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Hong Kong's modern slavery journey so far

Businesses must now take the lead

Lisa Ko-En Hsin

The UK's Modern Slavery Act 2015 (MSA)⁴ was heralded as a breakthrough when it was introduced five years ago; following its enactment, the law has generated considerable public awareness, shifted corporate priorities and created momentum for legislation elsewhere. The French *Droit de Vigilance* 2017,⁵ the Australian Modern Slavery Act 2018⁶ and the Dutch Child Labour Due Diligence Law 2019,⁷ were all enacted following the MSA, not only improving and clarifying the requirements, but broadening and increasing obligations on businesses to comply. Although not all focus on 'modern slavery', they address similar issues by requiring businesses to disclose information on how they plan to address exploitation and human rights violations in their supply chains. Fundamentally, they all require businesses to report on their supply chain activities and align with the United Nations Guiding Principles on Business and Human Rights. Other jurisdictions, including Canada and Switzerland, have legislative proposals underway. In Asia, Hong Kong legislators Dennis Kwok and Kenneth Leung became the first to propose a bill on Modern Slavery in 2018, modelled on the UK MSA.

Modern slavery in Hong Kong

Modern slavery is a pressing and persistent issue in Hong Kong. From migrant worker exploitation to sex trafficking, modern slavery is fundamentally linked to our consumer habits. Because we want a bargain, and businesses respond by offering low prices. To lower the prices, businesses look for cheap labour, which has helped to fuel the growth of international supply chains in which goods and services are sourced from places where, among other things, labour is cheap and labour laws are lax. It is worth remembering that modern slavery is not just about human trafficking, it is a spectrum of exploitative behaviour that is especially pervasive in global supply chains.

With so many major corporations head-quartered in Hong Kong, the city's laws could have considerable impacts around the Asia Pacific region, not only to bring Hong Kong into alignment with other major economic centres, it would also alleviate the city's poor rankings on the U.S. Department's Watch List in its Trafficking in Persons Report.⁸

On average, a person living in the developed world will have about 73 slaves working to provide them with goods and services through a complex and pervasive network of global supply chains.¹ According to the Walk Free Global Slavery Index 2016, there is an estimated 40.3 million people enslaved globally.² This means that there are 5.4 victims of modern slavery for every 1000 people in the world. The highest concentration of 'modern slaves' is in the Asia-Pacific region, with about 24.9 million people trapped and subjugated.³

For three consecutive years, from 2016 to 2018, Hong Kong has been on Tier 2 Watch List, just one rank from the worst offenders of human trafficking. The 2018 U.S. Department of State Trafficking in Persons Report noted the absence of legislation against human trafficking in Hong Kong: "Hong Kong law did not criminalize all forms of human trafficking and the government relied on various provisions of laws relating to prostitution, immigration, employment, and physical abuse to prosecute trafficking crimes".⁹ The U.S. assessment is not an absolute standard, but it does matter. Around the world, businesses use the report as an indicator of risk. Any sensible business seeking to deal with Hong Kong-based companies would regard the lack of safeguards as having potential adverse impacts on business stability. A clear law on modern slavery would be an important signal to the business community. However, to date, attempts to enact legislation similar to the UK MSA have been dismissed based on the argument that a law on modern slavery in Hong Kong would be a mere consolidation of certain existing laws. But the same could be said for the UK MSA, which is also a consolidation of existing provisions. The argument simply does not work against the section on transparency in supply chains, which was a new and ground-breaking element of the UK MSA, targeting modern slavery in supply chains.

A possible MSA in HK?

The Hong Kong Modern Slavery Bill (Draft Bill)¹⁰ was discussed by the Panel on Security of the Legislative Council, on 5 June 2018. The Draft Bill introduces and defines serious

criminal offences of slavery, servitude, forced or compulsory labour, human trafficking, forced marriage, illicit sex tourism and related offences. Bodies corporate and partnerships conducting business in Hong Kong, whose annual turnover exceeds a threshold amount, would be required to publish a slavery and human trafficking statement, including details of the steps they had taken to ensure that modern slavery was not occurring in their business or supply chain.

A key purpose of the Draft Bill was to consolidate and address loopholes in the existing legal framework, including: the inability to trace and freeze proceeds of crime relating to human trafficking overseas; failure of the existing legislative framework to cover all forms of modern slavery including forced labour; inadequate penalties; and lack of protections for victims. Unfortunately, the government did not support the Draft Bill on the basis that it considers the existing legal framework to be adequate. However, the Panel did not discuss the requirement for commercial entities to publish an annual slavery and human trafficking statement.¹¹

The same reasoning was given by Hong Kong's Court of Appeal in January when a Pakistani victim of forced labour in Hong Kong lost his appeal to create a new human trafficking offence. The Court found that the administration had no duty to enact specific legislation against human trafficking for the purposes of exploitation, servitude or forced labour on the basis that it already had other 'patchwork' offences, such as criminal intimidation and assault, which could target human trafficking, and therefore did not need a bespoke offence.¹²

But one Judge agreed that the administration has been "disgraceful" in its treatment of the appellant and warned the relevant authorities not to take their victory as a licence to relax efforts against human trafficking.¹³ Despite this encouraging obiter, the Judiciary turned out to be another dead-end. The momentum behind the push for legislation has further waned as the government's attention and resources have been diverted to dealing with ongoing civil protests and the challenge of a worldwide pandemic. But in the case where states fail to provide for redress, corporations can still play a vital and leading role.

A new angle: harnessing the power of the business community

The United Nations Guiding Principles on Business and Human Rights adopted in 2011 sets out a framework for states and businesses: the state has a duty to protect against human rights abuses by third parties, including businesses, and to ensure victims have greater access to effective remedy, both judicial and non-judicial; corporations also have a responsibility to respect human rights. It is a ground-breaking first – international law no longer applies to just states, but businesses as well.

In some cases where the state lacks the conviction, corporations can be a major source for change. For instance, in the UK, major corporations not only supported the UK MSA, many asked for legislation to support their work, and empower them to do more. Not only did these companies feel it was the right thing to do, they felt that others should be made to do the same thing too – the bid to 'level the playing field' was a major factor in the UK conservative government's adoption of the MSA.

Many businesses operating in Hong Kong are multinationals with operations around the world. Some areas are already subject to one or many of the due diligence legislation mentioned earlier in the piece. Pushing for similar legislation in Hong Kong could further cement the positive reputation of those companies seeking to do the right thing. A law like this would ease the concerns of risk-averse and ethically-minded shareholders alike, further justifying the decision to do business in Asia. Although the UK MSA has been criticised for being too business friendly, its impact should not be overlooked. In less than five years, human rights have steadily climbed up the corporate agenda, with modern slavery leading the charge. Corporate social responsibility is not just about philanthropy anymore. The consuming public, progressive shareholders and prescient company directors are increasingly getting to grips with the risks lurking in international supply chains, and the benefits of identifying them early and proactively – perhaps Hong Kong should too.

Lisa Ko-En Hsin, AHRC Modern Slavery Research Fellow, Bonavero Institute of Human Rights and DPhil Candidate, Faculty of Law, University of Oxford; Convener of the Oxford Business and Human Rights Research Network www.law.ox.ac.uk/people/lisa-ko-en-hsin

Notes

- Nolan, J. & Boersma, M. 2019. *Addressing Modern Slavery*. University of New South Wales Press, p.36. Figure obtained from 'Made in a Free World' using software available on slaveryfootprint.org.
- <https://tinyurl.com/US2018-TPR-HK>
- <https://tinyurl.com/WalkFree-AP2018>
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- <https://tinyurl.com/legfr-2017>
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