

The Rt Hon Liam Byrne MP
Chair of the Business and Trade Committee
House of Commons
London SW1A 0AA

17 February 2025

Dear Mr Byrne,

Re: Make Work Pay: Employment Rights Bill

Thank you for your letter of 27 January.

We recognise the importance of the issues you raise and want to assist the Committee as far as we can. Due to confidentiality restrictions, set out in s348 of the Financial Services Markets Act (FSMA), we do not ordinarily comment on individual applications for listing, including whether we have or have not received an application from a specific company. However, I am happy to provide the following general answers to the Committee's questions.

Does the FCA interpret the Prospectus Regulation as requiring that supply chain risks, particularly those tied to forced labour or sourcing materials from high-risk regions like Xinjiang, would be risk factors that could be specific and material for certain issuers and thus to be disclosed by issuers in the listing process?

The Prospectus Regulation is concerned with ensuring that investors have the information they need to assess whether they wish to invest in a particular issuer. This means that any prospectus needs to make appropriate disclosure of any material risks to its business model that might impact its investability.

It does not, however, anticipate the needs of all special interest investors, for example an investor that wishes to avoid an exposure to a specific product or geography. Any issuer carrying supply chain risks that could materially impact its business model or legal liability would need to consider thoroughly what disclosure of those risks was required. The level of detail to be disclosed would vary from case to case.

Where such risks are material, would you expect, or require, relevant issuers to disclose:

- ***The level of risk of forced labour in their supply chains; and***

Where a given risk is material, we would expect it to be disclosed as a risk factor. This is irrespective of whether the risk arises from the possibility of forced labour or another concern: the statutory regime does not specifically mention forced labour.

We do not, however, expect or require an issuer to estimate the level of risk quantitatively. If they can do so, they may. Guidelines on disclosure requirements under the Prospectus Regulation are clear that a qualitative approach to describing risk may be used. The key concern is to describe the impact of the risk should it crystallise.

We emphasise that materiality is from the point of view of an investor. It will depend significantly on the nature of the company in question, for example its size, the jurisdictions it operates in, the industry it is in, and a range of other factors.

- ***The potential exposure to sourcing materials from the Xinjiang region of China?***

It would depend largely on the legal risk the exposure in question presents. We note that few jurisdictions globally apply direct measures in relation to the sourcing of materials from this region. The United States has passed the Uyghur Forced Labor Prevention Act, which applies to importers. To the extent a company sources products from China and sells into the US, investors may wish to assess a company's compliance with that Act. The EU's Forced Labour Regulation has been adopted and comes into effect in December 2027. It remains to be seen what guidelines the EU adopts under that provision. To the extent a company makes significant sales into the EU, in future investors may need to know about the company's plans for compliance when it comes into force. In both cases this would be because non-compliance might present material risks to the business which investors need to assess. Reputational risks could also be relevant to an assessment of the prospects of a business and should be disclosed if material.

You stated you have powers to investigate and, if appropriate, take action against persons responsible for misleading investors through inaccurate statements.

- ***How often do such investigations occur?***

Since the beginning of 2018, we have opened 17 investigations into potentially misleading disclosures to the market. In the same period, we have taken enforcement action 6 times, which has included fines and public censures.

- ***To what extent can the FCA verify false declarations with respect to supply chain risks?***

It is for companies and their directors to verify statements made by listed companies. Listed companies and their directors face a range of legal liabilities, including a private right of action in relation to misleading statements. Taken together, these liabilities deter dishonesty and recklessness and ensure companies perform due diligence.

The FCA has the power to appoint investigators if there are circumstances to suggest there has been a contravention of the listing rules, prospectus regulation rules, the disclosure and transparency rules and/or the UK market abuse regulation (all of which contain provisions that may be relevant where inaccurate statements have been made to investors). There is also potentially criminal liability for misleading statements made dishonestly or recklessly.

To the extent that a statement to investors about supply chains meets these criteria, it could be investigated as a misleading statement. It is also conceivable a statement regarding supply chains might come under scrutiny as part of a wider investigation into other suspected misleading statements.

Conclusion

We hope this assists the Committee in its inquiry. We view our approach to market disclosure as broadly comparable to international peers. The Prospectus Regulation referred to in this letter has its roots in work done by the international securities regulatory body, IOSCO, to support international standards in relation to prospectuses and offering documents.¹ As we noted in our previous letter of 17 January, it was recently reviewed by the Government.²

Whilst our response is general and, as it is not company-specific, may not address the specific concerns you might have about the treatment of workers within supply chains, this relates to the broader point that we outlined in our letter of 17 January. Should the Government and Parliament wish to pursue a policy goal of significantly more granular supply chain transparency in relation to goods sold into the United Kingdom, capital markets regulation is unlikely to be the appropriate policy tool to achieve it. It does not apply to most of the companies policy makers are likely to want to focus on, and it serves a different purpose, focused on giving investors the information they need to assess the financial prospects of the issuer.

Yours sincerely,



Nikhil Rathi
Chief Executive

¹ <https://www.iosco.org/library/pubdocs/pdf/ioscoopd81.pdf>

² <https://www.fca.org.uk/publication/correspondence/make-work-pay-employment-rights-bill-evidence-committee-inquiry.pdf>