

On the Radar

Fighting Against Forced Labour and Child Labour in Supply Chains Act – Is it on Your Radar?

June 2023

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With increased scrutiny by a variety of stakeholders regarding companies' sustainability-related practices, it is not surprising that *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) received royal assent on May 11, 2023. The purpose of the Act is to implement Canada's international commitment to contribute to the fight against forced labour and child labour through new reporting obligations on certain government institutions and entities. The Act will come into force on January 1, 2024. Entities subject to the Act will have to file their first annual report on or before May 31, 2024.

Organizations that are subject to the Act will have to report on the measures taken to prevent and reduce the risk that forced labour or child labour is used, including in their supply chains. The Act also provides for an inspection regime and gives the Minister of Public Safety and Emergency Preparedness (the Minister) the power to require an entity to provide certain information. It also amends the Customs Tariff to allow for a prohibition on the importation of goods manufactured or produced, in whole or in part, by forced labour or child labour (as those terms are defined in the Act).

Given that the Act will result in new reporting obligations for certain entities, as well as expose them to a variety of examination activities, it is important for companies, their boards and advisors to understand the new obligations and the consequences for failure to comply.

Who does the Act apply to?

The Act imposes an obligation on certain entities that are involved in manufacturing, producing, growing, extracting or processing goods in Canada or elsewhere or in importing goods manufactured, produced, grown, extracted or processed outside Canada.¹ The obligations also apply to entities controlling an entity engaged in any of those activities.²

An *entity*, as defined in the Act, means a corporation or a trust, partnership or other unincorporated organization that:

- a. is listed on a stock exchange in Canada;
- b. has a place of business in Canada, does business in Canada or has assets in Canada and that, based on its consolidated financial statements, meets at least two of the following conditions for at least one of its two most recent financial years:
 - i. it has at least \$20 million in assets,
 - ii. it has generated at least \$40 million in revenue, and
 - iii. it employs an average of at least 250 employees; or
- c. is prescribed by regulations.

1 The Act also imposes reporting obligations on government institutions involved in producing, purchasing or distributing goods in Canada or elsewhere.

2 For the purposes of this part of the Act, an entity is controlled by another entity if it is directly or indirectly controlled by that other entity in any manner. The Act also addresses 'deemed control' as follows: An entity that controls another entity is deemed to control any entity that is controlled or deemed to be controlled by the other entity.

Definitions in the Act

The following are some of the key definitions in the Act. This is not an exhaustive list.

- **forced labour** means labour or service provided or offered to be provided by a person under circumstances that
 - a. could reasonably be expected to cause the person to believe their safety or the safety of a person known to them would be threatened if they failed to provide or offer to provide the labour or service; or
 - b. constitute forced or compulsory labour as defined in article 2 of the Forced Labour Convention, 1930, adopted in Geneva on June 28, 1930.
- **child labour** means labour or services provided or offered to be provided by persons under the age of 18 years and that
 - a. are provided or offered to be provided in Canada under circumstances that are contrary to the laws applicable in Canada;
 - b. are provided or offered to be provided under circumstances that are mentally, physically, socially or morally dangerous to them;
 - c. interfere with their schooling by depriving them of the opportunity to attend school, obliging them to leave school prematurely or requiring them to attempt to combine school attendance with excessively long and heavy work; or
 - d. constitute the worst forms of child labour as defined in article 3 of the Worst Forms of Child Labour Convention, 1999, adopted at Geneva on June 17, 1999.
- **governing body** means the body or group of members of the entity with primary responsibility for the governance of the entity.

What are the reporting obligations for entities?

Each entity must file an annual report, on or before May 31 of each year, to the Minister³ on the steps it has taken during its 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. An entity can comply with the requirement by providing a single report in respect of the entity or being party to a joint report in respect of more than one entity.

The report must include the following information in respect of each entity subject to the report:

- d. its structure, activities and supply chains;
- e. its policies and its due diligence processes in relation to forced labour and child labour;
- f. the parts of its business and supply chains that carry a risk of forced labour or child labour being used and the steps it has taken to assess and manage that risk;

³ The Minister may specify, in writing, the form and manner in which a report is to be provided.

- g. any measures taken to remediate any forced labour or child labour;
- h. any measures taken to remediate the loss of income to the most vulnerable families that results from any measure taken to eliminate the use of forced labour or child labour in its activities and supply chains;
- i. the training provided to employees on forced labour and child labour; and
- j. how the entity assesses its effectiveness in ensuring that forced labour and child labour are not being used in its business and supply chains.

Who needs to approve the report?

A 'single report' (i.e., covering one entity) must be approved by the [governing body](#) of that entity – e.g., the board of directors. A 'joint report' (i.e., covering more than one entity) must be approved by either: (a) the governing body of each entity included in the report, or (b) the governing body of the entity that controls each entity included in the report. The approval of the report must be evidenced by a statement that sets out which of these approval methods was applied. It must also include the signature of one or more members of the governing body of each entity that approved the report.

Who does the report need to be provided to?

In addition to providing the report to the Minister, the entity must also make the report available to the public, including by publishing it in a prominent place on its website. Further, any entity that is incorporated under the *Canada Business Corporations Act* or any other Act of Parliament must provide the report or revised report to each shareholder, along with its annual financial statements.

Electronic Registry of Reports

All reports provided to the Minister will also be maintained on an electronic registry that will be made available to the public on the Department of Public Safety and Emergency Preparedness website.

How can the Act be administered and enforced?

A designated person⁴ may, for the purpose of verifying compliance, enter any place where they have reasonable grounds to believe there is anything to which Part 2 of the Act (Reporting Obligations – Entities) applies, or any document relating to its administration. On entry, the designated person may, for these purposes, carry out a range of activities, including, but not limited to the following:

- examine anything in the place, including any document
- use any computer system in the place to examine data contained in or available to it
- take photographs or make recordings or sketches of anything in the place
- prohibit or limit access to all or part of the place or to anything in the place
- remove anything from the place for the purpose of examination

What are the possible offenses and punishments and who do they apply to?

There are a number of offenses and punishments under the Act including, but not limited to:

- fines of up to \$250,000 on summary conviction, for every person or entity that fails to comply with the annual reporting obligations (e.g., failure to provide report or required information in report; failure to have the report approved as required, failure to provide report to shareholders with the annual financial statements for federally incorporated corporations)
- fines of up to \$250,000 on summary conviction, for every person or entity that knowingly makes any false or misleading statement or knowingly provides false or misleading information to the Minister (or a designated person)

Personal liability for directors and officers

There is a risk of personal liability for directors and officers. In particular, any director or officer who directed, authorized, assented to, acquiesced in or participated in its commission is a party to and guilty of the offence and liable on conviction to the punishment provided for the offence, whether or not the person or entity has been prosecuted or convicted.

⁴ The Minister may designate persons or classes of persons for the purposes of the administration and enforcement of Part 2 of the Act.

Conclusion

The reporting requirements will seek to increase transparency around companies' practices related to fighting against forced labour and child labour. Given that there will be significant penalties both for the company and personally for its directors for non-compliance, it is critical that companies and their boards understand the reporting obligations. Going beyond reporting, companies need to work to ensure that they have sound governance frameworks in place to identify, manage and mitigate the risks within the company and its supply chains related to forced labour and child labour.

Other related items

The rise of the social pillar: The 'S' in ESG

State of Play: Study of social disclosures by Canadian public companies

References

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, 1st Sess, 44th Parl, 2022 (assented to May 11, 2023).