FAST INSIGHT 6

Insurance, modern slavery and human trafficking

About FAST

Finance Against Slavery and Trafficking (FAST) is a global public-private partnership mobilizing the financial sector to fight modern slavery and human trafficking. The FAST Blueprint (September 2019) sets out five Goals and thirty Actions for financial sector actors to address modern slavery and human trafficking. This Insight focuses on the role of insurance, and relates in particular to FAST Goal 2.

Insurance can determine who bears modern slavery risks

- Insurers are both major investors and key risk managers in the global economy. In many areas, they set the terms on which market actors take and shift risks.

- Acting collectively, insurers can play a crucial role in shaping modern slavery risk-reduction efforts by client, and even determine whether certain business models are viable.

- Insurers have shaped how slavery is organized in the global economy for several centuries. The insurance industry recently apologized for its role in the trans-Atlantic slave trade. Insurers provided cover for the carriage of slaves from West Africa to the Americas between the 17th and 19th centuries. Insurers used mechanisms such as excess and exclusions to encourage slave traders to manage their businesses in certain ways.

- In the early 1780s, British insurers refused to pay an insurance claim for 132 slaves who lost their lives while aboard the *Zong* in the Caribbean. The resulting litigation contributed significantly to the rise of abolitionism.

- In 2016, a group of trafficking victims in the UK successfully sued a labour broker, despite the broker's case being defended in court by the provider of its employers' liability insurance company. This case raised important questions about the scope of such insurance coverage.

More Information

- Robin Pearson and David Richardson, "Insuring the Transatlantic Slave Trade", *The Journal of Economic History*, Volume 79, Issue 2 (2019).
- James Oldham, "Insurance litigation involving the Zong and other British slave ships, 1780-1807", *The Journal of Legal History*, Volume 28, Issue 3 (2007).
- Galdikas & Ors v DJ Houghton Catching Services Ltd & Ors, EWHC 1376 (2016).

Insurers and brokers are now considering forced labour exclusions from coverage

- In the UK, the Gangmasters and Labour Abuse Authority has worked with major insurers to craft a standardized "Forced, Child and Slave Labour" exclusion clause for the marine market. The provision requires the insured to demonstrate compliance with their existing legal duties.

- Aon PLC, Fidelis Insurance Holdings Limited and Marsh LLC have developed a marine cargo clause making compliance with applicable legal and regulatory obligations on forced labour and child labour.

- In some cases, this will include the due diligence obligations embedded in §307 of the US *Tariff Act*, which prohibits entry into the US market of any goods made with forced labour. Under the Aon, Fidelis and Marsh clause, such goods would not be insured during marine carriage, putting the risk of loss arising from detention by US Customs and Border Protection on the shipper, not the carrier or insurer.

- An alternative approach is being promoted by the Joint Cargo Committee (JCC), made up of representatives from International Underwriting Association member companies and Lloyd's. The JCC has published a model clause that makes claims payment conditional on policyholders having undertaken due diligence relating to prohibited labour. This approach addresses both potential risks under the US *Tariff Act* and those arising from other, including future, due diligence regimes (see Insight 5).

- Insurers are also considering other insurance lines that may be impacted by forced labour, including commercial general liability (CGL) insurance, professional liability, employers' liability and directors' and officers' liability.

- CGL insurance typically includes an exclusion for criminal acts, which could be triggered in the event of forced labour or human trafficking. Yet, civil claims for forced labour may not trigger this exclusion. They could, however, trigger other exclusions, such as those for intentional torts (assault, battery).

- Professional liability coverage typically covers claims for alleged conduct in providing professional services. Some recruiters could potentially have coverage relating to forced labour arising out of recruitment processes. Given the close connections between recruitment fees and debt bondage, insurers may look closely in the future at coverage and exclusions.

- Directors' and officers' liability policies protect them against claims arising from, for example, stakeholder actions based on loss of value due to a company's connection to forced labour or modern slavery. As statutory and market expectations of directors and officers evolve, with the EU contemplating formal changes to require directors to factor ESG concerns into their decisions (see Insight 5), these clauses may also have to change.

More Information

- International Underwriting Association, "Prohibited Labour Clause JC2019-008" (6 August 2019).
- Michael J. Pisko, "Insurance Coverage for Forced Labor Liability", *Policyholder Pulse* (12 June 2020).

This is part of a broader trend towards ESG in global insurance

- Allianz Global Corporate & Specialty SE (AGCS) has developed thirteen ESG guidelines for sensitive business sectors, which include sector-specific human rights aspects including forced labour. AGCS advises its clients on how to reduce these risks, reducing premiums and the insurer's exposure.

- The UN-backed Principles for Sustainable Insurance (PSI) – an initiative involving insurers representing more than 25 per cent of world premium volume and USD 14 trillion in assets under management – has developed four Principles for Sustainable Insurance. PSI supporters follow these Principles in promoting ESG alignment, factoring ESG risks such as modern slavery into analytics, product offerings and claims management.

- PSI has also developed guidance for managing ESG risks in non-life insurance business. That guidance identifies forced labour as one of the highest and most widespread ESG risks insurers face.

- PSI also developed detailed guidance for high-risk sectors such as insurance of fishing vessels, where forced labour can in some cases occur.

More Information

- Angela Quiroga, "Hidden forced labour in developed economies" (1 September 2019).
- UNEP FI PSI, Principles for Sustainable Insurance (Switzerland: UNEP FI, 2012)
- UNEP FI PSI, Managing environmental, social and governance risks in non-life insurance business (Switzerland: UNEP FI, 2020).
- UNEP FI PSI, Risk assessment and control of IUU fishing for the marine insurance industry (Switzerland: UNEP FI, 2018).

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