LIECHTENSTEIN INITIATIVE | FINANCE AGAINST SLAVERY & TRAFFICKING

FAST INSIGHT 3

Dealing with government involvement in modern slavery and human trafficking

About FAST

GOAL 1

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 expectations under FAST Goal 1, compliance with laws, when a government is involved in modern slavery and human trafficking.

Government connections to modern slavery and human trafficking

- Slavery is illegal at all times and places. Yet there continue to be cases where governments tolerate or actively support compulsory labour in apparent violation of international standards.

- In Uzbekistan, from 1992 to 2017 around one fifth of the adult population experienced forced labour in the cotton harvest each year, as a result of government coercion and social pressure. Following government-led reforms, the number of people in forced labour has fallen from 448,000 in 2014 to 102,000 in 2019 according to ILO estimates.

- In Myanmar, there have been credible allegations for several decades of military and other government actors' involvement in forced infrastructure development and private enterprise. The Myanmar Government has worked with the ILO to strengthen anti-forced labour efforts. UN human rights actors have raised forced labour concerns relating to ongoing armed conflicts in Myanmar.

- In the Democratic People's Republic of Korea (DPRK, North Korea), UN investigators have found credible evidence of "widespread, systematic abuses" including forced labour in prisons and by political prisoners, and government-supported labour trafficking into foreign construction, ship-building, apparel production and forestry. The Government of DPRK denies the allegations.

- In Eritrea, a 2016 UN Commission of Inquiry found that officials had engaged in the crime against humanity of enslavement, including through use of forced labour in private enterprise in infrastructure development and mining. The Government of Eritrea denies the allegations.

- UN rapporteurs have raised concerns about possible widespread and systematic forced labour of Uyghurs and other minorities in People's Republic of China. This is allegedly the result of government labour market programmes. The Chinese Communist Party describes the relevant programmes as part of poverty alleviation, development and counter-terrorism strategies.

More Information

- Uzbekistan: ILO, Third-party monitoring of forced labour during the 2019 cotton harvest in Uzbekistan
- DPRK: Detailed findings of the commission of inquiry on human rights in DPRK
- Myanmar: Developing Freedom (UNU, 2021), Chapter 8
- Eritrea: Detailed findings of the Commission of Inquiry on Human Rights in Eritrea
- China: UN experts call for decisive measures; China, Employment and Labor Rights in Xinjiang, White Paper.

Risks connected to government officials involved in slavery, forced labour and human trafficking

- Government officials involved in slavery, forced labour and human trafficking may be liable to prosecution and/or sanctions by foreign jurisdictions. International crimes such as enslavement are subject to prosecution by international tribunals or by foreign states under the doctrine of universal jurisdiction. This can create obligations for financial entities relating to judicial cooperation, and asset tracing and freezing.

- State officials and enterprises involved in modern slavery may be subject to sanctions by other countries or by the United Nations. The UK and US Governments have both adopted sanctions on entities based on their ties to forced labour in the Democratic People's Republic of Korea.

- Individuals and entities connected to slavery, forced labour and human trafficking may give rise to anti-money laundering obligations for banks and other financial institutions with whom they do business. The US Government has issued guidance reminding "[e]ntities with banking ties to the US financial system … that financial institutions are required to… assess their potential exposure to the risk of handling the proceeds of forced labor on behalf of their clients, and, as appropriate, implement a mitigation process in line with the risk."

More Information

- On prosecution risks: Journal of International Criminal Justice, vol. 14, no. 2
- On AML and sanctions: FAST, Insight 1
- On China: US Government, Xinjiang Supply Chain Business Advisory
- On North Korea: UK announces first sanctions under new global human rights regime; US, Treasury sanctions

Due diligence and engagement

- Financial sector actors' responsibilities to identify and address modern slavery risks can be understood through reference to the UN Guiding Principles on Business and Human Rights (UNGPs). Prevailing guidance, such as the FAST Blueprint, OECD Guidelines on Multinational Enterprises, and the Australian Modern Slavery Act align with the UNGPs.

- Under the UNGPs, in high-risk circumstances, financial enterprises may need to undertake 'enhanced due diligence' to identify modern slavery (and other human rights) risks in their businesses and relationships. Where a government is involved, for example through policy, subsidies or coercion, this may constitute 'high-risk' circumstances.

- In assessing their own risk exposure, financial enterprises should consider whether suppliers and portfolio and loan book companies are taking appropriate measures to identify, mitigate, prevent and remedy modern slavery risks. Relevant questions will include:

    1. Is the company taking appropriate steps to identify modern slavery risks in its operations and business relationships, including its supply chain?

    2. Did the company pay particular attention to high risk areas and vulnerable populations, for example where there are credible allegations of state involvement?

    3. What expertise has the company drawn on to understand these risks?

    4. Have salient modern slavery risks been discussed at management and oversight levels of the company? What steps have been taken to raise awareness in other parts of the company?

5. What steps is the company taking to stop, prevent or mitigate harmful impacts?

6. What steps is the company taking to use or increase its leverage with relevant business and state actors? How is the company enabling information flows between itself and stakeholders?

7. What criteria does the company use for determining whether to end a business relationship or exit a government's jurisdiction?

8. What measures does the company have in place to provide or contribute to remedy for affected persons and communities?

9. How does the company monitor the situation?

10. How does the company report and communicate on its decisions?

- Where the financial enterprise is State-owned or State-controlled, expectations of due diligence and response may be heightened. Senior management may have greater access to information and greater scope for scrutiny and oversight than is the case in private sector financial entities.

- In countries where governments tolerate or support forced labour, domestic law may not align with international law and labour standards. With which law should an enterprise comply? UNGP 23 states that business enterprises should "seek ways to honour the principles of internationally recognized human rights when faced with conflicting requirements". Areas of potential conflict should be established through human rights due diligence.

- Where local law conflicts with international anti-slavery standards, it may be possible to seek clarification from the government, exemption, or to have local requirements changed. This may reduce risks to people and the enterprise, and signal commitment to human rights.

- Companies should engage relevant expert stakeholders to find a solution, including groups or individuals whose rights may be affected. In doing so, the company must consider how such engagement may affect these stakeholders.

- Companies are likely to be under heightened scrutiny from stakeholders. Without jeopardizing vulnerable people, companies should be able to account for their efforts.

- If, over time, the national context makes it impossible to prevent or mitigate adverse human rights impact, the company may need to consider ending its relationship, taking into account the human rights impact of doing so.

- Where a company is at risk of being involved in a gross human rights abuse – such as widespread or systematic forced labour, enslavement or human trafficking – they should consider this as risk of involvement in a serious crime, and take appropriate reporting and mitigation measures. This may include cooperation with other states and international law

More Information

- UN, Guiding Principles on Business and Human Rights
- OHCHR, FAQs about the Guiding Principles on Business and Human Rights
- OHCHR, The Corporate Responsibility to Respect Human Rights: An Interpretive Guide
- Shift, Human Rights Due Diligence in High Risk Circumstances

Using leverage

- Once salient modern slavery risks have been identified, a financial enterprise may need to engage portfolio and loan book companies, and other business partners, to mitigate, prevent and remedy risks and harms. This use of leverage can take numerous forms.

- **Deeper value chain analysis**: The Norwegian Export Credit Agency, GIEK, for example has closely examined its investment in the ship construction value chain, after suspected forced labour from the Democratic People's Republic of Korea was identified within it.

- **Shareholder action**: The Socially Responsible Investment Coalition filed a resolution at the 2020 Annual General Meeting of Skechers USA asking for the adoption of a human rights policy, calling out forced labor risks in China.

- **Collective action**: The Cotton Campaign, a global coalition of organizations including investors, has hosted an Uzbekistan Cotton Pledge since 2007. More than 300 signatories committed not to use Uzbek cotton. This helped lead to significant reforms over the last decade.

- **State-owned and State-controlled financial enterprises**: State-owned and State-controlled financial enterprises may have additional leverage, for example by working with other State organs to engage the government involved in modern slavery through diplomatic and/or legal channels.

Divestment and Exclusion

- If a financial enterprise cannot ensure that it is not causing, contributing to, or directly linked to modern slavery, forced labour or human trafficking, it may need to consider divestment or exclusion. This may be temporary, and can help restore the leverage needed to generate changed business conduct and risks to people. This is discussed further in FAST Insight 2.

- The Norwegian Government Pension Fund Global divested from Atal SA on the basis of its connections to forced labour from the Democratic People's Republic of Korea. Some investors have chosen to divest from all enterprises in Xinjiang Uyghur Autonomous Region because they consider that they cannot conduct effective human rights due diligence to identify risks and/or exert the leverage required to address forced labour-related harms.

- In Brazil, the Government has institutionalized exclusion of forced labour risks from some government lending, by publishing a list of companies found to have used slave labour. Inclusion in this list became a key indicator by which Brazil's financial sector assessed social risk in its actual and potential relationships, with the Government formally recommending this approach.

More Information

- On leverage: FAST, Insight 2
- Norway: Recommendation to exclude Atal SA from the Government Pension Fund Global
- China: IAHR, Human Rights Risks in Xinjiang Uyghur Autonomous Region – Practical Guidance for Investors and FLA, Forced Labor Risk in Xinjiang
- Brazil: Developing Freedom (UNU, 2021), Chapter 3

If you prefer to learn by listening, check out *Finance Against Slavery and Trafficking: The Podcast*.