

Is your Supply Chain Slave Proof?

Modern Slavery and Illegal Trafficking – Global Mandatory Reporting and Due Diligence Requirements in the Supply Chain

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Introduction

In today's global economy, multinationals face an increasingly complex and evolving legal environment. Compliance functions within those organizations must constantly adapt to address these challenges in order to pre-empt the next wave of enforcement actions around the globe. As tackling modern slavery is fast becoming a high priority across the world, the changing regulatory landscape makes monitoring of and compliance with legislation particularly challenging for all businesses.

Recent legislative developments in the Netherlands, France and Australia are just some examples of an emerging regulatory trend requiring companies to report their efforts to identify and mitigate human rights risks such as human trafficking, child labor, and other forms of forced labor from their global operations. In this context, it is important that businesses are compliant with their obligations and are aware of developing legislation and guidance. Beyond these legal imperatives, companies also have a moral duty to consider what more they could or should be doing to meet customer expectations and protect their reputation in this area.

This paper will give an overview of the current regulatory environment as regards modern slavery and illegal trafficking in the supply chain. The paper will also review emerging laws in the area in order to determine how these may impact your business and how developing laws are becoming part of a new global standard. A review of both existing and emerging legislation, and the manner in which country-by-country legislation tie together, will enable your business to navigate the changing regulatory environment in an efficient, effective manner and thus highlight the need for preventative measures and strong compliance structures.

What is Modern Slavery?

Modern slavery takes many forms. Forced labor and debt bondage are just some examples that affect the world's most vulnerable people. Slavery is prohibited under the 1948 Universal Declaration of Human Rights which provides that "no one shall be held in slavery or servitude: slavery and the slave trade shall be prohibited in all their forms."

The 1956 UN Supplementary Convention provides that "debt bondage, serfdom, forced marriage and the delivery of a child for the exploitation of that child are all slavery-like practices

and require criminalization and abolishment". In addition, the 1930 ILO Forced Labor Convention defines forced labor as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily".

Approximately 45.8 million people in 167 countries are victims of modern slavery according to the Global Slavery Index, 2016. 58% of those living in slavery are based in 5 countries:

- India
- China
- Pakistan
- Bangladesh
- Uzbekistan

The International Labour Organization has estimated annual profits from forced labor at \$150 billion and believes there are as many as 40 million victims of modern slavery globally.

Why should businesses care?

Many products available on the high street are made by, or include ingredients grown, harvested or mined by people in slavery. Complex supply chains can make it virtually impossible to guarantee that a product has not been produced using slavery. Typical industries that are affected by forced labor include:

- Electronics
- Textiles and Clothing
- Construction
- Extractives and Mining
- Logging
- Forestry, Wood and Paper (Packaging)
- ICT
- Tourism and Hospitality
- Manufacturing

Global supply chains with multiple tiers combined with the nature and location of work are major risk factors for serious labor rights violations. Sub-contracting and complex supply chains across the globe, particularly in countries with weak regulatory environments, can make it difficult to

monitor adherence to legislation in the area and can increase the legal, financial and reputational risks as a manufacturer.

New legislation is gaining momentum globally with a marked trend toward mandatory corporate disclosure regimes. Companies may struggle with the 'spaghetti soup' of national legislation, each with differing reporting requirements, currently in operation, some of which have extra-territorial effect. In addition, companies may find it difficult to comply with the high cost of managing requirements in multiple jurisdictions. Moreover, the increase in independent assessments and rankings of disclosures and compliance practices, has brought an increased focus by companies, investors and consumers towards companies' social and environmental impacts. The legal, financial and reputational risks associated with non-compliance in this area are significant and should not be overlooked.

Regulatory environment – what is the story so far?

Legislation in the area typically falls into two distinct categories:

Mandatory Transparency:

- o Mandatory transparency allows consumers, employees and investors to know what steps a company is taking to tackle modern slavery in its operations and supply chains by requiring companies to disclose actions taken to address the issue in their operations and supply chains.

Mandatory Due Diligence:

- o Mandatory due diligence describes the process that all companies should undertake to identify, prevent, mitigate and account for how they address their impact on human rights.

What are typical requirements of modern transparency legislation?

This section of the paper reviews the provisions relating to mandatory transparency as required of companies under the California Transparency in Supply Chains Act and the UK Modern Slavery Act. Over the past number of years, legislation addressing corporate responsibility for modern slavery has been adopted in several jurisdictions with the US state of California first off the mark.

The California Act, considered by many to be the forerunner in modern slavery legislation worldwide, entered into force on 1 January 2012 and requires companies to disclose on their

websites their “efforts to eradicate slavery and human trafficking from the supply chain for tangible goods offered for sale”. The Act applies to companies that:

- Do business in California;
- Have annual worldwide gross receipts in excess of USD \$100 million; and
- Are identified as manufacturers or retail sellers on their California state tax returns.

Pursuant to the Act, companies must post disclosures on their websites related to:

- Verification;
- Audits;
- Certification;
- Internal accountability; and
- Training.

In the UK, the Modern Slavery Act entered into force on 26 March 2015 and was modelled on the California Act. It applies to both UK registered organizations and all companies that conduct business in the UK (even if non-UK incorporated and headquartered) that supply goods or services, and have a turnover in excess of GBP £36 million. Note that the UK law is broader than its California counterpart in that it applies to suppliers of goods and services unlike the Californian law which applies to manufacturers and retailers only.

Pursuant to the Act, covered entities must publish an annual ‘Slavery and Human Trafficking Statement’ to be displayed prominently on their website as approved by the Board and signed by a Director. The statements must be published within six months of year end.

The Slavery and Human Trafficking Statement must include:

- the organization’s structure, business & supply chains;
- policies in relation to slavery and human trafficking;
- due diligence processes in relation to slavery and human trafficking in its business and supply chains;
- the parts of its business and supply chains where there is a risk of slavery and human trafficking taking place, and steps taken to assess & manage that risk;

- effectiveness in ensuring that slavery and human trafficking is not taking place in its business or supply chains, measured against performance indicators it considers appropriate;
- training and capacity building about slavery and human trafficking available to its staff

Compliance with the UK provisions however remains a problem for UK enforcement authorities. A report published in March 2018 by an international sustainability consultancy group indicated that only 58% of the UK Government's 100 top suppliers in 2017 met the legal requirement to outline their actions to combat forced labor within their supply chains. Whilst 97% of suppliers published an annual statement, only 58% of those were legally compliant. These statistics have previously been echoed in other similar type surveys.

In October 2017, the UK Home Office published a Guidance Document on Transparency in Supply Chains under the UK Modern Slavery Act. The Guidance sets out some advice on 'best practice' and provides that:

- References in the Act that provide that Slavery and Human Trafficking Statements "may" include certain information should be amended such that the "statements should aim to include" that information;
- Companies are expected to publish statements 'at most' six months after year end;
- Businesses are encouraged to leave previous statements on their websites indefinitely; and
- Companies with turnover less than the £36 million threshold are encouraged to voluntarily produce statements.

A review of modern transparency and disclosure legislation would not be complete without a reference to EU Directive 2014/95/EU on disclosure of non-financial and diversity information by certain large undertakings which, although not specifically related to modern slavery in the supply chain, nonetheless requires companies concerned to disclose in their management report, information on policies, risks and outcomes as regards various matters including *inter alia* respect for human rights which would include modern slavery and illegal trafficking. The Directive is quite limited in scope, however, and only applies to large companies with more than 500 employees.

What are typical requirements of mandatory due diligence legislation?

This section summarizes some key pieces of legislation that place mandatory human rights due diligence obligations encompassing modern slavery on companies.

The French Duty and Vigilance of Parent and Subcontracting Companies Law No. 2017-399 (the so-called *Devoir de Vigilance* Law) adopted on 27 March 2017, requires French companies with more than 5,000 employees in France, or more than 10,000 employees globally, to have a due diligence plan to identify and address adverse human rights impacts in their operations, supply chains and business relationships.

The due diligence plan (*plan de vigilance*) must contain adequate measures including:

- a risk assessment and planning program to help in identification, analysis and prioritization of risks;
- a method for regular assessment of the compliance status of subcontracting companies across the whole supply chain (affiliates, subcontractors and suppliers, etc.);
- appropriate actions to attenuate risks and prevent serious offences;
- a whistleblowing mechanism for gathering reports relating to the existence or likelihood of risks; and
- a system to monitor the implemented measures and evaluate their efficacy.
- Companies must disclose their due diligence plan annually. A decree providing further details on the content of the plan and the means of implementation of the obligations under the law is due to be published.

What can we expect in the future?

Emerging legislation to eradicate modern slavery in business operations and supply chains is gaining momentum in a number of countries, including the Netherlands, Hong Kong and most notably Australia. Recent legislative activity in this area demonstrates that the issue must remain firmly on the radar of all companies.

Some of the countries with key emerging legislation to watch out for include the following:

[Australia Modern Slavery in Supply Chains Reporting Requirement Consultation Paper, August 2017](#)

The Australians, on both a federal and a state level, appear to be leading the way as regards proposed mandatory reporting requirements in this area. In August 2017, the Australian Government launched a public consultation on the introduction of a reporting requirement applicable to modern slavery in the supply chain. Using the UK Modern Slavery Act and the United Nations Guiding Principles of Business and Human Rights as reference points, the proposal, if enacted, would require that all companies operating in Australia and meeting a threshold of \$100 million in total annual global revenue must report annually on their efforts to address modern slavery in their operations and “supply chains”.

The reporting requirements are expected to be further fleshed out in draft legislation due to be published later this year. However, the proposed requirement is intended to improve information available to consumers and investors about company efforts in combating modern slavery. Similar to its UK and California counterparts, the draft legislation is also designed to put pressure on companies to prevent, identify, and eliminate modern slavery practices in their operations and amongst business partners.

Of note is the potential extra-territorial effect of the proposed legislation which covers a broad range of entities that are either headquartered in Australia or have “any part of their operations in Australia” and that meet the revenue threshold. Thus, a multinational company based in, for example, the US, that meets the revenue threshold despite having only minimal operations in Australia, could fall under the definition of covered entity and, therefore, may be subject to the reporting requirement.

The proposals also include a requirement to publish an annual “Modern Slavery Statement” to be posted on the entity’s webpage and which must contain certain information regarding the covered entity as follows:

- Structure, operations and supply chains;
- Modern slavery risks present in the entity’s operations and supply chains;
- Policies and processes to address modern slavery in its operations and supply chains and their effectiveness; and,

- Due diligence processes relating to modern slavery in its operations and supply chains and their effectiveness.

A criticism of the proposal, as outlined in the consultation paper, is that there does not appear to be any financial or other penalties for non-compliance. The Government has, however, stated that it will monitor compliance and “entities that do not comply with the reporting requirement may be subject to public criticism.” It remains to be seen whether this is an effective tool.

Draft legislation was expected to be released in April 2018 but recent reports suggest that this may now be pushed out again. What is clear, however, is that the Australian legislation is likely to be more stringently enforced and more robust than its UK counterpart which some consider to be a “light-touch”.

[New South Wales \(Australia\) Modern Slavery Bill, March 2018](#)

On 8 March 2018, the New South Wales Legislative Council followed the Federal Government's lead and published a Modern Slavery Bill, Part 3 of which contains a specific section on supply chains.

If enacted, the Bill would require 'commercial organizations' to prepare a modern slavery statement in each financial year. 'Commercial organizations' are defined as organizations (other than a government agency) that have employees in the State that:

- supply goods and services for profit or gain, and
- have a total turnover in a financial year in excess of \$50 million or such other amount as may be prescribed by the regulations.

The modern slavery statement would contain such information as may be required by regulations which, when enacted, may require the inclusion of information on the following:

- the organization's structure, its business and its supply chains;
- its due diligence processes in relation to modern slavery in its business and supply chains;
- the parts of its business and supply chains where there is a risk of modern slavery taking place, and the steps taken to assess and manage that risk; and
- training available to employees.

The Bill also provides for the appointment of an Anti-Slavery Commissioner who would be required to keep a publicly available electronic register that identifies organizations that produce goods and services that are, or may be, products of supply chains in which modern slavery is taking place. In addition, the Commissioner will be obliged to develop and make publicly available codes of practice that can be used to remediate or monitor identified risks of modern slavery.

Interestingly, similar to its federal counterpart, the Bill is noteworthy due to its extraterritorial affect. In fact, Section 4 of the Bill deals specifically with this and states that the Parliament intends for the Act to apply both within and outside the State.

[UK Modern Slavery \(Transparency in Supply Chains\) Bill, September 2017](#)

In September 2017, the UK Government published a draft amendment to the Modern Slavery Act to enhance transparency in supply chains. The draft contains several provisions which include:

- Clarification on what must be included in the modern slavery statement.
- Inclusion of a requirement that companies provide reasons for failing to take steps to eradicate human trafficking and slavery.
- List of commercial organizations required to publish a statement
- Bans non-compliant organizations from participating in a public procurement.

[Netherlands: Child Labour Due Diligence, Draft Law, February 2017](#)

In February 2017, the Dutch Government published its Child Labour Due Diligence draft law which, if enacted, would require companies to:

- conduct due diligence on the occurrence of child labor in their operations or supply chains
- draw up an action plan if a reasonable presumption exists that child labor has contributed to a product or service; and
- submit a statement – to be published in a publicly available register - confirming that due diligence has been carried out in relation to child labor in the supply chain.

The draft, if enacted, would apply to both Dutch registered companies and those registered outside the Netherlands but which deliver their goods & services to Dutch consumers twice or more a year.

The Draft does not contain any specific requirements as to what the statements must contain. Additionally, unlike the provisions contained in the UK Modern Slavery Act, companies are only required to submit the statement once.

The Draft, if enacted, will enter into force on 1 January 2020 after which companies will be required to file declarations within six months (i.e. by 1 July 2020) certifying that they have conducted the required due diligence. Companies wishing to voluntarily send in their statements before the deadline can do so as early as 2018.

Hong Kong: Modern Slavery Bill, January 2018

On 11 January 2018, Dennis Kwok, a member of Hong Kong's Legislative Council, submitted a draft Modern Slavery Bill for consideration to the Chief Executive. The Bill is similar to the UK Modern Slavery Act and, if enacted, would impose annual reporting requirements on certain commercial entities under the existing scope of the Organized and Serious Crimes Ordinance.

Pursuant to the proposal, corporate bodies and partnerships conducting business in Hong Kong whose turnover exceeds a threshold amount would be required to publish an annual slavery and human trafficking statement. The turnover threshold is not specified and is to be set down by way of separate regulation.

Similar to the UK Act, the Draft requires that statement must:

- Set out the steps taken that financial year to ensure that slavery and human trafficking is not taking place in any part of the organization's business or in any of its supply chains or a statement confirming that no steps have been taken if that is the case;
- Be approved by the board of directors (or equivalent) and signed by a director (or general partner); and
- Be published on the company's website with a link to that statement appearing in a prominent place on the homepage.

Best practice for compliance

As Australia's Parliament continues to thrash out the details of a new Modern Slavery Act, and as other jurisdictions follow suit, what practical measures can you introduce now to ensure compliance with both existing and emerging requirements on a global level?

A list of useful online tools for companies is set out in the Annex. In the meantime, you can start by ensuring the following:

- Develop a corporate human rights policy stating the company's commitment to respecting human rights with specific reference to human trafficking, forced labor, child labor etc.
- Appoint someone to monitor compliance with the above policies and report back to the Board;
- Educate your management team, employees and Board of Directors.
 - Policies should be implemented throughout your organization to ensure that all employees are aware of their responsibilities;
- Undertake a human rights risk assessment and look at your supply chain by mapping out who the high-risk suppliers are (see Section entitled "Why should businesses care?" above for list of high risk industries);
- Investigate your suppliers:
 - Issue them with self-assessment questionnaires;
 - Conduct reputational assessments;
 - Examine company data.
- Implement training for staff on human trafficking and slavery;
- Update supplier contracts and codes of conduct to ensure your suppliers adhere to your modern slavery policies and procedures;
- Collaborate with other businesses, industry associations and NGOs;
 - Share resources and adopt similar procedures with regard to the same suppliers.
 - Human rights abuses rarely occur in isolation and more often than not are systemic across a region or country.
- Implement a whistle blowing policy so that your employees feel comfortable pointing out risks.

On a practical level, many multinationals that are subject to both the UK Modern Slavery Act and the California Transparency in Supply Chains Act already have opted to prepare a single combined statement to address the requirements in both jurisdictions. With potentially several jurisdictions at issue, it is prudent (and more efficient) for manufacturers to begin producing combined statements to satisfy multi-jurisdictional reporting requirements.

Conclusion

The proliferation of existing and proposed legislation on modern slavery in the supply chain is a clear example of the growing regulatory trend which requires manufacturers worldwide to self-regulate. As the burden to self-regulate increases, it is vital for companies to implement compliance systems that can deal with and respond to new issues (without having to reinvent the wheel each time). History suggests that when one larger or more influential jurisdiction begins to focus on a new issue, others will follow suit. With more and more jurisdictions following in the steps of the UK Modern Slavery Act and the California Transparency in Supply Chain Act, it is likely that mandatory reporting requirements for supply chains will become the new global standard. Be prepared!

Annex

Useful online tools for companies:

<https://www.socialresponsibilityalliance.org/str/> - This is a free, open-source industry standard template (Slavery & Trafficking Risk Template (STRT)) used to assist companies in their efforts to comply with human trafficking and modern slavery legislation.

<http://www.respect.international/modern-slavery-registry/>. - This is a free, transparent and publicly accessible registry of company statements published pursuant to the UK Modern Slavery Act and the California Transparency in Supply Chains Act.

<http://www.modernslaveryregistry.org/>. This is a registry of reports filed under the UK Modern Slavery Act

<https://www.dol.gov/ilab/complychain/> - This is a comply chain application developed by the US Department of Labor which provides step by step guidance on social compliance.

<https://www.dol.gov/ilab/reports/child-labor/list-of-goods/> - This is a list of goods and their source countries produced by the US Department of Labor which it believes are produced by child or forced labor in violation of international standards.

<https://knowthechain.org/> - This is a useful tool for companies to understand and address forced labor risks in their supply chains by benchmarking current corporate practices.

About the Author:



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