

Buyer, beware!

By Richard Dally and Duncan Jepson



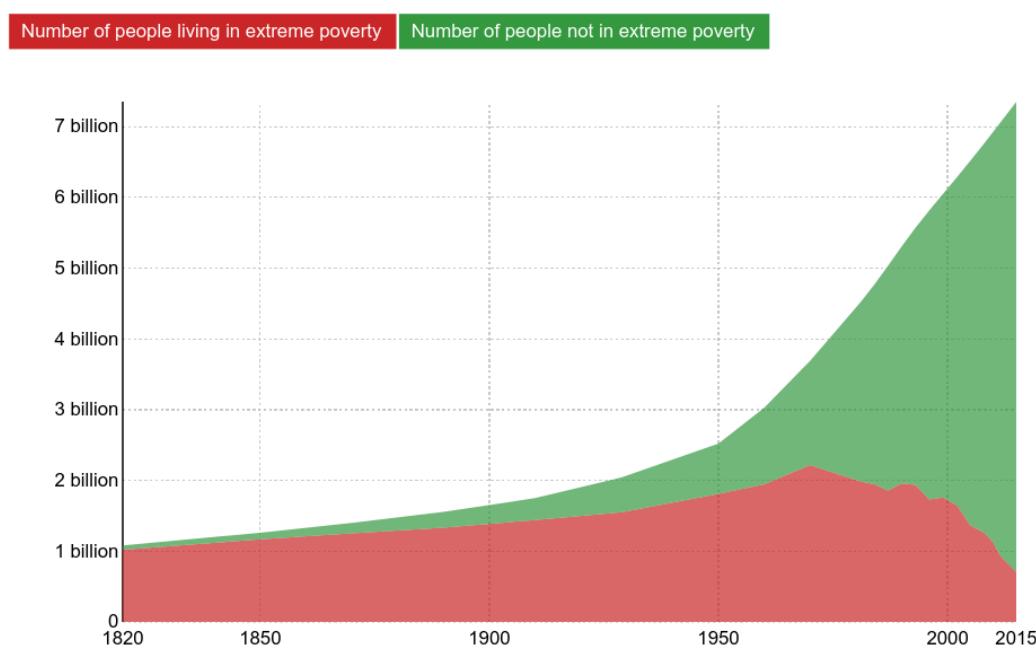
CAVEAT EMPTOR, “BUYER BEWARE,” IS THE STARTING PROPOSITION FOR ALL INVESTORS AS THEY MAKE THEIR DECISION TO PROCEED WITH A TRANSACTION OR DEAL.

The challenge of turning a possible investment idea into a feasible target is to narrow the information gap with due diligence. Even in information-rich locations – where there are reliable historical accounts and accounting rules, strong rule of law and enforcement, and comprehensive registries of rights and documentation – it is still impossible to answer all relevant questions with complete certainty. In emerging markets, information asymmetry, the difference between what is known and what is happening, is exacerbated by the absence of institutional and administrative infrastructure that generate and store the records and data needed to reduce risk. This systemic lack of information and the infrastructure required to support it make acquiring any kind of credible data exceedingly difficult.

The threat of exposure to criminal activity, such as slavery and trafficking, has steadily increased since the opening and swift development of many new global markets. These include the markets that emerged in Asia-Pacific and Central Asia in the 1980s and 1990s, and the development of Eastern Europe since the fall of the

Berlin Wall during that same period. A potential indicator of just how much societies have changed and benefited from economic development can be seen through the change in the population and poverty figures.

Income and wealth-generating activities have flourished across humanity, but they have also brought the potential for exploitation of some of the most vulnerable groups. Forced labor or other human rights offenses, such as land grabbing, denial of access to justice, and large-scale misappropriation through corruption, are some of the most common means used for exploitation. However, the news is not all bad. While rule of law in many countries is still weak and legal frameworks patchy, they have been growing and evolving such that countries which were previously in continual political upheaval and under constant threat of armed civil unrest in the mid-twentieth century have become more peaceable, enabling their communities to engage in commercial activities. Activities such as land grabbing, that were not recognized as criminal decades ago, are now being treated as such. It is not the knowledge that there is an absolute failure in the establishment of rights and access to justice that creates the risk; rather, it is the unpredictability of the treatment that creates the uncertainty.



Source: World Poverty in absolute numbers (Max Roser based on World Bank and Bourguignon and Morrisson (2002))
OurWorldInData.org/extreme-poverty/ • CC BY-SA

Those seeking to explore and invest in opportunities in emerging markets need to be more certain than ever before of who they are doing business with. The broad recognition of the importance of the UN Guiding Principles on business and human rights¹, the launch of International Labour Organisation's Alliance 8.7², and the rapid rise of environmental, social, and governance ratings³ demonstrate a greater commitment to reducing involvement in criminality and human rights and environmental abuses.

The generally positive response to environment and societal issues from the global business community⁴ is timely as there is also increasing evidence of widespread involvement of terrorist and transnational organized crime in human and wildlife trafficking activities. There are also increased links between the private sector, organized crime, and corrupt government and law enforcement in trafficking⁵, forced labor, and abuses and offenses against communities and the environment. All of these activities are directed at supporting local and regional businesses to increase profits and in turn pay kickbacks. The mass graves of Rohingya discovered in southern Thailand and northern Malaysia in 2015, and the convictions earlier this year of Thai officials, including a senior army general, are an example of one of the worst consequences of human trafficking⁶, and after two years it is still not yet known where those who survived were sold and put to work. There are businesses that benefited from those victims.

The risk of exposure to trafficking and slavery might seem small from an investment perspective when a search across the internet yields little of concern. However, while deeper open source intelligence and analysis can provide much information, it cannot be solely relied upon in markets where local and national media are influenced by regional elites and the potential for disclosure and transparency to uncover corruption is accordingly decreased. Accessing grassroots intelligence and on-the-ground due diligence is crucial in such markets to attempt to find unrecorded and unpublished information which may lead to more informed decision-making. Until recently, information from the ground about slavery have been

unavailable. However, growing collaborations between civil society, academic researchers, and the private sector have significantly increased the flow of substantiated data.

The most reliable annual source still is the U.S. State Department's "Trafficking in Persons Report."⁷ But during the last few years, those committed to combating slavery have increasingly focused on examining slavery's connection to the private sector, making businesses exposed to, and involved in, exploitation accountable. In some cases, businesses have become targets of litigation, such as the recent Nestle pet food case⁸ and the Unocal pipeline case in Myanmar⁹; in other cases, less confrontational means have been employed via disclosures and audits. The risk of a business being identified as exposed to, complicit in, or actively involved in slavery or other human rights abuse has become much greater with this increased flow of information and collaboration. As we progress to hyper-transparency, businesses would be wise to be aware of the risk and perform initial and ongoing due diligence of their investments or potential investments.

REFERENCES

- ¹ http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf
- ² http://www.ilo.org/global/topics/forced-labour/publications/WCMS_450718/lang--en/index.htm
- ³ <https://www.msci.com/esg-ratings>
- ⁴ <https://www.advisorperspectives.com/articles/2015/05/12/the-future-of-investing-esg-portfolios-changing-beliefs-perceptions-and-goals>
- ⁵ http://www.unodc.org/unodc/en/frontpage/2012/July/human-trafficking_-organized-crime-and-the-multibillion-dollar-sale-of-people.html
- ⁶ <http://www.cnn.com/2015/08/24/asia/malaysia-mass-grave/>
- ⁷ <https://www.state.gov/j/tip/rls/tiprpt/>
- ⁸ <https://business-humanrights.org/en/nestl%C3%A9-faces-new-lawsuit-in-california-court-alleging-use-of-fish-sourced-from-thai-company-using-slave-labour>
- ⁹ <https://business-humanrights.org/en/unocal-lawsuit-re-myanmar>



About Kroll

Kroll is the leading global provider of risk solutions. For more than 40 years, Kroll has helped clients make confident risk management decisions about people, assets, operations and security through a wide range of investigations, cyber security, due diligence and compliance, physical and operational security and data and information management services. Headquartered in New York with more than 35 offices in 20 countries, Kroll has a multidisciplinary team of nearly 1,000 employees and serves a global clientele of law firms, financial institutions, corporations, non-profit institutions, government agencies and individuals.

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.

About the authors



Richard Dailly

Managing Director in Kroll's Investigations and Disputes practice, head of Southeast Asia which includes Australia.



Duncan Jepson

Managing Director and Founder of Liberty Asia.

These materials have been prepared for general information purposes only and do not constitute legal or other professional advice. Always consult with your own professional and legal advisors concerning your individual situation and any specific questions you may have.

CONTACT

36 Robinson Road, #09-01, City House, Singapore, 068877
asia@kroll.com | T: +65 6645.4520

kroll.com

