

Trends and developments in modern slavery

Modern slavery is a term which lacks any precise legal definition. Rather, it is an umbrella term for various practices which share a common element of force or coercion. Modern slavery can be used to describe practices such as forced labour, child labour, forced marriage, human trafficking, confiscation of personal identification documents, debt bondage (i.e. forcing one to work to clear a debt), and indentured labour (e.g. prison labour), amongst others.

According to figures published by the International Labour Organisation ("ILO") in 2016, an estimated 40.3 million people were working in conditions which could be described as "modern slavery" at any given time in that year. Of these, it was estimated that 24.9 million worked in conditions which could be described as forced labour, and a further 15.4 million were parties to forced marriages. Perhaps unsurprisingly, women and children are disproportionately affected by modern slavery issues, with 25% of victims being children.

The same ILO data reported that annual profits from forced labour, in particular, reached USD 150 billion in 2016 (<https://www.pdpjournals.com/docs/99033>)

High risk sectors and countries

Whilst traditional slavery and state sponsored forced labour practices are generally in global decline, other forms of forced labour within the private sector appear to be on the rise.

In terms of geographical prevalence, the Asia Pacific region has the highest incidence of forced labourers (56% of the total), followed by Africa (18%), with Latin America and the Caribbean accounting for a further 9%. Other developed economies, including the European Union, account for 7%, whilst the non-EU countries of Central, Southeast and Eastern Europe and the Commonwealth and Independent states also account for a further 7% of the total.

Particular high-risk countries are those with high levels of political instability and conflict, such as North Korea, Eritrea, Burundi, Afghanistan, Pakistan, and Iran, amongst others.

Industries that see a high prevalence of modern slavery offences tend to be those that dominate the high risk locations mentioned above. Particular high-risk industries include agriculture, clothing manufacturing, construction, and mining. Modern slavery issues are also now increasingly found in retail and hospitality industries.

Why should companies care?

As companies shift to taking more notice of their environmental, social and governance positions ("ESG"), modern slavery issues have become, and will continue to become, more prevalent items on boardroom agendas. There are broadly three main reasons for this, as described below.

Firstly, there is the potential risk to brand value and reputation if companies are found to be engaging in modern slavery practices. Damage to brand value and reputation is unlikely to be dampened if the failings are found within a company's supply chain, rather than the company itself, as there is now an expectation that large, well-resourced, companies will have an appreciation of where their products and services are sourced, and how they are obtained or made.

Secondly, and linked closely to the first reason above, trust is increasingly becoming a more important driver of consumer and worker behaviour. The 2022 Edelman Trust Barometer suggests that trust is something that all stakeholders value: 58% will buy or advocate for brands based on their beliefs and values, 60% will use those metrics to choose an employer, whilst 80% would use the same measures to make investment decisions (<https://www.edelman.com/trust/2022-trust-barometer>).

Increasing stakeholder pressure, as well as that exerted by the media,

**Jonathan Tuck, Partner,
and David Yadid, Associate,
at Baker & McKenzie LLP,
explore the latest global
developments and compliance
measures in the field of
modern slavery**

has led to an evolving expectation of what companies should offer; there is now greater demand for companies to solve societal issues, to use their resources and capital to improve the world around them, to take authentic and tangible action and be a trusted provider in the market rather than simply provide goods and services for the lowest cost possible.

Finally, new and developing legislation around the world is forcing companies to turn their collective minds and resources to these issues. The content of these legislative regimes is further explored below.

We expect that the increased focus on ESG issues will force companies to adapt their behaviour, if they are not doing so already. In particular, modern slavery issues will need to be considered at a broad company level. This may include providing assistance and training (whether internally or from external service providers) to their procurement, recruitment, legal and/or compliance teams in order to avoid falling foul of various legislative regimes, each of which include some form of penalty for non-compliance.

The Modern Slavery Act 2015 – the UK position

The UK's offering in the modern slavery legislative space is the Modern Slavery Act 2015.

A summary of its key provisions is set out below.

Who is caught by the legislation?

A commercial organisation is caught by the legislation if it:

- is a "body corporate" or partnership (wherever incorporated);

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- carries on its business, or part of its business in the UK;
- supplies goods or services; and
- has an annual turnover of £36 million or more.

For the purposes of the legislation, "turnover" means the total turnover of the body corporate and any of its subsidiaries.

Overseas organisations must have a "demonstrable presence" in the UK in order to fall within the legislation. This can

be evidenced by, (amongst other factors), being registered at Companies House, having a physical UK presence, providing services or support functions in the UK, receiving income in the UK, or having another visible UK presence, such as a website.

What must companies do?

Companies caught by the requirements mentioned above must publish an annual modern slavery statement.

Where multiple group companies each meet the requirements set out above, they may publish one statement on behalf of the group as long as it names the organisations being covered, sets out the steps each one has taken to prevent modern slavery, and is published on the websites of each company. All statements must be signed off by a director of the enti-

ty to which the statement purports to relate.

What are the content requirements of a modern slavery statement?

There are currently no formal content requirements for a modern slavery statement published in line with the UK legislation. However, the UK Home Office has issued statutory guidance which sets out six areas that it is recommended to cover in a modern slavery statement. These are:

- organisation structure and supply chains;
- policies in relation to slavery and human trafficking;
- due diligence processes;
- risk assessment and management;
- key performance indicators to measure effectiveness of steps being taken;
- training on modern slavery and trafficking.

What are the penalties for non-compliance?

There are currently no financial sanctions available for non-compliance with the UK legislation. In theory, it is possible that the UK government could seek injunctions to enforce compliance, but as far as we are aware this power has not been exercised to date.

Modern slavery on the global legislative agenda

The UK Modern Slavery Act 2015 does not stand alone worldwide. Several other nations have their own similar regimes to police company behaviour and enforce proper supply chain management. Some of the key regimes across the world are those found in Australia, California, France,

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Germany and Netherlands. Each of these is explored in more detail below.

Australia

The Australian Modern Slavery Act 2018 catches Australian entities as well as foreign entities carrying on business in Australia, each with an annual consolidated revenue of AUD 100 million.

There are various content requirements for a compliant statement, including items such as the organisation's structure, operations and supply chain, an assessment of the risk of modern slavery practices in the organisation and its supply chains, and what due diligence is conducted and remedial actions taken to identify modern slavery risks and issues. Detail on training and internal policies is also required.

Similar to statements made under the UK Modern Slavery Act, statements published under the Australian legislation must be approved and signed by a director of the relevant entity being covered. They must also be submitted to the Minister of Home Affairs for publication on a central, public online register.

There are no financial or injunctive penalties under the Australian regime, but the Minister for Home Affairs can request non-compliant entities to provide an explanation for failing to comply, to which companies have 28 days to respond. Non-compliant companies can then be "named and shamed" for their refusal or inability to comply.

California

The California Transparency in Supply Chains Act 2010 catches entities which are retailers or manufacturers doing business in California with a worldwide revenue of at least USD 100 million.

It also requires statements to be published evidencing a company's actions in the modern slavery space. For example, statements must state

what actions have been taken to address modern slavery risks in their operations and in their supply chains; they must cover due diligence and audit practices, including a statement of whether the audits are independent and unannounced or not.

The California legislation also requires companies to proactively state the extent to which they require direct suppliers to certify their own compliance with local laws regarding modern slavery and human trafficking in the country in which they operate.

Unlike most other regimes, injunctive relief can be taken against non-compliant companies. However there are no financial penalties, nor have there been any actions taken to "name and shame" non-compliant companies to the best of our knowledge.

France

France's 'Duty of Vigilance' law places the onus on large companies in France to identify and prevent risks to human rights and the environment which could occur as a result of their business activities.

The law applies to companies either headquartered in France with more than 5,000 employees, or headquartered either in France or abroad but employing more than 10,000 employees worldwide (amongst other criteria).

Companies caught under the regime have a statutory obligation to publish and implement a "vigilance plan" which details their efforts in preventing serious violations of human rights, fundamental freedoms and the health and safety of people and the environment.

Germany

Germany's Supply Chain Due Diligence Act 2021 imposes due diligence obligations on companies with a footprint in Germany. The due diligence obligations they must comply with are those which ensure the safeguarding of human rights and standard of environmental protections in their supply chains.

The Act applies to companies which have their head office, principal place of business, administrative headquarters, or a registered office in Germany, and which employ more than 3,000 employees (amongst other criteria). Foreign companies with a branch office and a corresponding number of employees in Germany are also subject to the legislation.

In terms of reporting, the Act requires an annual report documenting the company's fulfilment of its human rights-related due diligence obligations. The same report must also be submitted to the competent German authority.

Netherlands

In the Netherlands, the Dutch Child Labour Due Diligence Law obliges companies to investigate whether their goods or services have been produced utilising child labour, and to produce a plan to prevent child labour in their supply chains if instances are uncovered.

The legislation applies to Dutch and foreign companies that do business with Dutch consumers consistently over time. Companies to whom the legislation applies must submit a declaration to a regulator affirming that they have exercised an appropriate level of supply chain due diligence in order to prevent child labour.

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The regulator publishes these corporate human rights due diligence statements in an online public registry.

Developing trends: reporting and policies

As a result of the increasingly global reach of legislation dealing with modern slavery in some form, many companies with global footprints are modifying the way they organise themselves in order to assure compliance across their businesses.

Perhaps the most notable trend in reporting behaviour amongst global companies is to tackle reporting obligations under multiple legislative regimes at one time. Companies have increasingly been involving internal and external stakeholders and advisers in the hope of preparing statements which can tick-off their compliance requirements under multiple regimes. We have seen statements most commonly covering the UK, US and Australian regimes as examples.

Sitting alongside a desire to harmonise reporting obligations is a commitment to a global approach to policies. With modern slavery now on the legislative books more commonly across the world, there is an increased need to ensure that key policies that could interact in this space, such as disciplinary and grievance, whistleblowing, recruitment, or compliance procedures, are to the fullest extent unified in their approach across jurisdictions to ensure that employees are supported in the same way across the business.

Legislative pipeline

With the recent growth of modern slavery-style legislation in the last decade, it is unsurprising that there are future developments expected which will have yet further impacts on the way companies conduct their business.

Domestically, an amendment bill aiming to reinforce the UK Modern Slavery Act was tabled in the House of Lords in June 2021. Whilst there does not appear to be any immediate

appetite to progress the bill into formal law, it will, when enacted, have a major impact on the way the UK's modern slavery legislation works and what demands are placed on companies caught under the regime. The bill aims to:

- establish minimum standards of transparency in supply chains with respect to modern slavery and human trafficking;
- mandate specific reporting topics that modern slavery statements must cover;
- set a single reporting deadline for the publication of modern slavery statements;
- enable the anti-slavery commissioner to issue warnings to companies who fail to meet transparency obligations;
- make it a criminal offence for those responsible for modern slavery statements (e.g. company directors) to know, or be reckless to the fact, that the statement they are producing is materially false or incomplete; and
- introduce financial penalties for commercial organisations that fail to meet their obligations.

Similar legislative progress is being made in the European Union. The EU Directive of Corporate Sustainability Due Diligence was proposed by the European Commission in February 2022. The proposed directive aims to promote and secure sustainable and responsible corporate behaviour throughout global supply chains – more specifically it aims to foster sustainable and responsible corporate behaviour throughout global value chains.

Companies will be required to avoid adverse impacts of their operations on human rights, such as child labour and exploitation of workers, and on the environment, for example pollution and biodiversity loss. The directive would require EU Member States to transpose into national law a corporate due diligence duty to identify, prevent, bring to an end, mitigate and account for adverse human rights and environmental

impacts. It would also force companies to put in place a formal complaints mechanism and to publically communicate on the effectiveness of their due diligence efforts.

Once transposed into national law, the law would apply to companies formed both within and outside EU Member States depending on their turnover, number of employees and/or sector. As yet, there is no precise timeline regarding when the directive will come into force.

Finally, legislation is also expected to come into force in Canada in the near future. Canada's Act to Enact the Fighting Against Forced Labour and Child Labour in Supply Chains was passed in the Canadian Senate in April 2022 and aims to address issues of forced and child labour. The Act will impose annual reporting obligations on companies caught by the regime which require them to state the steps they have taken during the preceding year to prevent and reduce the risk of forced labour or child labour during production/importation of goods in Canada or elsewhere by the entity.

It is clear that, globally, issues of modern slavery and related legislation are rapidly developing and should be of concern to the compliance function of businesses in all sectors.

Jonathan Tuck

David Yadid

Baker & McKenzie LLP

jon.tuck@bakermckenzie.com

david.yadid@bakermckenzie.com
