

Corporate Social Responsibility Legislation

A Summary of Selected Instruments

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INTRODUCTION

There has been a significant increase in corporate social responsibility legislation over the last few years, with more legislation on the horizon. With this development in mind, Ropes & Gray LLP was commissioned by AIM-PROGRESS to provide summaries of selected corporate social responsibility legislation relevant to its members. The Summaries included in this compilation are listed in the Table of Contents at the end of this Section.

This compilation is updated semi-annually, with this being the second installment of the compilation. Selected updates since the last installment of this compilation are discussed under “Updates Since Last Revision” and “Looking Further Out” below.

A FRAMEWORK FOR THINKING ABOUT CORPORATE SOCIAL RESPONSIBILITY LEGISLATION

At first blush, CSR legislation can seem complicated. However, there are similarities in approach across CSR instruments, as discussed in this sub-section.

Types of CSR Legislation

CSR legislation generally fits into the following four categories:

Disclosure Only: Disclosure-only legislation requires subject companies to disclose their compliance activities relating to the subject matter of the legislation. However, it does not require companies to adopt policies or procedures, trace their supply chains or source responsibly. Disclosure-only legislation is intended to increase transparency, to in turn encourage a “race to the top.”

Examples:

- California Transparency in Supply Chains Act
- UK Modern Slavery Act
- Australian Commonwealth Modern Slavery Act
- New South Wales Modern Slavery Act
- EU Non-financial Reporting Directive

Disclosure+Due Diligence: This type of legislation requires subject companies to conduct due diligence in relation to a particular issue and disclose the results of those efforts. However, it does not require companies to remediate any identified issues, instead relying on transparency to influence corporate behavior.

Example:

- US Conflict Minerals Rule (not part of these Summaries)

Disclosure+Due Diligence+Remediation: This type of legislation goes a step further, requiring companies to take affirmative steps to address issues that are uncovered as part of their due diligence.

Examples:

- US Federal Acquisition Regulation Anti-Human Trafficking Rule
- French Corporate Duty of Vigilance Law
- Netherlands Child Labor Due Diligence Law
- Swiss Responsible Business Initiative/Council Counter-proposal Bill

Trade-Based: Trade-based legislation prohibits the importation into a jurisdiction of goods that do not meet specified human rights requirements, in particular no forced labor in the supply chain. Although not explicitly part of these statutes, due diligence is implied, since it is taken into account as a mitigating or aggravating factor if there is a violation.

Examples:

- Section 307 of the US Tariff Act
- Section 321 of the Countering America's Adversaries Through Sanctions Act

Other: Of course not all CSR legislation neatly fits into the foregoing categories. An example is Section 135 of the Indian Companies Act, which requires subject companies to, among other things, have a CSR committee and a CSR policy and spend a specified portion of their net profits on CSR activities. In addition, keep in mind that, although not commonly thought of as corporate social responsibility legislation, there is a significant body of civil and criminal legislation globally addressing modern slavery and

other employment practices, environmental, health and safety matters, truth in advertising, consumer protection, data privacy and other topics. Although important from a compliance perspective, these areas are outside the scope of this work product.

Compliance Thresholds

With any piece of legislation, the threshold question is “Does it apply to my company?” CSR legislation is no different in this regard.

Common types of thresholds in CSR legislation include:

- Monetary thresholds, such as revenues or profits; these typically take into account the worldwide consolidated revenues of the particular entity, but typically do not include up-the-chain or sister companies in the group
- Number of employees
- “Doing business” requirements, which can be facts and circumstances-based or have bright line tests, such as a physical presence in the jurisdiction that adopted the legislation
- Nature of business activities
- Jurisdiction of organization

Some legislation has multiple threshold requirements. Thresholds typically must be tested at least annually.

ADDRESSING COMPLIANCE

With the rapid and continuing proliferation of new CSR regulations, it is becoming increasingly important for companies to take a holistic approach to compliance in this area, both to reduce compliance costs and better manage risks. Although each regulation has its own unique compliance requirements (as discussed in the Summaries), consistent with the foregoing approach, companies should consider the following high-level compliance measures:

- Ensure that policies, vendor codes of conduct and procedures are flexible enough to address new CSR regulations. For example, are policies and vendor codes broadly written, or are they narrowly tailored to specific regulations? Similarly, are supply chain compliance procedures scalable?

- Manage CSR compliance through a centralized team of subject matter experts. As similar regulations are adopted in different parts of the world, many companies are moving towards more centralized CSR compliance, either generally or around specific subject areas.
- Consolidate disclosure, for example by preparing a single global modern slavery statement.
- Leverage existing procedures for new regulations. If flexible, existing supply chain traceability, audit, training and risk assessment protocols usually can accommodate new CSR regulations.
- Leverage voluntary frameworks, guidance and best practices, in particular the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises, the OECD Due Diligence Guidance for Responsible Business Conduct, OECD sector guidance (including the OECD-FAO Guidance for Responsible Agricultural Supply Chains) and International Labour Organization conventions and recommendations, as well as non-binding government guidance and NGO commentary. Note that voluntary frameworks are outside the scope of this work product.

UPDATES SINCE LAST REVISION

We have updated the Summaries to reflect the following:

- ***UK Modern Slavery Act***: anticipated guidance and possible amendments to the UK MSA.
- ***Australian Commonwealth Modern Slavery Act***: the issuance of final guidance.
- ***New South Wales Modern Slavery Act***: the delay in the commencement of the NSW Act.
- ***EU Non-financial Reporting Directive***: the issuance of climate-related reporting guidelines.
- ***Swiss human rights Bill***: further developments in the legislative process.
- ***Section 135 of the Indian Companies Act***: July 2019 amendments pertaining to unspent CSR funds.
- ***Dutch Child Labor Due Diligence Law***: approval by the Dutch Senate.

At the request of AIM-PROGRESS, we have also included additional charts providing summary comparisons of the legislation described in the Summaries.

LOOKING FURTHER OUT

This newly-added section highlights other legislative initiatives, in some cases since our last compilation. Many of these initiatives are not yet at the rule-making stage. Other are not expected to be adopted in the near term, if at all, and/or in the form proposed. Summaries of these instruments are therefore not included in this compilation. We continue to monitor these and other legislative initiatives and will include summaries of such initiatives in subsequent compilations as warranted.

Belgium: In April 2019, a group of civil society organizations sent a letter to the Belgian government calling for a mandatory human rights due diligence law.

Canada: In December 2018, John McKay, a Member of Parliament, introduced a private member's Bill proposing a Canadian Modern Slavery Act. The Canadian MSA would apply to any entity described in the next sentence that (1) manufactures, produces, grows, extracts, processes or sells goods in Canada or elsewhere, (2) imports into Canada goods manufactured, produced, grown, extracted or processed outside Canada or (3) controls an entity described above. An entity would be subject to the Canadian MSA if it (1) is listed on a Canadian stock exchange, (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 for at least one of its two most recent financial years: (a) at least C\$20 million in assets, (b) at least C\$40 million in revenue or (c) employs an average of at least 250 employees or (3) is prescribed by regulations. As proposed, every subject entity would be required to produce an annual modern slavery report. The report would be required to discuss, among other things, steps taken during the previous year to prevent and reduce forced and child labor risks. In addition to modern slavery reporting, the Canadian MSA would amend the Customs Tariff to allow for a prohibition on importing goods manufactured or produced by forced or child labor.

Canada: In April 2019, Member of Parliament Arnold Viersen and Senator Dan Christmas announced their intention to introduce additional Canadian modern slavery legislation (in addition to the proposed Modern Slavery Act). As summarized at a press conference, businesses in Canada that exceed an annual turnover threshold of C\$35 million per year would be required to report annually on supply chain matters. Entities that meet the turnover threshold would also be required to take reasonable steps to avoid the use of forced labor, child labor and human trafficking in their operations abroad.

Denmark: In January 2019, three Danish political parties put forward a parliamentary motion asking the government to enact a mandatory human rights due diligence law.

Finland: According to a Policy Programme released by the Finnish government during June 2019, Finland will begin developing a national human rights due diligence law, with the goal of promoting the legislation at the EU level.

Germany: In February 2019, the German Federal Ministry for Economic Cooperation and Development released draft legislation that would require German companies and their global business partners to conduct human rights due diligence. As drafted, the law would apply to companies that (1) have their headquarters or main office location in Germany and (2) have over 250 employees and an annual turnover of more than €40 million, a balance sheet total of more than €20 million or are in high-risk sectors and operating in areas of armed conflict or weak governance. The law would require subject companies to assess human rights and environmental risks and take preventive actions with regard to business partners and suppliers. Additional requirements, among others, would include appointing a compliance officer and establishing a complaint mechanism for workers in the company’s supply chain. Proposed penalties for non-compliance would include exclusion from contracts with the German government, imprisonment and fines of up to €5 million. An alliance of NGOs and trade unions has launched a campaign urging the German government to propose a bill by 2020.

Norway: In January 2019, the Norwegian Forum for Development and Environment submitted a letter to Parliament calling for mandatory human rights due diligence legislation.

United Kingdom: In April 2019, a group of civil society organizations launched a campaign calling for mandatory human rights due diligence legislation.

United Nations: Negotiations to develop a binding human rights treaty have been ongoing since 2015. A “zero draft” of the treaty was released in July 2018 and a revised draft was released during July 2019. The current draft was discussed by the UN Intergovernmental Working Group during October 2019.

Washington State: In January 2019, a Transparency in Agricultural Supply Chains Act was introduced in the Washington State Senate. A scaled back substitute Bill was introduced in February 2019. Among other things, the Act would require every retail seller of agricultural products doing business in Washington State and having annual worldwide gross receipts of US\$200 million or more to publish an annual disclosure statement discussing actions taken to evaluate and address modern slavery risks in its supply chain and any violations information reported by suppliers.

ABOUT ROPES & GRAY

Ropes & Gray has a leading ESG, CSR and supply chain compliance practice. We offer clients a comprehensive approach to ESG, CSR and supply chain compliance through a global team with members in the United States, Europe and Asia. In addition, senior members of the practice have advised on ESG, CSR and supply chain compliance matters for almost 30 years, enabling us to provide a long-term perspective that few firms can match. For further information on the practice, please contact Michael Littenberg at michael.littenberg@ropesgray.com or 1-212-596-9160.

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Assessing the Applicability of Legislation

Modern Slavery Disclosure-based Legislation

	<u>CA Transparency in Supply Chains Act</u>	<u>UK MSA</u>	<u>Australia Commonwealth MSA</u>	<u>New South Wales MSA</u>
Jurisdiction	California, United States	United Kingdom	Australia (federal)	New South Wales, Australia
Compliance Threshold	Retailer or manufacturer with annual worldwide gross receipts in excess of US\$100 million	Total annual turnover of at least £36 million	Annual consolidated worldwide revenue of more than A\$100 million	Total annual turnover of A\$50 million or more
Nexus	Identifies as a retail seller or manufacturer in its CA tax returns	Carries on a business (including a trade or profession) or part of a business in the U.K.	Is either an Australian entity or carries on business in Australia	Has at least one employee in New South Wales and supplies goods and services for profit

Other CSR Regulations

	<u>S. 307 of the Tariff Act</u>	<u>S. 321 of the CAATSA</u>	<u>FAR Anti-Human Trafficking Rule</u>	<u>EU Non-financial Reporting Directive</u>	<u>French Corporate Duty of Vigilance Law</u>	<u>Swiss RBl / Counter-proposal</u>	<u>S. 135 of the Indian Companies Act</u>	<u>Dutch Child Labor Due Diligence Law</u>
Issue(s) Addressed	Forced labor	North Korean forced labor	Forced labor	Environment, social and employee matters, human rights, corruption and diversity	Human rights, health and safety and the environment	Human rights and the environment	Corporate social responsibility in India	Child labor
Jurisdiction	United States	United States	United States	European Union	France	Switzerland	India	Netherlands
Compliance Threshold	N/A	N/A	Conduct restrictions apply to all U.S. federal government contracts/ subcontracts Compliance plan and certification requirements apply to U.S. federal government contracts/ subcontracts if offshore performance exceeds US\$500,000	Balance sheet total of more than €20 million or a net turnover of more than €40 million, and more than 500 employees on average	Registered office in France and at least 5,000 employees in French subsidiaries or 10,000 employees worldwide	Balance sheet of SFr40 million, sales of SFr80 million or 500 full-time positions on average annually	Net worth of rupees five hundred crore or more, turnover of rupees one thousand crore or more or a net profit of rupees five crore or more	N/A
Nexus	Imports good into the United States	Imports goods into the United States produced using North Korean national or citizen labor	Contract with the U.S. federal government, as a prime, subcontractor or agent	EU-listed companies, banks, insurance companies and other companies designated by national authorities as public interest entities	Registered office in France	Swiss companies	Indian companies and foreign companies doing business in India	Companies that provide goods or services to end-users based in the Netherlands

Note: These charts should be read in conjunction with the more detailed Summaries that follow.

Modern Slavery Act Comparison

	<u>Australia Commonwealth MSA</u>	<u>New South Wales MSA</u>	<u>UK MSA</u>	<u>CA Transparency in Supply Chains Act</u>
Subject Companies	Any entity that meets the turnover and jurisdictional nexus requirements below	Supplies goods and services for profit or gain	Supplier of goods or services, including a trade or profession	Manufacturer or retailer
Annual Turnover Threshold	A\$100 million	A\$50 million	£36 million	US\$100 million
Jurisdictional Nexus	Australia-based entity or carries on business in Australia	Employees in NSW	Doing business in the United Kingdom	California Revenue and Taxation Code
Covered Business Activities	The subject entity's operations and supply chains	The subject entity's business and supply chains	Any of the subject entity's supply chains, and any part of its own business	Direct supply chain for tangible goods offered for sale
Statement Content (Similar, but not identical, across all jurisdictions)	Required topics	Required topics to be provided for in subsequent regulations	Suggested topics	Required topics
Publication	Submission to the Australian Border Force for inclusion in a central Modern Slavery Statements Register	To be provided for in subsequent regulations	Website, with a prominent homepage link, or upon written request	Website, with a conspicuous and easily understood homepage link, or upon written request
Signature/Board Approval	Required	Not specified, but likely to be required by subsequent regulations	Required	None
Frequency	Annual	Annual	Annual	Not specified; on an as-needed basis
Due Date	Within six months after fiscal year end; commencing with first fiscal year after 1/1/19	To be provided for in subsequent regulations	No mandatory due date; expected within six months after fiscal year end	Not specified
Specified Penalties	None	Up to A\$1.1 million	None	None

Note: This chart should be read in conjunction with the more detailed Summaries that follow.

Due Diligence- and Trade-based Modern Slavery Legislation

	<u>US Tariff Act</u>	<u>US CAATSA</u>	<u>US FAR</u>	<u>Dutch Child Labor Law</u>	<u>French Corporate Duty of Vigilance Law</u>
Covered Activities	Imports into the US	Imports into the US	US government contracts	Selling or providing goods or services to end-users based in the Netherlands	All business operations
Prohibited Activities	Importing goods produced using prison or forced labor	Importing goods produced using North Korean labor, whether in North Korea or abroad	No forced labor, withholding employee documentation or charging recruitment fees also affirmative obligations relating to return transport, housing and employment contracts in certain circumstances	N/A	N/A
Due Diligence	No specific requirements, but taken into account as a mitigating factor if there is a violation	No specific requirements, but taken into account as a mitigating factor if there is a violation	Required for contracts with foreign performance over specified dollar threshold	Must investigate whether there is a reasonable suspicion of child labor in the business or supply chain	Must establish a reasonable vigilance plan to allow for risk identification and prevention of severe violations of human rights, health and safety or environmental damage
Compliance Plan	No specific requirements, but taken into account as a mitigating factor if there is a violation	No specific requirements but taken into account as a mitigating factor if there is a violation	If due diligence / certifications are required, must also have compliance plan meeting specified requirements	If reasonable suspicion of child labor, must adopt and implement action plan	Must include procedures to identify and analyze human rights risks and regularly assess supplier risks, actions to mitigate risks and prevent violations, alert mechanisms and assessment mechanisms
Reporting	N/A	N/A	Compliance certifications at time of contract award and annually	Subject company generally must prepare a declaration indicating that it exercises due diligence in order to prevent the goods and services that its sells or supplies to Dutch end-users from being produced using child labor	Must make public the vigilance plan and reports on the implementation of the plan

Note: This chart should be read in conjunction with the more detailed Summaries that follow.

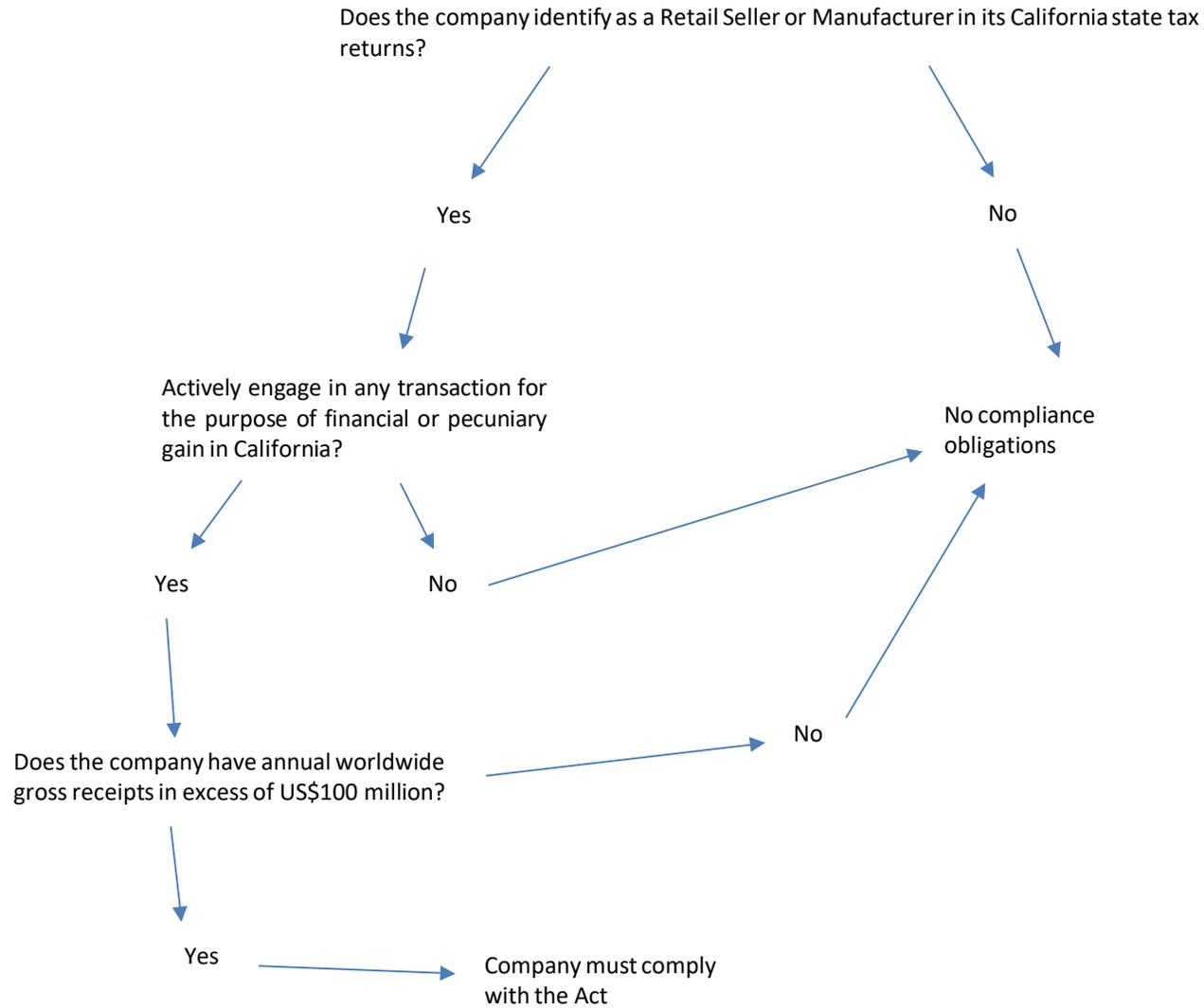
Transparency in Supply Chains Act California	
Overview	
Law / State	California Transparency in Supply Chains Act (California Civil Code S. 1714.43) (California, United States)
Goal	To reduce modern slavery through enhanced disclosure.
Adoption / Status	The Transparency in Supply Chains Act (the “ Act ”) was adopted on September 30, 2010 and went into effect on January 1, 2012.
Issues Addressed	<ul style="list-style-type: none"> • Slavery • Human trafficking
Covered Entities	<p>A company is subject to the Act if it:</p> <ul style="list-style-type: none"> • Identifies as a Retail Seller or Manufacturer in its California state tax returns; • Actively engages in any transaction for the purpose of financial or pecuniary gain in California; and • Has annual worldwide gross receipts in excess of US\$100 million.
How It Works	
Mandatory?	Yes.
Statement Requirements	<p>A company subject to the Act must prepare a statement indicating to what extent it:</p> <ul style="list-style-type: none"> • Engages in verification of product supply chains to evaluate and address risks of human trafficking and slavery. The disclosure must specify if the verification was not conducted by a third party. • Conducts audits of suppliers to evaluate supplier compliance with company standards for trafficking and slavery in supply chains. The disclosure must specify if the verification was not an independent, unannounced audit. • Requires direct suppliers to certify that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business. • Maintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking. • Provides company employees and management who have direct responsibility for supply chain management with training on human trafficking and slavery, particularly with respect to mitigating risks within product supply chains.
Reporting	The statement must be posted on the company’s website using a “conspicuous and easily understood link.” If the company does not have a website, the company must provide consumers with written disclosures within 30 days of receipt of a written request.

Enforcement	The Attorney General has exclusive authority to enforce the Act, and may file a civil action for injunctive relief. There are no associated financial penalties. The Act does not specify the timing for publishing a statement or specify when the existing statement must be updated.
Additional Information/Resources	
Law	For the text of the law as adopted, see: https://oag.ca.gov/sites/all/files/agweb/pdfs/cybersafety/sb_657_bill_ch556.pdf
Resource Guide	For the official resource guide, which includes sample disclosures, see: https://oag.ca.gov/sites/all/files/agweb/pdfs/sb657/resource-guide.pdf

Note: This summary is for informational purposes only and does not constitute legal advice.

(Updated October 1, 2019)

Applying the Law



Modern Slavery Act United Kingdom	
Overview	
Law / Country	UK Modern Slavery Act (S. 54) (United Kingdom)
Goal	To reduce modern slavery through enhanced disclosure.
Adoption / Status	<p>The UK Modern Slavery Act (“MSA”) transparency provisions came into force on October 29, 2015. Under regulations issued by the UK government on October 22, 2015, the first organizations required to produce a statement were those with a fiscal year end on or after March 31, 2016.</p> <p>The transparency disclosure requirements are addressed in Section 54 of the MSA. Note that this summary is largely limited to the transparency provisions of the MSA.</p>
Issues Addressed	<p>The MSA:</p> <ul style="list-style-type: none"> • consolidates and clarifies existing UK offenses of slavery and human trafficking; • increases penalties; • provides for new civil preventative orders; • provides for new maritime enforcement powers; • establishes the office of an Independent Anti-Slavery Commissioner; and • adopts measures focused on supporting and protecting victims.
Covered Entities	<p>Commercial organizations:</p> <p>The MSA covers any commercial organization that supplies goods or services and has a total annual turnover of at least £36 million. A commercial organization is a corporation or partnership that carries on a business (including a trade or profession) or part of a business in the United Kingdom, regardless of where it is was incorporated. The turnover calculation includes the turnover of the subject commercial organization and its subsidiary undertakings, including those subsidiary undertakings carrying on business outside of the United Kingdom.</p> <p>According to March 2019 Home Office guidance, factors in determining whether a foreign entity is required to publish a statement include, but are not limited to, registration at UK Companies House, UK offices, providing UK service or support functions and a visible UK presence such as a website.</p> <p>Parents and sister companies:</p> <p>Having a subsidiary that is subject to the MSA does not subject entities that are above that subsidiary in the corporate chain, or sister companies under common control, to the MSA. However, depending on their business activities in the UK, multiple entities in the consolidated group, even those not primarily engaged in carrying on a business in the United Kingdom, may be subject to the MSA. A parent organization that is subject to the MSA must include in its statement the activities of its subsidiaries, even if a subsidiary does not independently meet all of the MSA’s jurisdictional requirements, if the activities of the subsidiary are part of the parent’s supply chain or business.</p>

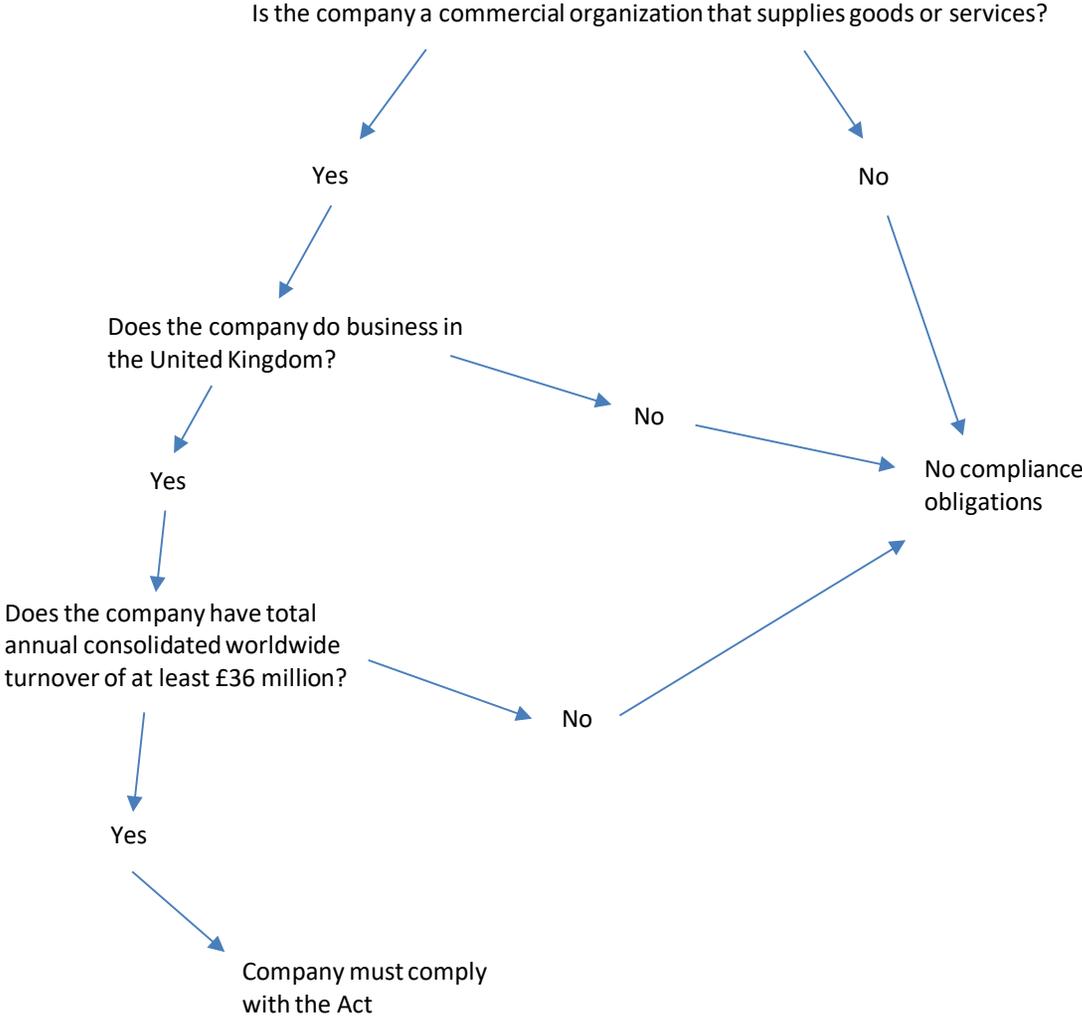
	<p>Franchisees:</p> <p>In determining the total turnover of a business operating a franchise model, only the turnover of the franchiser and not that of any franchisees must be included.</p>
How It Works	
Mandatory?	Yes.
Statement Requirements	<p>A commercial organization must prepare a statement indicating the steps it has taken during the applicable financial year to ensure that slavery and human trafficking are not taking place in any of its supply chains or in any part of its own business.</p> <p>While the MSA does not provide for mandatory disclosures, there are six encouraged disclosure topics:</p> <ul style="list-style-type: none"> • The structure of the organization, its business model and its supply chain relationships. • Policies relating to slavery and human trafficking. • Due diligence and auditing processes in relation to slavery and human trafficking in its business and supply chains. • The parts of its business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps it has taken to assess and manage that risk. • Its effectiveness in ensuring that slavery and human trafficking are not taking place in its business or supply chains, measured against such key performance indicators as it considers appropriate. • Slavery and human trafficking training available to its staff.
Reporting	<p>Timing:</p> <p>Commercial organizations are expected to publish a statement within six months after fiscal year end. However, there is no mandatory deadline.</p> <p>Publication:</p> <p>The statement must be published in a prominent location on the organization’s website homepage and must clearly identify the contents of the link. If the organization does not have a website, it must provide a copy of the statement upon written request within 30 days after the request is received. For organizations with more than one website, the statement should be placed on the most appropriate website relating to the organization’s business in the United Kingdom. If there is more than one relevant website, the organization should place a copy of the statement or a link to the statement on each relevant website.</p> <p>Approval/Signatures:</p> <p>For corporate organizations, the statement must be approved by the board of directors (or equivalent) and signed by a director or the equivalent. If the entity is a limited liability partnership, the statement must be approved by the members and signed by a designated member. If the organization is a limited partnership registered under the UK Limited Partnerships Act, it must be signed by a general partner. For any other kind of partnership, the statement must be signed by a partner.</p>

	<p>Additional Content Guidance:</p> <p>Home Office guidance published in 2018 and 2019 pertaining to statement content indicates that:</p> <ul style="list-style-type: none"> • Group statements published by parent entities should clearly name the entities covered by the statement. • Statements should indicate the date of the fiscal year end and the period covered. • Statements should clearly indicate the board approval date. • Statements should include the name (physical signature not required) and job title of the signatory and the signature date.
Enforcement	At present, there is no financial or legal penalty for non-compliance.
Future Guidance, Updates and Possible Amendments	<p>In 2018, the UK Government commissioned an independent review of portions of the MSA, including the transparency provisions. In response to that review, the UK Government has indicated that:</p> <ul style="list-style-type: none"> • The Home Office will revise its guidance in 2020 to, among other things: <ul style="list-style-type: none"> ○ Include a statement template. ○ Make clear that organizations need to over time strengthen their due diligence activities beyond the first and second tiers as part of a risk-based approach. ○ Encourage organizations to include details of specific future due diligence steps. • It will establish a central government-run repository for statements. • It will consider the following amendments to the MSA: <ul style="list-style-type: none"> ○ Whether the suggested reporting topics should be mandatory. ○ Whether a single statement deadline for all companies is appropriate. ○ Whether additional enforcement mechanisms, such as monetary penalties are appropriate.
Additional Information/Resources	
Law	http://www.legislation.gov.uk/ukpga/2015/30/pdfs/ukpga_20150030_en.pdf
Resource Guide	https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/649906/Transparency_in_Supply_Chains_A_Practical_Guide_2017.pdf

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(Updated October 1, 2019)

Applying the Law



Commonwealth Modern Slavery Act 2018 Australia	
Overview	
Law / Country	Australia Commonwealth Modern Slavery Act (No. 153, 2018) (Australia) (the “Act”)
Goal	To reduce modern slavery through enhanced disclosure.
Adoption / Status	Effective January 1, 2019, for fiscal years beginning after the effective date.
Issue Addressed	Modern slavery practices occurring in the supply chains of goods and services in the Australian market. Note that this summary is limited to the transparency provisions of the Act.
Covered Entities	<p>A reporting entity under the Act is an entity that:</p> <ul style="list-style-type: none"> • At any time in the reporting period is either an Australian entity or carries on business in Australia; and • Has annual consolidated worldwide revenue of more than A\$100 million. <p>Consolidated revenue is the total revenue of the entity for a reporting period, or if the entity controls another entity or entities, the total revenue of the entity and all of the controlled entities, considered as a group, for the applicable reporting period of the controlling entity.</p>
How It Works	
Mandatory?	Yes.
Statement Requirements	<p>A Modern Slavery Statement must include the following:</p> <ul style="list-style-type: none"> • the reporting entity; • the entity’s structure, operations and supply chains; • the potential modern slavery risks in the entity’s operations and supply chains; • actions the entity has taken to assess and address those risks, including due diligence and remediation processes; and • how the entity assesses the effectiveness of those actions. <p>The statement also must describe the process of consultation with:</p> <ul style="list-style-type: none"> • any entities that the reporting entity owns or controls; and • in the case of a joint modern slavery statement, with the other entities giving the statement. <p>In addition, the statement must include any other information that the reporting entity considers relevant.</p>
Reporting	<p>Timing:</p> <p>Reporting starts with the first fiscal year after the Act took effect. Statements are due within six months after fiscal year end.</p>

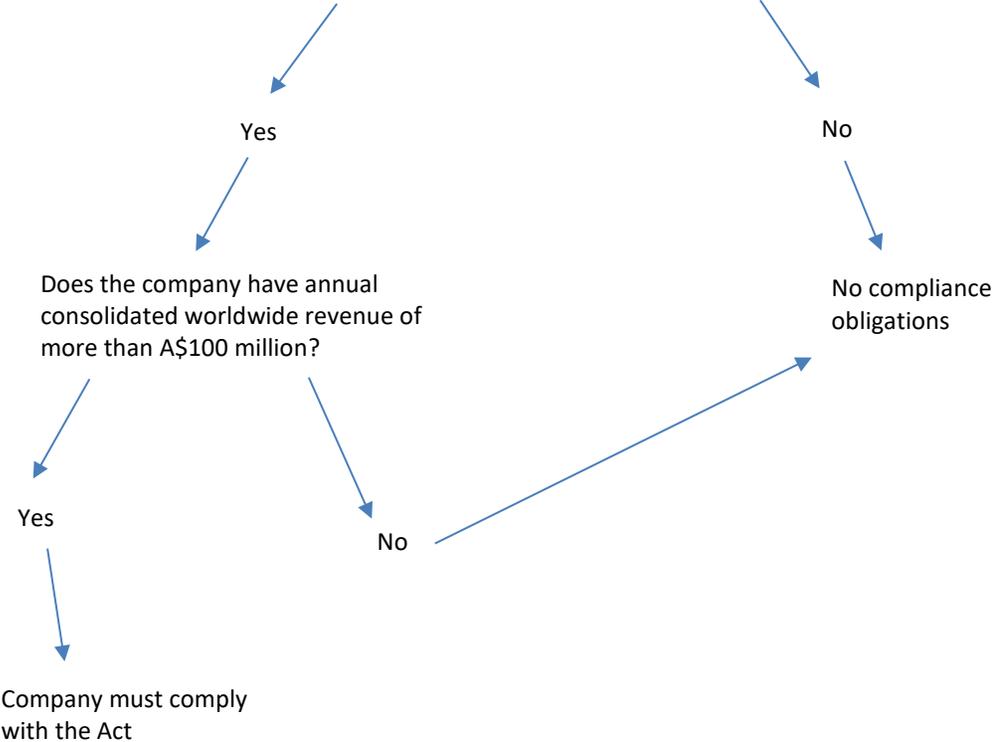
	<p>Publication:</p> <p>Reporting entities must submit statements to the Australian Border Force for publication in an online central register.</p> <p>Approval/Signatures:</p> <p>A statement must be approved by the principal governing body of the subject entity and signed by a responsible member for the entity.</p>
Department of Home Affairs Guidance	<p>The Department of Home Affairs published draft guidance in March 2019. Final guidance was published in September 2019.</p> <p>The guidance contains information related to modern slavery generally and provides explanatory guidelines for complying with the Act. The final guidance largely aligns with the draft guidance and does not create additional substantive obligations under the Act.</p>
Enforcement	<p>If the Minister believes an entity failed to comply with the Act, the Minister may ask the entity to provide an explanation for its failure to comply. The Minister also may request the entity undertake remedial action. If the entity fails to comply with the Minister's request, the Minister may publish information about its failure to comply.</p>
Additional Information/Resources	
Law	For the text of the law as adopted, see: https://www.legislation.gov.au/Details/C2018A00153
September 2019 Guidance	For the updated guidance, see: https://www.homeaffairs.gov.au/criminal-justice/files/modern-slavery-reporting-entities.pdf
Explanatory Memorandum	For the explanatory memorandum prepared while the Act was under consideration by the Parliament, see: https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6148_ems_9cbeaf3-b581-47cd-a162-2a8441547a3d/upload_pdf/676657.pdf;fileType=application/pdf

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(Updated October 1, 2019)

Applying the Law

Is the company either an Australian entity or a foreign entity that carries on business in Australia?



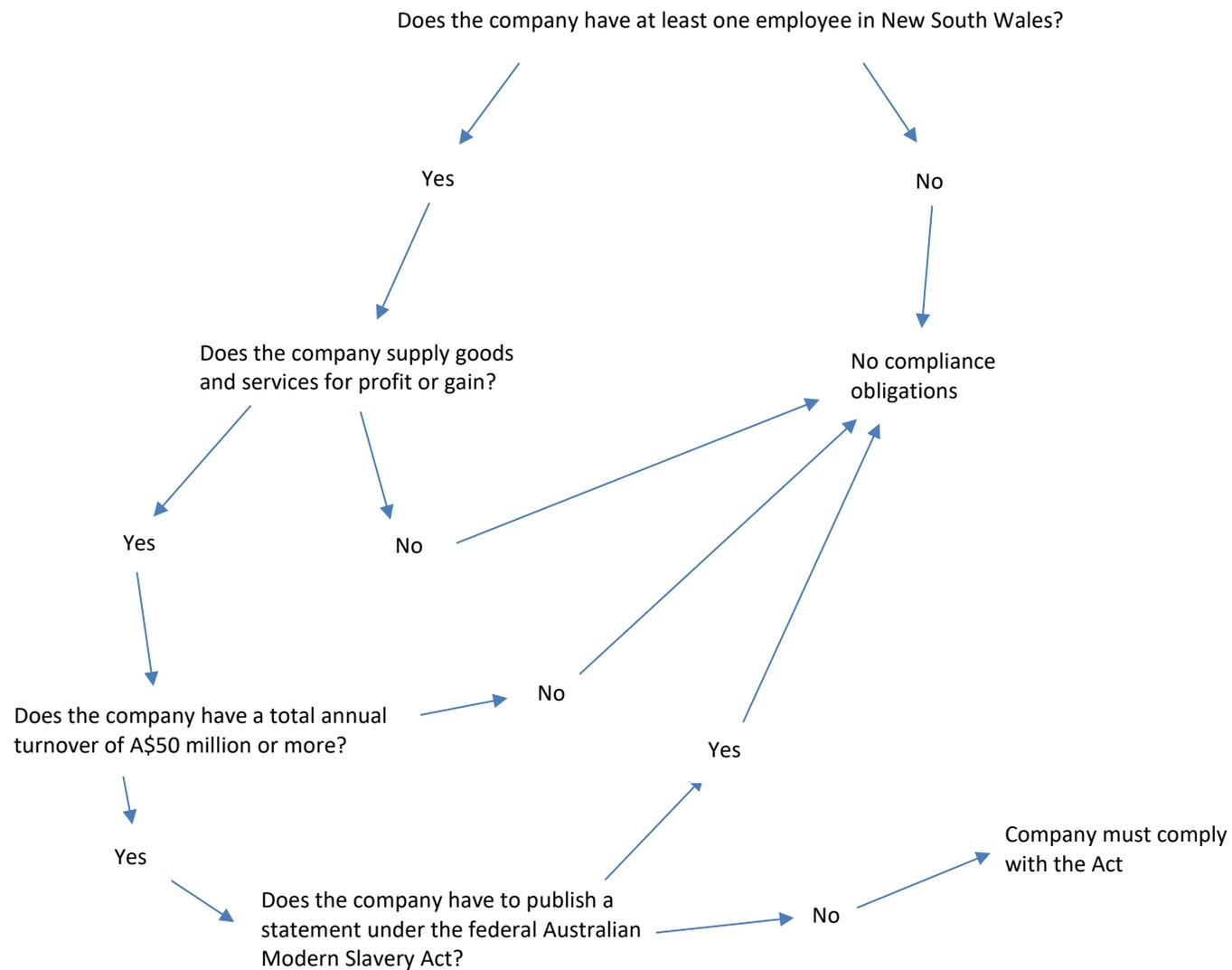
Modern Slavery Act New South Wales	
Overview	
Law / State	Modern Slavery Act (Act No. 30, Part 3) (New South Wales, Australia) (the “ Act ”)
Goal	To reduce modern slavery through enhanced disclosure.
Adoption / Status	Adopted June 27, 2018. The original anticipated commencement date of the Act was July 1, 2019. However, this was delayed due to constitutional concerns and concerns over potential conflicts with the Australian Commonwealth Modern Slavery Act. On August 6, 2019, the Legislative Council Standing Committee on Social Issues announced it will be issuing additional recommended changes by February 14, 2020. Accordingly, the timeline for commencement has not yet been established.
Issues Addressed	<ul style="list-style-type: none"> • Slavery • Forced marriage and child abuse • Cybersex trafficking <p>Note that this summary is limited to the transparency provisions of the Act.</p>
Covered Entities	<p>A commercial organization must:</p> <ul style="list-style-type: none"> • have at least one employee in New South Wales; • supply goods and services for profit or gain; and • have a total annual turnover of A\$50 million or more. <p>A commercial organization can be a company, partnership, association or other entity.</p>
How It Works	
Mandatory?	Yes. However, it is expected that companies required to comply with the Australian Commonwealth Modern Slavery Act will not be required to separately comply with the New South Wales Act.
Statement Requirements	<p>Forthcoming New South Wales regulations (the “Regulations”) will detail the information that companies will be required to report in their statement. The Act states that the Regulations may require that an annual modern slavery statement should cover, at a minimum:</p> <ul style="list-style-type: none"> • the structure of the organization, as well as its business and supply chains; • internal policies, due diligence and remediation processes relating to modern slavery; • key risk areas for potential modern slavery malpractice and any steps taken to assess and manage those risks; and • training practices with respect to modern slavery.

Reporting	Commercial organizations will be required to make their statements publicly available. Further information concerning timing, signature requirements and methods of publication will be provided in the Regulations.
Enforcement	If an organization fails to publish a statement, or knowingly provides false or misleading information in a statement, the organization may be fined up to A\$1.1 million. The Act also allows for a court to issue modern slavery risk orders. Breaching this order carries a maximum penalty of A\$55,000, imprisonment for two years, or both.
Additional Information/Resources	
Law	For the text of the law as adopted, see: https://www.legislation.nsw.gov.au/#/view/act/2018/30/part3

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(Updated October 1, 2019)

Applying the Law



Section 307 of the US Tariff Act United States	
Overview	
Law / Country	Section 307 of the US Tariff Act (19 U.S.C. § 1307) (United States)
Goal	To ensure that goods being imported into the United States are not being produced using forced labor.
Adoption / Status	The US Tariff Act (the “ Act ”) came into force in 1930. However, an exception to Section 307, known as the “consumptive demand exception,” substantially curtailed the applicability of Section 307. The Trade Facilitation and Trade Enforcement Act of 2015 (“ TFTEA ”), which entered into force on March 10, 2016, eliminated the consumptive demand exception.
Issues Addressed	<ul style="list-style-type: none"> • Prison labor • Forced labor
Covered Entities	Importers of goods into the United States.
How It Works	
Mandatory?	Yes.
Prohibited Imports	<p>Goods, wares, articles and merchandise mined, produced or manufactured wholly or in part in a foreign country by convict, forced or indentured labor under penal sanctions are not entitled to entry into the United States and its importation is prohibited.</p> <p>Forced labor is any work or service exacted from a person under the threat of penalty and the person has not offered to perform the work voluntarily. Forced labor and indentured labor include forced or indentured child labor.</p>
Enforcement	<p>After Customs and Border Protection (“CBP”) receives a petition from customs officers or an interested party, CBP can begin an investigation into the goods in question. If CBP decides conclusively that the goods were made with forced labor in another country, CBP may seize the goods and initiate forfeiture proceedings. If CPB decides that the available information reasonably, but not conclusively, indicates that goods made with forced labor are being or will be imported, CPB may require the importing company to submit supplementary documentation. Violations of Section 307 can also result in fines.</p> <p>Since the repeal of the consumptive demand exception, CBP has issued withhold release orders covering the following goods:</p> <ul style="list-style-type: none"> • Potassium, potassium hydroxide and potassium nitrate (March 2016, Tangshan Sunfar Silicon Industries) • Stevia and its derivatives (May 2016, Inner Mongolia Hengzheng Group Baoanzhao Agricultural and Trade LLC) • Peeled garlic (September 2016, Hongchange Fruits & Vegetable Procuets Co., Ltd.) • Toys (March 2018, Huizhou Mink Industrial CO.LTD.) • Turkmenistan cotton (May 2018, all Turkmenistan cotton products) • Seafood (February 2019, Fishing Vessel: Tunago No. 61)

	<ul style="list-style-type: none"> • Seafood (February 2019, Fishing Vessel: Tunago No. 61) • Calcium chloride and caustic soda (March 2019, Tangshan Sanyou Group and its subsidiaries) • Artisanal rough cut diamonds (September 2019, Marange Diamond Fields) • Bone black (September 2019, Bonechar Carvao Ativado Do Brasil Ltda) • Disposable rubber gloves (September 2019, WRP Asia Pacific Sdn. Bhd.) • Garments (September 2019, Hetian Taida Apparel Co., Ltd.) • Gold (September 2019, artisanal small mines in the eastern DRC)
Reasonable Care Guidance	<p>CPB’s Informed Compliance Publication on Reasonable Care includes guidance to help companies comply with Section 307 of the Act. Under the guidance, the following can be evidence of reasonable care:</p> <ul style="list-style-type: none"> • Have you established reliable procedures to ensure you are not importing goods in violation of Section 307 of the Act? • Do you know how your goods are made, from raw materials to finished goods, by whom, where, and under what labor conditions? • Have you reviewed CBP’s "Forced Labor" webpage, which includes a list of active withhold release orders and findings, as well as forced labor fact sheets? • Have you reviewed the Department of Labor’s "List of Goods Produced by Child Labor or Forced Labor" to familiarize yourself with at-risk country and commodity combinations? • Have you obtained a "ruling" from CBP regarding the admissibility of your goods under Section 307 and, if so, have you established reliable procedures to ensure that you followed the ruling and brought it to CBP’s attention? • Have you established a reliable procedure of conducting periodic internal audits to check for forced labor in your supply chain? • Have you established a reliable procedure of having a third-party auditor familiar with evaluating forced labor risks conduct periodic, unannounced audits of your supply chain for forced labor? • Have you reviewed the International Labour Organization’s “Indicators of Forced Labour” booklet? • Do you vet new suppliers/vendors for forced labor risks through questionnaires or some other means? • Do your contracts with suppliers include terms that prohibit the use of forced labor, a time frame by which to take corrective action if forced labor is identified, and the consequences if corrective action is not taken, such as the termination of the contractual relationship? • Do you have a comprehensive and transparent social compliance system in place? Have you reviewed the Department of Labor’s “Comply Chain” webpage? • Have you developed a reliable program or procedure to maintain and produce any required customs entry documentation and supporting information?
Additional Information/Resources	
Law	For the text of Section 307 of the US Tariff Act, see:

	https://www.gpo.gov/fdsys/pkg/USCODE-2011-title19/pdf/USCODE-2011-title19-chap4-subtitleII-partI-sec1307.pdf For the text of The Trade Facilitation and Trade Enforcement Act of 2015, see: https://www.congress.gov/114/plaws/publ125/PLAW-114publ125.pdf
CPB's Reasonable Care Guidance	https://www.cbp.gov/sites/default/files/assets/documents/2018-Mar/icprescare2017revision.pdf

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(Updated October 1, 2019)

Applying the Law

Does the company import any goods into the United States?

Yes

Company must
comply with Section
307

No

Section 307 is not
applicable to the
company

Section 321 of the Countering America’s Adversaries Through Sanctions Act United States	
Overview	
Law / Country	Section 321 of the Countering America’s Adversaries Through Sanctions Act (22 U.S.C. § 9241(a)) (United States) (the “ Act ”)
Goal	Intended to primarily address North Korean state-sponsored labor in other countries, which helps to mitigate the effect of sanctions by providing hard currency to the North Korean government through workers’ remittances.
Adoption / Status	The Act was signed into law on August 2, 2017.
Issue Addressed	Forced labor.
Covered Entities	Importers of goods into the United States produced using North Korean national or citizen labor.
How It Works	
Mandatory?	Yes.
Prohibited Imports	If goods were produced, manufactured or mined by North Korean nationals or North Korean citizens in any country, the Act creates a rebuttable presumption that the goods involved forced labor. Goods produced using forced labor may not be imported into the United States under Section 307 of the Tariff Act. Under the Act, such goods may be imported into the United States only if the Commissioner of U.S. Customs and Border Protection (“ CBP ”) finds by clear and convincing evidence that the goods were not produced using slave or forced labor. The burden of proof is held by the importer of the goods in question and is difficult to satisfy.
Enforcement	CBP and U.S. Immigration and Customs Enforcement (“ ICE ”) enforce the Act through both civil and criminal enforcement actions. If CBP finds evidence that goods have been produced with North Korean forced labor, CBP will deny entry and may detain, seize or seek forfeiture of the goods. ICE Homeland Security Investigations (“ HSI ”) may commence a criminal investigation. CBP and HSI consider a company’s due diligence when contemplating enforcement action.
DHS Guidance – March 2018	In March, 2018, the U.S. Department of Homeland Security published FAQs relating to the Act. The FAQs recommend that companies review due diligence best practices and closely reexamine their entire supply chain with the knowledge of high risk countries and sectors for North Korean workers. The FAQs provide the following examples of actions that may be taken to ensure due diligence: <ul style="list-style-type: none"> • A high-level statement of policy demonstrating the company’s commitment to respect human rights and labor rights; • A rigorous continuous risk assessment of actual and potential human rights and labor impacts or risks of company activities and relationships, which is undertaken in consultation with relevant stakeholders, such as governments,

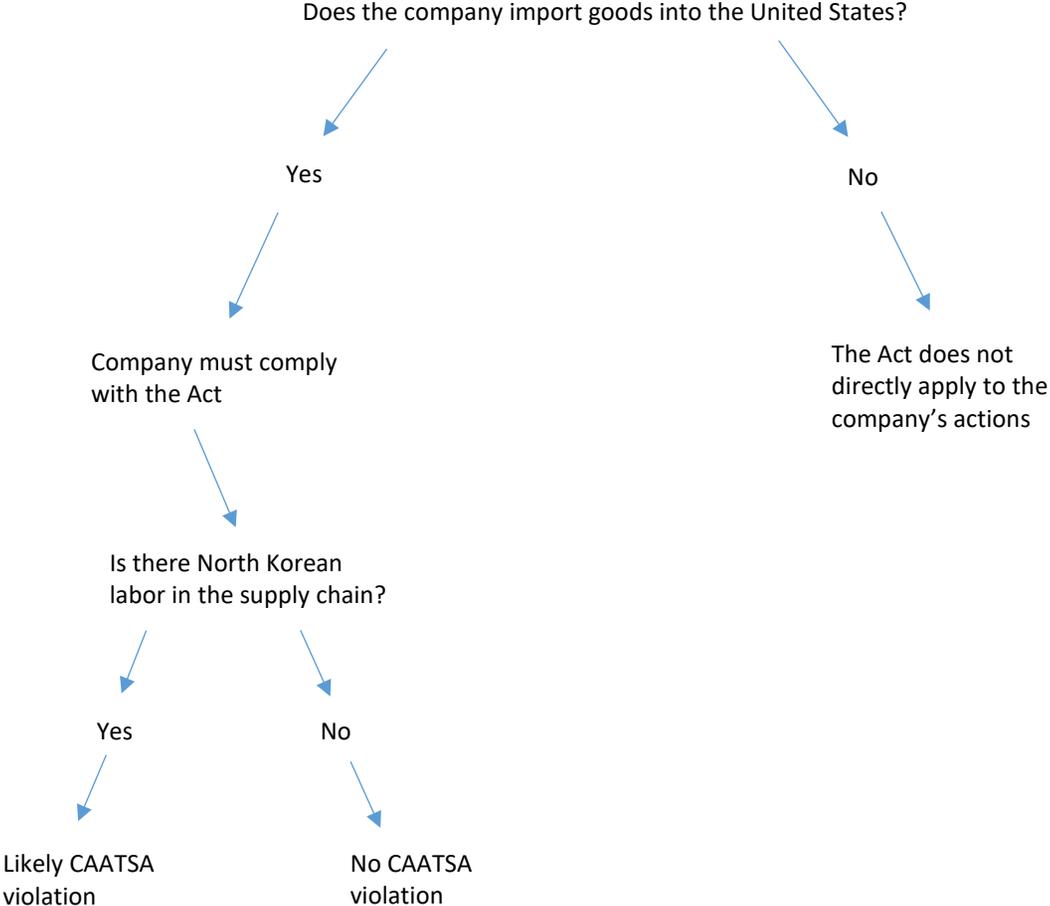
	<p>local business partners and members of civil society such as local communities, workers, trade unions, vulnerable groups and NGOs;</p> <ul style="list-style-type: none"> • Integrating the foregoing commitments and assessments into internal control and oversight systems of company operations and supply chains; and • Tracking and reporting on areas of risk. <p>The FAQs also indicate that importers have the responsibility to exercise reasonable care. To demonstrate reasonable care, an importer may present any material that it chooses to, which may include comprehensive due diligence efforts that may have been undertaken, such as:</p> <ul style="list-style-type: none"> • Workforce composition at the location in question; • Training materials on North Korean forced labor prohibitions that have been provided to suppliers and sub-contractors; • Company policies, and evidence of implementation, on using North Korean laborers; • Contracts with suppliers and sub-contractors that state the company’s policy on North Korean forced labor; • Publishing the full names of all authorized production units and processing facilities, the worksite addresses, the parent company of the business at the worksite, the types of products made, and the number of workers at each worksite; • Information on how and to whom wages are paid at the location; • Information demonstrating that recruitment agencies are within the scope of any third-party audit with suppliers; • Documents verifying the use of authorized recruitment agencies and brokers or that the company uses direct recruitment; • Documents verifying that the fee structure presented by the recruitment agency is transparent and has been verified through worker interviews; • If the company has reimbursed any fees paid, verification of such reimbursement, • Demonstrated commitment to human rights and labor due diligence at the highest levels of the company; and • Results of the company’s human rights and labor impact assessments.
<p>DoS Guidance – July 2018</p>	<p>In July 2018, the U.S. State Department, with Treasury’s Office of Foreign Assets Control and CBP and ICE, issued a North Korea Sanctions & Enforcement Actions Advisory.</p> <p>The advisory identifies five areas of heightened risk for and potential indicators of goods and services with a North Korean nexus, including subcontracting or consignment firms, mislabeled goods, joint ventures, raw materials or goods provided at artificially low prices and information technology services and products.</p> <p>The advisory also discusses five categories of potential indicators of North Korean overseas labor, including:</p> <ul style="list-style-type: none"> • Withholding wages, making unreasonable pay deductions, paying wages late and making in-kind payments; • Long-term contracts that require a large upfront payment to the North Korean government;

	<ul style="list-style-type: none"> • Unsafe and unsanitary housing conditions provided by the employer and excessive costs for those accommodations; collective housing and isolation from laborers of other nationalities; • No access to/control over bank accounts; the employer retains passports and/or confiscates or destroys laborers’ personal documents; little to no time off and required to attend mandatory self-criticism sessions; and • Contract details are hidden and it is difficult to determine the ultimate beneficiary of financial transactions; laborers cannot be interviewed without a “minder” present. <p>In addition, the guidance identifies 12 industries and 41 countries in which North Korean overseas labor was present in 2017-2018.</p>
Additional Information/Resources	
Law	<p>For the text of the law as adopted, see: https://www.treasury.gov/resource-center/sanctions/Programs/Documents/hr3364_pl115-44.pdf</p>
Guidance	<p>March 2018 DHS Guidance: https://www.dhs.gov/news/2018/03/30/caatsa-title-iii-section-321b-faqs July 2018 DoS Guidance: https://www.treasury.gov/resource-center/sanctions/Programs/Documents/dprk_supplychain_advisory_07232018.pdf</p>

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(Updated October 1, 2019)

Applying the Law



Federal Acquisition Regulation Anti-Human Trafficking Rule United States	
Overview	
Law / Country	Federal Acquisition Regulation Combatting Trafficking in Persons Rule (42 CFR 22.17) (United States) (the “Rule”)
Goal	To ensure that contractors, subcontractors, their respective employees and agents do not engage in human trafficking or commercial sex acts or use forced labor in connection with U.S. federal contracts.
Adoption / Status	The effective date of the Rule is March 2, 2015. The Rule applies to contracts awarded on or after the effective date, and new task orders under existing contracts. The Rule implements Executive Order 13627 (2012), “Strengthening Protections Against Trafficking in Persons in Federal Contracts.”
Issues Addressed	<ul style="list-style-type: none"> • Human trafficking • Forced labor
Covered Entities	<p>The Rule applies to parties that contract with the U.S. federal government, their subcontractors, their respective employees and agents. The prohibited activities (discussed below) apply to all conduct, irrespective of dollar amount or location of performance. The compliance plan and certification requirements (discussed below) apply to any portion of a contract or subcontract that:</p> <ul style="list-style-type: none"> • Is for supplies, other than commercially available off-the-shelf (COTS) items, to be acquired outside the United States, or services to be performed outside the United States; and • Has an estimated value that exceeds US\$500,000. <p>The contractor is required to contractually flow down the Rule’s requirements in its contracts with subcontractors and agents. Subcontractors include both direct and indirect subcontractors.</p>
How It Works	
Mandatory?	Yes.
Prohibited Activities	<p>The Rule prohibits contractors, subcontractors, their respective employees and agents from:</p> <ul style="list-style-type: none"> • Engaging in severe forms of trafficking in persons during the contract performance period; • Procuring commercial sex acts during the period of contract performance; • Using forced labor in the performance of the contract; • Destroying, concealing, confiscating or otherwise denying access by an employee to the employee’s identity or immigration documents; • Using misleading or fraudulent practices during the recruitment of employees or offering of employment and using recruiters that do not comply with local labor laws;

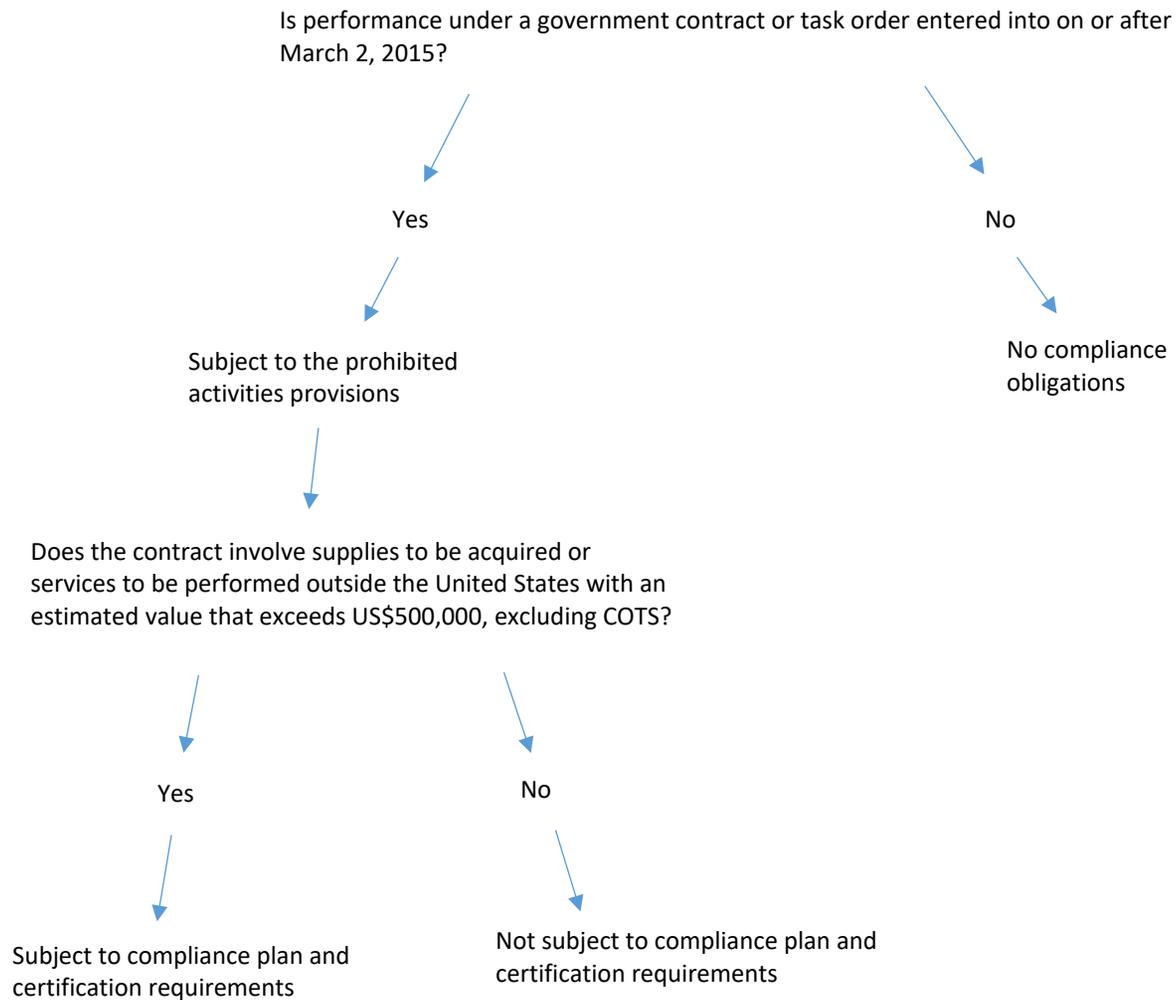
	<ul style="list-style-type: none"> • Charging recruitment fees to employees; • Under certain circumstances, failing to provide or pay for return transportation upon the end of employment for employees brought into the country for the purpose of working on the contract or subcontract; • Providing or arranging housing that fails to meet the host country housing and safety standards; or • If required by law or contract, failing to provide an employment contract, recruitment agreement or other required work document in writing, and failing to satisfy certain other related requirements.
Compliance Plan and Certifications	<p>If a compliance plan is required, the contractor must certify:</p> <ul style="list-style-type: none"> • That it has implemented a compliance plan and procedures to prevent any activities prohibited by the Rule and to monitor, detect and terminate the contract with a subcontractor or agent engaging in prohibited activities; and • After having conducted due diligence, either: <ul style="list-style-type: none"> o To the best of the contractor’s knowledge and belief, neither it nor any of its agents or subcontractors are engaged in any such activities; or o If abuses relating to any of the prohibited activities identified in the Rule have been found, the contractor, subcontractor or agent has taken the appropriate remedial and referral actions. <p>Certifications are required in connection with the contract award and annually.</p> <p>At a minimum, a compliance plan must include the following:</p> <ul style="list-style-type: none"> • An awareness program to inform contractor employees about the Rule or government policies relating to the Rule as well as consequences for violations. • A mechanism for employees to report, without fear of retaliation, any activities inconsistent with the Rule and related government trafficking policies. To satisfy this requirement, at a minimum, a Global Human Trafficking hotline and its email address must be provided. • A recruitment and wage plan that only authorizes the use of recruitment companies with trained employees, prohibits charging recruitment fees to employees and guarantees that wages meet host-country legal requirements or clarifies any discrepancy. • If the contractor or subcontractor intends to provide housing, any related housing plan must meet host-country housing and safety standards. • Procedures to prevent all subcontractors and agents from engaging in human trafficking and to observe, identify and terminate any subcontracts, subcontractor employees or agents that have engaged in such activities. <p>The compliance plan must be proportional to the size and complexity of the contract, the number of non-U.S. citizens expected to be employed and the risk that the contract or subcontract will involve services or goods susceptible to human trafficking.</p>

Recruitment Fee Guidance	<p>On December 20, 2018, the Rule was amended to clarify the prohibition on charging employees recruitment fees. Recruitment fees include fees of any type, including charges, costs, assessments or other financial obligations, that are associated with the recruiting process, regardless of the time, manner or location of impositions or collection of the fee.</p> <p>The Rule applies, but is not limited to, fees (when associated with recruitment) for:</p> <ul style="list-style-type: none"> • Soliciting, identifying, considering, interviewing, referring, retaining, transferring, selecting, training, providing orientation to, skills testing, recommending or placing employees or potential employees; • Obtaining permanent or temporary labor certification; • Processing applications and petitions; and • Acquiring visas.
Violations / Enforcement	<p>The contractor is required to inform the contracting officer and the agency Inspector General of any credible information regarding an allegation that a contractor employee, subcontractor, subcontractor employee or their agent engaged in prohibited activities under the Rule.</p> <p>Remedies may include:</p> <ul style="list-style-type: none"> • Requiring the contractor to remove an employee from the performance of the contract or terminate a subcontract; • Postponement of contract payments until the contractor has taken applicable remedial action; • Loss of award fees for the performance period during which the contractor was noncompliant; • Declining to implement available contract options; • Terminating the contract for default or cause based on the contract terms; or • Suspension or debarment. <p>Failure to comply with the Rule may also result in criminal liability and liability under the False Claims Act.</p> <p>In considering remedies, the contracting officer may consider whether the contractor had a compliance or awareness program at the time of the violation, was in compliance with the program at the time of the violation and has taken applicable remedial action.</p>
Additional Information/Resources	
Law	<p>For the text of the law as adopted, see: https://www.govinfo.gov/content/pkg/FR-2018-12-20/pdf/2018-27541.pdf</p> <p>For the text of the recruitment fee provision, see: https://www.govinfo.gov/content/pkg/FR-2018-12-20/pdf/2018-27544.pdf</p>

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(Updated October 1, 2019)

Applying the Law



Non-financial Reporting Directive European Union

Overview

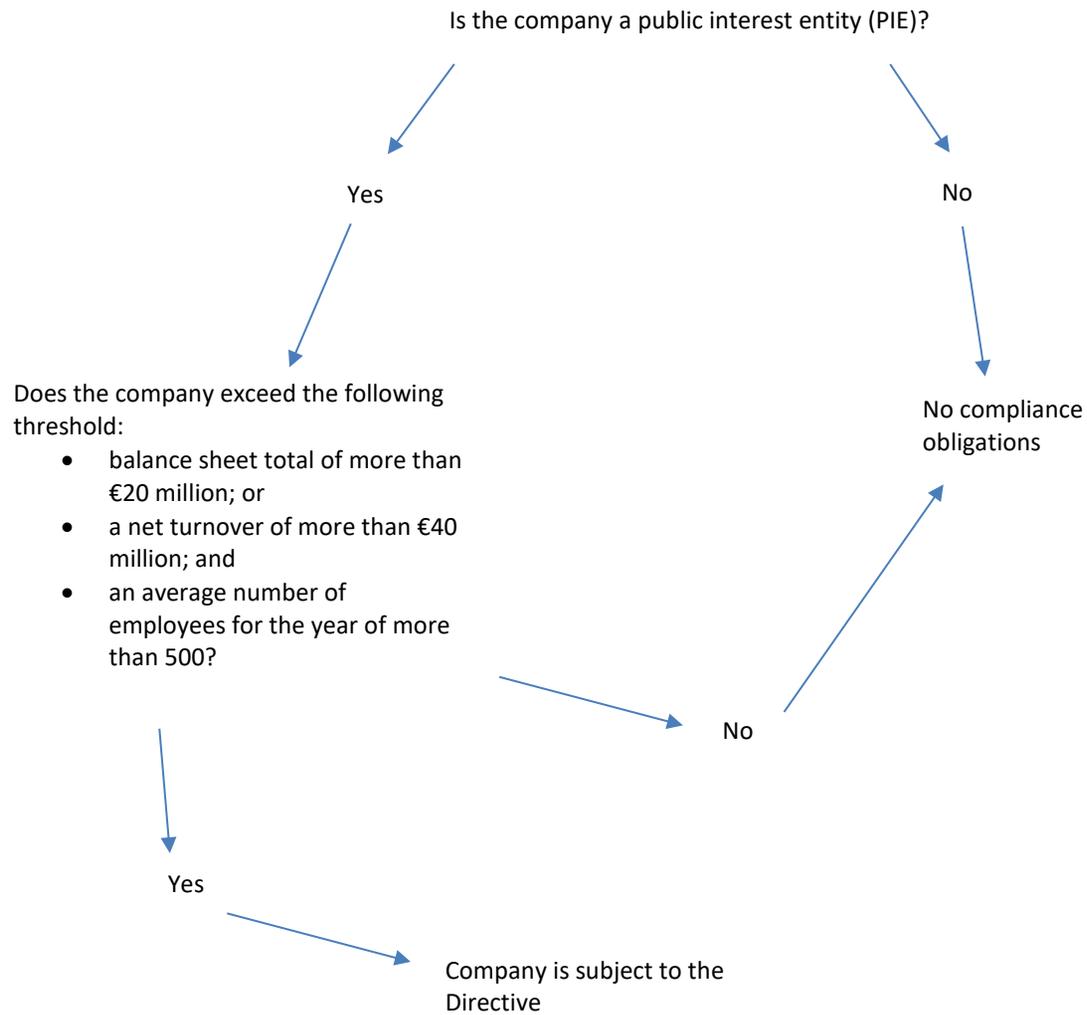
Law / Country	EU Non-financial Reporting Directive (2014/95/EU) (European Union)
Goal	To drive improvements in social, human rights and environmental matters through enhanced disclosure.
Adoption / Status	The EU Non-financial Reporting Directive (the “ Directive ”) was adopted on October 22, 2014. The Directive is effective for financial years beginning on or after January 1, 2017. The Directive has been subsequently implemented into national legislation in the EU member states.
Issues Addressed	<ul style="list-style-type: none"> • Environment • Social and employee matters • Human rights • Corruption and bribery • Diversity
Covered Entities	<p>EU-listed companies, banks, insurance companies and other companies designated by national authorities as public interest entities (“PIEs”) that meet the following criteria (note that the threshold for diversity disclosure is different):</p> <ul style="list-style-type: none"> • balance sheet total of more than €20 million or a net turnover of more than €40 million; and • an average number of employees for the year of more than 500. <p>For parent companies, the consolidated figures of the whole group are used to determine whether the company must comply with the Directive. If so, the parent company is required to disclose the required non-financial information (as described below) of the entire group. Subsidiaries are exempt from the reporting requirement, even if the subsidiary is independently subject to the Directive, if the parent organization reports.</p>
How It Works	
Mandatory?	Yes.
Reporting	<p>Covered companies must include in their management statement, or as a separate report, a non-financial statement containing information, to the extent necessary for an understanding of the company’s development, performance, position and impact of its activity, relating to, at a minimum:</p> <ul style="list-style-type: none"> • environmental protection; • social responsibility and employee matters; • respect for human rights; • anti-corruption; and • bribery matters. <p>The non-financial statement should include:</p>

	<ul style="list-style-type: none"> • a brief description of the company’s business model; • a description of the policies pursued by the company in relation to non-financial aspects, including due diligence processes implemented; • the outcome of those policies; • the principal risks related to those matters linked to the company’s operations including, where relevant and proportionate, its business relationships, products or services which are likely to cause adverse impacts in those areas, and how the company manages those risks; • non-financial key performance indicators relevant to the particular business; and • a description of the diversity policy applied in relation to administrative, management and supervisory bodies with regard to aspects such as age, gender, or educational and professional backgrounds, the objectives of that diversity policy, how it has been implemented and the results in the reporting period. <p>If the company does not pursue policies in relation to the above matters, the non-financial statement must provide a clear and reasoned explanation for not doing so. The non-financial statement must also, where appropriate, include references to, and additional explanations of, amounts reported in the annual financial statements.</p>
Additional Guidelines	<p>The European Commission published non-binding disclosure guidelines during June 2017. The guidelines provide further guidance on complying with the Directive, including suggested disclosure topics and key performance indicators. These pertain to the supply chain and conflict minerals, among other topics.</p> <p>The guidelines indicate that the reported non-financial information can be made fairer and more accurate through:</p> <ul style="list-style-type: none"> • appropriate corporate governance arrangements (for instance, certain independent board members or a board committee entrusted with responsibility over sustainability and/or transparency matters); • robust and reliable evidence, internal control and reporting systems; • effective stakeholder engagement; and • independent external assurance. <p>In June 2019, the European Commission published additional guidelines on climate-related reporting under the Directive. Among other things, the guidelines contain recommendations on how companies should report the impact of their operations on the climate as well as the impact of climate change on their business.</p>
Enforcement	Enforced by the individual EU member states. Enforcement varies by member state.
Additional Information/Resources	
Text of the Directive	For the full text of the Directive, see: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0095
Official Guidelines	<p>For the June 2017 guidelines, see: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52017XC0705(01)</p> <p>For the June 2019 guidelines, see: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52019XC0620(01)</p>

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(Updated October 1, 2019)

Applying the Law*



* Note that the threshold for diversity disclosure is different.

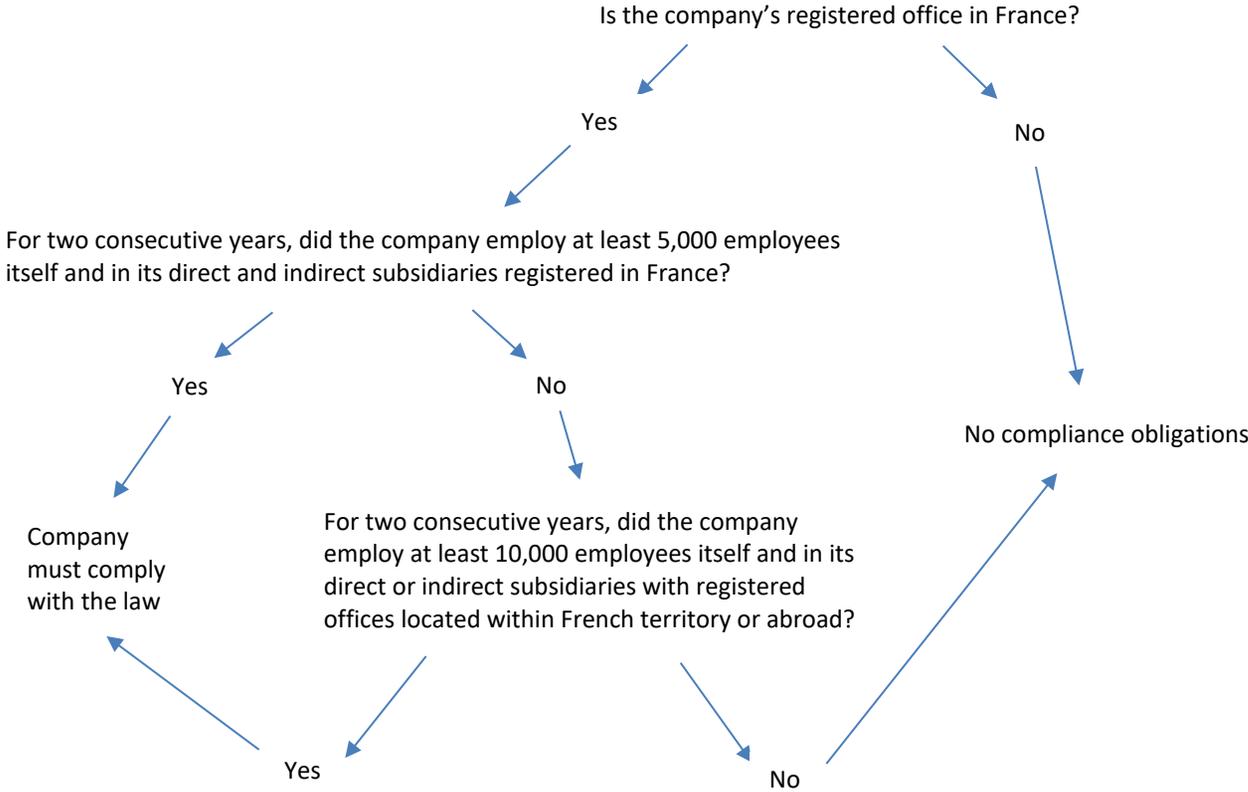
Corporate Duty of Vigilance Law France	
Overview	
Law / Country	Corporate Duty of Vigilance Law (No. 2017-399) (France)
Goal	To prevent severe human rights violations and violations of the health and safety of people or the environment, including those associated with subsidiaries, subcontractors and supply chain members.
Adoption / Status	<p>The Corporate Duty of Vigilance Law (the “Law”) was adopted on February 21, 2017 by the French National Assembly and became effective on March 27, 2017.</p> <p>On March 27, 2017, the French Constitutional Council struck down, as failing to comply with constitutional principles, the portion of the Law that calls for imposing fines on corporations not in compliance (described below).</p> <p>The requirement to establish a vigilance plan started on the effective date; the reporting obligations started with fiscal 2018.</p>
Issues Addressed	<ul style="list-style-type: none"> • Serious violations of all human rights and fundamental freedoms, identical to the full spectrum of human rights outlined in the UN Guiding Principles on Business and Human Rights (the “UN Guiding Principles”) (link below); • The health and safety of people; and • The environment.
Covered Entities	<p>Any company with its registered office in France that employs, for a period of two consecutive financial years:</p> <ul style="list-style-type: none"> • at least 5,000 employees itself and in its direct or indirect subsidiaries with registered offices in France; or • at least 10,000 employees itself and in its direct or indirect subsidiaries with registered offices located within French territory or abroad. <p>A company is considered to be a subsidiary if another company owns more than 50% of its capital.</p> <p>Up-the-chain affiliates and sister companies are not subject to the Law unless they independently meet its requirements. A controlled company independently required to comply with the Law is exempt if it comes under the vigilance plan of a parent entity.</p>
How It Works	
Mandatory?	Yes.
Vigilance Plan Requirements	<p>Subject companies must establish a reasonable vigilance plan to allow for risk identification and prevention of severe violations of human rights, health and safety or environmental damage resulting from the operations of the company, its subsidiaries, subcontractors and suppliers.</p> <p>The vigilance plan must include:</p>

	<ul style="list-style-type: none"> • procedures to identify and analyze the risks of human rights violations or environmental harms in connection with the company's operations; • procedures to regularly assess risks associated with subsidiaries, subcontractors and suppliers with which the company has a commercial relationship; • actions to mitigate identified risks or prevent the most serious violations; • mechanisms to alert the company to risks and collect signals of potential or actual risk; and • mechanisms to assess measures that have been implemented as part of the company's plan and their effectiveness. <p>The plan must be drafted in association with the company stakeholders involved and, where appropriate, within multi-party initiatives that exist in the subsidiaries or at the territorial level. The alert mechanism must be developed in a working partnership with the trade union representative of the company.</p> <p>The Law's provisions may be clarified through a further General Administrative Order. In addition, a Council of State decree can add to the diligence measures.</p>
Reporting	Companies must make public their vigilance plans and regular reports on the implementation of the plan. Companies must include their vigilance plans and reports on implementation in their annual management reports.
Enforcement	<p>If a subject company fails to create, implement or publish a vigilance plan, an interested person may send a formal notice to the company detailing its non-compliance. After receiving a formal notice of non-compliance, the company has three months to meet its obligations.</p> <p>If the company fails to meet its obligations after the three-month period, any person with a demonstrable interest (i.e., the claimant has suffered harm and there is loss causation) may demand a court take action to enforce the law, at which point a judge may issue an injunction forcing compliance. The judge may also rule on whether a vigilance plan is complete and appropriately fulfills the obligations described in the Law.</p> <p>Companies may also be subject to civil liability. If an individual is harmed by a company's non-compliance, the individual can seek damages for corporate negligence.</p>
Additional Information/Resources	
Law	For the text of the law as adopted, see: http://www.assemblee-nationale.fr/14/pdf/ta/ta0924.pdf
Constitutional Council Decision	For the text of the decision, see: http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank/pdf/conseil-constitutionnel-148858.pdf
UN Guiding Principles	For the UN Guiding Principles in multiple languages, see: https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

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(Updated October 1, 2019)

Applying the Law



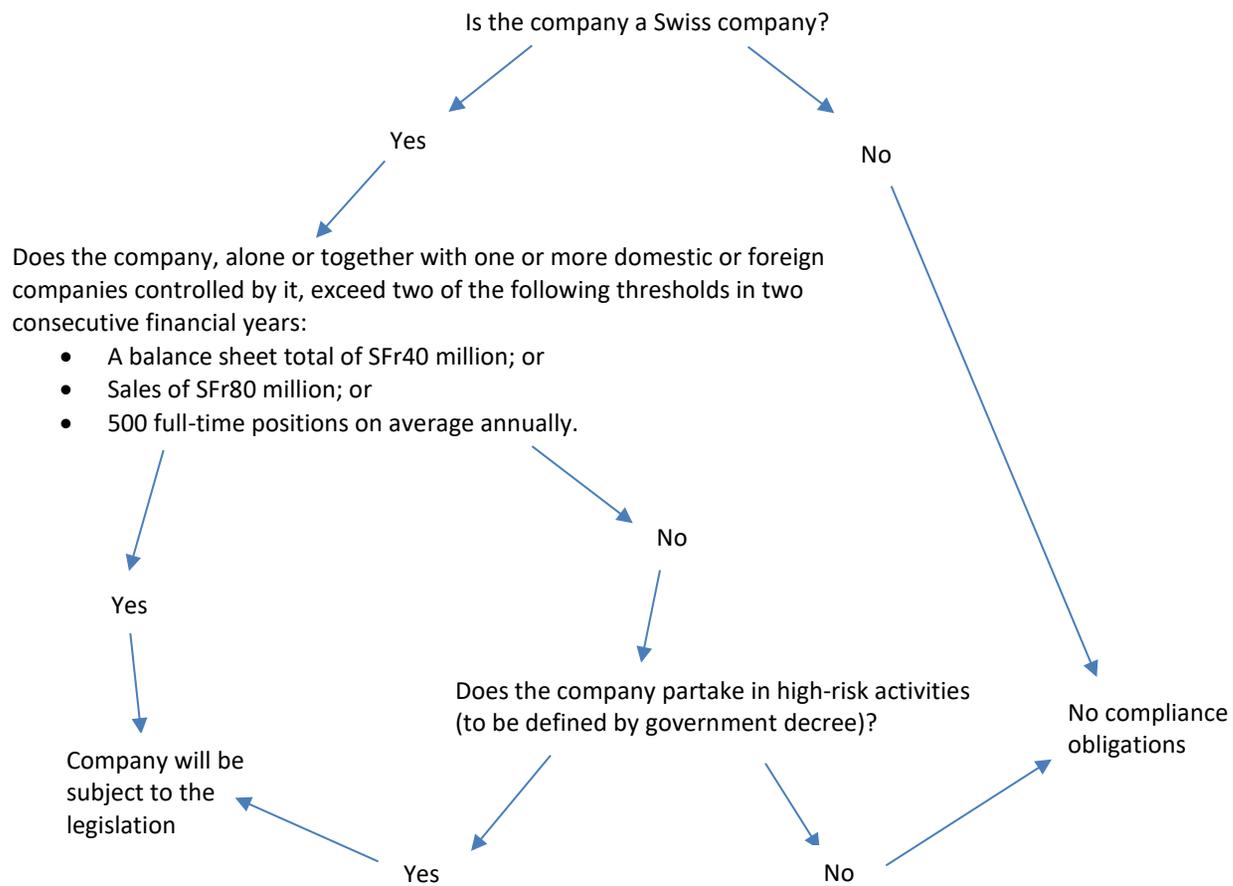
Swiss Responsible Business Initiative – Counter-proposal Bill Switzerland	
Overview	
Law / Country	Swiss Responsible Business Initiative (L’initiative pour des multinationales responsables) – Council Counter-proposal Bill (Switzerland)
Goal	To further responsible business practices by Swiss companies and their suppliers by implementing mandatory human rights and environmental due diligence requirements and creating liability for damages caused in other countries.
Adoption / Status	<p>In October 2016, a coalition of Swiss civil society organizations working in human rights, development and environmental protection proposed the Responsible Business Initiative. In November 2017, the Legal Affairs Committee of the Council of States (upper house) suggested a counter-proposal (the “Bill”). On June 14, 2018, the National Council (lower house) adopted the Bill. However, the Bill was narrowly (22 to 20) rejected in the Council of States on March 12, 2019 and reverted back to the National Council. On June 13, 2019, the National Council decided by a majority vote to maintain its support for the Bill without modification.</p> <p>On September 4, 2019, the Legal Affairs Committee of the Council of States once again requested the Council of States to adopt the Bill, with some modifications (discussed below). On September 10, 2019, the Swiss civil society coalition that originally proposed the Responsible Business Initiative announced it would withdraw its initiative if the Bill is adopted. The Council of States was scheduled to review the Legislative Affairs Committee’s request on September 26, 2019. However, the discussion was postponed until after Swiss parliamentary elections on October 20, 2019.</p>
Issues Addressed	<ul style="list-style-type: none"> • Human rights • Environmental protection
Covered Entities	<p>Swiss companies which, alone or together with one or more domestic or foreign companies controlled by them, exceed two of the following thresholds in two consecutive financial years:</p> <ul style="list-style-type: none"> • A balance sheet total of SFr40 million; • Sales of SFr80 million; or • 500 full-time positions on average annually. <p>In addition, companies engaged in high-risk activities may be subject to the legislation, regardless of size. Activities that are considered high-risk will be defined by government decree.</p>
How It Works	
Mandatory?	Yes.
Requirements	Under supervision of the Board, the company will be required to:

	<ul style="list-style-type: none"> • Take measures to ensure that it complies with provisions for the protection of human rights and the environment, including relevant Swiss laws and international law binding in Switzerland; • Conduct due diligence to identify potential and actual impacts of the company’s business activities (including controlled companies and third parties due to business relationships) on human rights and the environment and assess these risks; due diligence is primarily concerned with the most severe impacts on human rights and the environment; • Taking into account the company’s ability to exert influence, take effective measures to minimize the identified risks concerning human rights and the environment as well as ensure effective remedy for violations; and • Monitor the effectiveness of the measures adopted and report on them.
Reporting	Subject companies will be required to prepare a report describing their compliance with the requirements of the legislation. The report will be required to be made publicly available.
Enforcement	<p>Companies will be liable for damage to “life, limb or property” arising out of a violation of law by the company or a company controlled by it, whether the violation occurred in Switzerland or abroad.</p> <p>Companies will not be liable for violations by controlled companies if they were not able to influence the conduct of the controlled company in connection with the violation.</p> <p>Board members and natural persons will not be liable for injuries suffered abroad as a result of the actions of a controlled company.</p> <p>Under the September 4, 2019 proposal by the Legal Affairs Committee of the Council of States, a complaint under the legislation would be required to be preceded by a National Contact Point proceeding in accordance with the OECD Guidelines for Multinational Enterprises.</p>
Additional Information/Resources	
RBI	<p>For the text of the original initiative with accompanying explanations, see: https://corporatejustice.ch/wp-content/uploads//2018/06/KVI_Factsheet_5_E.pdf</p> <p>For the text of the Parliament’s counter-proposal, see: http://www.bhrinlaw.org/180508-swiss-parliament-counter-proposal_unofficial_en-translation_updated.pdf</p>

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Section 135 of the Companies Act India	
Overview	
Law / Country	Section 135 of the Companies Act (The Companies Act, 2013, amended 2015, 2017 and 2019) (India)
Goal	To further corporate social responsibility in India by requiring investment in CSR initiatives.
Adoption / Status	On August 29, 2013, the Companies Act of 2013 received the assent of the President of India. This Act included the passage of Section 135 (the “ Law ”). On July 26, 2019, Parliament passed a series of amendments to the Law, which are further described below. The President assented to the amended Law on July 31, 2019.
Issue Addressed	<p>Schedule VII of the Companies Act outlines the recognized CSR activities:</p> <ul style="list-style-type: none"> • eradicating extreme hunger and poverty; • promotion of education, gender equality and empowering women; • reducing child mortality and improving maternal health; • combating human immunodeficiency virus, acquired immune deficiency syndrome, malaria and other diseases; • ensuring environmental sustainability; • employment enhancing vocational skills and social business projects; and • contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic development and relief and funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women.
Covered Entities	<p>The Law applies to Indian companies and foreign companies doing business in India that, during the immediately preceding financial year:</p> <ul style="list-style-type: none"> • have a net worth of rupees five hundred crore or more; • turnover of rupees one thousand crore or more; or • a net profit of rupees five crore or more.
How It Works	
Mandatory?	Yes
CSR Committee	<p>Subject companies generally are required to have a CSR Committee of three or more directors. At least one of these directors generally must be independent, unless stated otherwise in Section 149(4) of the Companies Act. This Committee must:</p> <ul style="list-style-type: none"> • formulate and recommend to the Board, a Corporate Social Responsibility Policy (the “CSR Policy”) that indicates the activities to be undertaken by the company (see the summary of Schedule VII above for recognized activities); • recommend the amount of expenditure to be incurred on the above activities; and

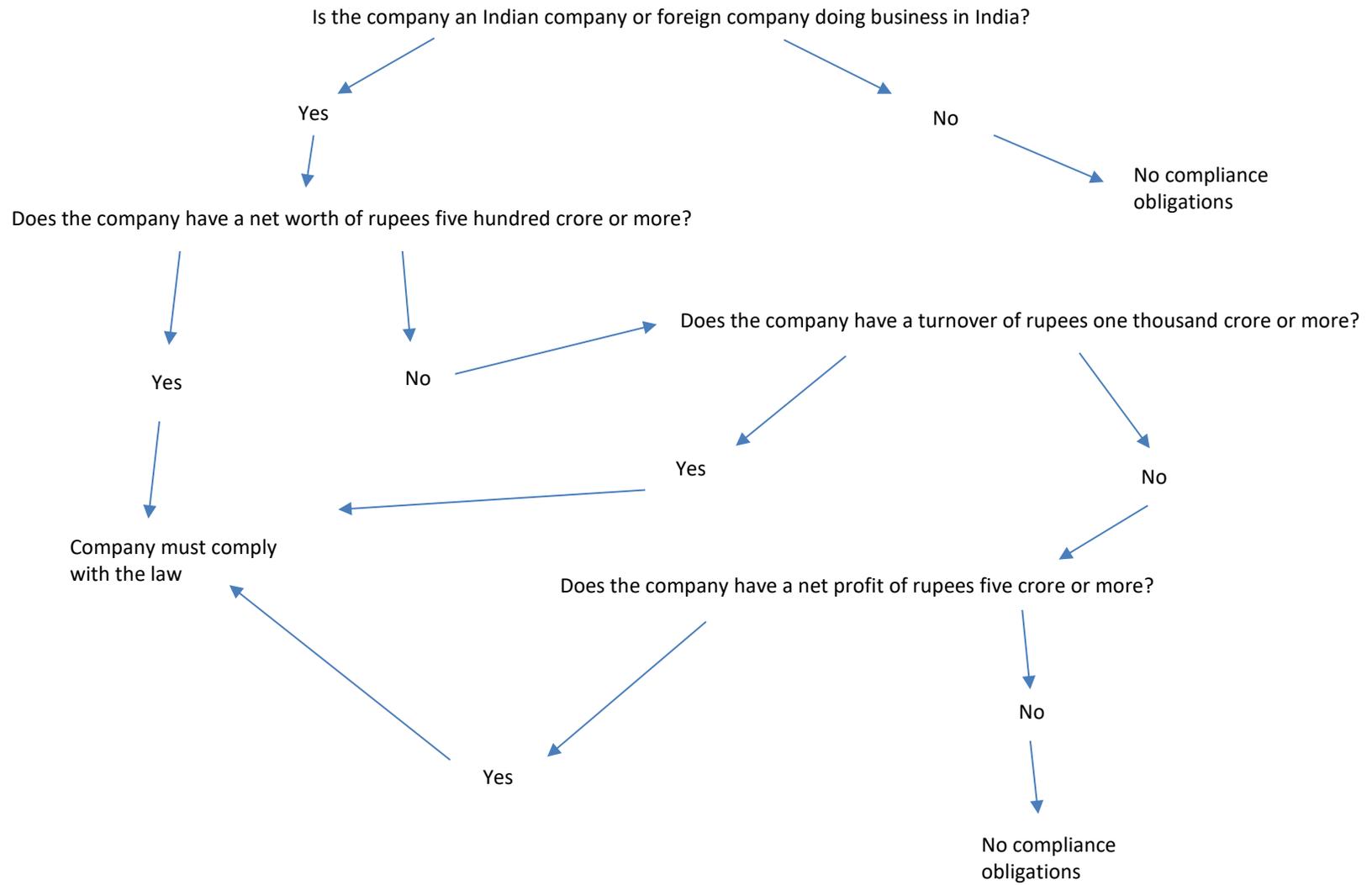
	<ul style="list-style-type: none"> • monitor the CSR Policy of the company from time to time.
Implementation and Disclosure of CSR Policy	<p>The Board of every covered company must:</p> <ul style="list-style-type: none"> • after taking into account the recommendations made by the CSR Committee, approve the CSR Policy and disclose the contents of the policy in its report and also place it on the company's website; • ensure that the activities included in the CSR Policy are undertaken by the company; and • ensure that the company spends, in every financial year, at least 2% of the average net profits of the company made during the three immediately preceding financial years (or shorter number of years the company has been in existence), in pursuance of its CSR Policy. <p>The Law indicates that covered companies should “give preference to the local area and areas around it where it operates” when deciding how to spend the 2%. Viable CSR opportunities and causes are listed in Schedule VII of the Act (see Issues Addressed above).</p> <p>Companies are required to report any failure to spend the required 2% and provide reasons for the failure. Section 134 of the Companies Act details further reporting requirements.</p>
Enforcement	<p>Section 134 states that, if a company contravenes the provisions of Section 135, the company shall be punishable with fines which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees. Section 134 also states that every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fines which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.</p> <p>Under Section 206 of the Companies Act, the government has powers to call for information and inspect the books of a company. Additionally, the Ministry of Corporate Affairs (“MCA”) has created the Centralised Scrutiny and Prosecution Mechanism (“CSPM”) to track companies’ CSR spending records.</p> <p>The MCA has sent notices to companies (over 5,000 so far) that have failed to spend 2% of their profits on human rights or social welfare activities. We understand that the notices have thus far only required companies to furnish the MCA with information, including explanations for non-compliance.</p>
July 2019 Amendments	<p>Pursuant to the July 2019 amendments:</p> <ul style="list-style-type: none"> • Any unspent CSR funds relating to an ongoing project must be transferred within 30 days after the end of the financial year to a specialized account to be opened by the company called the Unspent CSR Account, or to an escrow account. Companies are required to spend this money in accordance with the CSR Policy within three financial years from the date of such transfer. • If the foregoing amount is not spent within three years, it must be transferred to a fund specified in Schedule VII of the Companies Act within 30 days after the last day of the third financial year.

	<ul style="list-style-type: none"> • If the unspent amount is unrelated to an ongoing CSR project or CSR Policy, companies are required to transfer such unspent amount to a fund specified in Schedule VII within six months after the end of the financial year.
Additional Information/Resources	
Text of Section 135	<p>For the text of the Law, see: http://www.mca.gov.in/SearchableActs/Section135.htm</p> <p>For the 2018 Clarification of Section 135(5), see: http://www.mca.gov.in/Ministry/pdf/GeneralCircular2805_29052018.pdf</p>
Indian Companies Act	<p>For the full text of the 2013 Companies Act, see: http://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf</p> <p>For the 2017 Amendments, see: http://www.mca.gov.in/Ministry/pdf/CAAct2017_05012018.pdf</p> <p>For the 2019 Amendments, see: http://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf</p>

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Child Labor Due Diligence Act Netherlands	
Overview	
Law / Country	Child Labor Due Diligence Act (No. 34 506) (Netherlands)
Goal	To reduce child labor in the supply chain.
Adoption / Status	<p>The Dutch Parliament adopted the Child Labor Due Diligence Act (the “Act”) on February 7, 2017. The Dutch Senate approved the Act on May 14, 2019.</p> <p>The Act will enter into force on a date to be determined by Royal Decree, but not prior to January 1, 2020. However, the initiating Parliament members indicated that the Act will likely become effective sometime in 2022. Many of the specifics will be codified in a General Administrative Order (the “GAO”), which has yet to be published.</p>
Issue Addressed	Child labor
Covered Entities	<p>Companies covered include:</p> <ul style="list-style-type: none"> • Companies established in the Netherlands that sell or provide goods or services to end-users based in the Netherlands. • Companies established outside the Netherlands that sell or provide goods or services to end-users based in the Netherlands. <p>For purposes of the Act, an end-user is the natural person or legal entity using or consuming the goods or purchasing the service.</p> <p>The Act does not specifically exempt any types of companies, but exemptions may be provided for in a subsequent GAO.</p> <p>The Act contains a transitional provision, which provides that it will not apply to goods or services to the extent the obligation to supply the goods or services was entered into prior to the publication of the Act. The transitional exemption will sunset not later than five years after the effective date of the Act.</p> <p>The Act provides that a company that transports goods is not considered a supplier of those goods. Although the Act is silent on the point, the transportation of the goods will presumably be a covered service under the Act.</p>
Definition of Child Labor	<p>For purposes of the Act, child labor includes any form of work performed by persons under 18 and that is included among the worst forms of child labor referred to in Article 3 of the Worst Forms of Child Labor Convention, 1999. Under the Convention, this comprises:</p> <ul style="list-style-type: none"> • all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict;

	<ul style="list-style-type: none"> • the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; • the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; and • work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children. <p>If the work takes place in the territory of a state that is party to the Minimum Age Convention, 1973, in addition to the foregoing, child labor will include any form of work prohibited by the laws of that state in implementation of the Convention. If the work takes place in the territory of a state that is not a party to the Minimum Age Convention, child labor will further include:</p> <ul style="list-style-type: none"> • any form of work performed by persons who are subject to compulsory schooling or who have not yet reached the age of 15 and • any form of work performed by persons under 18 if the work, by virtue of its nature or the conditions under which it is performed, may endanger the health, safety or morality of young persons, except that child labor will not include light work (as defined in the Minimum Age Convention), carried out for a maximum of 14 hours a week by persons who have reached the age of 13. <p>“Light work” is defined in the Minimum Age Convention as work by persons 13 to 15 years of age which is:</p> <ul style="list-style-type: none"> • not likely to be harmful to their health or development; and • not such as to prejudice their attendance at school, their participation in vocational orientation or training programs approved by a competent authority or their capacity to benefit from the instruction received.
How It Works	
Mandatory?	Yes.
Due Diligence and Action Plan	<p>A company must conduct an investigation to determine whether there is a “reasonable suspicion” that child labor occurs in its business or supply chain, both at the first tier supplier level and further down the supply chain. Due diligence is to be based on sources that are reasonably known and accessible to the subject company. Due diligence also can be satisfied by obtaining goods or services from companies that have issued declarations that they exercise due diligence (declarations are discussed in more detail below).</p> <p>If the subject company has a reasonable suspicion of child labor in the production of the goods or services, it must adopt and implement a plan of action. A joint action plan aimed at ensuring that affiliated companies exercise due diligence that is developed by or among one or more social organizations, employees’ organizations or employers’ organizations and approved by the Minister for Foreign Trade and Development Cooperation will satisfy this requirement.</p>

	<p>Further requirements pertaining to due diligence and the plan of action will be specified in a GAO, which will take into account the ILO-IOE Child Labour Guidance Tool for Business. The Child Labour Guidance Tool was created jointly by the International Labour Organization and the International Organisation of Employers as a resource for companies to meet the due diligence requirements indicated in the UN Guiding Principles on Business and Human Rights, as they pertain to child labor.</p>
Reporting	<p>A company that is subject to the Act generally must prepare a declaration indicating that it exercises due diligence in order to prevent the goods and services that it sells or supplies to Dutch end-users from being produced using child labor.</p> <p>Companies that already are registered in the trade register will be required to submit the declaration to the designated regulator within six months after the Act takes effect. If a company is not already registered in the trade register, it will be required to submit its declaration immediately after it is registered. A company that is not registered in the European part of the Netherlands and that is not registered in the trade register will be required to submit a declaration within six months after the company supplies goods or services to end-users in the Netherlands for the second time in a given year.</p> <p>Declarations will be published in an online public register to be established by the designated regulator. The Act indicates that further rules may be established pertaining to the content and form of declarations.</p> <p>If a company only receives goods or services from other companies that have issued a declaration, it is not required to issue its own declaration. Other exceptions to the reporting requirements of the Act may be established by GAO.</p>
Enforcement	<p>Complaints:</p> <p>Any natural person or legal entity whose interests are affected by the actions or omissions of a subject company relating to compliance with the Act may submit a complaint to the designated regulator. The complaint must contain a concrete indication of non-compliance by an identifiable party. In the first instance, an aggrieved party must work with the subject company to resolve the complaint. The regulator only may address a complaint after it has been dealt with by the company, or six months after the submission of the complaint to the company without it having been addressed.</p> <p>Penalties:</p> <p>A company can be fined up to €8,200 for failing to submit a statement declaring that it exercises due diligence. If a company fails to carry out due diligence in accordance with the Act or to draw up a plan of action, or to comply with any further requirements that are established pertaining to due diligence and the plan of action, a fine of up to 10% of the worldwide annual turnover of the company can be imposed. However, the Act provides that a fine will not be imposed until after a binding instruction has been issued to the company. A time limit may be set for complying with the instruction.</p> <p>In addition, the company can incur additional fines and a director may even be imprisoned for up to two years if, in the prior five years, a fine previously had been imposed for violating the same requirement of the Act and the new violation is committed under the order or de facto leadership of the same director.</p>

Additional Information/Resources	
Text of the Bill	https://www.eerstekamer.nl/behandeling/20170207/gewijzigd_voorstel_van_wet/document3/f=/vkbkk8pud2zt.pdf
ILO-IOE Child Labour Guidance Tool for Business	http://www.ioe-emp.org/fileadmin/ioe_documents/publications/Policy%20Areas/child_labour/EN/_2015-12-16_ILO-IOE_Child_Labour_Guidance.pdf
UN Guiding Principles	https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

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