



Refugees in the Workplace – *Compliance Strategies to Mitigate Modern Slavery Risk*

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Michael Littenberg is a partner in the securities & public companies practice group at Ropes & Gray.

As part of his practice, for more than 25 years, Michael has been active in advising leading public and private companies on supply chain compliance and corporate social responsibility matters, including relating to, among other areas, anti-human trafficking and conflict minerals and other commodities, and he is widely viewed as the leading practitioner in this emerging area.

Michael advises a significant number of companies on compliance with the US Conflict Minerals Rule, the pending EU Conflict Minerals regulation, the California Transparency in Supply Chains Act, the UK Modern Slavery Act, the FAR anti-human trafficking rule, REACH, RoHS, OFAC and anti-boycott and other supply chain-related regulations. Michael advises clients on, among other things, disclosure and compliance with legal requirements, the construction and implementation of compliance programs, mitigating customer, litigation, NGO and socially responsible investor risk, and in clients' interactions with these constituencies.

Today's Discussion

- Compliance Drivers
 - The Legislative Framework
 - External Stakeholder Expectations and Pressures
- Mini Case Study – The Turkish Garment Supply Chain
- Practical Compliance Tips

What is Human Trafficking and Modern Slavery?

- Includes slavery, servitude, forced or compulsory labor and human trafficking
 - **Slavery and servitude** – behavior that deprives the victim of their freedom; the obligation to provide services by use of coercion; obligation to live on another's property with the impossibility of changing his/her condition
 - **Forced or compulsory labor** – coercion, whether direct threats of violence or more subtle forms of compulsion; key elements are that work or service is exacted under threat of penalty and the person has not offered him/herself voluntarily
 - **Human trafficking** – arranging or facilitating travel of another person with a view to exploitation
- Often co-exists with other poor labor practices

Selected Corporate Anti-Human Trafficking Legislation

Adopted	Pending/Proposed	Voluntary
California Transparency in Supply Chains Act	US Business Supply Chain Transparency on Trafficking and Slavery Act	UN Guiding Principles on Business and Human Rights
US Federal Acquisition Regulation Anti-Human Trafficking Rule	Netherlands Child Labor Due Diligence Law	OECD Guidelines for Multinational Enterprises
UK Modern Slavery Act	Australian Parliament inquiry concerning the adoption of national modern slavery legislation (initial stages)	Various Industry Codes of Conduct, Third Party Standards and NGO Recommendations
US Trade Facilitation and Trade Enforcement Act	Swiss human rights due diligence referendum	Welsh Code of Practice for Ethical Employment in Supply Chains
French Corporate Duty of Vigilance Law		

UK Modern Slavery Act Overview

- “Commercial organisations” must prepare a slavery and human trafficking statement each year
 - Applies to entities that supply goods or services and have an annual turnover of at least £36MM
- Must indicate steps taken during the applicable year to ensure human trafficking is not occurring in the supply chain or business
- Effective for fiscal years ending on or after 3/31/16

Recommended disclosure topics

- Organizational structure, business model and supply chain relationships
- Applicable policies
- Due diligence and auditing process
- Human trafficking risks and steps taken to assess and mitigate risk
- Compliance effectiveness and KPIs
- Training

Recommended Disclosure Topics

There are no mandatory disclosure topics; recommended disclosure topics include:

Organizational Structure and Supply Chains

- The sector(s) the business operates in and whether any of its work is seasonal
- The organizational structure and group relationships
- The countries it sources its goods or services from including high risk countries
- The make-up and complexity of its supply chains
- Relationships with suppliers and others, including any trade unions

Organizational Policies

- Process for policy development
- Supplier code of conduct
- Child labor, migrant labor, procurement and whistleblowing policies

Assessing and Managing Risk

- Actions taken to understand the organization's operating context/risk
- Details of risk management processes
- Details of impact assessments undertaken
- Action plans to address risk/actual instances of modern slavery
- Evidence of stakeholder engagement

Key Performance Indicators

- Information on existing KPIs
- Explanation as to whether existing KPIs make the organization more vulnerable to modern slavery risk
- Details of additional KPIs the organization has introduced to measure performance of anti-slavery actions taken

Training

- Formal or informal training offered to employees or suppliers on identifying and taking corrective action against modern slavery

California Transparency in Supply Chains Act

Requires large retailers and manufacturers doing business in California (US\$100MM) to disclose on their websites their efforts to eradicate slavery and human trafficking from their direct supply chains of goods offered for sale

Requires disclosure regarding

- Verification of product supply chains
- Supplier audits
- Supplier certifications
- Internal accountability
- Training

Emerging Compliance Requirements

- France
- The Netherlands
- Australia
- Switzerland

NGO Expectations

- An expansive view of modern slavery
 - Robust policies and procedures
 - Good faith risk assessment
 - Due diligence/supply chain engagement
 - Meaningful efforts to mitigate risk
 - Consultation with external stakeholders
 - Disclosure
 - An ongoing process/effort
- A significant number of NGOs are focused on human trafficking across a broad range of products, commodities and geographies
 - NGO, SRI and other stakeholder engagement is becoming increasingly sophisticated and varied

Regulatory Action and Litigation

- In 2015, the California Dept. of Justice undertook a CTSCA compliance sweep
- There are several lawsuits pending relating to slavery and child labor in the supply chain
 - These suits cite various theories for liability and have been brought in several jurisdictions
- Lawsuits alleging violations of the CTSCA have been threatened by pension funds
- NGOs have published guides on how to bring claims
- The MSA is being championed by PM May, which may result in vigorous enforcement
 - There also is an Independent Anti-Slavery Commissioner

Syrian Refugee Labor in the Turkish Garment Industry

- *The issue*: approximately 3.2MM Syrian refugees are in Turkey, many working informally in the garment industry at tier 2/tier 3 suppliers of international brands
 - Often working illegally, without work permits
 - Often being paid less than minimum wage
 - Often poor working conditions
 - Alleged forced labor and widespread child labor
- *International attention*:
 - Widespread media attention
 - International Migration Institute White Paper (March 2017)
 - BBC: Undercover: The Refugees Who Make our Clothes (October 2016)
 - BHRRC Survey and Analysis (February and October 2016)

Turkish Garment Industry – Leading Risk Mitigation Practices

- Identify risk, individually and through collective action
- Adopt a tailored policy and/or make tailored communications to suppliers
 - Zero tolerance for discrimination
 - Payment of gross minimum wage required
 - Must support refugees to secure a work permit
- Contractual terms and conditions
- Supplier training
- Supply chain audits (announced, semi-announced and unannounced) and monitoring
 - Include Arabic speakers on audit teams
 - Go deeper than tier 1
- Implement a refugee protection strategy
- Collaborate with other brands through multi-stakeholder initiatives and partner with refugee-focused organizations

Hallmarks of an Effective AHT Compliance Program



- **Strong Company Management Systems** – Defined management structure with senior oversight; policies; contractual terms and conditions; communication and training; grievance mechanism
- **Identification and Assessment of Risk** – Vendor and product scoping/risk weighting; vendor outreach; data validation; vendor compliance assessment; supply chain mapping
- **Risk Management** – Internal reporting; corrective action plan; vendor follow-up; capacity building
- **Independent Third-party Audits/ Assessments**
- **Public Reporting**

Getting Started – Practical AHT Compliance Tips

- Assess applicability of statutes
 - Are statutory thresholds met?
- Take a thoughtful, measured approach
 - Assess human trafficking risk
 - Determine appropriate compliance measures in light of perceived risks, compliance obligations and commercial considerations
 - Assess adequacy of existing compliance policies, plans and procedures and related training; modify and enhance as appropriate
- Harmonize disclosure and compliance procedures
 - Take MSA, CTSCA and other disclosures into account
 - Leverage complementary supply chain compliance initiatives
- Benchmark against peers, NGO guidance and compliance frameworks

Assessing Modern Slavery Risk – Selected Factors

- Nature of products and services
- Raw materials inputs and origin
- Location of manufacture/assembly
- Vendor and supply chain workforce
 - Use of subcontractors
 - Use of temporary or seasonal labor or home-based workers
 - Use of labor recruiters by vendors and supply chain
- Transience of supply chain
- Transportation of products
- Turnaround times/supply chain pressures
- Depth of supply chain
- Salience vs. materiality
- Presence/risk of related human rights and labor issues
- Strength of local laws and institutions
- Local economic and political factors

Assessing Modern Slavery Risk – Resources

- Vendor questionnaires and audits
- US Department of Labor lists
 - List of Products Produced by Forced or Indentured Child Labor
 - List of Goods Produced by Child Labor or Forced Labor
- US State Department country risk ratings
- Media reports
- NGO publications
- Industry associations
- Third-party consultants
- Local stakeholders

Adopting A Policy – Practical Considerations

- Audience: Internal or external or both?
- Content
 - Compliance with laws or beyond?
 - *E.g.*, the UN Global Compact, Universal Declaration of Human Rights, International Bill of Human Rights, UN Guiding Principles, OECD Guidelines for Multinational Enterprises and/or ILO core labor standards
 - Statement of expectations or requirements?
 - Level of granularity?
 - Include a grievance mechanism?
 - Commit to engage with stakeholders, remedy adverse impacts and respect the rights of human rights defenders?
- Format: Stand-alone or fold into existing documentation?
- Dissemination: Distribute and/or publish?
- Other Considerations
 - Internal approval requirements
 - Align with other policies and CSR communications
 - Litigation risk
 - Ongoing monitoring

*For additional
compliance
resources:*



<https://www.ropesgray.com/corporate-social-responsibility-and-supply-chain-compliance.aspx>