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## Corporate Responsibility for Third-Party Misconduct: The UK Modern Slavery Act of 2015

Companies have long faced serious legal consequences for bribes paid by employees, vendors, suppliers, business partners and other third parties with whom they do business. More recently, that risk has expanded beyond bribery to human trafficking and exploitation—a concept that encompasses a wide range of misconduct, including forced labor, modern slavery and sexual exploitation.

According to the United Nations, human trafficking is a pervasive problem that affects virtually every country in the world, and disproportionately affects women and children, who make up more than 80 percent of trafficking victims. On March 2, 2015, amendments to the Federal Acquisition Regulation came into effect that expanded the scope of human trafficking activities prohibited by companies in their fulfillment of federal contracts. 48 C.F.R. § 52.222-50. Among other things, these regulations require certain government contractors to report if they or their subcontractors engaged in human trafficking and include a variety of penalties, including debarment, for violations. 48 C.F.R. § 52.222-50.

In 2010, California became the first state in the United States to require that companies publicly disclose their efforts to detect and prevent exploitation in their supply chains and other business relationships, typically through prominently displayed information on their websites. The California Transparency in Supply Chains Act, which applies to any company doing business in the state with more than \$100 million in annual gross receipts, does not impose monetary penalties on violators, but it does subject corporations to injunctive relief for non-compliance and exposes companies that tolerate human trafficking to public view and disapproval.

The United Kingdom (UK) has now joined California in the legislative battle against human trafficking, and companies worldwide, including American corporations doing **any** business in the UK, should take note. In July 2015, the UK Parliament enacted the Modern Slavery Act of 2015 (the “Act”), which takes wide-sweeping steps to increase transparency and curb human trafficking, modern-day slavery and sexual exploitation in the UK and beyond.

One provision of the Act—the Transparency in Supply Chain provision (the “Provision”)—imposes new disclosure requirements on large corporations that carry on a business, or part of a business, in any part of the UK. The Provision went into effect October 29, 2015. The goal of the Provision is to have “businesses take the issue of modern slavery seriously at the highest levels and for businesses to be able to determine, demonstrate and explain their [anti-slavery and human trafficking] policies and practices relevant and specific to their own circumstances.”

Modeled after the California law, the Provision requires affected organizations to prepare and publish, after every fiscal year, a public statement regarding their efforts to combat slavery and human trafficking in their supply chains.

If you would like more details, please do not hesitate to contact your Katten attorney or the following members of Katten’s **White Collar, Investigations and Compliance** practice.

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## Who Must Comply

The Provision applies to any business entity that: (1) supplies goods or services; (2) has a total turnover<sup>1</sup> of more than £36 million (approximately \$55 million); and (3) carries on a business, or part of a business, in any part of the UK. The reach of this Provision is extraordinarily broad: it applies to all business entities (including partnerships) that meet these three conditions, regardless of where they are incorporated or registered. It applies to companies that sell any goods or services of any kind, and it applies to companies with total, global annual revenues—not UK-generated revenue—above the £36 million threshold. And it applies to companies that conduct any amount of business, no matter how small, in the UK.

Guidance recently published by the UK government specifies that businesses with fiscal years ending between October 29, 2015 and March 30, 2016 will not be required to publish a statement until their next fiscal year; but businesses with fiscal years ending on or after March 31, 2016 must prepare a statement for 2015–16. Organizations are encouraged to publish their statements within six months of the end of their fiscal year. Statements must be published each year the organization meets the threshold requirements of the Provision, although the UK government recommends that businesses continue to produce a statement in future years, even if their total revenue has fallen below the £36 million mark.

## The Statement

The Provision provides companies with a great deal of flexibility in creating their statements, and the UK Home Office has indicated that it fully “expect[s] slavery and human trafficking statements to differ from business to business.” Although the Provision does not mandate that companies take steps to eliminate human trafficking, the statement must explain either: (1) the steps the organization has taken during the previous financial year to ensure that slavery and human trafficking are not taking place in any of its supply chains and in any part of its own business; or (2) that the organization has taken no such steps.

Recently published guidance includes detailed information regarding the potential content and form of the statement. Organizations are encouraged to write their statements in simple language, include all steps taken by the organization to combat human trafficking, and include information about:

1. the organization’s structure, its business model, and its supply chains;
2. its policies in relation to slavery and human trafficking;
3. its due diligence processes in relation to slavery and human trafficking in its business and supply chains;
4. 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;
5. its effectiveness in ensuring that slavery and human trafficking are not taking place in its business or supply chains, measured against such performance indicators as it considers appropriate; and
6. the training about slavery and human trafficking available to its staff.

The Provision requires that the transparency statement be approved by the company’s board and signed by a director, designated partner or an equivalent officer. The statement must be published on the company’s website, with a link in a prominent place on the homepage. If the company does not have a webpage, the statement must be provided within 30 days to anyone who makes a written request for it.

## Non-Compliance

Outside of the potential for reputational damage, companies that fail to comply with the requirements of the Provision are subject to potential injunctive proceedings brought by the UK Secretary of State. If the organization fails to comply with the injunction, it could be found in contempt of a court order, which is punishable by an unlimited fine.

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<sup>1</sup> Turnover is defined as the total revenue of a business after deducting trade discounts, VAT and other relevant taxes.

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## How to Prepare

- Determine if the Provision applies to your company.
- Examine your company's supply chain to determine if there is a risk of labor exploitation or human trafficking.
- Perform and/or review human trafficking audits and due diligence of your company's supply chain.
- Evaluate what policies your company has in place to prevent labor exploitation and human trafficking. Consider implementing or improving these policies.
- Assess and/or develop training regarding slavery and human trafficking for staff, especially those who oversee or interact with the company's supply chain.
- Consider the form and content of the transparency statement.
- Prepare your company's board and management for the approval and publication of the statement.

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