

Someone recently commented to us that humans are “low risk and high profit” and, after having read recent press reports about the shocking working conditions allegedly subsisting in Myanmar garment factories, this statement sadly rings true.

The latest research has revealed that following the lifting of sanctions and the prospect of cheap labour, the garment industry in Myanmar has exploded: Myanmar garment production was estimated to be worth US \$1.46 billion in 2015, with EU imports of clothing from Myanmar worth €432 million that year (up 80% year on year) and with circa 350,000 workers being employed in the industry by 2016 (90% of which were women)¹. Unfortunately, this has led to people, mainly women and children, working in conditions where wages are desperately low and where many are forced to work excessive hours and often unpaid overtime to ensure that customer orders are met for large organisations in the developed world. Sadly, this is not the first time that situations such as these have been brought to the world’s attention. We can all recall the Rana Plaza collapse in Dhaka in April 2013 and the report last year that hundreds of thousands of Syrian refugees were working in garment factories in Turkey. Again, the overwhelming majority were women and children who did not have the legal right to work and who therefore felt unable to speak out for fear of reprisals. There are other examples closer to home in terms of cockle and fruit pickers, nail bar workers, garage car wash attendants and those working in the sex trade.

Whilst this latest research centres upon the garment industry, the issues are not unique to this particular industry, nor is it unique to countries in certain geographical regions. However, the nature of the industry will clearly be relevant to any risk assessments that organisations should be carrying out before entering into any supply chain relationships. Who can forget the incidents of Kozee Sleep who supplied mattresses to John Lewis, Next and Dunelm, or the brothers who were recently jailed for trafficking Polish workers into the UK and then forcing them to work at Sports Direct? Whilst the brands themselves were clearly not directly responsible for the abuse that was uncovered in those cases, unfortunately it was their names that appeared all over the press, in plain view of their current and prospective customers.

With today’s highly outsourced, ever longer, leaner and increasingly global supply chains, it makes it extremely difficult for organisations to have complete visibility beyond their 1st or 2nd tier supply chain.

In the case of Myanmar, and against the backdrop of a socio-political background that remains in a state of flux, the draw of weak labour laws and cheap labour may have superficial appeal; but organisations should consider their options very carefully before investing in the region.

So, How Should Organisations React to Reports Such as This?

The only way that things will improve in these communities is if organisations, whose orders they satisfy, take a stand against the suppliers who are exploiting these vulnerable people for financial gain. In the UK, it could be said that some organisations have been slow to react to the introduction of the Modern Slavery Act 2015 (MSA) – perhaps through fear of being questioned about the content of their statements where they are not “walking the talk”, or worse, by being held to account by NGOs or in court proceedings, or arguably because the legislation lacks a hard-hitting financial penalty for non-compliance. However, organisations should be mindful of the “power of the consumer” (particularly in today’s social media hungry world), which can have significant and far-reaching global influence in a short space of time and often before you even realise you have a problem on your corporate hands.

Today’s trading environment is considerably more ethically driven, particularly by Millennials (Generation Y), than it was perhaps five or 10 years ago. For example, 10 years ago few people were concerned with where their coffee or tea came from and whether or not it was a “fair trade” product. This is very different today, where consumers are becoming increasingly choosy about the provenance of the products they spend their hard-earned money on. Therefore, organisations considering investing in countries with a view to benefitting from their weak laws and cheap labour, such as Myanmar, should take a moment to consider how their attitude towards the issues going on in Myanmar could impact upon their brand and reputation should they be found to be fuelling poor labour conditions and particularly fuelling child labour.

Further, preventing exploitation in the labour market, whether here in the UK or abroad, is becoming more important in terms of an organisation’s corporate social responsibility and some organisations consider it a tool to evidence their ethical, proactive and positive approach towards eradicating abuse in the labour market. This equally applies to smaller organisations who are using it as a way of differentiating themselves from their competitors, particularly in tender processes, or, alternatively, who have been asked by their larger customers (whose supply chain they form part of) what their stance is in relation to slavery and human trafficking. Some organisations are even terminating some supplier relationships where suppliers are not willing to address and correct such abuses.

¹ Source: Myanmar Garment Manufacturers Association

So, What Can Organisations Do When Considering Entering into a New Supplier Relationship to Ensure Their Supply Chain Remains Slavery Free?

- Obtain buy in from the very top of the business when it comes to deciding whether to prioritise ethically sourced products over cheap products – this will not be an easy sell to the board, however, there are clear advantages to becoming an ethically aware brand.
- It is important to regularly risk assess your current supply chain and organisation for the purposes of producing an MSA statement (whether or not the legal obligation to do so is triggered or not). When it comes to entering into a new supplier relationship, it is also crucial to carry out due diligence in order to determine what the main risks are within the particular industry (e.g., dangerous work), country (e.g., political conflict or corruption) and workforce (e.g., vulnerable, low-skilled and often migrant or trafficked workers); where those risks appear in the supply chain; and whether this will be a targeted, risk-based strategy. On the basis of the publicity surrounding the Myanmar factories, there really is no excuse for organisations failing to carry out proper due diligence.
- On a practical level, supplier questionnaires and bid processes for suppliers to be assessed upon their commitment to improving labour conditions could all be implemented as part of an organisation's strategy. The more extreme option could be a site visit by the organisation or a trusted third-party organisation, although the positive aspect of a site visit is to see first-hand how your organisation could work with that supplier to improve the lives of the workers and the community.
- After having carried out the due diligence, it will then be a matter of considering how to measure the new supply relationship (which will then form part of your ongoing supply chain mapping process) to ensure that you are continuously monitoring both your own organisation's efforts and your supply chain's efforts too. This is likely to include supplier audits, targets and, most importantly, robust contracts between parties, whilst also ensuring that the supplier is well aware of any supplier codes of conduct that they must adhere to. Areas to consider from a contractual perspective include: requiring suppliers to share information and maintain records; powers of step-in/audit; confirmation of compliance with, and certifications and undertakings in respect of, applicable MSA and other relevant legislation, policies and procedures; financial penalties for non-compliance; provision of indemnities; and potential rights of termination where breaches are not rectified by suppliers in a timely manner, etc.
- Whilst we are focusing on new supply relationships, it is important not to forget your internal processes, particularly in relation to staff awareness of slavery and human trafficking. In the context of new suppliers, organisations should ensure they have relevant policies in place to detect, eradicate and prevent modern slavery in their supply chain and organisation and to provide a framework for organisational accountability.

The policies should be brought to life with staff engagement and training, with targeting of key areas of an organisation such as procurement and sales (for supply chain) and HR and recruitment (for the organisation itself).

- Staff members should be subject to disciplinary action if they fail to adhere to the policies, procedures and applicable laws. In terms of staff dealing with the supply chain, they should learn how to identify and report risks in the supply chain and be able to relay information about the standards suppliers are expected to adhere to. Organisations should develop a culture that encourages identification and reporting of issues without fear of reprisal/retaliation.
- In a situation where labour abuse is uncovered, organisations will want to ensure they have appropriate "get out" clauses. Organisations should also be mindful that there may be a limited number of suppliers of a particular product in a particular region and an immediate termination of the relationship could well impact upon the organisation's ability to fulfil its own orders. On this basis, one option would be to impose a period of time for improvement, perhaps with the organisation's help, to rectify the issues. If things do not improve, the relationship can be terminated whilst alternative sourcing options were being explored in the background.
- Some organisations are even consulting with NGOs to review and potentially assist them in identifying areas of weakness, so as to further improve their overall compliance with relevant legislation, and improving due diligence techniques, governance, company systems and staff training processes.

Further Helpful Guidance

On 8 February 2017, the Organisation for Economic Co-operation and Development (OECD) issued its Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector. This is likely to provide a useful steer to organisations when they are looking at responsible supply chain issues and ensuring compliance with global legislation and expectations more generally.

The guidance promotes a framework of actions that organisations in the apparel and footwear sector can use to practically address and reduce the negative human rights impacts of their business activities. It is not only a suggested framework from OECD, but it will likely be an outline that NGOs, ethically aware consumers and other activists will use as they review, analyse and score the efforts and disclosures of organisations in the sector year on year.

Please visit our [website](#) to download the basic recommendations for supply chain due diligence, a full outline of the guidance and specific approaches to address child labour and forced labour issues. Our previous article on [Supply Chain Audits](#) may also be of interest to organisations looking seriously at these global issues.

With global attitudes and tolerance of issues such as labour conditions, slavery and human trafficking thankfully changing for the better, and with support from interested stakeholders (e.g., NGOs and activist consumers, etc.) and a renewed focus given by complimentary compliance regimes and legislation, such as the MSA, all organisations (not just UK high street fashion retailers) will hopefully increasingly view human capital (specifically their workers)

as “higher risk” – thereby moving such organisations to do the right thing by their workers not only because it is the right thing to do, but also because failure to do so can/will impact them both financially and in terms of brand and reputational damage.

Contacts

Beverley Smith

Senior Associate, Labour & Employment

T +44 121 222 3144

E beverley.smith@squirepb.com

Simon Garbett

Partner, Supply Chain and Litigation

T +44 121 222 3390

E simon.garbett@squirepb.com

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