Kroll LIBERTY ASIA TO PREVENT HUMAN TRAFFICKING

Forewarned is forearmed

By Richard Dailly and Duncan Jepson

PRESENTLY, IT IS NOT A CRIME TO BENEFIT FROM THE MATERIAL PROCEEDS OF SLAVERY, BUT IT IS A CRIME TO BENEFIT AND/OR TRANSACT BUSINESS FROM ITS FINANCIAL PROCEEDS.

Getting ahead of the problem is vital to anti-money laundering (AML) specialists in order to continue providing services in many emerging markets where low-cost labor is a key part of many prevailing industries.

The potential relationship between modern slavery and money laundering is going to become a greater challenge for financial institutions in the future. Many AML professionals and investment due diligence managers are now beginning to focus on modern slavery, and there is now an absence of proper intelligence-gathering protocols in place. The lack of regular information about slavery analyzed by intelligence, risk, legal, and compliance teams is not proof of its nonexistence or the infrequency of slavery's occurrence. Civil society records information from the tens of thousands of victims cared for every year, yet the information-gathering process is still in its infancy. But change is coming.

Firstly, exploitation, whether as modern slavery, forced labor, or human trafficking, is now being measured and evaluated, albeit its methodologies are still a work in progress. The Global Slavery Index, for example, puts the number of individuals in modern slavery at 48 million, and the International Labour Organisation estimates profits from slavery are US$150 billion worldwide.

Secondly, the global legal and regulatory framework governing and criminalizing these activities has developed substantially during the last few years. Although the changes in laws, whether in the U.S., UK, EU, or Thailand, may have been passed without much coordination and lack an overall strategy, the promulgation of these laws has motivated ongoing efforts to provide greater global coherence to the legal and regulatory frameworks addressing this issue.

Thirdly, the increasing collaboration between civil society and the broader community has led to a call for better information and data-gathering. Consequently, certain global financial institutions are seeking information[1] and data about slavery in industries such as fishing, agriculture, apparel, and manufacturing. Together, this marks the start of the proliferation of information into the financial services sector for risk mitigation purposes.

Finally, as liability is increasing, there is growing momentum within a wide variety of global industries to identify slavery and exploitation in their supply chains. The efforts to gain greater insight, whether from traditional audit or public investigative journalism, are starting to reveal that businesses have serious problems. Banks providing services to these businesses should be able to red-flag revenue gathered from such exploitation and other similar activities.

Business intelligence and data about exploitative activities is starting to become available outside of audit and law enforcement, from victim stories via civil society, supply chain research and investigation, and new information-sharing initiatives. Technology platforms built around new search engines are being offered to financial services companies to help them understand their risk and identify their clients' activities or exposure by searching for relationships in open source data, which is set to grow. It is estimated that in the next three years, over 80 billion devices will be connected to the internet[2], creating more forums, investigative blogs, reporting, and tip-offs. The prevalence of open source data might trigger legal and regulatory due diligence and know-your-client obligations under AML requirements or prosecutions.

Potential liability arising from money laundering is taken very seriously by global financial institutions. But local and regional financial institutions can often take a less than robust approach to know-your-customer (KYC) and client due diligence. As a result, their teams can be too accepting of the local business environment which may be typified by a scarcity of information, inconsistent rule of law, poor law enforcement, patchy regulations, pervasive corruption, poor information-sharing tools, unfocused civil society, or a lack of strong internal reporting and monitoring organizational structure in the local office.

As unskilled labor-intensive industries tend to be located in emerging economies, and the Global Slavery Index estimates 66% of global modern slavery is in Asia[3], it is safe to assume that proceeds from the sale of goods produced from modern slavery in fishing, manufacturing, and agriculture are going to be present in all levels of the banking system as such goods are bought and sold within the supply chain. Likewise, 10 years ago, little was known about the problems in palm oil, fishing, hotels, mining, and apparel, for example, whereas today, there are many documented allegations of abuse that have been reported in all these industries.

Business intelligence through technology has become the primary method of mitigating risk of modern slavery but, as slavery is hard to identify and define, work on the ground is important. The many disparate legal and regulatory definitions of modern slavery have further complicated the situation for the AML professional, particularly within the context of money laundering.

There is the statutory crime of human trafficking, which is inconsistently defined and applied across jurisdictions, some focusing on sex trafficking only while others include a wide range of exploitative activities.

Additionally, there is the activity of exploitation, be it modern slavery, trafficking, or forced labor, which is composed of many actions against the victim. Each action, together constituting the experience of slavery, is likely a statutory crime on its own. Theft (of personal identification and travel documents), deceit and fraud (to enter into debt bondage employment contracts), false imprisonment (ensuring the victims remain in a specific location such as on a fishing boat), violence (ensuring order and compliance), rape, and murder are such instances. When there is a suspicion of slavery, one cannot rule out the crimes attached to it.

Money laundering prosecutions based on slavery are rare because the information about victims suffering in forced labor has been hard to verify. Until very recently, most non-government organizations (NGOs) and prosecutions for trafficking have only focused on sex trafficking. This has changed. A number of NGOs are deploying a range of technologies to help make anonymized victim information be more accessible and widely shared for analysis.

REFERENCES

[1] https://www.sc.com/en/resources/global-en/pdf/Careers/Financial%20Crime%20Compliance.pdf

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[3] http://www.globalslaveryindex.org/region/asia-pacific/

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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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