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Modern slavery reporting obligations – effective from 29 October 2015

As reported in an earlier Alert, the UK's Modern Slavery Act has imposed far reaching reporting requirements on companies to produce an annual statement explaining the steps they have taken to eliminate modern slavery in their businesses, and also within their supply chains. The concept of modern slavery encompasses a range of exploitative behaviour including slavery, servitude, forced or compulsory labour, sexual exploitation, securing services from children and vulnerable people, and human trafficking. These new reporting obligations became effective as of 29 October 2015. This Alert sets out an overview of the statutory guidance published by the UK Government explaining its expectations for compliance.

By way of reminder, the Act's reporting obligations apply to all companies that carry on some business in the UK, and that have a worldwide turnover in excess of £36m. There is no minimum threshold for the volume of turnover or activity that needs to be linked to the UK, and the turnover of any subsidiaries should be included in the calculation. Whether or not a company "carries on business in the UK" will be assessed using a common sense approach. This approach includes, but is not limited to, considering whether it has any commercial activities in the UK. That common sense approach may, however, allow non-UK companies that do not have a demonstrable business presence in the UK to fall outside of the Act's jurisdiction. Similarly, simply having a UK subsidiary will not automatically mean that a parent company carries on business in the UK – much will depend on the degree of independence within the group organisation.

In relation to franchisors, the guidance confirms that the £36m in worldwide turnover is assessed by reference to the franchisor's turnover alone, not its franchisees. Although, there would likely be reputational considerations/issues for the franchisor if one of its franchisees engages in modern slavery, or if a franchisor relied on a franchise structure to avoid engaging with the problem of modern slavery. Equally, if any franchisee has turnover above the threshold, it will have to make a statement in its own right.

The reputational pressure of the Act and guidance can also be seen in its recommendation that where a parent company has to make a report, but it has non-UK subsidiaries that technically fall outside the requirement, it would be good practice to cover them in the statement regardless, particularly if they operate in a high risk industry or location.

Whilst a slight period of transition has been allowed, all companies with a financial year-end date of 31 March 2016 onwards will be required to publish a statement for their 2015-2016 financial year. Companies are encouraged to make this part of the general annual reporting process, but at the very least, publish the statement within six months of the financial year end.

The guidance acknowledges that the initial statements will reflect that this is a new initiative, so they may be focused on the early reaction to the issue and planned actions for the coming year. Each consecutive statement should build on that and demonstrate the progress that has been made. For corporate groups, the parent can publish a statement that can be utilised by each of the subsidiaries, provided that the parent's statement adequately captures the activities that each of the group companies have undertaken.

The guidance is not prescriptive about the form or content of the annual statement but expects it to be succinct, in plain English, and comprehensive in covering all the relevant points. It provides examples of the categories of information that might be included, along with some sample case studies, relating to each of the core areas that should be covered:

- organisational structure and supply chains;
- organisational policies;
- due diligence;
- assessing and managing risk;
- performance indicators; and
- training.

While the guidance is focused on good practice, as opposed to just strict legal obligations, it is clear that the expectation is for companies to develop substantively robust policies and procedures, and for the statement to be a public way of tracking their effectiveness.

To ensure senior level commitment and accountability, the statement must be approved and signed at the highest level in an organisation. For companies, therefore, the statement will need to be approved by the board and signed by a director. It must then be published on the corporate website, with a link provided in a prominent place.

For those companies whose financial year is due to end on 31 March 2016 or shortly thereafter, it is important to start the process of preparing for that initial statement. This will include identifying someone within the organisation to own the issue and oversee the preliminary stage of gathering information that will inform how these issues are already being addressed by the business, if at all.

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