

# Reducing and Removing Involvement in Modern Slavery

By Richard Dailly and Duncan Jepson



## ON THE HEELS OF THE DUTCH CHILD LABOUR DUE DILIGENCE BILL, THE FRENCH CORPORATE DUTY OF VIGILANCE LAW, COMES THE BRITISH UK CRIMINAL FINANCES ACT 2017 WHICH ENHANCES THE PROCEEDS OF CRIME ACT ALLOWING THE SEIZURE OF PEOPLE WHO HAVE CARRIED OUT GROSS HUMAN RIGHTS ABUSE OUTSIDE THE UK<sup>1</sup>.

And in the US, there have been numerous bills put forward in relation to anti-human trafficking, supply chains and banking, since the loophole under the Tariff Act was closed last year by Obama's Trade Facilitation and Trade Enforcement Act<sup>2</sup>.

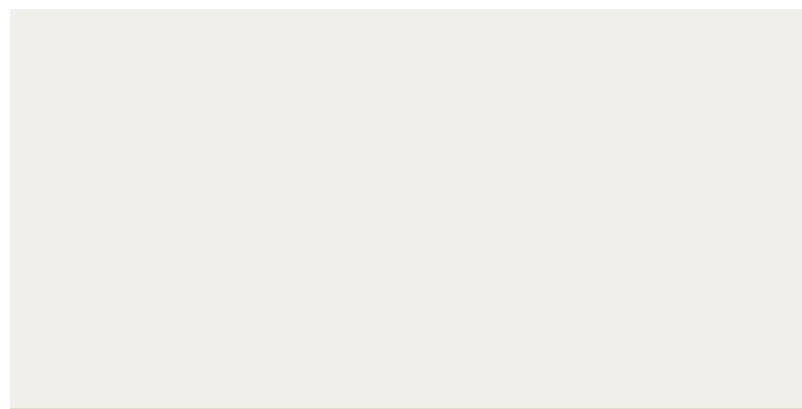
Modern slavery and human trafficking present businesses with potentially huge risks. Thailand's fishing industry, construction projects in Qatar, brick kilns in India, dams on the Mekong, palm oil in Malaysia, and electronic goods in China are just a few of the operations suspected of engaging in human exploitation that are regularly reported in the press. A closer examination of the human story behind the headlines provides the understanding of an organization's true exposure and liability, which was, for instance, starkly revealed by the mass graves of trafficked persons found in northern Malaysia and southern Thailand in 2015.

One of the greatest difficulties in getting businesses to be more proactive in rooting out human trafficking and slavery from their supply chains has been that no criminal liability has readily accrued to end buyers or

suppliers. This is despite the fact that human trafficking is a crime of crimes, comprising multiple offenses against the person as well as corruption and money laundering. There has been limited incentive to invest in the type of internal controls that would provide consistent corporate transparency throughout the supply chain. A more potent driver has been the fear of an investigative journalist finding and then managing to sell a story that will be picked up by global readers. However, many companies know this only happens infrequently.

Therefore, instead of implementing robust ongoing risk control, many companies rely on tactics such as single audits of the supply chain and due diligence of specific suppliers. However, when companies admit that the identities of their suppliers are largely unknown, there is real doubt that their compliance programs are having much of an impact. The reality has been that without obligations carrying a penalty for failure to comply to some risk-based approach, strategies have been piecemeal and half-hearted.

Businesses looking for best practices to aid their compliance with anti-slavery laws might logically turn to the risk-based approach developed over the years by organizations to comply with a wide variety of anti-money laundering, anti-bribery, and anti-corruption laws, such as the Bank Secrecy Act, U.S. Foreign Corrupt Practices Act, and the UK Bribery Act.



This kind of risk-based approach requires the implementation of proper internal controls capable of ongoing monitoring, reporting, and resolution of incidents. Continual training must also be provided to employees so they understand the exposure of the business to criminal activities. The requirements involve the implementation of better due diligence of third parties, robust procedures for onboarding third party relationships, contract management, compliance monitoring, and risk dashboards.

In practice, though, such internal controls require heavy investment, one that most businesses have not historically been willing to make in relation to risks associated with modern slavery and human exploitation in their supply chains. However, in light of the growing regulatory focus on the issue, the risk-based framework will not only aid companies in protecting shareholder value by limiting their risks and liabilities, it will also help management make better overall business decisions.

Ultimately, with or without robust procedures, better decision-making will only occur if individuals and teams are supported by increasingly richer intelligence resources and have access to quality information, whether from "big data," open source intelligence analysts, or information directly from the ground. At present, the development and distribution of actionable intelligence available to industry on modern slavery activities is nascent, but the need of it has never been clearer, and efforts are progressing rapidly. Society's commitment to anti-trafficking and eliminating

modern slavery has never been greater, and that is starting to generate powerful information and intelligence in the forms of basic case studies, thorough typologies, and victim statements around a nascent but increasingly robust legal and regulatory framework.

The advent of new legislation worldwide, the developing collaboration of civil society on sharing information, and increasing attention and application by financial institutions of their risk control teams to this problem should be clear indicators to many other industries that more will be needed than a confidential audit. While the current disclosure requirements are soft, as more incidences of modern slavery and exploitation come to light, governments will likely push companies toward a regime of more accurate and complete disclosure, requiring consistent and reliable internal controls. Additionally, one-off confidential audits will be less potent as intelligence and information is being increasingly gathered and shared by activists, law enforcement, and industry service providers. Finally, as the current ethical duty evolves to become a criminal liability and regulatory obligation, there will be an urgency to understand third party relationships from a risk perspective to ensure purchasing, investment, and business strategy decisions avoid and prevent liability and not just aim to fix a problem retrospectively.

## REFERENCES

- <sup>1</sup> <http://www.aoinvestigationsinsight.com/the-criminal-finances-act/>
- <sup>2</sup> <http://news.trust.org/item/20160224232745-ks4et/>



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## About Liberty Asia

Liberty Asia aims to prevent human trafficking through legal advocacy, technological interventions, and strategic collaborations with NGOs, corporations, and financial institutions in Southeast Asia.

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