

Canada's Modern Anti-Slavery Legislation Passes Final Vote

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On May 3, 2023, 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) passed its final vote in the House of Commons. Royal assent is expected shortly and, once received, the Act will come into force on January 1, 2024.

The Act will have implications on several businesses and other “entities” in Canada, including the imposition of significant reporting obligations. Affected businesses and other entities should begin gathering the required information, identify information gaps, and develop a process to ensure that all information required by the Act will be available in advance of May 31, 2024, being the date that a first report will be required under the Act.

The Act applies 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” is a corporation, trust, partnership, or other unincorporated organization that:

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, based on its consolidated financial statements:
 - (a) had at least \$20 million in assets;
 - (b) generated at least \$40 million in revenue; or
 - (c) employed an average of at least 250 employees; or
3. is prescribed by regulations.

Given that the “entity” thresholds above are based on consolidated financial statements, the Act will apply to consolidated corporate groups that meet the thresholds even if individual entities do not.

Key interpretive questions remain, including (1) whether the Act applies to foreign entities (arguably yes, if the foreign entity satisfies the “entity” criteria above) and (2) whether the Act applies to entities that deal in goods in Canada only incidentally (arguably yes, since there is not a carve out for *de minimis* dealings). The House of Commons has not provided guidance on these matters, and it is unclear if the House of Commons

intends to address these matters before the Act comes into force.

Entities to which the Act applies will be required to file an annual report with the Minister of Public Safety and Emergency Preparedness by May 31 of each year, beginning May 31, 2024. Such report will be made available to the public through an online registry. Entities incorporated under the *Canada Business Corporations Act* or any other federal legislation will also need to provide such annual report to each shareholder with their annual financial statements. Annual reports will 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 or child labour is used at any step of the production of goods produced or 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 and child labour;
4. the parts of the entity's business and supply chains that carry a risk of forced or child labour and the steps taken to assess and manage that risk;
5. any measures taken to remediate any forced 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 or child labour;
7. training provided to employees on forced and child labour; and
8. how the entity assesses its effectiveness in ensuring that forced and child labour are not being used in its business and supply chains.

Entities who fail to comply with the provisions of the Act or who knowingly make a false or misleading statement will 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 the same.

Given the scope of information that must be reported under the Act and the diligence and resources that will be required to gather the same, companies within the scope of the Act should begin preparing, including determining how required information will be gathered, identifying information gaps and developing a process to ensure that all information required by the Act will be available prior to May 31, 2024.