The UK Modern Slavery Act 2015: Implications for Asia

LIBERTY ASIA
TO PREVENT
HUMAN TRAFFICKING
The Modern Slavery Act 2015 (The Act) defines twin offences of: (i) slavery, servitude and forced or compulsory labour; and (ii) human trafficking. In addition, if found guilty of either slavery or human trafficking offences, the Act provides the court will now assume that all the assets a defendant has, or has had in the last six years are the proceeds of crime.

The Act requires transparency and disclosure statements to be published publicly by certain corporates, which will likely require them to conduct due diligence, provide internal training and implement policies and procedures.

For Corporates:-

- **Who?**
  relevant to all commercial organisations (any foreign incorporated business with a business presence in the UK) with an annual turnover of more than £36 million and which carries on a business, or part of a business, in any part of the UK;

- **What?**
  publish an annual statement for each financial year setting out the steps the organisation has taken during that year to address slavery and human trafficking;

The Act also suggests corporates:

- identify its key risk areas;

- consider instituting various internal policies, including staff training; and

- consider conducting due diligence on current and future suppliers to assess the risk of slavery and human trafficking in the suppliers’ supply chains

- **Otherwise?**
  if an organisation does not publish a statement as required, the Home Secretary can enforce the obligation by seeking an injunction in the High Court.

For corporates, the transparency provision brings with it the opportunity to mainstream human rights considerations through business processes whilst also exposing them to increased risk of litigation, investigation and public scrutiny.
For NGOs and Activists – By Liberty Asia

• The transparency provision set out at s.54 of the Act presents a new tool of accountability, which is relevant not only to Governments, but also to civil society and other interest groups such as consumers. As corporates start to put out statements on their websites, there is a better opportunity for consumers to understand if the goods they are purchasing are indeed free from the taint of slavery.

Corporates would also have to be very careful about not misrepresenting their efforts and the slavery footprint (if any) within their organisation as this may lead to consumer activism and reputational damage.

• Activists and NGOs operating in South East Asia can use these provisions as an opportunity to encourage the engagement of the private sector and commercial organisations in the quest to eradicate modern slavery and human trafficking. Commercial organisations will need to audit their supply chains, and the intelligence and community involvement, which NGOs can provide on the ground, could be key to this. Where any of these offences is discovered or suspected, NGOs may be well placed to advise commercial organisations on a strategy to address the issues without damaging the economic interests of the local community.

• It is often the case in global businesses that there are multiple entities registered in different jurisdictions and servicing the various different needs of the corporate. The application of the transparency provision is to companies that carry on a business, or part of a business, in any part of the UK and could, in theory, exclude subsidiaries incorporated outside the UK. However, Guidance from the UK Home Office encourages corporates to take an inclusive approach, recommending that “if a foreign subsidiary is part of the parent company’s supply chain or own business, the parent company’s statement should cover any actions taken in relation to that subsidiary to prevent modern slavery”. In any event, even where non-UK subsidiaries of commercial organisations fall outside the scope of the Act because of their geographic location, commercial organisations could be encouraged to comply for various reasons. Such an approach can protect the brand reputation; indeed, the Home Office Guidance advises that “if a parent company is seen to be ignoring the behaviour of its non-UK subsidiaries, this may still reflect badly on the parent company”. The UK Home Office Guidance considers it best practice to report on non-UK subsidiaries, especially where these are in high-risk industries or locations. In addition, corporates should consider that other jurisdictions may decide to introduce similar transparency provisions.

• The transparency provision also applies to any foreign incorporated business that has a business presence in the UK. Guidance from the UK Home Office encourages corporates to apply “a common sense approach” when evaluating such business presence, but the provision could include companies producing goods or selling services in the UK while being registered outside the UK. This provides the opportunity to draw the attention of consumer groups and the Anti-Slavery Commissioner to any slavery related offences that are being committed abroad in the production of goods and services destined for the UK.

It is now more than ever imperative for NGOs working in this space to gather intelligence credibly and comprehensively and to be aware of how to best use the information to achieve systemic change. For this provision to be truly impactful, there would need to be a flow of intelligence from the field to those in decision-making capacities. Investigative journalism has in the past played a critical role in building this intelligence flow but the
Act now provides an opportunity for greater involvement of civil society in helping bring transparency to a world where complexities abound and within those complexities are lost the voices of millions of vulnerable individuals exploited in the name of commercial gain.

- Enforcement of the transparency provision will rest with the newly created Office of the Anti-Trafficking Commissioner as well as the UK Home Secretary (who has the power to seek an injunction mandating compliance through the High Court) and will no doubt provide a very interesting focal point for NGOs working on the ground and who are often more directly aware of instances of slavery in the supply chain.

The essence of the Act is very much one of systemic change and encouraging the reform of business practices through enhanced transparency. The tone of the Guidance put out by the UK Home Office and the forward-looking and proactive nature of this piece of legislation both suggest that civil society engagement with helping monitoring and compliance whether by sharing intelligence or otherwise would be welcome by the enforcing body.

For NGOs, activists and consumer groups, this provision paves the way for accountability and change. It shifts the goal posts so that businesses are not mindful simply of business risks, but also of risks to the people who make it possible for the business to produce goods and services and in turn generate revenue.