UK Government Issues New Business Integrity Measures Including New Penalties Under the Modern Slavery Act

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On Tuesday 12 January, the United Kingdom (UK) Government announced a package of measures designed to ensure that British organisations avoid being implicated in alleged human rights violations in Xinjiang Province. The package includes measures specific to the region, such as a review of export controls and guidance for businesses with links to the area. It also includes measures of more general application, including the introduction of financial penalties for organisations that fail to meet their obligations under the Modern Slavery Act 2015 (the "MSA").

The measures represent the latest step in the UK's efforts to establish itself as a global leader in business and human rights regulation. They also highlight the increasing importance of companies adopting comprehensive policies and rigorous due diligence processes to avoid direct and indirect involvement in adverse human rights impacts throughout their supply chains.

The Measures Adopted by the UK. The package of measures adopted by the UK Government includes:

- a review of export controls as they apply to Xinjiang Province;
- the introduction of financial penalties for organisations that fail to meet their statutory obligations to publish annual modern slavery statements;
- new, robust and detailed guidance to UK businesses setting out the specific risks faced by companies with links to Xinjiang Province and underlining the challenges of conducting effective due diligence there;
- guidance and support for all UK public bodies to use public procurement rules to exclude suppliers where there is sufficient evidence of human rights violations in their supply chains; and
- a Minister-led campaign of business engagement to reinforce the need for UK businesses to take action to address these risks.

New Due Diligence Considerations for UK Businesses. As part of the new measures, the UK Government has issued "new, robust and detailed" guidance on the risks for companies participating in business or research in Xinjiang Province, and the "particular reputational, economic and legal risks" for companies with supply chain-links to the region. This guidance underlines the general importance of adopting comprehensive due diligence processes to identify and address potential adverse human rights impacts which a business might "cause", or to which it "contributes" or is "directly linked" (to use the language of the United Nations Guiding Principles on Business and Human Rights (the "UNGPs").

International Coordination. The UK government also announced that it has been working with international partners. In particular, Canada has implemented seven measures similar to those adopted by the UK, including provisions for export controls and guidance for businesses.

Other countries have taken a different approach. For example, the United States has authorised the use of sanctions against companies and individuals involved in serious human rights abuses through Executive Order 13818, which builds on and implements the Magnitsky Act. On 13 January, the United States barred the entry of all cotton products and tomatoes from the Xinjiang Province.

Amendments to the MSA: Financial Penalties. In addition, and as part of the package of measures, the UK Government announced that it will impose financial penalties on businesses failing to comply with section 54 of the MSA. Section 54 of the MSA requires companies or partnerships that have a global annual turnover of £36 million or more, and that supply goods or services in the UK, to publish an annual statement on the steps they take to combat modern slavery in their operations and supply chains. It therefore operates as a transparency mechanism to encourage businesses to put in place policies, conduct due diligence and avoid links with modern slavery.

Currently, the MSA permits companies to issue a statement saying that a company has take no steps to combat modern slavery in its business or supply chains, although this looks set to change. If a company within the scope of section 54 fails to issue a statement, the government may request an injunction forcing compliance, but to date the government has not exercised this power.

An Independent Review initiated by the Government in 2019 into improving the effectiveness of certain provisions of the MSA, including section 54, recommended that penalties for non-compliance should be strengthened. The UK Government's Response to the Independent Review's recommendations, and to the results of a subsequent consultation, did not take a final position on remedies, noting instead that civil remedies in tort already exist for victims of trafficking under the Human Rights Act and that it would issue further updates on civil penalties in "due course".

The announcement of financial penalties would appear to be the promised update. However, the specific details of the "financial penalties for organisations" are yet to be published – and so the scope of the enforcement remains unclear. While the UK Independent Anti-Slavery Commissioner, Sara Thornton, has welcomed the proposed penalties, she has encouraged the government to actively enforce them.

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Debevoise's cross-practice Business Integrity Group is closely monitoring these developments. Tools like the Debevoise Business Integrity Screen can help companies implement a systematic approach to business integrity risks to manage the rapidly evolving reputational, financial, political and legal consequences of such risks. For more information regarding business integrity matters, please visit our and Business Integrity Group Page.

Please do not hesitate to contact us with any questions.

LONDON

Lord Goldsmith QC
phgoldsmith@debevoise.com

Geoffrey P. Burgess
gpburgess@debevoise.com

Samantha J. Rowe
sjrowe@debevoise.com

Karolos Seeger
kseeger@debevoise.com

Patricia Volhard
pvolhard@debevoise.com

Merryl Lawry-White
mlawrywhite@debevoise.com

Konstantin Bureiko
kbureiko@debevoise.com

NEW YORK

Catherine Amirfar
camirfar@debevoise.com

David W. Rivkin
dwrivkin@debevoise.com

Natalie L. Reid
nlreid@debevoise.com

Jane Shvets
jshvets@debevoise.com