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The Modern Slavery (Amendment) Bill

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The Modern Slavery Act 2015

The Modern Slavery Act 2015 (the “Act”) was introduced in order to help tackle modern slavery and human trafficking. Section 54 of the Act requires certain commercial organisations supplying goods or services in the UK to publish an annual slavery and human trafficking statement (a “Modern Slavery Statement”). Such a statement should outline the steps an organisation has taken to identify and mitigate the risks of modern slavery or human trafficking within its business or supply chains.

The UK government has recently taken a number of steps to strengthen the Act, including the creation of a central registry for Modern Slavery Statements, and announcing proposals, for “when parliamentary time allows”, for the implementation of fines for the failure to publish a Modern Slavery Statement, and certain other measures designed to strengthen the Act’s transparency provisions.

The Modern Slavery (Amendment) Bill

The Modern Slavery (Amendment) Bill (the “Bill”) was introduced, by way of a private member’s bill, to the UK parliament in June. The Bill seeks to introduce minimum reporting standards, as well as new offences to deter the publication of false or misleading information in a Modern Slavery Statement and to prevent the sourcing of supplies from suppliers who fail to meet such reporting standards.

New minimum reporting standards

If passed, the Bill would introduce new requirements of disclosure and transparency, including requirements to:

- i) publish and verify information about the country of origin of sourcing inputs in a business’s supply chain;
- ii) arrange for credible external inspections, external audits, and unannounced external spot checks; and
- iii) report on the use of employment agents acting on behalf of an overseas government.

The Bill would then empower the Independent Anti-Slavery Commissioner (the “Commissioner”) to issue formal warnings to organisations that fail to comply with these obligations.

The Bill leaves unanswered important questions about the new requirements, notably 1) where the information regarding country of origin of sourcing inputs is to be reported; 2) what constitutes ‘credible’ external inspections; 3) what the inspectors would examine; and 4) the form and content of the report on the use of employment agents.

New offence – false information in relation to Modern Slavery Statements

The Bill includes the proposal for two new offences. The first would see directors (or equivalent) of body corporates, members in the case of a limited liability partnership, or partners in the case of any other kind of partnership, liable for providing information in the Statement that is knowingly or recklessly false or materially incomplete (the “Reporting Offence”). The Reporting Offence carries a maximum penalty of a two year imprisonment and/or a fine equivalent to 4% of the organisation’s global turnover, up to a maximum of £20 million.

Those who are charged with this offence would have a complete defence if they take all reasonable steps to ensure that the Modern Slavery Statement is corrected, and inform the Commissioner as soon as practicable after becoming aware of the falsehood or omission.

New offence – sourcing from suppliers which fail to demonstrate minimum standards of transparency

The second offence would be committed by an organisation which continues to source from suppliers or sub suppliers which fail to demonstrate minimum standards of transparency, after the supplier has been issued a formal warning by the Commissioner (the “Supplier Offence”). This would create a somewhat mismatched situation whereby non-compliance with the transparency requirements results only in a formal warning (albeit a warning which would result in a *de facto* embargo on the organisation’s goods or services), but any organisation sourcing goods or services from such a non-compliant organisation (even if themselves compliant) faces criminal sanctions for doing so.

Those found guilty of the Supplier Offence would face a fine equivalent to 4% of the organisation’s global turnover, up to a maximum of £20 million.

Conclusion

If the Bill passes in its current form, the introduction of criminal sanctions would place more pressure on organisations to comply, and significantly increase the risk of not doing so.

To meet the proposed transparency requirements, organisations may well need to establish systems for the collection of data, and ensure that any systems already in existence are adequately thorough. The unannounced spot checks would require organisations to establish policies and procedures in a consistent manner across the whole organisation.

As regards the formal warnings from the Commissioner, despite there being no criminal penalty imposed on the supplier itself, the threat of criminal sanctions on any organisation *sourcing* from such a supplier, would essentially create an immediate *de facto* embargo on that supplier or sub supplier in the UK, and could severely impede their ability to continue trading.

We are increasingly advising clients of the new diligence and disclosure requirements being placed on businesses in a time of increased ‘ESG’ focus. The Bill marks yet another step in the UK’s attempts to concentrate on the Social and Governance aspects of ‘ESG’, and with such concentration brings inevitable demands and challenges on legal and compliance teams globally.