

LABOUR IN SUPPLY CHAINS

AN INVESTOR'S GUIDE

“11% of British business leaders report modern slavery likely already plays a role in their supply chains”

David Noble, Chief Executive
Of the Chartered Institute of Procurement & Supply

“Some organizations underestimate the damage that can be caused by not adopting and enforcing ethical practices across their supply chain. Command and control from the center means nothing if it is not rigorously monitored and enforced. For too long, extended supply chains have obscured ethically questionable practices.”

Mike Bailey, EMEA Director of Professional Services at BSI

“The successful prosecution of those few individuals who bring such misery to so many remains inadequate – this needs to change.... We have come a long way over the last seven years since we first put an estimate on how many people were forced into labor or services across the world and have made good progress in ensuring most countries now have legislation in place which criminalizes forced labor, human trafficking and slavery-like practices.”

Beate Andrees, head of the ILO's Special Action Programme to
Combat Forced Labour

INTRODUCTION

In the wake of increased legislation on forced labour and trafficking and an emphasis on transparency in supply chains, corporates are becoming subject to greater scrutiny from both a legislative and public perspective. As the sourcing of goods and products burgeons in developing countries and competition between companies for faster manufacture at cheaper prices ever increases, a need to protect workers from exploitation and irregular practices has become heightened and consumers and ethical organizations are placing greater pressure on companies to be less opaque in their supply chains.

Institutional investors and individual shareholders alike need to be cognizant of the mounting demand upon companies to become more ethical and sustainable and have the ability to encourage the companies into which they invest to be aware of the increasing and fundamental issue of human trafficking and forced labour. Companies need to be made aware of the potential impact of non-conformance and ensure that they can display an effective commitment to transparent supply chains not only to adhere with legislation but also with regard to long term brand reputation management and the ability to secure contractual relationships.

Shareholders have the ability and capacity to place pressure on companies' Boards of Directors to make them become aware of conformance/processes and the potential reputation and financial damage that may arise from either non-conformance or a quasi-adherence.

This paper seeks to provide guidance as to what questions and actions as **both shareholders and investors** should seek to ascertain from its Board of Directors when either as acting shareholders or as investors that are seeking to expand their portfolios and considering new investments.

Companies underestimate the damage that can be caused by not adopting and enforcing ethical practices in their supply chains. It is not just a question of regulation or legislative obligations. All companies large and small should consider reputation and also perception to third party and counter-parties when doing business. In the age of knowledge, companies can be subject to scrutiny by potential partners and business counter parties and not incorporating ethical practices into their business may result in lost business and a damaged brand.

The International Labor Organization (ILO) estimates that almost 21 million people are victims of forced labour. This is reinforced by recent media investigations that have uncovered evidence of labour abuses from the apparel, agriculture, seafood, and electronic sectors to construction and hospitality. No industry is immune to the risk of forced labour and human trafficking. According to the 2015 Trafficking in Persons Report, prosecutors worldwide brought just 10,051 criminal cases against traffickers in 2014 obtaining 4,443 convictions.¹

¹ US Department of State, 2015 Trafficking in Persons Report, July 27 2015, p48

Governments and societies have come to better understand the systems and causes that contribute to the exploitation of people and we know that many of these abuses are happening in complex multi-tiered supply chains. Whilst outsourcing production and procurement is common in global trade, the supply chains created are often opaque, making them difficult to trace, audit and control. The ILO, said its figures show three in every 1,000 people worldwide are in some form of forced labor - from state-imposed work to forced sexual exploitation and they have stated that attention should now concentrate on better identifying and prosecuting offenses around forced labour such as human trafficking.

Due to the widely endorsed benchmark principles such as *UN Guiding Principles on Business and Human Rights* and national legislation (see Section 2 for further detail) greater responsibility is being placed upon corporations to consider their position with regard to supply chains and worker rights. Whilst regulators, NGOs and lobbying groups will place pressure upon corporates to address forced labour and human trafficking, the more integral group that will sway the corporate position are investors/shareholders.

Investors have the ability to control the financial stability of a company and either maintains or improves its reputation and should encourage the companies into which they invest to be aware of the increasing and fundamental issue of human trafficking and forced labour and the potential impact of non-conformance and ensuring an effective commitment to transparent supply chains. Shareholders, additionally, should place pressure on its Board of Directors to become aware of conformance/processes and the potential reputation and financial damage that may arise for either non-conformance or a quasi-adherence.

Why Should Businesses Act?

Legislative Obligations

**Disclosure Requirements where
businesses meet de minimis
threshold**

**If Not Required under legislation,
still consider impact**

**What Is Impact? Consider Brand/Reputation/Long Term
Contractual Relationships**

**Be a company that has a supply chain that reflects its
BRAND and not a brand that reflects its supply chain**

SECTION 1
FORMS OF TRAFFICKING

Modern Slavery/Human Trafficking can take several forms in the supply chain but forced labour/trafficking are the key forms that need to be considered by investors/shareholders and forced labour is not limited to just one industry. Wherever there is a supply of services and goods, the question of how and in what manner is such supply taking place needs to be asked and is not exclusive to the apparel/mining/fishing industry.

All supply scenarios should be scrutinized.

1 Bonded labour, also known as debt bondage and peonage, occurs when people give themselves into slavery as security against a loan or when they inherit a debt from a relative. It can be made to look like an employment agreement but one where the worker starts with a debt to repay— only to find that repayment of the loan is impossible. At this point, their enslavement becomes permanent.

Consider:

In South Asia, mainly lower caste families working in brick kilns are there due to debt bondage which is assigned from one generation to another and is not nullified upon death.

Bonded labour is designed to exploit workers. The cyclical process begins with a debt, whether acquired or inherited, that cannot be paid immediately. Whilst the worker works to repay the debt, the employer continues to add on additional expenses. Consequently, the employee only grows his debt while continuing to labour on behalf of his debtor and repayment becomes impossible.

Migrant labourers are particularly vulnerable to this form of enslavement. In their home countries, migrant labourers contract with labour agencies, recruitment intermediaries and employers for a destination country, looking for an economic opportunity. Many will pay large recruitment fees to secure employment abroad, often taking out loans to do so. This will place many workers in a situation of debt bondage before they even arrive at the workplace, whatever the subsequent conditions of employment. Instead of honouring a genuine term of employment, some recruiters or employers further unlawfully exploit the initial debt by adding immigration, housing and other fees that are designed to keep the migrant workers from ever being capable of repayment.

The international *Palermo Protocol* requires the criminalization of bonded labour as a form of trafficking. Still, this particular system of slavery is deeply entrenched around the world. It is most common in India, Pakistan, Bangladesh and Nepal. In fact the majority of the world’s slaves live and work in India in a form of bonded labour.

2 Forced Labour is work or service that is imposed upon a person under the threat of a penalty (financial, physical, sexual or otherwise) and where a person has not submitted to the work voluntarily.

Consider:

Exploitation of Syrian refugees in Turkish garment factories

3 Child Labour is also prevalent in the supply chain - today, more than a quarter of the world’s slaves are children. Supply needs and industry demand for cheap, unskilled labour are some of the leading causes of child labour. Price pressures encourage suppliers - especially those at the top of the supply chain - to find the cheapest labour. Poverty is generally the basis for the children to undertake such jobs. These supply and demand factors are reinforced by systemic, structural issues such as lack of access to education, inadequate employment opportunities for the educated, corruption and social stratification.

Consider:

Ghana in the fishing and gold mine industries

3 **Sex trafficking** is a crime when women, men and/or children are forcefully involved in commercial sex acts. In the United States, any minor under the age of 18 engaged in commercial sex acts is automatically considered a victim of sex trafficking under the law. Worldwide, it is estimated that there are 4.5 million victims of sex trafficking.

Often, traffickers keep victims under their control by stating that the victims will be free once any debts are repaid. The “debt” is supposedly incurred from the victims’ recruitment, transportation, upkeep or even their crude “sale.” Thus, sex trafficking may occur within debt bondage/bonded labour. Victims of sex trafficking may eventually perform other functions, in addition to being forced sex workers. Some traffickers use sex trafficking victims to recruit or transport other victims.

Forced labour includes forced sexual services. The ILO’s *Forced Labour Convention* defines forced labour as all work or service exacted from a person under the threat of a penalty and for which the person has not offered himself or herself voluntarily. The UN’s *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (the *Palermo Protocol*) includes three elements in its definition: the act, the means and the object. Sex trafficking is the recruitment, transportation, transfer, harbouring or receipt of persons who under threat, force, coercion, fraud, deception or abuse of power are sexually exploited for the financial gain of another.

Whilst not relevant in the corporate’s supply chain, another form of trafficking includes **domestic servitude** which is the seemingly normal practice of live-in help that is used as cover for the exploitation and control of someone, usually from another country. It is a form of forced labour, but it also warrants its own category of slavery because of the unique contexts and challenges it presents. Generally victims of domestic servitude may appear to fall under the labels of nannies or other domestic help, but once their employment arrangement transitions into a situation whereby they cannot leave of their own free will it becomes a case of enslavement.

Domestic servitude can also be a form of **bonded labour**. This form of slavery happens when migrant workers reach a destination country, and they incur a debt for their travel and/or a recruitment fee. Though working, if their employer or recruiter adds on additional costs that can never be repaid, like housing or food, then the arrangement transitions into a form of slavery.

WHAT CAN BE DONE WITH REGARD TO FORCED LABOUR, HOWEVER IT IS DEFINED?

A swathe of guiding principles and legislation are now in force that impose obligations upon businesses/legal entities in recognizing and identifying forced labour and ensuring a transparent and “clean” supply chain. Section 2 of this document sets forth certain relevant legal frameworks and the **Labour Exploitation Accountability Hub** - <http://accountabilityhub.org/countries/> succinctly consolidates all legislation on a country, topic and industry basis.

This guidance note provides a summary of *The United Nations Guiding Principles on Business & Human Rights*, the *Modern Slavery Act 2015* (United Kingdom) and *The Trafficking Victims Protection Act (TVPA) 2000* as revised, *The California Transparency in Supply Chains Act 2010* and the Federal Acquisition Regulation: *Amendments to Strengthen Prohibitions Against Trafficking*. which are key elements for corporates and their understanding of forced labour. (See Section 2)

SECTION 2

**LEGAL
GUIDELINES/LEGISLATION**

As discussed earlier in this document, company directors, shareholders and potential investors need to be cognizant of legal frameworks and legislation that govern forced labour and exploitation. Very helpfully, national legislation has been consolidated at the **Labour Exploitation Accountability Hub** and a detailed analysis of each has been considered in the Hub.² For the purposes of this guidance paper, the following definitions are provided for each of human trafficking, forced labour and modern slavery.

Human trafficking is defined in accordance with Article 3 of the *2000 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children*, commonly known as the *Palermo Protocol*. It contains the first internationally recognized definition of human trafficking:

*“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs’.*³

Forced Labour is defined under Article 4.2 of the *European Convention on Human Rights* which states that ‘no one shall be required to perform forced or compulsory labour’⁴ and in prosecutions under this article reference has been made to the International Labour Organization (ILO) *Forced Labour Convention 1930 No. 29*, definition of forced labour as:

*‘...all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself [sic] voluntarily’.*⁵

The indicators of forced labour overlap with those of human trafficking and include restriction of movement, retention of identity documents, debt bondage, abusive working and living conditions and excessive overtime. The concept of the Forced Labour Continuum addresses the spectrum of the various situations that may arise under a labour definition.

² <http://accountabilityhub.org/countries/>

³ Modern Slavery Act 2015, Chapter 30. Available at: <http://www.legislation.gov.uk/ukpga/2015/30/pdfs>

⁴ Convention for the Protection of Human Rights and Fundamental Freedoms (the European Human Rights Convention) 1950. Article 4.2, available at: http://www.echr.coe.int/Documents/Convention_ENG.pdf

⁵ Convention Concerning Forced or Compulsory Labour. 1930.(No. 29), Article 2.1.

The continuum addresses the range of labour from decent work to extreme exploitation and the way in which different workers' experiences are dealt with from a legislative and theoretical perspective and the complexity of the transitioning movement of situations in a worker's environment.

'**Modern Slavery**' has no agreed definition in international law but it is used in the *UK Modern Slavery Act 2015* to include human trafficking, exploitation and forced labour as a single meaning.

A person is deemed to have committed an offence under the *Modern Slavery Act 2015* if:

a) the person holds another person in slavery or servitude (as defined by Article 4 of the Human Rights Convention) and the circumstances are such that the person knows or ought to know that the other person is held in slavery or servitude, or

*b) the person requires another person to perform forced or compulsory labour and the circumstances are such that the person knows or ought to know that the other person is being required to perform forced or compulsory labour.*⁶

WHAT DO BUSINESSES NEED TO CONSIDER WITH REGARD TO LEGAL CONTEXT?

In Europe, the United Kingdom and the United States of America, there are principles and legislation that impose corporate responsibility on businesses that are underpinning the scrutiny that businesses have to give to their supply chains, worker rights and general governance.

The United Nations Guiding Principles on Business & Human Rights are a global standard of benchmark principles for preventing and addressing adverse human rights impacts that are linked to business activity, which were unanimously endorsed by the UN Human Rights Council in 2011. They encompass three pillars of responsibility that should be maintained:

- ❖ the state's duty to protect human rights by enacting and enforcing policies and interacting with business to address human rights issues;
- ❖ the corporate responsibility to respect human rights by considering and acting upon both the direct and the broader impacts that companies have on human rights through their own activities;
- ❖ access to remedy for victims of human rights abuses related to corporate activity.⁷

And although these are non-binding, the Principles have become widely accepted and used as a springboard for both domestic- law making and guidance- setting for best practice regarding the relationship between business and human rights.

United States of America - The California Transparency in Supply Chains Act 2012

⁶ Modern Slavery Act 2015, Chapter 30. Available at: http://www.legislation.gov.uk/ukpga/2015/30/pdfs/ukpga_20150030_en.pdf

⁷ UN Guiding Principles Reporting Framework, <http://www.ungreporting.org/wp-content/uploads/2015/02>

This Act imposes upon retail sellers and manufacturers that do business in California, and have over \$100 million in gross annual receipts, a requirement to publically disclose their efforts to eradicate slavery and human trafficking from their supply chains. Companies are required to disclose, on their corporate websites, what actions they are taking, if any, to:

- ❖ Evaluate and address the risks of human trafficking and slavery in their product supply chains. These disclosures must state if companies are not using third parties to verify the risks in their supply chains.
- ❖ Require their direct suppliers to certify that the materials incorporated into company products comply with laws regarding slavery and human trafficking in the countries in which they are doing business.
- ❖ Conduct audits of their suppliers to evaluate compliance with company standards on trafficking and slavery. These disclosures must state whether independent, unannounced audits are conducted.
- ❖ Maintain accountability standards and procedures for employees or contractors that fail to meet corporate standards regarding slavery and human trafficking.
- ❖ Provide employees and managers, who have direct responsibility with supply chain management, with training on the mitigation of human trafficking and slavery risks.

In 2015, the State of California issued a new guidance for companies subject to the legislation. The guidance, *The California Transparency in Supply Chains Act – A Resource Guide*, provides information on model disclosures and best practices with the intent of ensuring that companies can “*provide disclosures that comply with the law, as well as enhance consumers’ understanding of [their] anti-trafficking efforts.*”⁸

Companies subject to the law must disclose information about five specific topics related to human trafficking and their product supply chains. Each topic has a number of model disclosure suggestions that provide depth and context to consumers, while also recognizing a company’s legitimate interest in protecting confidential, proprietary, and trade secret information. These model disclosure suggestions should make clear that compliance with the Act requires more than oblique and vague statements; instead, a covered company should look to its supply chain practices and make disclosures tailored to those practices.

1. Verification. At a minimum, disclose to what extent, if any, that the retail seller or manufacturer engages in verification of product supply chains to evaluate and address risks of human trafficking and slavery. The disclosure shall specify if the verification was not conducted by a third party.

2. Audits. At a minimum, disclose to what extent, if any, that the retail seller or manufacturer conducts audits of suppliers to evaluate supplier compliance with company standards for trafficking and slavery in supply chains. The disclosure shall specify if the verification was not an independent, unannounced audit.

3. Certification. At a minimum, disclose to what extent, if any, that the retail seller or manufacturer requires direct suppliers to certify that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business.

4. Internal Accountability. At a minimum, disclose to what extent, if any, that the retail seller or manufacturer maintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking.

⁸ <http://www.csrandthelaw.com/2015/05/10/the-california-transparency-in-supply-chains-act-new-guidance-and-increased-enforcement-efforts/>

5. Training. At a minimum, disclose to what extent, if any, that the retail seller or manufacturer provides company employees and management, who have direct responsibility for supply chain management, training on human trafficking and slavery, particularly with respect to mitigating risks within the supply chains of products.

Even Companies Taking No Actions Must Comply

The Act applies even to companies that take no actions related to these five disclosure categories. In this circumstance, a company could simply disclose that, as to each category, it does not take any actions.

The *Business Supply Chain Transparency on Trafficking and Slavery Bill (H.R. 4842)* was also introduced on 11 June 2014 and seeks to build on *The California Transparency in Supply Chains Act 2012*. The Bill echoes the U.N. Guiding Principles on Business and Human Rights, which “*affirm that business enterprises have a responsibility to respect human rights, and that States have a duty to ensure these rights are protected. Such Guiding Principles also clarify that the duty to protect against business-related human rights abuses requires States to take the necessary steps to prevent and address human rights abuses to workers through effective policies and regulation.*”

United Kingdom - Modern Slavery Act 2015

The United Kingdom took the steps of implementing the Principles through national legislation and the *Modern Slavery Act 2015* was passed on the 26 March 2015. This also took elements of *The California Transparency in Supply Chains Act 2012* with regard to disclosures by companies in the UK.

Section 54 of the *Modern Slavery Act* focuses on supply chain transparency and holds businesses accountable for their supply chains. Companies are required to report on what they are doing to ensure that their supply chains are free from human trafficking, forced labour, and other forms of human exploitation. It applies to ‘*commercial organisations*’ operating in the UK that are suppliers of goods or services and which have a turnover of more than £36 million.

Much in line with the US Act, companies will have to produce a ‘*slavery and human trafficking statement*’ for each financial year. They will have to disclose steps that they have taken to ensure that their supply chains are slavery free, or a statement disclosing that no such steps have been taken. The statement may include but is not limited to:

- 1 Organisational structure, its business and its supply chains;
- 2 Policies in relation to slavery and human trafficking;
- 3 Due diligence processes in relation to slavery and human trafficking in business and supply chains;
- 4 Identifying parts of the business and supply chain where there is a risk of slavery and human trafficking taking place, and the steps it has taken to assess and manage that risk;
- 5 Effectiveness in ensuring that slavery and human trafficking is not taking place in the business or supply chains, measured against such performance indicators as are considered appropriate;
- 6 Training about slavery and human trafficking available to its staff.

Statements will have to be approved by the company's board of directors, signed off by a director (or equivalent) and must be published on the company's website with a link to this statement displayed in a prominent place on the website, companies may wish to consider having more than one director sign this.

A practical guide as to the disclosure requirements as also been published to assist companies in respect of their reporting.⁹

Federal Acquisition Regulation ("FAR")

On January 29, 2015, the U.S. Government released a final rule amending the *Federal Acquisition Regulation* ("FAR"). The final rule is intended to implement Executive Order 13627 ("*Strengthening Protections Against Trafficking in Persons in Federal Contracts*") and Title XVII of the *National Defense Authorization Act for Fiscal Year 2013* ("*Ending Trafficking in Government Contracting*").

The new rule goes into effect on **March 2, 2015**.³

Existing Requirements

FAR subpart 22.17 already prohibits federal contractors and subcontractors from:

- Engaging in severe forms of trafficking in persons during the period of performance of a contract;
- Procuring commercial sex acts during the period of performance of a contract; and
- Using forced labour in the performance of a contract.

FAR subpart 22.17 also requires federal contractors and subcontractors to notify employees of prohibited activities and the actions that may be taken against them for violations.

Finally, FAR subpart 22.17 requires that government contract shall impose suitable remedies, including termination, on contractors that fail to comply with the FAR's prohibitions and notification requirements with regard to trafficking.

New Requirements

The final rule further amends FAR and prohibits the following:

- Destroying, concealing, confiscating or otherwise denying access by an employee to his or her identity or immigration documents;
- Using misleading or fraudulent practices during the recruitment of employees or when offering employment;
- Using recruiters that do not comply with local labour laws in the countries in which recruiting takes place;
- Charging employees recruitment fees;
- Providing or arranging housing that fails to meet host country housing and safety standards; or

⁹ <https://www.gov.uk/government/publications/transparency-in-supply-chains-a-practical-guide>

- If required by law or contract failing to provide an employment contract, recruitment agreement or similar work paper in writing in the employee’s native language prior to the employee departing from his or her country of origin.

The final rule establishes additional requirements for contracts, including all portions of a contract, for which the estimated value of the supplies acquired, or the services required to be performed, outside the United States exceeds \$500,000.

These heightened requirements do not apply to contracts or subcontracts for commercially available ‘off-the-shelf’ items.

For contracts covered by these amendments, contractors must:

- Develop a compliance plan applicable to the portions of a contract performed outside the United States; and
- Submit a certification to the Contracting Officer on an annual basis stating that a compliance plan has been implemented.

LEGISLATION	OBLIGATIONS	THRESHOLDS	PENALTIES
UK MODERN SLAVERY ACT	Provide a slavery and human trafficking statement for each financial year	Applies to ‘commercial organisations’ operating in the UK that are suppliers of goods or services and which have a turnover of more than £36 million	Civil proceedings but no financial penalties
The California Transparency in Supply Chains Act 2012	Provide a slavery and human trafficking statement for each financial year and review their supply chains in a more considered manner	Applies to retail sellers and manufacturers that do business in California, and have over \$100 million in gross annual receipts	Civil proceedings and injunctive relief
Federal Acquisition Regulation	Prohibition of using forced labour in the performance of a contract; Destroying, concealing, confiscating or otherwise denying access by an employee to his or her identity or immigration documents; using misleading or fraudulent practices during the recruitment of employees or when offering employment; Using recruiters that do not comply with local labour		In addition to suspension of payment, debarment and termination of a contract, the government may also forgo exercise of a contract’s option periods and expose a company to potential criminal sanctions

	<p>laws in the countries in which recruiting takes place; Charging employees recruitment fees;</p> <p>Under the FAR rule, federal contractors and subcontractors with contracts or subcontracts performed abroad involving services or supplies exceeding US\$500,000 will be required to implement appropriate compliance plans targeting trafficking activities, complete a compliance certification prior to accepting an award, and publish such plans at their respective workplaces and on their websites.</p>		
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SECTION 3
WHAT DOES THIS MEAN
FOR BUSINESSES?

In looking at Sections 1 and 2 of this guidance paper, a business will become knowledgeable of the different types of forced labour, the definitions of human trafficking and what principles/legislation need to be considered and what companies “technically” need to do, however what does this mean in reality and from a day to day corporate perspective?

The key issue is transparency and a company having the ability to look at its multi-tier supply chain and be able to clearly state that its supply chain is ethical and free of forced labour and human trafficking (and child labour) but upon whom is the onus to ask these questions?

Directors and Shareholders

Whether a company is private or publicly listed, the Board of Directors must act in the best interests of the company and are answerable to its shareholders and should ensure (and this list is not exhaustive) that the following are in place:

- ❖ Does the company have an ethical team or someone responsible for CSR matters? If not, delegate this position to either the legal counsel, Financial Director or outsource to a third party. It is important that someone takes responsibility for the compliance and has knowledge of their responsibilities.
- ❖ What operation policies/documents are in place? Are there any standard operation processes to address the supply chain and what needs to be discussed/negotiated with third party suppliers?
- ❖ Has a Code of Conduct been drafted? Does this cover all relevant issues for forced labour, recruitment practices, worker rights, grievance procedures? Does it state that third party suppliers at all tiers need to adhere to the principles of the Code?
- ❖ Notwithstanding that all relevant documentation is in place, do employees and/or directors know what the processes and policies mean? If asked, could they explain what is required in practice? Consider training for employees and a toolkit to assist in understanding the documentation that is being provided to third party suppliers
- ❖ When entering into supply agreements with third parties, do the articles of the company provide that shareholders have to approve any such agreements or is the director’s capacity enough?
- ❖ When the director executes an agreement with a third party supplier, does the director ensure that Codes of Conduct have been included within the agreement and that all relevant issues regarding worker rights have been addressed in the agreement and there are no provisions included that impose hardship or restrictions on the third party supplier to meet its commitments?

- ❖ Does the company carry out audits or appoint any third parties to carry out audits? How detailed are such audits? Are specific questions asked to ensure that workers are not coerced to stating a positive position when there may be a negative one?
- ❖ Do third party suppliers themselves have sufficient means to ascertain whether there are worker rights/forced labour/trafficking in their supply chains.
- ❖ Should issues arise during the course of audits, what assistance/recourse/remedies can a company provide to ensure compliance?
- ❖ How is the company monitoring its suppliers' processes and their supply chain? Can it provide a toolkit?
- ❖ Has the company requested that grievance processes/worker committees be put in place? Can the company assist with grievance/bullying/harassment mechanisms?
- ❖ Does the company have the cultural information required where manufacturers are abroad and may have a differing cultural structure vis-à-vis gender/caste?
- ❖ Is the company working with NGOs and Trade Unions in the relevant companies to understand the impact of worker rights/how forced labour/bonded labour can be recognized – is it working with the correct organisations?
- ❖ How is the company monitoring bonded labour and the payment of recruitment fees? Is it aware of how workers are recruited and employed and upon what basis?
- ❖ Is the company having any conversations with the suppliers and recruitment agents? Can it enlist assistance in country of source to monitor the recruitment process?
- ❖ Is the company working with others within trade associations or multi-stakeholder initiatives to ensure best practice is shared across industry sectors and wider.
- ❖ Is the company aware of any benchmarks against which it should measure its adherence and performance? Does the board set aside time on its agenda to address and measure continuous adherence/updating of processes and policies?
- ❖ Where relevant, is the company ready to make its statement under the *Modern Slavery Act* and do the Board of Directors understand what they need to provide under the *Modern Slavery Act*?
- ❖ It has been suggested from an Ernst & Young study that in the face of growing concern over stranded assets and other risks, institutional investors around the world say they are increasing their integration of companies' ESG and other nonfinancial information into their investment decision making. They are considering more information, from more sources, in more structured ways, with a focus on issuer-supplied disclosures that shed light on expected business performance.

- ❖ It seems that investors have clear priorities regarding the type and quality of nonfinancial information they want. Accordingly, an issuer that discloses this information in the way investors find most useful improves the chances its story will attract attention.
- ❖ In addition, companies that excel at getting nonfinancial data to the market have a first-mover opportunity to help set the standard and tone for nonfinancial reporting within their sectors. In other words, they can shape, rather than react to, the reporting standards that investors seek. Information that is important to obtain is that which:
 - Comes directly from issuers, rather than from third parties
 - Focuses on measureable performance factors, such as regulation, cost and risk
 - Relies on standard, industry-specific criteria that allow comparisons between companies in the same sector
 - Clearly explains the links between nonfinancial risks and expected performance
 - Has a company's top-level approval by, for example, its board or audit committee

Currently there does not seem to be an agreed format for due diligence questions regarding supply chains/labour issues, but investors and fund managers should also include a supply chain/compliance section in their due diligence checklists when looking at potential investments.

The issues/ questions stated above should be considered but more specifically investors need to have a clear understanding of the company's commitment to modern slavery issues and should raise the following questions:

- ❖ Who carries out the ethics/CSR role? Is there an understanding of sector specific requirements and what risks/issues need to be identified? Are the relevant provisions included in third party contracts such as KPIs/service levels? Can the company assist in any remedial action or provide incentive schemes?
- ❖ Are the board of directors trained/educated in this area – are they aware of the need for clear guidelines and processes and the impact upon reputation for adhering to relevant principles on modern slavery and forced labour?
- ❖ What accountability processes does the company have for itself and for its suppliers in a multi-tier chain?
- ❖ How does the company balance its financial position whilst maintaining an ethical position?
- ❖ Where does the company envisage its supply chain/transparency/processes to be in 12 months' time – is it committed to continuous improvement?

Shareholders and investors are a fundamental element for a company and can dictate many practices that a company may carry out. Whilst there have been several recent cases of shareholders of certain PLC companies not questioning the ethical practices of companies, with the obligation of disclosure under the Modern Slavery Act (in the UK), the acknowledgement of a moving horizon across Europe and the Americas, companies will become increasingly accountable for their sourcing/manufacturing/ labour practices and the above list of questions are not exhaustive but serve as an initial framework from which further questions may materialize. This guidance paper also does not purport to identify issues on a sector basis but this is discussed further in *“Forced Labour, Human Trafficking & The FTSE 100”*.

Further Reading:

1. *Forced Labour, Human Trafficking & The FTSE 100, Rathbone Greenbank Investments/Stop The Traffik, 2015*
2. *Walk Free Foundation. Tackling Modern Slavery in Supply Chains: A Guide. 2014*
3. *UN Global Compact, Some Key Business and Human Rights Guidance Materials and How to Use Them, November 2011*
4. *Ernst & Young. Tomorrow's Investment Rules 2.0, 2015*
5. *Corporate Approaches to addressing modern slavery in supply chains: A snapshot of current practice, ETI and Ashridge Executive Education*
6. *Strengthening Protections Against Trafficking in Persons in Federal and Corporate Supply Chains, Verite 2015.*