

The UK Modern Slavery Act 2015 and Supply Chain Transparency: The Impact on Private Investment Funds

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Introduction

The Modern Slavery Act 2015 is new legislation introduced in the UK with the intention of combatting slavery and human trafficking. Continuing the trend for legislation to have extra-territorial reach, as illustrated by the UK Bribery Act, it can apply to entities based outside of the UK.

Of particular importance to businesses is Section 54 which requires certain businesses to state annually and publicly the steps they have taken to ensure that their business and supply chains (i.e. those who they engage to provide goods and services) are free from human trafficking and slavery (a "**Section 54 Statement**").

This briefing focuses on the impact of this new legislation on private investment funds and their portfolio companies, and in particular Section 54 Statements.

Who is required to issue a Section 54 Statement?

Section 54 applies to any entity that:

- is a commercial organisation (irrespective of where incorporated such that both UK and non-UK entities are covered by the legislation);
- supplies goods or services;
- has a turnover (globally and not just in the UK) of at least £36 million per year; **and**
- carries on a business (or part of its business) in the UK.

As to carrying on a business or part of a business in the UK, the relevant Home Office guidance (the UK government department responsible for the legislation) states that the relevant test is whether or not the business in question has a "*demonstrable business presence*" in the UK.

Many private funds managers will satisfy these conditions and be required to issue their own Section 54 Statements. However, this legislation is more likely to have direct impact on their portfolio companies.

In most cases, a portfolio company would not be part of the "supply chain" of a private investment fund because the relationship between a fund and a portfolio company is one of investor to investee and not a relationship based on the supply of goods or services. Therefore, private investment funds generally will not be directly responsible for making Section 54 Statements about their portfolio companies. However, as discussed below, investment funds should still take care to consider (or even approve) the contents of Section 54 Statements issued by their portfolio companies.

When must a business make its first Section 54 Statement?

The deadline for making a first Section 54 Statement is within six months of the first fiscal year that falls after 31 March 2016 of a relevant entity. For example, if the relevant entity has a fiscal year ending on 31 December 2016, the first Section 54 Statement must be published by 30 June 2017.

The legal sanction for failing to publish a Section 54 Statement is a Court Order compelling an organisation to make one, which, if ignored, would constitute a criminal offence punishable by a fine. In addition, it is likely that such a failure would trigger hostile campaigns and adverse publicity.

The content of a Section 54 Statement

The Home Office guidance recommends that a Section 54 Statement should be:

- written in simple language to ensure that it is easily accessible to everyone; and
- succinct but cover all the relevant points and link to relevant publications, documents or policies.

As to the contents, it must state:

- the steps the organisation has taken during the financial year to ensure that slavery and human trafficking is not taking place in any of its supply chains and in any part of its own business; or
- the organisation has taken no such steps (which may be justified in circumstances where there is an extremely low risk of slavery and human trafficking).

The requirement to "*ensure that slavery and human trafficking is not taking part in any part of its supply chain*" does not mean that the organisation must guarantee that the entire supply chain is slavery free, but the organisation should set out in the statement all the actions it has taken to ensure its supply chain and its business is free from slavery.

There is no prescribed form or length requirements for a Section 54 Statement, but guidance suggests that it could include information about the following:

- The organisation's structure, business and its supply chains;
- Its policies in relation to slavery and human trafficking;
- Its due diligence processes in relation to slavery and human trafficking in its business and supply chains;
- The parts of its business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps it has taken to assess and manage that risk;
- Its effectiveness in ensuring that slavery and human trafficking is not taking place in its business or supply chains, measured against such performance indicators as it considers appropriate; and
- The training about slavery and human trafficking available to its staff.

Approval of a Section 54 Statement

The Board of Directors (or equivalent) of the relevant entity must approve the Section 54 Statement and it must be signed by a director (or equivalent).

Publication of a Section 54 Statement

A Section 54 Statement must be published on the website most appropriate for its UK business and include a link to it on a "*prominent*" place on the homepage of that website.

A prominent place may mean a link that is directly visible on the home page or part of an obvious drop-down menu on the home page. The link should be clearly marked so that the contents are apparent (for example, the Home Office guidance suggests that the link could say "*Modern Slavery Act Transparency Statement*").

The impact on private investment funds

The Modern Slavery Act is a symptom of the increasing prominence and awareness of supply chain issues. Increasingly, consumers, trade unions and other pressure groups are campaigning to ensure those at the top of the supply chain take responsibility for what goes on lower down, irrespective of where the legal responsibility actually falls.

Because portfolio companies are generally not part of the supply chain of a private investment fund, funds and their managers will not generally be legally responsible for the acts of their portfolio companies. However, in order to protect their investments, fund managers should take active measures to ensure that portfolio companies comply with the provisions of the Modern Slavery Act.

In many respects, protection against supply chain issues is analogous to steps commonly taken to combat risks of bribery and corruption and practical steps that fund managers can take to protect themselves against the risks of their portfolio companies experiencing supply chain issues throughout the lifecycle of an investment include:

- Adding supply chain issues to the pre-acquisition due diligence process and the ongoing monitoring of investments;
- Seeking the verification of Section 54 Statements prior to their publication (and even requiring their prior approval);
- Identifying particular investments that may be especially susceptible to supply chain risk (based on factors such as location and the type of business); and
- Devising tailored audits (such as site visits, requests for information and means of verifying the information provided) to mitigate the risk of supply chain issues, especially investments that are high-risk.

Related Professionals

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