmental risk in owned operations; stronger case that the parent should influence conduct.
Commercial agent	Acts on behalf of the principal; closer attribution risk; mandatory agency protections may limit some controls.	Bribery, sanctions and sales-practice risk; use contract leverage, but account for limits on termination and remuneration.
Distributor	Resells in its own name; commercially independent but often central to market access.	Sales conduct, bribery through local networks, warehousing/logistics labour and sub-distribution; leverage depends on incentives and information rights.
Supplier	Supplies into the principal’s operations or products.	Labour, environment and land-use risk on the production side; focus on purchasing practices, traceability and monitoring across tiers.
Other intermediaries (consultants, introducers, customs brokers, security and labour providers)	Often narrow mandates but high exposure around payments, clearance, recruitment or security.	Check beneficial ownership, payment flows and subcontracting; small contracts can mask serious risk.

Table 1: Counterparty types, legal/commercial position and due-diligence focus.

These categories are not interchangeable in law or commercial practice. Under Council Directive 86/653/EEC, for example, self-employed commercial agents in the EU benefit from a harmonised framework that includes mandatory rights relating to remuneration, notice and indemnity or compensation on termination, and the parties may not derogate from certain provisions to the detriment of the agent. Distributors typically do not enjoy the same dedicated statutory regime, but their greater commercial independence can make behavioural control more difficult in practice because they purchase and resell on their own account, operate through their own customer relationships and often retain significant discretion over downstream sales methods.

For the purposes of ethical due diligence, the first distinction is therefore between entities within the corporate group and independent business partners outside it. Where the counterparty is a subsidiary, the parent ordinarily has more structural tools of oversight: group policies, internal reporting lines, management appointments, financial control and centralised compliance systems. Those tools do not eliminate the problem of distance, particularly where operations are carried on through locally managed entities in high-risk jurisdictions, but they usually create a stronger basis for arguing that the parent both can and should influence conduct. By contrast, where the relationship is with an independent distributor or agent, the principal's ability to shape behaviour depends less on corporate hierarchy and more on the quality of contract design, the economic significance of the relationship and the practical leverage generated by onboarding, monitoring and commercial incentives.

The second distinction is between an intermediary who acts on behalf of the principal and one who acts in its own name. Commercial agents sit closer to the principal in legal character because they are authorised to negotiate or conclude transactions for the principal and may therefore expose the principal more directly to liability arising from their conduct. That matters acutely in corruption, sanctions and human-rights contexts. If an overseas sales agent pays a bribe in the course of securing public contracts, or exerts abusive pressure on local dealers while purporting to act for the principal, the principal may face regulatory or civil exposure not only because it failed to supervise adequately, but because the intermediary's role is one of representation. The language of "arm's length" is therefore less convincing in relation to agency than distribution, even when the agent is formally self-employed and locally incorporated.

A distributor stands in a different position. Because the distributor typically buys and resells in its own name, the principal will often stress the distributor's independent status and seek to limit attribution through express contractual wording. In one sense that is legally coherent: the distributor is not ordinarily concluding contracts on the principal's behalf and may market competing products, assume inventory risk and control local resale conditions. Yet from a due-diligence perspective that commercial independence does not dissolve the principal's responsibilities where the principal's products, services or business strategy remain linked to adverse impacts through the relationship (United Nations 2011; Ruggie 2013, 10). Indeed, the distributor model may generate a distinctive compliance challenge precisely because the intermediary is more commercially autonomous, more deeply embedded in local networks and often less visible to the principal than a captive sales subsidiary would be.

This is where broader categories such as "intermediary" or "business partner" become analytically useful, but only if they are used carefully. In practice, overseas market-entry structures often include master distributors, local sub-distributors, commercial agents, customs brokers, logistics providers, introducers, commission-based consultants and service companies that perform overlapping functions. It is not uncommon to find relationships that are labelled "distribution" but contain agency-like features, such as authority to negotiate pricing on the principal's behalf, use of the principal's branding in a representative capacity, or extensive control by the principal over customer approval and tender participation. Hybrid structures of that kind matter because they complicate both due-diligence mapping and legal characterisation. A principal that assumes it is dealing with a legally independent reseller may in fact be operating through a representative whose conduct is more easily attributable, while at the same time relying on contractual language that does not reflect the reality of the relationship.

The distinction between suppliers and intermediaries also requires emphasis. Much of the business-and-human-rights literature and many model contractual initiatives focus on supply-chain contracting, especially manufacturing supply chains (Sherman 2023; American Bar Association Working Group 2021). That work is highly relevant, but overseas distributors and agents present a somewhat different pattern of risk. Suppliers are typically associated with labour conditions, land use, environmental harm and raw-material sourcing on the production side; distributors and agents are more often associated with sales practices, bribery exposure, sanctions circumvention, after-sales servicing, hidden subcontracting, local security arrangements and the use of shadow sales channels or sub-agents. The same intermediary may also create labour and human-rights risk through warehousing, transport, recruitment or subcontracted installation services. Conceptual slippage between "supplier" and "intermediary" can therefore obscure the specific mechanisms through which harm arises and the specific forms of leverage that are realistically available.

Mandatory due-diligence regimes strengthen the need for these distinctions rather than weaken it. The Corporate Sustainability Due Diligence Directive proceeds through functional concepts such as the "chain of activities" and does not assume that all business relationships are alike. That is significant because the legal expectations placed on in-scope companies are shaped not merely by whether a contract exists, but by where the counterparty sits in the relevant chain, how much influence the company can exercise and what preventive or mitigating measures are reasonable in context. A principal dealing with a wholly owned subsidiary, an exclusive commercial agent and a non-exclusive distributor in the same country may therefore face three very different due-diligence profiles, even if all three sell the same product into the same market.

The practical lesson is that ethical contracting cannot begin from boilerplate. Lawyers need a typology that distinguishes at least among subsidiaries, agents, distributors, suppliers and other intermediaries, and then asks how legal character, commercial dependence and factual influence interact in each case. That typology determines not only which clauses are appropriate, but also how persuasive it will be for a principal later to say that it exercised meaningful leverage over a risky business relationship. If the article's broader claim is that clauses are not enough, the corollary is that even good clauses cannot be assessed in the abstract: their likely value depends on what kind of intermediary is involved, how the relationship actually operates on the ground and how the contract fits into a wider due-diligence system.

4. From Allocation to Responsibility

Traditional cross-border contracting has often treated ethics clauses as instruments of risk allocation (Mahmoudi 2024; International Trade Centre 2018). In that model, the principal identifies certain categories of regulatory or reputational exposure: bribery, labour abuse, sanctions breaches, environmental non-compliance. The principal then seeks to place implementation burdens on the counterparty through warranties, indemnities, termination rights and broad undertakings to comply with all applicable laws. This remains common in anti-bribery and compliance drafting involving distributors and agents, especially in sectors where local market access depends on third-party relationships and where the principal is anxious to create a paper trail showing that misconduct was prohibited by contract. As Mahmoudi notes in the anti-corruption context, such clauses function as an additional due-diligence tool aimed at mitigating risk and providing a contractual basis for response when misconduct comes to light (Mahmoudi 2024).

There is an obvious commercial logic to this approach. Principals entering high-risk markets often do not control local conditions directly, may have limited visibility over day-to-day sales conduct, and face acute pressure from regulators, financiers and civil-society actors to show that they took steps to prevent abuse. Contract offers an immediately available technology of control: it can state prohibitions, require certifications, reserve rights of inspection and permit termination for breach. In intermediary-heavy structures, it also appears to offer a way of pushing legal and financial responsibility towards the party that is physically closest to the risky conduct. Where an overseas distributor hires the warehouse staff, manages sub-distributors and interacts with customs officials, it is tempting for the principal to assume that the distributor should also carry primary contractual responsibility for any associated human-rights or compliance failure. Where, however, a dominant buyer loads extensive flow-down duties and monitoring obligations onto a far weaker intermediary, the exercise looks less like responsible delegation and more like ethical offshoring of problems the buyer is better placed to address itself.

This is why business-and-human-rights frameworks increasingly reject the idea that principals can satisfy their responsibilities simply by cascading boilerplate obligations down the chain (Office of the United Nations High Commissioner for Human Rights 2012, 42; Scheltema 2020). Scheltema identifies a mismatch between corporate human-rights policies and the contractual mechanisms used in cross-border supply relations, arguing that contracts are too often treated as subordinate to policy rather than as integral governance tools. The deeper problem, however, is not only one of legal technique but of normative orientation. A purely allocative model assumes that the principal's task is to distance itself from wrongdoing and to preserve claims against the intermediary if something goes wrong. A responsibility-based model assumes instead that the principal may itself bear ongoing duties to identify, prevent, mitigate or even remedy adverse impacts linked to its business relationships, even where the harmful conduct is committed by an independent counterparty. Casting a small intermediary as the buyer's de facto compliance department turns human-rights due diligence into a paper exercise and sits uneasily with the UNGPs' insistence on the company's own ongoing scrutiny of its business relationships.

The UN Guiding Principles make that shift explicit (United Nations 2011). They distinguish between impacts a company causes, contributes to, or is directly linked to through its business relationships, and they frame human-rights due diligence as an ongoing process rather than a one-off representation. On that view, a principal cannot answer a credible allegation of forced labour, abusive recruitment fees or serious bribery risk merely by pointing to a compliance clause in its distributor agreement. What matters is whether the company mapped the risk, exercised leverage, monitored implementation, supported corrective action where feasible, and reconsidered the relationship if harm persisted. Contract remains relevant, but as part of that process rather than as a substitute for it.

Directive (EU) 2024/1760 reinforces the same reorientation. Its core due-diligence obligations are framed as a continuing system of integration into policies, identification and assessment of adverse impacts, prevention and mitigation, bringing impacts to an end, remediation and monitoring of effectiveness. Contractual assurances may form one element within that architecture, but they do not exhaust it, and the Directive's logic is plainly sceptical of paper compliance unaccompanied by verification and operational follow-through. For intermediary relationships this is especially important. The distributor or agent may be outside the corporate group and formally independent, yet if the principal's products or services reach the market through that channel, and if the principal knows or ought to know that the relationship presents material human-rights or environmental risk, the principal is expected to do more than recite standards in boilerplate terms.

Model drafting initiatives reflect the same move from allocation to responsibility. The American Bar Association Working Group's Model Contract Clauses 2.0 present human-rights due diligence as a cooperative and shared responsibility of buyer and supplier, emphasising responsible purchasing practices, remediation and ongoing due diligence rather than a narrow representations-and-warranties approach (American Bar Association Working Group 2021). Although developed primarily for supply chains, the underlying insight carries readily into distributor and agency structures. If the principal imposes unrealistic sales targets, compresses delivery schedules, tolerates opaque commission arrangements, or rewards aggressive local market capture without adequate controls, the risk of abuse may be generated as much by the principal's commercial model as by the intermediary's local opportunism. In that setting, a clause that purports to place sole responsibility on the intermediary may be formally useful yet substantively misleading.

This point is best illustrated through intermediary examples. Suppose a medical-products manufacturer appoints an exclusive distributor in a high-risk market, requires rapid public-sector sales growth, offers large volume incentives, and permits the distributor to use sub-distributors with minimal disclosure. The agreement includes a robust anti-bribery clause, an indemnity and a termination right. If later evidence emerges that bribes were paid through local consultants, the principal may invoke the clause to terminate and seek damages. But from a responsibility perspective the prior questions are harder: did the principal conduct adequate pre-appointment due diligence on ownership and political exposure; did it scrutinise discounting and commission structures; did it require visibility over sub-intermediaries; did it investigate red flags in tender patterns; and did it monitor whether the distributor's business model made abuse likely? If the answer is no, the contract may have allocated risk, but it has not discharged the principal's due-diligence responsibilities. In such a configuration, the manufacturer's decision to push rapid growth through a lightly supervised local intermediary is itself a central source of risk; to treat the distributor alone as the wrongdoer is to ignore who designed and drove the commercial architecture.

Scenario	**Risk pathway**	**Contract tools**	**Why wider due diligence is still needed**
Exclusive distributor in a high-risk public-sector market	Rapid targets, volume incentives and weak visibility over consultants or sub-distributors create bribery risk in tenders and local sales.	Anti-bribery clauses; disclosure of consultants and sub-distributors; approval rights over commissions or discounts; audit rights; books-and-records duties; corrective-action and termination clauses.	Even strong clauses do not suffice if the principal failed to vet ownership and political exposure, monitor tender patterns, or scrutinise commissions and incentives.
Distributor using warehousing, transport and labour outsourcing	Labour risk may arise through agency labour, subcontracted logistics, recruitment fees, wage withholding, unsafe conditions or hidden subcontracting.	Flow-down obligations; disclosure of subcontractors and labour providers; inspection rights; workforce-record access; remediation clauses; cooperation duties.	The principal must still map who performs the work, examine labour conditions and recruitment channels, verify conditions over time, and use leverage to remediate.
Sales agent acting on the principal's behalf	Because the agent represents the principal, bribery, sanctions breaches or abusive sales conduct may be more readily attributed to the principal.	Limits on authority; approval rights over sub-agents; commission transparency; auditable books; training; notification of public-sector contacts; review and remediation clauses.	Agency is less convincingly arm's length, so contractual wording cannot remove the supervision and attribution risks created by representative authority.
Hybrid "distribution" arrangement with agency-like features	Mislabelled relationships can hide representative conduct, reduce visibility and produce clauses that do not fit the real risk profile.	Precise role definition; disclosure of downstream actors; restrictions on representative acts; approval rights for high-risk engagements; update mechanisms for compliance controls.	The article warns that hybrid structures complicate legal characterisation and due-diligence mapping, so the principal must review how the relationship operates in practice.

Table 2: Intermediary risk: scenarios, contractual tools and the continuing need for wider due diligence.

A similar analysis applies to labour and modern-slavery risk outside classic manufacturing supply chains. An overseas distributor may operate regional warehouses, outsource transport, rely on labour agencies, or subcontract installation and servicing to smaller local firms. Those downstream arrangements may generate serious risks of abusive recruitment, withholding of wages, unsafe conditions or coercive subcontracting practices. A principal that treats the distributor merely as an independent reseller may fail to ask the questions that a responsibility-based approach requires: who performs the work linked to the product; under what labour conditions; through which subcontractors; and with what degree of visibility and influence?

None of this means that contractual allocation of risk disappears. Contracts still allocate costs, specify remedies and define the consequences of breach. The point is rather that, in the due-diligence context, allocation is no longer the whole story and cannot plausibly be treated as the principal's endpoint. The more convincing view is that ethical clauses should be drafted and used as instruments of operational responsibility: they should support disclosure, training, monitoring, remediation and escalation, while recognising that the principal's own conduct may need to change if the relationship is to become more sustainable (Sherman 2023; American Bar Association Working Group 2021). The movement from allocation to responsibility is therefore not rhetorical. It alters what counts as good contracting, what evidence matters when scrutiny arises, and how far principals can credibly claim that overseas intermediaries, rather than the commercial architecture established by the principal itself, were solely responsible for the resulting harm.

5. What Clauses can do

Recognising the limits of contract does not mean dismissing contract. At their strongest, contractual mechanisms perform several useful functions in intermediary relationships, and it would be a mistake to swing from excessive faith in boilerplate to the opposite claim that clauses have little practical value. The better view is that clauses can make a real contribution to ethical due diligence when they are designed to fit the risks of the relationship, the type of intermediary involved and the operational systems available to the principal (Kilimcioğlu 2024). Their contribution is most convincing where they do not merely prohibit misconduct in abstract terms, but structure information, incentives, escalation and remediation over the life of the relationship.

The first thing clauses can do is articulate a baseline of expected conduct. In cross-border agency and distribution agreements, that typically means incorporating anti-corruption, labour, environmental and human-rights standards into the contractual framework, whether through a dedicated ethics schedule, a supplier or partner code of conduct, or express reference to international standards and applicable law (Kilimcioğlu 2024). This matters because intermediaries often sit at the point where legal fragmentation is most acute. Local law may be under-enforced, industry custom may tolerate practices that are unacceptable to the principal, and downstream actors may be uncertain which standards govern sub-contracting, gifts and hospitality, recruitment fees, use of labour agencies or engagement with public officials. A well-drafted clause can therefore do more than signal moral aspiration: it can specify the standards that must govern the relationship and clarify that those standards apply not only to direct employees of the intermediary but, where appropriate, to sub-agents, subcontractors and other downstream actors through whom the intermediary performs the contract.

The second function is procedural leverage. Clauses can create rights to receive information, conduct audits, inspect records, require periodic certifications, mandate training, approve sub-intermediaries and trigger investigations where red flags emerge. These tools are particularly important for overseas distributors and agents because the principal is otherwise dependent on what the intermediary chooses to report. In practice, information asymmetry is often the central obstacle to meaningful due diligence. The intermediary knows which consultants are being used, which local warehouses rely on agency labour, whether cash payments are common, whether customs clearance is subcontracted informally, and whether unusual commissions are being paid to politically exposed persons. Clauses that require disclosure of sub-agents, beneficial ownership, high-risk payments, recruitment channels or subcontracting arrangements can materially improve the principal's visibility into risks that would otherwise remain hidden.

The third function is to structure response. Good ethical clauses do not merely create a binary choice between silent tolerance and immediate termination. They can require corrective-action plans, time-bound remediation steps, enhanced reporting, suspension of particular practices, replacement of problematic sub-contractors, or specific cooperation with investigations and worker-remedy processes. This is where prosocial or responsibility-oriented contracting becomes especially useful. As Kilimcioğlu argues, contracts can contribute to human-rights protection not only by threatening sanctions but by embedding processes through which parties respond to problems in operational terms (Kilimcioğlu 2024). That is highly relevant to intermediary relationships because immediate exit is not always the most responsible response. If the principal retains leverage over the distributor or agent, structured remediation may reduce harm more effectively than abrupt termination that simply pushes the problem into a less visible channel.

The fourth function is to shape incentives and commercial behaviour. Clauses do not operate only as prohibitions backed by sanctions; they also influence the economic environment within which distributors and agents make choices. Responsible-contracting literature emphasises that oppressive or unrealistic commercial terms can generate pressure that heightens human-rights risk (American Bar Association Working Group 2021; Sherman 2023). In intermediary settings, that can take the form of excessive sales targets, opaque rebate schemes, aggressive discount requirements, unfunded compliance obligations, or unilateral demands that the intermediary absorb inventory and service costs while still delivering rapid market penetration. Those pressures may in turn encourage bribery, hidden sub-distribution, abusive labour outsourcing, or the concealment of compliance failures. Clauses that allocate reasonable lead times, require transparency around commission structures, restrict use of high-risk consultants, or align performance metrics with compliance expectations can therefore do substantive ethical work by reducing the incentive structure that otherwise rewards misconduct.

The fifth function is to extend the principal's field of vision into layered networks. Many of the most serious risks in distribution structures arise not from the immediate contractual counterparty but from actors one or two stages further down: sub-distributors, customs brokers, local introducers, labour providers, security contractors or installation subcontractors. If the principal contracts only with the first-tier distributor and asks no questions about these downstream relationships, a significant part of the risk profile remains outside view. Clauses can help by requiring the intermediary to map and disclose relevant downstream actors, to obtain approval before appointing certain high-risk sub-intermediaries, and to flow down specified compliance and human-rights obligations. That will not guarantee visibility or compliance, but it gives the principal a concrete basis on which to demand information and to argue later that it sought to build traceability into the relationship rather than accepting opacity as the price of market access.

A sixth function, closely related to the others, is evidential. When regulators, courts, financiers or investigative journalists later examine a problematic intermediary relationship, the question is rarely whether the contract contained a generic compliance clause and often whether the contractual framework formed part of a credible system of governance. Clauses that record training obligations, approval rights, reporting duties, audit access, corrective-action mechanisms and downstream disclosure requirements can help demonstrate that the principal sought to create and use leverage. In this sense, contractual drafting contributes not merely to ex ante control but to the ex post evidential narrative of responsible conduct. That narrative is not sufficient on its own, but it is materially stronger where the contract shows a pattern of thought about how risk would be identified, monitored and addressed in the specific intermediary structure concerned (Heinen, Müller, and Kessler 2017).

The strongest version of this argument is not that clauses solve the problem, but that they can operationalise due diligence. A principal appointing an overseas sales agent, for example, can use the contract to define prohibited conduct, require disclosure of sub-agents, reserve approval rights over commissions, mandate training, insist on auditable books, trigger review if public-sector sales spike unusually, and require cooperation in remediation if concerns emerge. None of those devices guarantees compliance, but together they translate broad due-diligence expectations into ongoing practical obligations that fit the reality of intermediary-led market entry. The same is true of an exclusive distributor arrangement in which the principal requires visibility over warehousing, labour subcontracting and after-sales service providers, while aligning rebates and performance incentives with transparent and lawful conduct.

For that reason, the proper question is not whether clauses work in isolation, but what exactly they are capable of doing within a wider governance model. They can define standards, generate information, create leverage, shape incentives, support remediation and improve the evidential position of the principal. They cannot, however, eliminate the need for partner selection, ongoing monitoring, local risk assessment and commercially realistic behaviour by the principal itself. Their genuine value lies in making those wider due-diligence functions more concrete and enforceable across borders, particularly where the firm’s exposure is mediated through distributors, agents and other intermediaries rather than through wholly owned subsidiaries or direct employment structures.

6. Structural Limits

The first limit is enforceability. Many distributor and agency contracts are governed by the principal's chosen law but performed through locally incorporated entities overseas, which complicates evidence gathering, dispute resolution and enforcement. Contractual rights may therefore exist on paper while remaining difficult to vindicate in practice.

The second limit is information asymmetry. Overseas intermediaries are often closer than the principal to local customers, officials and working conditions, and therefore better placed to conceal misconduct or sanitise reporting. The UN Guiding Principles expressly require ongoing due diligence, monitoring and communication because companies cannot assume that formal commitments alone demonstrate respect for human rights (United Nations 2011).

The third limit is that one-sided contracting can itself undermine ethical goals. The American Bar Association materials warn that aggressive or oppressive terms tend to create adversarial buyer-supplier relations, generate undue commercial pressure, exacerbate human-rights risks and weaken the buyer's own ability to meet its commitments (American Bar Association Working Group 2021). This supports the broader proposition that a strict zero-tolerance clause, if paired with unrealistic commercial demands, may operate more as reputational armour than as a genuine control mechanism. When powerful buyers demand that modest intermediaries police complex downstream networks on their behalf, the resulting clauses often resemble liability shields for the buyer more than realistic instruments of control.

The fourth limit lies in mandatory law. In commercial agency, mandatory statutory protections can constrain termination or other enforcement steps even where ethical concerns arise, which means the principal cannot assume unrestricted contractual freedom. In the due-diligence context, Directive (EU) 2024/1760 reinforces that companies must identify, prevent, mitigate and where relevant remedy adverse impacts through an operational due-diligence system, not merely through standard contractual drafting (European Union 2024). This is the author's interpretive synthesis of Articles 5–11 and Recital 61, which together frame due diligence as an ongoing process of integration into policies, identification and assessment of adverse impacts, prevention and mitigation, bringing impacts to an end, remediation and monitoring of effectiveness. Contractual assurances are listed as just one among several elements, the others being in-depth assessments, prevention and corrective-action plans, verifications, remediation measures and periodic assessments. The emphasis is on implementation and effectiveness rather than the mere existence of clauses (European Union 2024).

Forced-labour enforcement developments point in the same direction. Guidance linked to import-control measures emphasises active supply-chain due diligence, documentation, tracing and verification, rather than reliance on supplier declarations alone. Hyken similarly argues that, following the narrowing of Alien Tort Statute litigation in the United States, contract law has become a key site for both allocating and enforcing corporate accountability for supply-chain human-rights violations, particularly forced labour (Hyken 2022). Although focused on online intermediaries, analogous debates about secondary and conditional liability, safe harbours and monitoring duties under EU law illustrate how far regulatory regimes are prepared to go in imposing responsibility on actors who do not directly perform the harmful conduct (Bulgakova and Deruma 2023). Contractual warranties may support this process, but they are not a substitute for the evidence expected by enforcement authorities.

7. Integrated due Diligence

A more credible model is therefore integrated ethical due diligence, as illustrated below.

On this view, trade law supplies the architecture of the commercial relationship, while business-and-human-rights standards shape how that relationship ought to be governed in order to reduce adverse impacts. Contract clauses remain essential, but they work best when combined with structured onboarding, risk-based partner selection, realistic commercial terms, continuous monitoring, escalation procedures and remediation mechanisms (American Bar Association Working Group 2021). Similar themes appear in labour-law scholarship on global value chains, which argues that contractual freedom in cross-border arrangements needs to be understood within broader transnational labour-governance frameworks rather than as a purely private matter between firms (Liukkunen 2024).

For lawyers managing overseas distributors and agents, this integrated model typically involves four linked elements, as per the figure below.

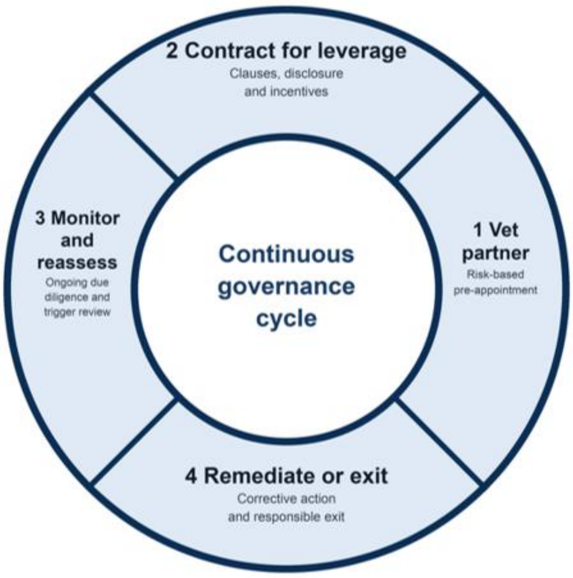

Figure 1: Integrated ethical due diligence for overseas intermediaries.
Source: Author's own elaboration.

First, robust pre-appointment due diligence should examine ownership, reputation, compliance history, sectoral and geographic risk, and the intermediary's own downstream relationships. Second, contractual terms should be calibrated to the actual risk profile and should require cooperation, disclosure and corrective action rather than only abstract compliance promises. Third, principals should monitor over time through certifications, audits, payment scrutiny, training and trigger-based reassessment. Fourth, remediation and responsible exit should be considered before immediate disengagement where leverage still exists and continuing engagement can realistically reduce harm.

This approach aligns more closely with both the UN Guiding Principles and Directive (EU) 2024/1760. It also puts principals in a stronger position to defend enforcement scrutiny or civil claims because it demonstrates a pattern of ongoing engagement rather than mere reliance on boilerplate. Contract law remains important, but it cannot carry the entire ethical burden of cross-border intermediation by itself.

8. Conclusion

Contractual mechanisms cannot by themselves control conduct in distant markets, but they can materially shape conduct when they are embedded in a wider framework of ethical due diligence. Used narrowly as devices for downstream risk transfer, ethical clauses risk creating a veneer of compliance without altering the structural conditions that generate abuse. Used as part of an integrated governance architecture, however, they can clarify expectations, structure information flows, support remediation and create leverage for more responsible commercial behaviour across borders.

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