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Business & Human Rights Resource Centre

JUNE 2017

ENGAGING WITH COMPANIES ON MODERN SLAVERY – A BREIFING FOR INVESTORS

About this guidance

This document has been prepared by CORE with contributions from Anti-Slavery International, Business and Human Rights Resource Centre (BHRRC) and Unicef UK. It is one of four briefings designed to provide information for businesses reporting under the Transparency in Supply Chains clause in the Modern Slavery Act 2015. The other briefings can be found here and include: *Recommended Content for a Modern Slavery Statement; Modern Slavery Reporting: Weak and Notable Practice;* and *Tackling Modern Slavery through Human Rights Due Diligence*. These briefings are intended to supplement and should be read alongside Beyond Compliance: Effective Reporting under the Modern Slavery Act, the civil society guide for commercial organisations on the transparency in supply chains clause.

This briefing supports investors to engage with companies on their actions to tackle modern slavery and human trafficking in their operations and supply chains. It provides investors with:

- **A rationale for engagement:** modern slavery risks are pervasive in business supply chains and have the potential to impact on reputation and share price.
- **Criteria for corporate engagement**: which companies to prioritise?
- **Questions to initiate dialogue:** engaging with companies that have only just started to consider their exposure to modern slavery, as well as questions for companies that are more advanced in addressing this issue.
- **Guidance on evaluating companies' responses:** fundamentals for all compa nies on understanding modern slavery risk.
- **Ideas for further action:** including considering modern slavery risks when constructing investment portfolios, through to supporting collaborations and engaging policy makers on the issues.

Why Engage?

Modern slavery, including forced labour and child labour is a grave violation of human rights. The clandestine nature of slavery and related practices makes it difficult to determine how widespread the problem is. The International Labour Organisation estimates 21 million people are in some form of forced labour globally.

Modern slavery is pervasive in corporate supply chains in all regions of the world. According to the U.S. Department of Labor, 139 commodities and goods ranging from timber to electronics to flowers are made using forced labour or child labour.

Investors have an important role in influencing corporate action on modern slavery. A report by the Ethical Trading Initiative found that investor interest is increasingly a driver for companies to address modern slavery. Of over 70 leading brands and retailers that took part in the research, 25% now see investor concerns as a strong motivator, an increase from zero in 2015.

Modern slavery poses a material business risk to companies and ultimately investors. Not only can the discovery of modern slavery pose a reputational risk and affect share price, there is a further risk of costly legal action and in some cases large compensation awards to victims. In 2015 U.S. marine-services company Signal International LLC had to pay U.S$ 20 million in compensation to former employees who were victims of human trafficking. The company later filed for bankruptcy. Signal was 47% owned by two major public pension funds, the Teachers' Retirement System of Alabama and the Employees' Retirement System of Alabama, who lost approximately U.S$70 million. For an overview of recent lawsuits against companies regarding forced labour, see the Business & Human Rights Resource Centre's Corporate Legal Accountability Bulletin on forced labour.

Investors can also face direct criticism if things go wrong. Using the OECD National Contact Points, in recent years complaints for insufficient human rights due diligence were brought against two prominent European investment funds that were minority shareholders in the South Korean steel company POSCO. The OECD has since published guidelines which clarify the responsibilities of investors, and confirm that the OECD Guidelines do apply to minority shareholders.

Which Companies Should Investors Engage With?

1 High risk sectors

All companies should take steps to address modern slavery risks. Even companies that are considered low risk should look into their supply chains, for instance to avoid exploitation of workers in cleaning or transportation services. Investors, however, may wish to prioritise engagement with companies operating in sectors that have been identified by the International Labour Organization as high risk for forced labour and human trafficking: domestic work, agriculture, construction, manufacturing, hospitality, and entertainment.

2 Companies required to comply with mandatory transparency legislation

The UK Modern Slavery Act and the California Supply Chains Transparency Act require large companies to publish statements detailing the steps they have taken to identify and address modern slavery in their operations and supply chains.

The Modern Slavery Act Registry, operated by the Business & Human Rights Resource Centre maintains a comprehensive collection of company statements published under the UK Modern Slavery Act. Investors can use this Registry to see which companies have and have not published statements.

3 Companies which do not fulfil the legal requirements under the UK Modern Slavery Act

Section 54 of the UK Modern Slavery Act [1] sets out two specific legal requirements with which companies must comply. Company statements must be approved by the board (or equivalent) and signed by a director (or equivalent), and there must be a link to the statement on the homepage of the company's website.

These requirements are significant: approval by the board demands buy-in from the very top for company-wide action to combat slavery risks; a director's signature creates clear accountability; and access to the statement from the company's homepage demonstrates a clear public stance against modern slavery and allows for easier scrutiny by consumers, investors and others stakeholders.

The Business & Human Rights Resource Centre tracks whether the statements on its Registry comply with each of these requirements. At the time of writing, only around 14% of statements meet these two requirements.

1. The transparency in supply chains clause of the Act (Section 54) requires companies with a turnover of over £36 million with operations in the UK to produce such a statement; estimates on the number of companies required to publish a statement under the MSA range between 13,000 and 17,000.

4 Companies which perform poorly in benchmarks & analysis

Accompanying this investor guide is the Weak and Notable Practice briefing, highlighting a sample of current reporting practices spanning the financial, retail, communications, and food and beverage sector.

KnowTheChain has published benchmarks on the disclosed efforts of 60 global companies to eradicate forced labour from their global supply chains in the ICT, food & beverage, and apparel & footwear sectors.

The Business & Human Rights Resource Centre has published an analysis of the modern slavery statements produced by 27 FTSE 100 companies. The briefing distinguishes stronger from weaker statements by tiering the 27 companies, and provides examples of good practice and gaps and trends in reporting.

In March 2017 the Corporate Human Rights Benchmark published its analysis of the human rights policies, processes and performance of 100 global companies in the extractive, agricultural products and apparel industries. The Benchmark identifies forced labour as a key industry risk for the agricultural products and apparel industries and will continue to evaluate companies' efforts in this regard.

KEY GAPS IN REPORTING UNDER UK MODERN SLAVERY ACT

Structure of supply chains: The vast majority of statements do not provide details on company supply chains, such as number of suppliers, details of sourced products and commodities, including source location by either country or region. Companies do not report substantially on suppliers beyond the first tier. This is a major gap. Many companies have complex, global supply chains, and the risks of slavery increase further down the chain.

Risk assessment: Very few statements describe how companies seek to identify risks or instances of modern slavery in their operations or supply chains. Statements that provide no details of the process in place also tend not to include information on modern slavery risks or instances that have been identified.

Questions for Investors to Ask Companies

QUESTIONS TO INITIATE ENGAGEMENT

Section 54 of the UK Modern Slavery Act suggests that companies include in their statements information on six areas - structure of business and supply chains, policies, due diligence, risk assessment and management, effectiveness and training. Investors should make clear their expectation that companies provide details on each of the suggested criteria. Comprehensive information on all six areas will give an overall picture of how the company is addressing modern slavery risks.

Some companies, in particular small and medium sized companies, as well as companies in lower risk sectors may have only just started to turn their attention to modern slavery risks and will not have taken action on all criteria set out in section 54. For engagement dialogues with those companies, investors may wish to focus on companies' governance, supply chain structure, business model and risk assessment. These areas are fundamental in enabling companies to address risks and investors to understand their risk exposure, yet company reporting on them is currently poor.

Company supply chain structure, business model and risk assessment

Companies need to understand where they operate and/or source from as a prerequisite to assessing modern slavery risks. Companies then need to assess risks related to commodities, manufacturing/sourcing countries, workforce composition (e.g. potential for exploitation of migrant workers by recruitment agencies), lack of oversight due to illegal sub-contracting, etc.

Questions for investors to ask include:

- Can you provide details of your organisation's structure and business model (including information on commodities and source countries)?
- How do you identify modern slavery risks? If your company does not have processes in place at present, what is the timeline for developing processes?
- Have you identified any modern slavery risks (including those related to raw materials, manufacturing/sourcing countries, workforce composition, or use of recruitment agencies)?
- How are you addressing identified risks?

Governance

Questions on governance will help investors understand the extent to which companies take modern slavery seriously. In order for a company to address modern slavery effectively, the development, implementation and oversight of policies and strategy related to modern slavery should start at the top level of management.

- What is the highest level of organisational oversight in ensuring modern slavery issues are addressed?
- Does the board discuss human rights issues regularly, including risks related to modern slavery?
- Who in the organisation is responsible for reviewing and/or approving key policies related to modern slavery or labour rights/human rights?

QUESTIONS ON PREVENTING AND ADDRESSING IDENTIFIED RISKS

Investors should focus not only on whether or how companies *assess* risks, but as they move further along in their due diligence process, on how companies *prevent* and *address* identified risks, and test companies' ability to respond to modern slavery allegations and incidents.

Addressing modern slavery risks

To address modern slavery risks, companies should assess the risks posed by their current practices and then act to address them, for example by developing and strengthening processes related to purchasing practices, recruitment and monitoring of suppliers. Investors should refer to CORE briefings Recommended Content for a Modern Slavery Statement and Modern Slavery Reporting: Weak and Notable Practice, which provides information on the content investors should expect to see in companies' modern slavery statements.

- Describe the steps you are taking to manage the risk of forced labour in your direct operations and supply chains?
- Describe the modern slavery training that you are providing internally and to suppliers?
- How are you addressing modern slavery risks through purchasing practices?

Stakeholder engagement

From preparing a statement under the UK Modern Slavery Act to developing remedial action plans when modern slavery has been identified, companies should seek input and expertise from a diverse group of stakeholders including potentially affected rights-holders, governments, peers (particularly those in the same sector or operating in the same geographic areas) and civil society. This engagement should be ongoing to ensure the company's strategy continues to be effective as operations or supply chains shift.

- Which stakeholders are you engaging with on modern slavery, and how?
- How are you engaging with governments in your countries of operation / source countries on their obligations to protect labour rights?
- How are you engaging with workers and trade unions, including in the sup ply chain (e.g. how do you ensure that workers in the supply chain are able to exercise their right to freedom of association)? Where national laws restrict freedom of association, are you involved in confidential stakeholder engage ment processes?
- How are you engaging with peers on modern slavery (e.g. in sector or multi-stakeholder collaborations)?

Response to allegations and incidents, and remedy

Companies should have grievance mechanisms in place for both direct employees and workers in the supply chain to report concerns and violations of the company's standards and/or local laws. These mechanisms should be accessible, and communicated to workers, including in the supply chain, and should allow workers to report concerns without fear of retribution.

Companies should also have in place clear processes to create corrective action plans with suppliers found to be in violation of the company's standards, and crucially, a process by which victims can seek and obtain remedy. Information on these processes can provide investors with the confidence that the company is prepared to act swiftly and appropriately in response to incidents occurring.

- How can affected stakeholders report modern slavery incidents or concerns? How does the company ensure that workers (including vulnerable workers such as migrants) in the supply chain know how to use the grievance mechanism?
- Can you give examples of remedy provided to affected rights-holders? If no incidents of forced labour have been identified, provide a description of the remedy that would be provided should incidents be discovered?
- What processes does the company have in place to publicly respond to and investigate severe human rights related incidents?

Evaluating Companies' Responses

Can the company demonstrate it understands its modern slavery risks?

- Companies should have a thorough understanding of the risks its business model and practices pose to the labour rights of its direct employees and contracted workers. Failure to understand this creates a secondary risk of reputational damage and costly litigation.
- Companies should consider if and how sourcing practices create a risk of modern slavery.
- Companies should consider if and how recruitment and outsourcing practices create a risk of worker exploitation, particularly for vulnerable workers such as migrants or women.

Can the company demonstrate it takes modern slavery risks seriously?

- Companies should be able to demonstrate board oversight on human rights (or labour rights / modern slavery more specifically) and that it has created accountability within the organisation for addressing modern slavery risks.
- Companies should comply with applicable reporting laws such as the MSA and prepare robust reports rather than treat it as a box-ticking exercise. The reporting requirement is an opportunity for companies to take positive action and put robust systems and processes in place. Where companies have robust human rights management and reporting systems in place, it should be possible to extract the information without too much additional re porting burden.

Can the company demonstrate it makes credible commitments?

- Companies should amend/ develop processes and policies related to managing the risks of modern slavery.
- To ensure progress over time, companies should also develop and dis close measureable, time-bound targets to track performance. Targets should be reviewed and revised regularly.

Beyond Engagement: From Integration to Engaging Policy Makers

Investors should take a holistic and proactive approach to addressing modern slavery risks, given the prevalence of such risks in business and the trend towards more legislation in this area.

Evaluating and addressing modern slavery risks should start with portfolio construction. The Principles for Responsible Investment (PRI)'s guide to integration provides an example of how investors can calculate the impact of labour standards on revenue and discount rate. Benchmarks and company analysis from, for example, the Business & Human Rights Resource Centre and KnowTheChain can help investors determine to what extent companies address modern slavery risks.

Active ownership is a key opportunity to address risks, particularly for passive investors. Some investors prefer to engage portfolio companies. The Church Investors Group has engaged over 250 UK companies regarding their obligations under the UK Modern Slavery Act. Others, particularly investors in the U.S. may prefer to file shareholder resolutions. Investors with limited resources may consider, at a minimum, supporting collaborative efforts such as signing investor statements on human rights expectations for companies. Examples include the Interfaith Centre for Corporate Accountability's Human Trafficking Investor Statement and the PRI's statement on Investor Expectations on Labour Practices in Agricultural Supply Chains.

Investors which outsource asset allocation and active ownership should communicate clear expectations regarding modern slavery to their asset managers and/or service providers. ShareAction's Forced Labour Investor Briefing provides examples of questions that asset owners can ask asset managers to ensure they address forced labour risks.

Finally, investors can play a key role in engaging policy makers. In 2014 a group of investors coordinated by Rathbone Greenbank Investments supported the inclusion of the Transparency in Supply Chains clause in the UK Modern Slavery Bill, helping to secure the inclusion of the transparency provision in what is now Section 54 of the Modern Slavery Act. The investors also helped to ensure that the transparency provision had a wide scope, by supporting an annual turnover threshold of over £36 million, rather than higher proposed thresholds. Investors should continue to engage with the UK and other governments to ensure a level playing field for companies, and effective and meaningful enforcement of the Act. For example, investors may want to ask the UK government to publish a list of companies that are required to report under the MSA, which would enable stakeholders and competitors to hold companies accountable.

RESOURCES

ShareAction Investor Briefing: Forced Labour: What Investors Need to Know

Business & Human Rights Resource Centre Modern Slavery Act Registry

FTSE 100 At the Starting Line: An Analysis of Company Statements under the UK Modern Slavery Act

Church Investors Group – Engagement Report. Modern Slavery 2016

KnowThe Chain Benchmarks

KnowTheChain Investor Resources: Engaging Portfolio Companies on Forced Labor Risks