SLAVERY AND HUMAN TRAFFICKING: HOW BUSINESSES CAN MANAGE THEIR RISKS

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Government Enforcement Alert

Trafficked labour and slavery are very much at the top of the global agenda. Global organisations need to be increasingly aware of their ethical and legal responsibilities in helping to reduce this scourge.

As part of our series (click here for our previous alerts) analysing the effect of the Modern Slavery Act 2015 ("**MSA**") on corporate decision-making, in this article we look at the role of the private sector and what practical solutions organisations can adopt in managing risks in their companies and supply chains.

BACKGROUND

According to Government statistics there are between 10,000 and 13,000 potential victims of slavery in the UK. The new Prime Minister, Theresa May, has identified this issue as one of her chief priorities and at the end of July announced a £33.5 million fund to help combat trafficking. The MSA came into force last year and was heralded by Mrs May, then Home Secretary, as a flagship piece of legislation. Recently, the Prime Minister has re-iterated her commitment to addressing the issue: "This is the great human rights issue of our time, and as Prime Minister I am determined that we will make it a national and international mission to rid our world of this barbaric evil."[1] Further, in June 2016 the U.S. Department of State published its annual Trafficking in Persons Report with Secretary of State Carey declaring that "ending modern slavery isn't just a fight we should attempt—it is a fight we can and must win."[2] The report describes how Government can work with NGOs and the private sector to combat trafficking.

In August new powers in the MSA came into force, enabling officers from Border Force, police forces and the National Crime Agency (NCA) to board and search vessels, seize evidence and arrest offenders where they have a suspicion that modern slavery is taking place. Offenders arrested at sea for modern slavery offences now face up to life imprisonment for their crimes under the MSA. Whereas individuals face imprisonment, corporates are under pressure to combat modern slavery by political and popular means as well as increasingly severe compliance burdens.

DOING THE RIGHT THINGS: GUIDANCE FOR CORPORATIONS

In the foreword to the MSA, Mrs May declared that: "Organisations with significant resources and purchasing power are in a unique and very strong position to influence global supply chains. It is simply not acceptable for any organisation to say, in the twenty-first century, that they did not know. It is not acceptable for organisations to ignore the issue because it is difficult or complex." This sets the bar high. Companies are expected to be pro-active in identifying and addressing the risks in their supply chain. The US Government has identified specific

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roles for companies in eradicating slavery and trafficking. These include implementing stringent recruitment procedures to ensure that prospective employers within the supply chain have legal, formalised processes of recruitment and that workers are hired in compliance with these, or directly, and not through unscrupulous middlemen.

PAINTED RED

In July, newspaper reports alleged that a component of paint used by a number of prominent car manufacturers came from mines in India where child labour and debt bondage were prevalent. They subsequently announced that they were launching investigations into their paint supply chains. This example is indicative of how brand and media pressure and the importance of ethics increasingly influence the behaviour of global companies. Merely publishing statements which express intolerance of slavery is no longer sufficient. The imperative on global businesses to undertake meaningful due diligence on their supply chains is gaining momentum and the consequences of not doing so may repel investment, breach legislation and attract significant adverse publicity. Indeed, in some cases, online campaigns have been set up to boycott a company's products.

LOOKING INTO YOUR SUPPLY CHAIN

Many organisations have published or are about to publish statements to comply with the MSA. As part of this exercise organisations must examine their own business and supply chains. This analysis should include:

- Engaging the board / senior management to commit to preventing slavery and trafficking within the business
- Undertaking a slavery and trafficking risk assessment to identify the highest risk areas of the business and vulnerable supply chains
- Following the risk assessment, conducting audits of the most vulnerable areas of the business and implementing appropriate remediation strategies
- Embedding policies and procedures in the business
- Requiring contractual representations and warranties from suppliers that their labour practices are in accordance with the company's Code of Conduct

In devising an initial strategy to combat the corporate challenges of slavery and trafficking, Barack Obama's Executive Order of 2012 on human trafficking provides helpful guidance.[3] This Order provides that federal contractors must not: i) use misleading or fraudulent recruitment practices during the recruitment of employees; ii) charge employees recruitment fees or iii) destroy, conceal, confiscate, or otherwise deny access by an employee to their identity documents. An awareness and understanding of these fundamental tenets is a good starting point to determining what issues a company may want to address, and what level of protection it wants to build into its policies.

HOW CAN WE HELP?

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Increasingly, ethics and brand risk issues are top priorities for the boardroom. Companies recognise that global sourcing and commerce often represents a significant challenge to ethical compliance. Companies that want to meet high ethical standards and improve their reputations should be aware of the importance of implementing effective and multi-risk sensitive compliance programmes. The risks of not doing so may be crippling. We work with businesses to determine how best to configure all aspects of a robust compliance programme, which may include:

- Drafting codes of conduct
- Devising an effective corporate communication strategy
- Producing risk assessments
- Drafting self-assessment questionnaires
- Advising on when to initiate audits and how best to conduct an audit
- Implementing corrective action plans
- Drafting supplier representations and warranties

We can help devise an integrated compliance programme. Many organisations already have some level of compliance in place, for example in relation to supplier and vendor due diligence. We can work with these organisations to harmonise their existing policies and compliance to effectively target the vulnerable areas in their supply chains. Targeting resources means maximising efficiency and limiting costs. Pro-active due diligence minimises risk. Failing to publish a statement under the MSA may lead to an injunction, prosecution of individuals for slavery or trafficking and significant adverse publicity. Integrated, pro-active due diligence will allow an organisation properly to assess its business risk and to manage this proportionately. Notwithstanding any other requirement, with an estimated 48.5 million people enslaved in the world today, the duty to tackle slavery and human trafficking is, above all, a matter of ethics and humanity.

NOTES

[1] https://www.gov.uk/government/speeches/defeating-modern-slavery-theresa-may-article
[2] http://www.state.gov/j/tip/rls/tiprpt/2016/index.htm
[3] https://www.whitehouse.gov/the-press-office/2012/09/25/executive-order-strengthening-protections-against-trafficking-persons-fe

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