

Modern Slavery and Human Trafficking in the Financial Services Sector

18 October 2021

Overview

Background

In September 2021, the Independent Modern Slavery Commissioner (the “Commissioner”), issued a report (“September report”) setting out the Commissioner’s recommendations for the financial sector to take concrete steps to address modern slavery and human trafficking (“MSHT”) in supply chains and activities across all operations. The report explains that financial organisations may be involved in contributing to MSHT in several ways and have a critical role to play in combating MSHT. For instance, financial services companies may act as “upstream” providers of financial goods and services linked to MSHT through the trading of commodities generated by modern slavery or human trafficking; the subscription to funds using profits drawn from MSHT; or through underwriting, reinsurance or inter-bank services provided to the firm by other financial service companies with links to MSHT. MSHT can also occur “downstream”, at the clients and value-chain level, implicating financial services companies that provide loans or investments in businesses with modern slavery in their supply chains or project finance where the project engages forced labour or human trafficking.¹

The September report builds on an earlier study and report by the Commissioner—in collaboration with the financial crime consultancy Themis and the TRIBE Freedom Foundation—published in January of this year (“January report”) that set out the role of the financial services sector in preventing MSHT.² The January report found that only a

¹ Preventing Modern Slavery & Human Trafficking: An Agenda for Action across the Financial Services Sector, January 2021 (“January report”), p. 16, <https://static1.squarespace.com/static/5c12a68fc258b4c36480afb6/t/6000daf6cc01164759cbf4cb/1610668806780/Preventing-MSHT-Full-Report.pdf>

² The role of the financial sector in eradicating modern slavery: CEOs respond to the Independent Anti-Slavery Commissioner, September 2021 (“September report”), <https://www.antislaverycommissioner.co.uk/media/1672/iasc-report-sep-2021-the-role-of-the-financial-services-sector-in-eradicating-modern-slavery.pdf>.

small number of financial services companies are actively managing their MSHT risk and engaging with clients and suppliers on MSHT issues.

The September report urges senior leaders in the financial services sector to stand against MSHT by setting the correct “tone from the top” and committing to eradicating all forms of coercive labour practices. The recommendations also focus on the need to develop risk management processes and the need to create better information sharing systems. The Commissioner encourages collective action initiatives by investors and suggests that financial services could be a powerful tool to address the significant risks present in the electronics sector. Finally, the Commissioner suggests that until “the government legislates to extend Section 54 of the Modern Slavery Act to cover financial portfolios...business covers these areas voluntarily in their annual modern slavery statements”.³ This update discusses the key recommendations in more depth and how they might affect our clients.

This update also provides an overview of other recent developments in the United Kingdom and worldwide concerning modern slavery and forced labour. Several governments have explained or exhibited and increased focus on assisting in the fight against modern slavery, human trafficking and forced labour including through additional or strengthened legislation and regulation.

What Are the Independent Anti-Slavery Commissioner’s Recommendations?

The January report was the product of a year-long research and outreach project by the Independent Anti-Slavery Commissioner’s Office, in partnership with the financial crime consultancy Themis and TRIBE Freedom Foundation. The main objectives of the project were to draw attention to the issue of MSHT, highlight the linkages to MHST within the financial services industry, and sound a call to action for the industry as a whole. Following the publication of the report, Dame Sara Thornton, the Commissioner, wrote to 51 CEOs of leading companies in the financial services sector—ranging from international banks to investment platforms, building societies and digital payment companies—to ask them to respond to the report. Specifically, the Commissioner had asked that the CEOs reassure themselves that their organisations were taking concrete steps to address the findings and recommendations of the January report.

In preparing the September report, the Commissioner reviewed the 44 responses that she received following her request for input.

³ September report, p. 6, <https://www.antislaverycommissioner.co.uk/media/1672/iasc-report-sep-2021-the-role-of-the-financial-services-sector-in-eradicating-modern-slavery.pdf>.

Following this review, the Commissioner set out the following recommendations:

- **Recommendation 1:** Develop better risk identification, assessment, and mitigation controls, or integrate MSHT risks into existing systems, so that concerns can be identified in real time. Portfolio companies should also be subject to risk management and mitigation controls, through initial due diligence exercises as well as ongoing monitoring. This will require the development of a standardised and consistent approach to measurement to enable benchmarking and reporting. Collaboration between regulators, tech companies, and innovators may be key to this process.
- **Recommendation 2:** Collaboration through data sharing also plays a key role. To this end, government and industry stakeholders should support the development of information-sharing systems, including, for example, on actors involved in MSHT. Analysis of this data should inform investing and lending decisions.
- **Recommendation 3:** Modern slavery awareness and prevention can also be achieved through collective action initiatives that incentivise and accelerate improvements in company disclosure and compliance to the Modern Slavery Act. It recommends that, in addition to investors, CEOs and other senior management members support such initiatives.
- **Recommendation 4:** The financial sector should also remain diligent in assessing and responding to the challenges brought by supply chains related to the development of electronic equipment—an essential component of the financial services industry. Issues arise not only from assembly and manufacture of devices, but also of the mining of rare metals and the manufacturing of silicon.
- **Recommendation 5:** Financial institutions should report on the steps they are taking to combat MSHT in their portfolios, pursuant to Section 54 MSA. Despite the major impact that financial institutions could have in combating forced labour through their investment and lending portfolios, very few are disclosing this activity in modern slavery statements. Improvements in this regard may come from either strengthening the MSA or voluntary and collective change within the industry.

The September report also lays out the Commissioner’s observations on some of the key points highlighted and discussed in the financial services companies’ responses:

- **Setting the tone at the top:** Almost all the companies surveyed “set the tone at the top” by producing MSA statements. However, few companies link those statements to a culture of internal engagement or continual improvement, and

even fewer lay out their anti-slavery approaches to investing in the statement. A number of them build modern slavery considerations into their governance and control workforce, and several have specific taskforces and working groups to engage with MSHT issues. Many companies are aligned with the UN Guiding Principles on Business and Human Rights, which set out core labour and human rights standards. Most also express a willingness to work with competitors, law enforcement and expert organisations to develop a more nuanced understanding of local and international MSHT issues.

- **Monitor and report:** There is a lack of recognition of the risks inherent in procurement; many of the companies surveyed explained that, because they were based in the United Kingdom and sourced supplies and services domestically, they were at “low risk” of having supply chains that have links to MSHT. However, the September report did state that due diligence on supply chains is improving, and new risk management tools are being developed. Furthermore, improvements are being made to supplier engagement, in part by embedding expectations in commercial agreements and by direct intervention (e.g. through site visits in high-risk areas). Companies also conduct strategic training and awareness-raising activities.
- **Detect and disrupt:** Systems for detecting the proceeds of crime are being continually improved, as are the skills of frontline staff in detecting MSHT. Collaboration and knowledge sharing to fight modern slavery and other crimes is increasing.
- **Invest and engage:** Though many companies have overarching sustainability and climate change frameworks to meet their ESG expectations, few have sufficiently developed social and MSHT practices. The lack of transparency and inconsistent data may make benchmarking difficult, but some organisations have nevertheless begun to better address these issues, in part by improving their due diligence and analyses of high-risk areas and sectors. Furthermore, direct engagement with clients regarding MSHT issues has increased, as have investor-led collaborations for change, such as the UN PRI and the CCLA’s “Find It Fix It Prevent It” initiative.
- **Empower and support:** The companies surveyed were mostly effective in promoting financial inclusion to help survivors, recognising and protecting vulnerable groups, and campaigning and doing outreach work to help prevent and mitigate MSHT.

What Risks Do Financial Services Companies Face Regarding MSHT?

Financial services companies are likely to face the following corporate risks regarding MSHT, as set out in the January report:⁴

- **Legal risk:** companies and public bodies in the United Kingdom with a turnover of over GBP 36 million are required by law to publish an MSA statement.
- **Regulatory risk:** MSHT is a predicate crime to money laundering. Financial services companies found to be holding the proceeds of MSHT will be liable for money laundering offences.
- **Reputational risk:** investors and lenders are exposed to reputational damage if they are found to have invested in companies associated with poor labour practices and/or modern slavery.
- **Customer risk:** an increasing number of customers want to know that the financial organisations they are dealing with are protecting the most vulnerable in society. Institutions that do not show this commitment may face backlash from customers.
- **Governance risk:** poor management of MSHT risk may indicate wider poor governance and a lack of controls in other areas.
- **Financial risk:** the aforementioned risks are likely to have a material impact on the company's long-term profitability.

A survey conducted by the Commissioner, Themis and TRIBE Freedom Foundation, revealed initial research that showed that, despite the MSHT links to money laundering and other financial crimes, only a small number of financial services companies are actively managing their risk and engaging with clients and suppliers on issues related to MSHT.⁵ For instance, 30% of employees who participated in the survey thought that modern slavery was not something that happened in the United Kingdom. This figure rose to 45% among directors and board level managers. 43% of board-level managers and director-level employees either did not have a modern slavery policy, or did not know if

⁴ January report, p. 10, <https://static1.squarespace.com/static/5c12a68fc258b4c36480afb6/t/6000daf6cc01164759cbf4cb/1610668806780/Preventing-MSHT-Full-Report.pdf>.

⁵ *Ibid.*, p. 9.

they had one; and 71% of financial industry employees stated that they had never participated in any form of training with their current employer regarding MSHT.⁶

The Commissioner observed that the financial services sector is uniquely placed in helping combat MSHT due to the influence it holds over global business. The Commissioner also highlighted that financial institutions can have a meaningful impact on MSHT through their investment decisions in addition to having a legal responsibility to report suspicious activity to law enforcement.

Other Recent Developments in the United Kingdom and Worldwide Concerning Forced Labour and Modern Slavery

The Commissioner's reports and recommendations sit alongside other recent developments concerning modern slavery and forced labour, including a Government commitment to strengthen the effectiveness of section 54 of the Modern Slavery Act. For instance:

- A Modern Slavery (Amendment) Bill (the "Amendment Bill"), a Private Member's Bill,⁷ is currently in its second reading in the House of Lords.⁸ The Amendment Bill proposes a number of significant amendments to the MSA 2015, including the incorporation of new offences applicable to individuals and companies responsible for the publication of an MSA statement. For example, the Amendment Bill proposes to introduce as a criminal offence: (i) knowingly including an MSA statement that is false or incomplete, or being reckless as to its accuracy; and (ii) continuing to source from suppliers or sub-suppliers that have failed to demonstrate minimum standards of transparency after having been issued a formal warning from the Commissioner. The Amendment Bill also proposes the introduction of minimum standards of disclosure, including requirements to publish and verify information about the country of origin of sourcing inputs in the supply chain; to arrange for credible external inspections, audits, and unannounced spot checks; and to report the use of employment agents acting on behalf of an overseas government. The Amendment Bill follows the UK Government's announcement of a package of new measures that would

⁶ September report, p. 23, <https://www.antislaverycommissioner.co.uk/media/1672/iasc-report-sep-2021-the-role-of-the-financial-services-sector-in-eradicating-modern-slavery.pdf>.

⁷ Private Member's bills are public bills introduced by MPs and Lords who are not government ministers. A minority of Private Members' bills become law, but by creating publicity around an issue, they may affect legislation indirectly. <https://www.parliament.uk/about/how/laws/bills/private-members/>.

⁸ UK Parliament, Modern Slavery (Amendment) Bill [HL], <https://bills.parliament.uk/bills/2892>.

strengthen the provisions that concern transparency in supply chains (i.e. sections 41 and 54) of the MSA 2015.⁹

- In response to the findings of independent review of certain provisions of the Modern Slavery Act published in 2019 [see Debevoise In Depth on [Recent Developments in Human Rights Due Diligence and Reporting](#)], which raised concerns that the Commissioner was “*too heavily influenced and constrained by Government*”,¹⁰ the UK Government accepted that the independence of the Independent Anti-Slavery Commissioner is crucial and that the Commissioner’s role should be “*to advise and hold the Government to account, on modern slavery, and promote co-operation between different groups*”.¹¹ The Government further accepted that “*it would be helpful to have greater clarity about the [Commissioner’s] role in international work, and agrees there needs to be a balance between domestic and international engagement. To address this, the Government has responded positively to one of the other recommendations to create a government international envoy on modern slavery*”.¹² Thus, in November 2019, the UK Government appointed Jennifer Townson as the Migration and Modern Slavery International Envoy. Since her appointment, the Envoy has engaged with countries, multilateral bodies and civil society representatives in support of the UK Government’s “Modern Slavery and Human Trafficking” international objectives. [For example, this has included engaging with Gulf States on reform of the *Kafala* system;¹³ Nigeria and Sudan on victim support and prosecutions; South Asian partners on trafficking and labour standards; and multilateral initiatives such as Alliance to build practical international cooperation.¹⁴]

⁹ UK Home Office, Transparency in supply chains consultation: Government response, p. 4, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919937/Government_response_to_transparency_in_supply_chains_consultation_21_09_20.pdf.

¹⁰ Independent Review of the Modern Slavery Act 2015: Final Report (May 2019), para. 12, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/803406/Independent_review_of_the_Modern_Slavery_Act_-_final_report.pdf.

¹¹ UK Government Response to the Independent Review of the Modern Slavery Act 2015, para. 7, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/815410/Government_Response_to_Independent_Review_of_MS_Act.pdf.

¹² UK Government Response to the Independent Review of the Modern Slavery Act 2015, para. 7, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/815410/Government_Response_to_Independent_Review_of_MS_Act.pdf.

¹³ The *kafala* system is a legal framework defining the relationship between migrant workers and their employers in Jordan, Lebanon and all Arab Gulf states except Iraq. It was created to supply cheap, plentiful labour in an era of booming economic growth. The system has become controversial, and there is growing recognition that it is rife with exploitation. See <https://www.cfr.org/background/what-kafala-system>.

¹⁴ 2020 UK Annual Report on Modern Slavery (October 2020), p. 36, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/927111/FINAL_-_2020_Modern_Slavery_Report_14-10-20.pdf.

- In March 2021, the UK Home Office launched a modern slavery statement registry online to provide a platform for organisations to share the positive steps they have taken to tackle and prevent modern slavery.¹⁵ The registry’s aim is to enhance transparency and accessibility by bringing MSA statements together in one place, to make it easier to find and compare them.¹⁶ Submitting MSA statements to the registry will become mandatory in the future “[t]hese measures require legislative change and will be introduced as soon as parliamentary time allows”.¹⁷
- The UK Government announced that it will create a “powerful new workers’ watchdog” to protect the rights of UK workers.¹⁸ This new authority will be responsible for ensuring that businesses that break the rules have nowhere to hide and will be responsible for tackling modern slavery, enforcing the minimum wage and protecting agency worker. The new watchdog will also enhance workers’ rights by providing a single, recognisable port of call for workers so they know their rights and can “blow the whistle on bad behavior”.¹⁹ This new enforcement body should be established through primary legislation but it is still unclear when the legislation will be adopted.
- Finally, the focus on strengthening the MSA 2015 extends also to other provisions. On 12 August 2021, the Sentencing Council for England and Wales published new guidelines for sentencing offenders convicted of modern slavery offences in England and Wales.²⁰ The guidelines will come into effect on 1 October 2021 and aim to assist judges in passing appropriate sentences and to promote consistency in sentencing.²¹ Prior to publishing the guidelines, the Sentencing Council had organised a consultation process in which 16 judges took part. This consultation process demonstrated a tendency to impose a higher

¹⁵ UK Government, “Government launches modern slavery statement registry”, 11 March 2021, <https://www.gov.uk/government/news/government-launches-modern-slavery-statement-registry>.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ UK Government press release, “Government to protect workers’ rights and clamp down on workplace abuse with powerful new body”, 8 June 2021, <https://www.gov.uk/government/news/government-to-protect-workers-rights-and-clamp-down-on-workplace-abuse-with-powerful-new-body>.

¹⁹ *Ibid.*

²⁰ Sentencing Council, “Modern slavery offences sentencing guidelines published”, 12 August 2021, <https://www.sentencingcouncil.org.uk/news/item/modern-slavery-offences-sentencing-guidelines-published/>.

²¹ *Ibid.*

sentence when using the guidelines.²² Under the guidelines, offenders could face up to 18 years in prison.²³

There are also some significant legislative movements in other jurisdictions relating to modern slavery and forced labour:

- **Australia.** Australia passed a modern slavery act into law in 2018, modelled closely on the MSA 2015, although with more prescriptive reporting requirements. More recently, a private senator's bill—the Customs Amendment (Banning Goods Produced by Uyghur Forced Labour) Bill 2020 was introduced into the Senate in December 2020.²⁴ The bill seeks to amend the Customs Act 1901 to ban the importation of goods from Xinjiang in China, as well as goods from other parts of China that are produced in whole or in part by forced labour.²⁵ On 17 June 2021, the Senate Foreign Affairs Defence and Trade Legislation Committee published a report including various recommendations which, if implemented, may have significant impacts on Australia's modern slavery regime.²⁶ These recommendations include, among others, the prohibition to import any good made wholly or in part with forced labour, reviewing the Modern Slavery Act (2018) as soon as possible and establishing a list of products or companies considered to be at high risk of being produced by forced labour.
- **New Zealand.** The Minister of Workplace Relations and Safety, Hon. Michael Wood, launched New Zealand's "Plan of Action Against Forced Labour, People Trafficking and Slavery" ("Plan of Action") on 16 March 2021.²⁷ The Plan of Action reaffirms New Zealand's commitment to prevent and eliminate all forms of modern slavery and outlines 28 actions Government agencies are taking through to 2025. Under the Plan of Action, policy work should seek to explore

²² The Law Society Gazette, "Landmark sentencing guidelines issued for modern slavery", 12 August 2021, <https://www.lawgazette.co.uk/law/landmark-sentencing-guidelines-issued-for-modern-slavery/5109519.article>.

²³ Sentencing Council, "Slavery, servitude and forced or compulsory labour / Human Trafficking", <https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/slavery-servitude-and-forced-or-compulsory-labour-human-trafficking/>.

²⁴ Customs Amendment (Banning Goods Produced By Uyghur Forced Labour) Bill 2020, https://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/s1284_first-senate/toc_pdf/20S2120.pdf;fileType=application%2Fpdf.

²⁵ Explanatory Memorandum, Customs Amendment (Banning Goods Produced by Uyghur Forced Labour) Bill 2020, p.1, https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/s1284_ems_06516164-02c7-4cf1-b821-5192f1a2ad47/upload_pdf/20S21em.pdf;fileType=application%2Fpdf.

²⁶ Report from the Foreign Affairs, Defence and Trade Legislation Committee (June 2021), [https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024618/toc_pdf/CustomsAmendment\(BanningGoodsProducedByUyghurForcedLabour\)Bill2020.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024618/toc_pdf/CustomsAmendment(BanningGoodsProducedByUyghurForcedLabour)Bill2020.pdf;fileType=application%2Fpdf).

²⁷ Hon Michael Wood, "Action plan to tackle modern forms of slavery released", 16 March 2021, <https://www.beehive.govt.nz/release/action-plan-tackle-modern-forms-slavery-released>.

legislative and other options to address modern slavery including forced labour in international supply chains.²⁸

- **European Union.** The European Union’s draft mandatory human rights due diligence law (MHRDD) continues to move through the pipeline. [See Debevoise previous updates on [Recent Developments in Human Rights Due Diligence and Reporting \(9 October 2020\)](#)]. The MHRDD law continues to move through the pipeline. Earlier this year, the European Parliament [adopted a report](#) on the law and submitted recommendations to the European Commission. The proposed law is broad in scope, covering not only large businesses but certain small and medium enterprises as well. The draft directive codifies a “duty” on companies to respect human rights, the environment and good governance. As a result, companies covered by the law are required to take all proportionate measures and make efforts within their means to prevent, mitigate, and address adverse impacts in these areas which would include forced labour and human trafficking. The law requires due diligence based on a risk-based methodology and disclosure of both the methodology and results. It also focuses on ensuring a remedy for those affected by adverse impacts and requires companies to establish a grievance mechanism. In addition, the MHRDD law requires that national jurisdictions provide for a civil liability scheme. Liability extends not only to the actions of the company itself but also companies under their control.

In addition, on 15 September 2021, the President of the European Commission, Ursula von der Leyen, announced at the annual “State of the Union” the Commission’s intent to propose a ban on products made using forced labour.²⁹ This follows the publication, on 13 July 2021, by the European Commission and the European External Action Service of a Guidance on due diligence to help EU companies to address the risks of forced labour in their operations and supply chains.³⁰ The EU made combatting forced labour one of its priorities, and with this new Guidance, it seeks to “*provid[e] concrete, practical advice [to businesses] on how to identify, prevent, mitigate and address its risk*”.³¹ The Guidance only addresses the risk of forced labour and does not cover due diligence for other supply chains risks.

* * *

²⁸ *Ibid.*

²⁹ State of the Union, Address 2021 by Ursula von der Leyen, p. 15, https://ec.europa.eu/info/sites/default/files/soteu_2021_address_en_0.pdf.

³⁰ Guidance on Due Diligence for Businesses to Address the Risks of Forced Labour in Their Operations and Supply Chains, July 2021, https://trade.ec.europa.eu/doclib/docs/2021/july/tradoc_159709.pdf.

³¹ EU Commission, “New EU guidance helps companies to combat forced labour in supply chains”, 13 July 2021, https://ec.europa.eu/commission/presscorner/detail/en/IP_21_3664.

Please do not hesitate to contact us with any questions on how these developments may impact your business.

LONDON



Samantha J. Rowe
sjrowe@debevoise.com



Patricia Volhard
pvolhard@debevoise.com



John Young
jyoung@debevoise.com



Charlotte Bocage
cbocage@debevoise.com



Meryll Lawry-White
mlawrywhite@debevoise.com



Emma Habanananda
(Trainee Associate)
ehabanananda@debevoise.com



Sophie Michalski
(Trainee Associate)
smichalski@debevoise.com