

Canada's modern slavery legislation to create reporting obligation

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Bill S-211, *An Act to enact the Fighting Against Forced Labour and Child Labour in Supply Chains Act and to amend the Customs Tariff* (the Act), is awaiting adoption of committee report and final reading in the House of Commons. Once passed, the Act will require many corporations with connections to Canada, and federal government institutions, to report on steps taken to prevent and reduce the risk that forced labour or child labour is being used in their supply chains. If the Act is passed in 2023, the first report will be due in May 2024. This will bring Canadian law generally into line with Australia and the U.K.

What you need to know

- The Act is far-reaching and will apply to (1) any company listed on a Canadian stock exchange, and (2) any company doing business or holding assets in Canada that meets certain size thresholds—and produces, sells or distributes goods in Canada or elsewhere, or imports goods into Canada.
- A company subject to the Act will be required to publish on its website and submit to the Minister of Public Safety and Emergency Preparedness by May 31 of each year a report setting out the steps that it has taken to reduce the risk that forced labour or child labour is used in its supply chains. CBCA corporations must also provide the report to their shareholders.
- Any federal government institution that produces, purchases, or distributes goods in Canada or elsewhere will also be required to submit an annual report.
- The report must include a description of the entity's supply chains, policies, due diligence processes, training and other steps taken to manage the risk of forced labour and child labour, any measures taken to remediate forced labour and child labour, and an assessment of effectiveness in ensuring that forced labour and child labour are not being used.
- The Act includes enforcement provisions, including appointing a designated person to verify compliance, and the creation of a new summary offence for failing to file the report or make it public, with a maximum fine of C\$250,000.

Reporting requirements

A company subject to the Act will be required to publish on its website and submit to the Minister of Public Safety and Emergency Preparedness by May 31 of each year a report setting out the steps that it has taken to reduce the risk that forced labour or child labour is used in its supply chains.

A company will have obligations under the Act if it:

1. is listed on a stock exchange in Canada; or
2. has a place of business in Canada, does business in Canada, or has assets in Canada, and meets at least two of the following conditions in one of two of its most recent financial years:
 - a. has C\$20 million in assets;
 - b. generated at least C\$40 million in revenue; or
 - c. employs at least 250 people; and
3. if either (1) or (2) are met, conducts any of the following specified activities:
 - a. produces, sells or distributes goods in Canada or elsewhere;
 - b. imports goods into Canada; or
 - c. directly or indirectly controls an entity engaged in (a) or (b).

The report must set out the steps taken during the previous financial year to prevent and reduce the risk that forced labour or child labour is used at any step of the production of goods in Canada or elsewhere by the entity, or of goods imported into Canada by the entity. The report must include a description of supply chains; applicable policies and due diligence processes, training and other steps taken to manage this risk; any measures taken to remediate any forced labour or child labour; and an assessment of effectiveness in ensuring that forced labour and child labour are not being used, among other things. The Act authorizes the Minister to specify the form and manner in which a report is to be provided, though no such additional requirements have been published.

Companies can submit their own report, or in the case of a corporate group, one report may be provided for all related companies. Companies must make their annual report public, and CBCA corporations must provide the report to their shareholders with their annual financial statements.

Any federal government institution that produces, purchases or distributes goods in Canada or elsewhere will also be required to submit an annual report to the Minister by May 31 of each year. This obligation applies to federal departments, ministries and Crown corporations as defined in the *Access to Information Act* (Canada). The report is required to set out the same information required in a company report.

Getting ready

On its face, the Act applies most clearly to entities engaged in the manufacture of and trade in goods. However, its provisions are drafted broadly and there is no minimum threshold for the production, sale, distribution or import of goods that triggers a reporting obligation. As a result, companies across a variety of sectors and with potentially limited connections to Canada will need to consider the ways in which their activities may fall within the ambit of the Act.

Companies will also want to consider how best to discharge their obligations in respect of entities over which they exercise direct or indirect control. They may choose to publish one consolidated report or a series of separate company-specific reports.

The content of the report will be similar to those required under U.K. and Australian legislation, but unlike the U.K., the reporting criteria set out in Bill S-211 will be mandated by law. The Act also explicitly requires the report to contain information about remediation measures, both in terms of forced labour and in terms of the loss of income to vulnerable families because of the elimination of forced labour. However, unlike certain European countries, the Act does not impose a duty of due diligence.

The Act enters into force on January 1 of the year following the year of Royal Assent. If passed in 2023, the Act will therefore enter into force on January 1, 2024, with the first report due on May 31, 2024. Companies should evaluate their internal controls and certifications that will be required to audit their supply chains and generate a comprehensive and accurate report in that timeframe.

To discuss these issues, please contact the author(s).

This publication is a general discussion of certain legal and related developments and should not be relied upon as legal advice. If you require legal advice, we would be pleased to discuss the issues in this publication with you, in the context of your particular circumstances.

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