

The Impact of the Modern Slavery Act (2015) on UAE Entities

Legal Briefing (05 May 2020)

Slavery that had been effectively abolished or outlawed in the 19th century is still existent in many parts of the world in its modern form and continues to harm people in various countries around the world. There are estimated 40.3 million people in modern slavery which can take the form of forced labour, bonded labour, forced marriage or child slavery. Modern slavery in the Middle East has been brought to the public's attention with the undergoing construction works in Qatar for the World Cup in 2022. However, there is no specific legislation dealing with the modern slavery in the GCC countries, nevertheless, the entities based in the GCC region can now be affected by the application of the United Kingdom's Modern Slavery Act 2015. In this Legal Briefing, we will specifically analyse the effect of the Modern Slavery Act 2015 on the UAE entities.

1. What is Modern Slavery?

Modern slavery is defined as the act of recruiting, harbouring, transporting, providing or obtaining a person for compelled labour work. The main element of modern slavery is not the legal ownership anymore, but rather illegal control. Nowadays, modern slavery can usually be found in countries with a low educational, economical and socio-cultural environment.

It can take the form of government-forced labour, bonded labour (slavery as security against a loan) or forced migrant labour (enticement to migrate with promise of work with a subsequent seizure of documents). Furthermore, certain occupations and economic sectors are more prone to slavery – e.g. car washers, domestic workers, cosmetic therapists, manufacturing and construction.

2. What is the Modern Slavery Act (2015)?

The Modern Slavery Act (“**Act**”) is a UK law which came into effect on March 26, 2015 and primarily deals with modern slavery in England and Wales. The Act consolidates various slavery and trafficking related offences.

a) Scope of Application

The Act is applicable to a) any person committing one of the offences in England or Wales and b) to any commercial organization supplying goods or services in any part of the UK which has a turnover of not less than approx. AED 170 million. Any commercial entity falls under the scope of the Act regardless of its legal form or country of incorporation as long as it is providing its services and goods in the UK and reaches the threshold (including the turnover of any subsidiary).

b) Offences and Penalties

The Act punishes slavery, servitude, forced labour and human trafficking. Any offence committed under the Act is punishable with:

- a fine; and/or
- imprisonment between 12 month and a life sentence; and/or
- compensation payment to the victim; and/or
- confiscation of assets.

c) Main Obligation for Companies

The main obligation for companies is provided for in section 54 of the Act i.e. – preparation of a slavery and human trafficking statement for each financial year. Such a statement shall include all steps taken during a financial year to ensure that offences related to slavery and human trafficking were not committed in the company itself but also in any other company falling under its supply chain. In particular, the statement must include the following points:

- company's structure, its business and supply chain;
- policies regarding slavery and human trafficking;
- due diligence process regarding slavery and human trafficking for its business and its supply chain;
- risk assessment and risk management;
- effectiveness of preventing slavery and human trafficking in its business and supply chain; and
- training and educational program for its employees.

The report must be visibly published on the website of the company or made available

upon request, if the company does not have a website.

A guide on how to prepare the statement and which points should be included, can be found on the following website: <https://www.gov.uk/government/collecti- ons/modern-slavery-bill>.

d) Application to UAE Entities

One could ask which relevance a UK law has in relation to entities incorporated in the UAE. A connection can be construed either directly or indirectly.

A direct relation to the Act would exist if a UAE incorporated company conducts commercial activities in England or Wales and reaches the aforementioned threshold in turnover. In such cases, the UAE company has to prepare and publish a slavery and human trafficking report. As part of the report under the Act, a due diligence process has to be established, maintained and controlled for all supply chain companies. Furthermore, employees have to be trained in order to assess potential slavery risks they may encounter – whether in their own company or in the supply chain company.

An UAE incorporated company can be also affected indirectly if they belong to the supply chain of a UK company which falls under the Act's scope of application.

With the inclusion of supply chain companies into the reporting requirements for UK companies, any UAE company who is integrated into a UK company's supply chain becomes the focus of attention.

This means that UK companies may pass on a) the requirements of drafting a slavery and human trafficking report to all of their supply chain companies and b) the obligation to observe modern slavery

rules. As the UK company will have to include in its slavery and human trafficking report a section for due diligence conducted in its supply chains, it may pass on the requirement of due diligence to the respective supply chain company.

This also means that the supply chain companies may be obliged to incorporate same or similar procedures and processes in order to comply with the UK company's compliance regulations.

Any non-compliance with the Act for directly affected UAE companies may result in imprisonment and confiscation of assets. For indirectly affected UAE companies (belonging to a UK company's supply chain) any non-compliance may result in termination of the business relationship. Moreover, UAE based supply chain companies may have to pass on the new requirements also to their sub-contractors in other countries.

3. Summary

The inclusion of supply chain companies in the Act results in extensive and far-reaching consequences – even beyond the borders of the United Kingdom.

Any UAE entity affected by the Act will have to assess potential risks in its own business structure as well as its supply chain and then manage and control the identified risks.

It is also recommended that UAE entities proactively incorporate modern slavery rules into their HR policies and recruiting guidelines in order to prevent any risks of

modern slavery during all stages of employment and especially if manpower is being hired (either from abroad or inside the UAE).

It is also advisable to establish adequate due diligence procedures for sub-contractors – whether they are involved on a commercial basis or employment basis. Employees would have to be educated and continuously trained to assess situations where they may think that they are being subjected to slavery or human trafficking. Employees should be provided with a handbook on how to assess, manage and report situations related to slavery. Any measures taken should be reported and compiled into a statement at the end of each financial year.

Any and all measures taken against slavery – either as part of a UK reporting under the Act or voluntarily – can save your company fines, bad reputation and press, loss of business and revenues. In return your company can improve its standing in the public eye and become more attractive for foreign companies in terms of cooperation.

Please contact your usual contact person at SCHLÜTER GRAF or send an email to dubai@schlueter-graf.com in order to inquire whether your entity falls under the scope of application of the Act and/or how the Act can be implemented in your organization.

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