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Expert Analysis: UK Holds Companies Responsible for Slavery in Supply Chain

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In March 2015, the United Kingdom passed the Modern Slavery Act ("U.K. Act"), the first of its kind in Europe.

Asian businesses that are suppliers or contract manufacturers of raw materials, components and finished products that result in goods or services sold in the United Kingdom can expect greater scrutiny of their labor practices, as well as increased requirements and demand for certifications of compliance, from their global customers. Asian businesses that are able to provide assurances of compliance are likely to benefit from greater market share, while those who do not may find themselves deselected by their customers.

While most of the U.K. Act addresses the violations and sanctions against those directly engaged in the criminal activities of slavery and human trafficking, the U.K. Act includes a new corporate reporting obligation that is modeled on a 2010 California law.

The U.K. Act's new corporate reporting obligation is similar in content and structure to, and appears to borrow in significant part from, California's Transparency in Supply Chain Act (SB 657). The California law required corporations to comply by January 1, 2012, and the new U.K. Act requires compliance by October 15, 2015. There are some differences in the compliance required by both jurisdictions, but it appears possible for sellers of products into both jurisdictions to comply with both laws with some coordination.

Who Will Be Impacted?

Under the California law, retail sellers and manufacturers selling goods into California and having annual worldwide gross receipts over $100 million (as defined in California's Revenue and Tax Code Section 25120) are subject to this law.

Following a consultation process in May 2015, the U.K. government has confirmed that the U.K. Act will apply to commercial organizations (corporate bodies and partnerships, wherever incorporated or formed) that (1) have a total turnover, or gross receipts, of £36 million ($50 million) or higher, and (2) "carry on a business" in the U.K. The U.K. Act will therefore catch both U.K. and non-U.K. incorporated or registered entities.

It is estimated that more than half of the world's working slaves are in Asia, according to the Global Slavery Index. Asian companies, particularly those supplying to the apparel and footwear, agriculture, electronics, mining, forestry and food-processing industries in the U.K. and California, are likely to be the most exposed.

Similarities and Differences in the Acts

In both the California and U.K. laws, the substance of the compliance requirement is a moving target.

The California statute states five main disclosure requirements in a rather straightforward fashion requiring each retailer or manufacturer to verify compliance through a link on its web homepage. The California attorney general also recently released recommendations for companies that want to go beyond the requirements for the "best disclosures."

The U.K. Act is less prescriptive, stating only that a company provide a statement of "the steps" it has taken to ensure that slavery and human trafficking are not taking place "in any of its supply chains" or parts of its business. Rather than provide a prescriptive list, the U.K. Act offers a series of suggested topics to include in the company's statements, including descriptions of its policies, due diligence processes, training, performance measures, an assessment of the effectiveness of its program and identification of parts of its supply chain at greater risk of slavery and human trafficking.

At present, no guidance, outside the framework legislation adopted by the U.K. Act, has been issued on the content of the required public statement. The U.K. government has stated in the consultation response that this guidance is due to be published prior to October, when the obligation to publish a statement comes into force. Moreover, the growing trend for transatlantic "regulatory learning" (e.g., in relation to conflict minerals) dictates that, as hinted at above, the U.K. will take California's lead on the required contents of the published statement.

A key difference is that under the U.K. Act, the disclosure statement must be adopted annually at the end of each financial year, and it must be signed and approved by the board of directors (or equivalent management body) and signed by a director who can attest that steps have or have not been taken to ensure no slavery or human trafficking is occurring in the supply chain. Also, under the U.K. Act, the statement must be sent annually to the newly appointed Independent Anti-slavery Commissioner and published in a "prominent place" on its website homepage. In contrast, the California law does not require annual statements, only a single statement, nor a signature by a high ranking officer of the company. Duties under the California law are triggered by the annual gross receipts and industry code (i.e., retailer or manufacturer) a company cites on its state tax return.

Both the California law and U.K. Act offer only injunction or performance of the statutory duties as the means of enforcement. It also should be noted that there is no limit on remedies available for a violation of any other state or federal law, leaving some open questions as to whether, for example, California's unfair business practices law in Section 17200, et seq., would be available to plaintiffs seeking to enforce this law's disclosure provisions.

What Should Companies Selling into the California and U.K. Markets Do Now?

Many companies prepared and posted their SB 657 compliance statements on their websites in late 2011 in anticipation of the law's January 1, 2012, effective date. Now it is three years later, and many of those statements should be reviewed to determine whether improvements can be made to align the statements with the new AG Guide on best practices. The California AG's office started its enforcement efforts in 2015 and is currently seeking voluntary submission of the statements via a data survey on its website.

In addition to a review and update of their existing SB 657 statements, companies should be preparing for compliance with the U.K. Act's requirements that currently have a provisional deadline of October 2015. For the next few months, companies should be looking for guidance that will be issued by the U.K. Secretary of State for clarification on the required content on the published statement, and should be looking at the steps they have taken in the past year to ensure that no slavery or human trafficking has occurred in their supply chain.

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