

Canada's Modern Anti-Slavery Legislation Takes Another Step Toward Being Passed Into Law

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There is potential that Canada's modern anti-slavery legislation, 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 Bill) may receive royal assent before year-end and come into force on January 1, 2023. This will have implications on several "entities" in Canada. This article focuses on the Bill's application to "entities" and advises such entities that they may want to start proactively working to gather the required information, including identifying information gaps, and developing a process to ensure that all information required by the Bill will be available prior to the date that a first report is required under the Bill. Please see below for further details.

Timeline

On November 30, 2022, the Bill passed through the 'consideration in committee stage' in the House of Commons, with the Standing Committee on Foreign Affairs and International Development reporting the Bill back to the House of Commons without amendments. The Bill is now at the 'report stage' in the House of Commons, with speculation that it may receive royal assent before year-end. If the Bill receives royal assent before year-end, it will come into force on January 1, 2023.

Application of Bill S-211

The Bill's purpose is to implement Canada's commitment to fight against forced labour and child labour through the imposition of reporting obligations on certain government institutions and entities meeting specified criteria.

The Bill would apply broadly to "entities" that (1) produce, sell, or distribute goods in Canada or abroad, (2) import goods produced abroad into Canada, or (3) control an entity engaged in the aforementioned activities.

An "entity" for purposes of the Bill is a corporation, trust, partnership, or other unincorporated organization that:

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1. is listed on a stock exchange in Canada;
2. has a place of business in Canada, does business in Canada or has assets in Canada, and satisfies at least two of the following in at least one of the two most recent financial years:
 - (a) has at least \$20 million in assets;
 - (b) has generated at least \$40 million in revenue; or
 - (c) employs an average of at least 250 employees; or
3. is prescribed by regulations.

Based on the wording of the Bill, there are some key interpretive questions including (1) whether the Bill would apply to foreign entities (arguably yes, if the foreign entity satisfies the “entity” criteria above) and (2) whether the Bill would apply to entities that deal in goods in Canada only incidentally (arguably yes, since the Bill doesn’t contain a carve out for de minimis dealings). It is unclear whether the House of Commons intends to address these matters before the Bill is enacted.

Implications

The framework of the Bill is a reporting framework, similar to modern anti-slavery legislation in force in certain other jurisdictions, including Australia and the United Kingdom. This can be distinguished from the due diligence framework of modern anti-slavery legislation, as in Germany and The Netherlands, which provides that entities have a duty to prevent human rights violations in their supply chains.

If the Bill is passed in its current form, the entities to which the Bill would apply would be required to file an annual report with the Minister of Public Safety and Emergency Preparedness by May 31 of each year. Such report would be made available to the public through an online registry. Entities incorporated under the *Canada Business Corporations Act* or any other federal legislation would also need to provide such annual report to each shareholder with their annual financial statements. Annual reports would need to include the following information:

1. steps taken by the entity 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;
2. the entity’s structure, activities and supply chains;
3. the entity’s policies and due diligence processes in relation to forced labour and child labour;
4. the parts of the entity’s business and supply chains that carry a risk of forced labour or child labour being used and the steps such entity has taken to assess and manage that risk;
5. any measures taken by the entity to remediate any forced labour or child labour;
6. 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 force labour or child labour in the entities activities and supply chains;

7. training provided to employees on forced labour and child labour; and
8. how the entity assesses its effectiveness in ensuring that forced labour and child labour are not being used in its business and supply chains.

There is some ambiguity around what certain reporting obligations would require. For example, some reporting requirements relate to actions *during the previous financial year*, while other reporting requirements are silent on time frame. Where the Bill is silent on the relevant time frame (for example, reporting on an entity's structure, activities, and supply chain), will an entity be required to report information beyond just the previous financial year? As another example, does reporting on an entity's supply chains mean that the entity would need to provide information identifying each of its suppliers? It is hoped that, if the Bill is passed, additional guidance on reporting would be provided before the first reports are due.

Entities who fail to comply with the provisions of the Bill or who knowingly make a false or misleading statement would be subject to fines of up to \$250,000. The directors, officers, and agents of the offending entity could also be held personally liable if they ordered or authorized the infringement or consented to or participated in it.

Given the scope of the information that must be reported and the diligence and resources that will be required to gather the same, it would be prudent for companies within the scope of the Bill's application to proactively work to gather the required information, including identifying information gaps and developing a process to ensure that all information required by the Bill will be available prior to the date that the first report is required.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.