

# **Corporate Social Responsibility Legislation**

**A Summary of Selected Instruments**

**Prepared for AIM-PROGRESS**

**May 2020**

**Prepared by Ropes & Gray LLP**

**Michael R. Littenberg**

**Nellie V. Binder**

**Anne-Marie L. Beliveau**

## INTRODUCTION

There has been a significant increase in corporate social responsibility legislation over the last few years, with more legislation on the horizon. In light of these developments, 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. Selected updates since the last installment of this compilation are discussed under “Updates Since Last Revision.”

## 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 Act
- Proposed Swiss mandatory human rights due diligence legislation
- Proposed Norwegian Human Rights Due Diligence and Disclosure Act

***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 generally 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 often 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 where applicable, 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 the Summaries.

## UPDATES SINCE LAST REVISION

We have included the following new Summaries in this installment:

- ***Proposed Norwegian Human Rights Due Diligence and Disclosure Act:*** On November 28, 2019, the Ethics Information Committee convened by the Norwegian government recommended the adoption of mandatory corporate human rights legislation. As proposed, this broadly applicable Act would create additional human rights due diligence and disclosure obligations for a significant number of multinationals doing business in Norway.
- ***Trafficking Victims Protection Reauthorization Act:*** The TVPRA creates civil and criminal liability for persons, including entities, that engage in human trafficking and forced labor. We have added the TVPRA to the Summaries because class action lawsuits recently have been filed against several large, well-known companies under the TVPRA.

We also have updated the Summaries to reflect a significant number of developments over the past six months:

- ***UK Modern Slavery Act:*** the issuance of COVID-19 guidance.

- ***Australian Commonwealth Modern Slavery Act:*** the issuance of COVID-19 guidance.
- ***New South Wales Modern Slavery Act:*** proposed amendments to the Act, proposed implementing regulations and the recent Parliamentary Committee Report on the implementation of the Act.
- ***US Federal Acquisition Regulation Anti-human Trafficking Rule:*** recent guidance for federal contracting authorities to support agency compliance with the Rule.
- ***French Corporate Duty of Vigilance Law:*** recent litigation and enforcement developments.
- ***Proposed Swiss mandatory human rights due diligence legislation:*** updates relating to the legislative process.
- ***Section 135 of the Indian Companies Act:*** proposed amendments that would strengthen section 135.

## LOOKING FURTHER OUT

In the last installment, we noted the growing call for mandatory human rights due diligence legislation in several jurisdictions in Europe and North America. Since that time, the momentum behind mandatory human rights due diligence has continued to build. Some of the more significant developments since our last installment relating to mandatory human rights due diligence are noted below.

***European Union:*** The most significant development in this regard is the late April announcement by Didier Reynders, the EU Commissioner for Justice, that the European Commission intends to introduce mandatory corporate human rights due diligence legislation in early 2021. The legislation will be part of the EU’s COVID-19 recovery package and the European Green Deal. The announcement was made in connection with a Parliamentary working group webinar held to discuss a study commissioned for the European Commission’s Directorate-General for Justice and Consumers on due diligence through the supply chain. The final report is intended as an initial study for the possible development of regulatory options at the EU level.

In addition, the Parliament recently expressed support for a mandatory human rights due diligence requirement. In its April 2020 resolution on EU coordinated action to combat the COVID-19 pandemic and its consequences, the Parliament indicated that, as part of a stronger post-crisis Union that delivers more effective action to its citizens, it is convinced that corporate human rights and

environmental due diligence are necessary conditions in order to prevent and mitigate future crises and ensure sustainable value chains.

**United Kingdom:** In a report published in February 2020, the British Institute of International and Comparative Law recommended the introduction of new legislation that would require subject companies to take reasonable steps to prevent human rights harms in their own activities and those of their business relationships. The U.K. government has not yet issued a formal response to the BIICL proposals.

In March 2020, Members of Parliament proposed an amendment to the Environment Bill under discussion in the United Kingdom, which would require the Secretary of State to publish a draft bill on environmental and human rights due diligence within six months of the passing of the Environmental Bill. The Bill is currently on hold due to the COVID-19 pandemic.

Also in March 2020, the Global Resources Initiative taskforce convened by the UK government published its final report. As part of its recommendations, the taskforce recommended that the UK government introduce a mandatory due diligence obligation that would require companies to analyze the presence of environmental and human rights risks and impacts within their supply chains, take action to prevent or mitigate those risks, and publicly report on actions taken and planned. The UK government has indicated that it will consider the taskforce's findings and recommendations and respond in due course.

**Canada:** In February 2020, Canadian lawmakers introduced a bill in the Senate proposing a Modern Slavery Act. The Act would require companies doing business in Canada to publicly report on any known instances of forced or child labor in their supply chains. Covered companies also would be required to take preventative steps against these practices. This Bill is the second attempt in Canada to address human rights violations in companies doing business in Canada, after an earlier Bill failed to gain traction in the Canadian legislature.

**Investors' Call for Action:** During April 2020, the Investor Alliance for Human Rights released a statement calling on all governments to develop, implement and enforce mandatory human rights due diligence requirements for companies headquartered or operating within their own jurisdictions or, where appropriate, to strengthen regulatory regimes that already exist. Among other things, the Investor Alliance for Human Rights statement notes that proper and comprehensive human rights due diligence by companies, including mandatory and meaningful disclosure, enables investors to identify the greatest risks to people in investors' portfolios and make informed and responsible investment decisions. The Investor Alliance for Human Rights is an initiative of the Interfaith Center on Corporate Responsibility that was formed to provide institutional investors with a dedicated platform to increase their capacity and impact in addressing human rights risks associated with business activities. More than 100 investors representing approximately \$5 trillion in assets under management have signed on to the statement. A significant number of the investor

signatories are faith-based investors and investors with niche investment strategies, although the statement also has been signed by mainstream investors with significant assets under management.

## **ABOUT ROPES & GRAY**

Ropes & Gray has a leading ESG, CSR, business and human rights and supply chain compliance practice. We offer clients a comprehensive approach in these subject areas through a global team with members in the United States, Europe and Asia. In addition, senior members of the practice have advised on these matters for more than 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](mailto: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>
<b>Jurisdiction</b>	California, United States	United Kingdom	Australia (federal)	New South Wales, Australia
<b>Compliance Threshold</b>	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 consolidated revenue of A\$50 million or more
<b>Nexus</b>	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>
<b>Issue(s) Addressed</b>	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 (parameters to be determined)	Corporate Social responsibility in India	Child labor
<b>Jurisdiction</b>	United States	United States	United States	European Union	France	Switzerland	India	Netherlands
<b>Compliance Threshold</b>	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	To be determined; at present, there are competing Bills	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
<b>Nexus</b>	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>
<b>Subject Companies</b>	Any entity that meets the turnover and jurisdictional nexus requirements below	Supplies goods and services for profit or gain	Commercial organisation that supplies goods or services	Manufacturer or retailer
<b>Annual Turnover Threshold</b>	A\$100 million	A\$50 million	£36 million	US\$100 million
<b>Jurisdictional Nexus</b>	Australia-based entity or carries on business in Australia	Employees in NSW	Doing business in the United Kingdom	California Revenue and Taxation Code
<b>Covered Business Activities</b>	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
<b>Statement Content (Similar, but not identical, across all jurisdictions)</b>	Required topics	Required topics that align with the Commonwealth MSA (Proposed regulations)	Suggested topics	Required topics
<b>Publication</b>	Submission to the Australian Border Force for inclusion in a central Modern Slavery Statements Register	Submission to the Anti-Slavery Commissioner for inclusion in an online public register (Proposed regulations)	Website, with a prominent homepage link, or upon written request	Website, with a conspicuous and easily understood homepage link, or upon written request
<b>Signature/Board Approval</b>	Required	Required (Proposed regulations)	Required	None
<b>Frequency</b>	Annual	Annual	Annual	Not specified; on an as-needed basis
<b>Due Date</b>	Within six months after fiscal year end; commencing with first fiscal year after 1/1/19*	Within six months after fiscal year end; beginning with first fiscal year after commencement of the Act (Proposed regulations)	No mandatory due date; expected within six months after fiscal year end*	Not specified
<b>Specified Penalties</b>	None	Up to A\$1.1 million	None	None

\* See the discussion of COVID-19 relief in the applicable Summaries.

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>
<b>Covered Activities</b>	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
<b>Prohibited Activities</b>	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
<b>Due Diligence</b>	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
<b>Compliance Plan</b>	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
<b>Reporting</b>	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 it 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

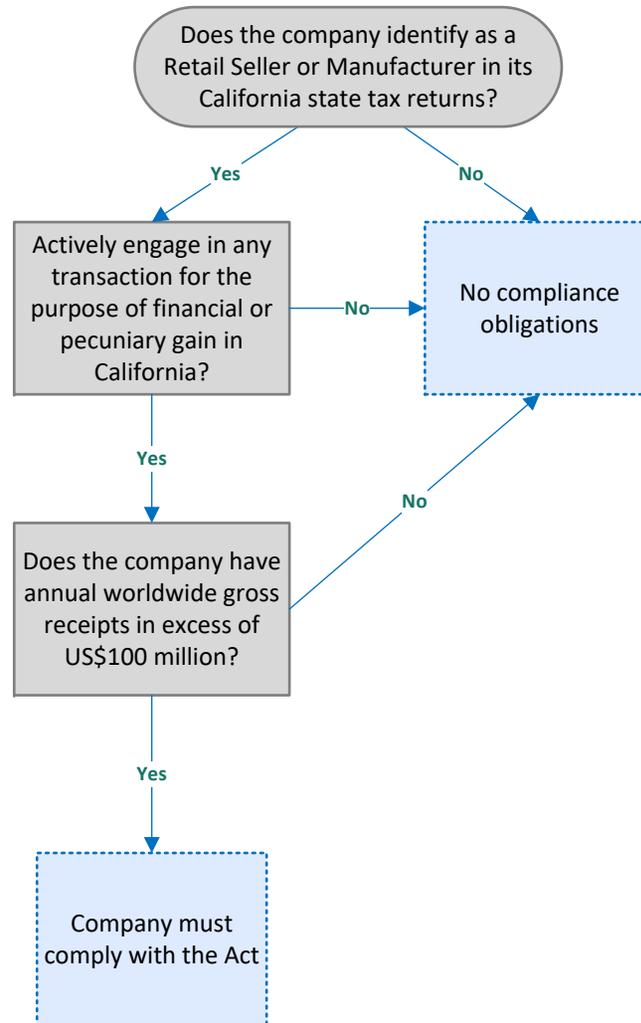
<b>Law / State</b>	<b>California Transparency in Supply Chains Act</b> (California Civil Code S. 1714.43) (California, United States)
<b>Goal</b>	To reduce modern slavery through enhanced disclosure.
<b>Adoption / Status</b>	The Transparency in Supply Chains Act (the “ <b>Act</b> ”) was adopted on September 30, 2010 and went into effect on January 1, 2012.
<b>Issues Addressed</b>	<ul style="list-style-type: none"> <li>• Slavery</li> <li>• Human trafficking</li> </ul>
<b>Covered Entities</b>	<p>A company is subject to the Act if it:</p> <ul style="list-style-type: none"> <li>• Identifies as a Retail Seller or Manufacturer in its California state tax returns;</li> <li>• Actively engages in any transaction for the purpose of financial or pecuniary gain in California; and</li> <li>• Has annual worldwide gross receipts in excess of US\$100 million.</li> </ul>
<b>How It Works</b>	
<b>Mandatory?</b>	Yes.
<b>Statement Requirements</b>	<p>A company subject to the Act must prepare a statement indicating to what extent it:</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> <li>• Maintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking.</li> <li>• 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.</li> </ul>
<b>Reporting</b>	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.

<b>Enforcement</b>	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.
<b>Additional Information/Resources</b>	
<b>Law</b>	For the text of the law as adopted, see: <a href="https://oag.ca.gov/sites/all/files/agweb/pdfs/cybersafety/sb_657_bill_ch556.pdf">https://oag.ca.gov/sites/all/files/agweb/pdfs/cybersafety/sb_657_bill_ch556.pdf</a>
<b>Resource Guide</b>	For the official resource guide, which includes sample disclosures, see: <a href="https://oag.ca.gov/sites/all/files/agweb/pdfs/sb657/resource-guide.pdf">https://oag.ca.gov/sites/all/files/agweb/pdfs/sb657/resource-guide.pdf</a>

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

(Updated April 30, 2020)

### Applying the Law



<b>Modern Slavery Act United Kingdom</b>	
<b>Overview</b>	
<b>Law / Country</b>	<b>UK Modern Slavery Act (S. 54) (United Kingdom)</b>
<b>Goal</b>	To reduce modern slavery through enhanced disclosure.
<b>Adoption / Status</b>	The UK Modern Slavery Act (“ <b>MSA</b> ”) transparency provisions came into force on October 29, 2015.  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.
<b>Issues Addressed</b>	The MSA: <ul style="list-style-type: none"> <li>• consolidates and clarifies existing UK offenses of slavery and human trafficking;</li> <li>• increases penalties;</li> <li>• provides for new civil preventative orders;</li> <li>• provides for new maritime enforcement powers;</li> <li>• establishes the office of an Independent Anti-Slavery Commissioner; and</li> <li>• adopts measures focused on supporting and protecting victims.</li> </ul>
<b>Covered Entities</b>	Commercial organisations:  The MSA covers any “commercial organisation” that supplies goods or services and has a total annual turnover of at least £36 million. A commercial organisation 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 organisation and its subsidiary undertakings, including those subsidiary undertakings carrying on business outside of the United Kingdom.  Parents and sister companies:  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>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>
<b>How It Works</b>	
<b>Mandatory?</b>	Yes.
<b>Statement Requirements</b>	<p>A commercial organisation 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"> <li>• The structure of the commercial organisation, its business model and its supply chain relationships.</li> <li>• Policies relating to slavery and human trafficking.</li> <li>• Due diligence and auditing processes in relation to slavery and human trafficking in its business and supply chains.</li> <li>• 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.</li> <li>• 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.</li> <li>• Slavery and human trafficking training available to its staff.</li> </ul>
<b>Reporting</b>	<p>Timing:</p> <p>Commercial organisations are expected to publish a statement within six months after fiscal year end. Although there is no mandatory due date by which statements must be published, over time, the Home Office has taken steps to increase pressure on companies to timely report. However, as discussed below, April 2020 Home Office guidance indicates that businesses that need to delay the publication of their modern slavery statement by up to six months due to COVID-19-related pressures will not be penalized.</p> <p>Publication:</p> <p>The statement must be published in a prominent location on the commercial organisation’s website homepage and must clearly identify the contents of the link. If the commercial organisation 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 commercial organisations with more than one website, the statement should be placed on the most appropriate website relating to the commercial organisation’s business in the United Kingdom. If there is more than one relevant website, the commercial organisation should place a copy of the statement or a link to the statement on each relevant website.</p>

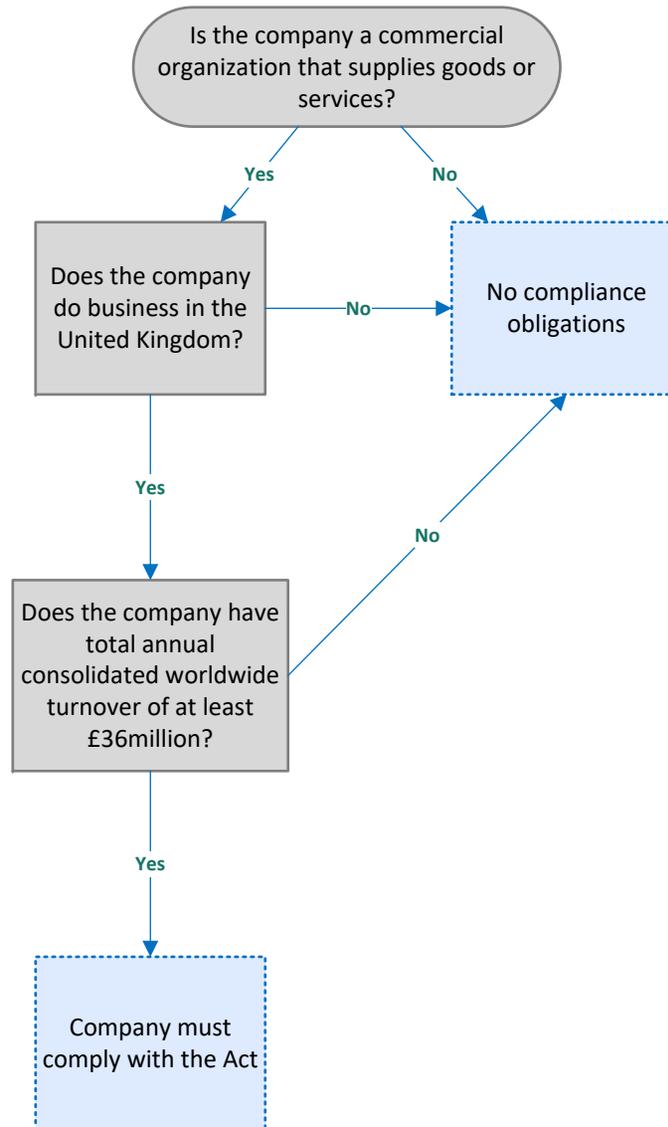
	<p>Approval/Signatures:</p> <p>For corporate entities, the statement must be approved by the board of directors (or equivalent) and signed by a director or the equivalent. If the entity is a limited liability partnership, the statement must be approved by the members and signed by a designated member. If the entity 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 pertaining to statement content indicates that:</p> <ul style="list-style-type: none"> <li>• Group statements published by parent entities should clearly name the entities covered by the statement.</li> <li>• Statements should indicate the date of the fiscal year end and the period covered.</li> <li>• Statements should clearly indicate the board approval date.</li> <li>• Statements should include the name (physical signature not required) and job title of the signatory and the signature date.</li> </ul>
<b>Enforcement</b>	At present, there is no financial or legal penalty for non-compliance.
<b>April 2020 COVID-19 Guidance</b>	<p>In April 2020, the Home Office published guidance for businesses on addressing and reporting on modern slavery risks during the COVID-19 pandemic.</p> <p>The guidance indicates that businesses still will need to report on the actions they have taken to address modern slavery during the COVID-19 pandemic. However, the Home Office guidance recognizes that work to address new or increased risks may take precedence over previously planned activities and may mean that businesses are not able to meet the goals set in earlier modern slavery statements. With this in mind, the guidance indicates that businesses should use their next statement to demonstrate how they monitored their risks during this period and adapted their activities and priorities in response.</p> <p>Extended Publication Date:</p> <p>The Home Office acknowledges that the challenges presented by COVID-19 may mean that some businesses will not be able to publish their modern slavery statement within the usual timeframe, including due to reduced staff capacity. The guidance indicates that businesses that need to delay the publication of their modern slavery statement by up to six months due to COVID-19-related pressures will not be penalized. The reason for the delay should be indicated in the statement.</p>
<b>Future Guidance, Updates and Possible Amendments</b>	<p>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"> <li>• The Home Office will revise its guidance in 2020, to, among other things: <ul style="list-style-type: none"> <li>○ Include a statement template.</li> <li>○ Make clear that commercial organisations need to over time strengthen their due diligence activities beyond the first and second tiers as part of a risk-based approach.</li> <li>○ Encourage commercial organisations to include details of specific future due diligence steps.</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>• It will establish a central government-run repository for statements.</li> <li>• It will consider the following amendments: <ul style="list-style-type: none"> <li>○ Whether the reporting topics should be mandatory.</li> <li>○ Whether a single statement deadline for all companies is appropriate.</li> <li>○ Whether additional enforcement mechanisms, such as monetary penalties, are appropriate.</li> </ul> </li> </ul>
<b>Additional Information/Resources</b>	
<b>U.K. Modern Slavery Act</b>	For the UK Modern Slavery Act text, see: <a href="http://www.legislation.gov.uk/ukpga/2015/30/pdfs/ukpga_20150030_en.pdf">http://www.legislation.gov.uk/ukpga/2015/30/pdfs/ukpga_20150030_en.pdf</a>
<b>April 2020 COVID-19 Guidance</b>	For the April 2020 COVID-19 Guidance, see: <a href="https://www.gov.uk/government/publications/coronavirus-covid-19-reporting-modern-slavery-for-businesses/modern-slavery-reporting-during-the-coronavirus-covid-19-pandemic">https://www.gov.uk/government/publications/coronavirus-covid-19-reporting-modern-slavery-for-businesses/modern-slavery-reporting-during-the-coronavirus-covid-19-pandemic</a>

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(Updated April 30, 2020)

### Applying the Law



<b>Commonwealth Modern Slavery Act 2018 Australia</b>	
<b>Overview</b>	
<b>Law / Country</b>	<b>Australia Commonwealth Modern Slavery Act (No. 153, 2018) (Australia) (the “Act”)</b>
<b>Goal</b>	To reduce modern slavery through enhanced disclosure.
<b>Adoption / Status</b>	Effective January 1, 2019, for fiscal years beginning after the effective date.
<b>Issue Addressed</b>	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.
<b>Covered Entities</b>	<p>A reporting entity under the Act is an entity that:</p> <ul style="list-style-type: none"> <li>• At any time in the reporting period is either an Australian entity or carries on business in Australia; and</li> <li>• Has annual consolidated worldwide revenue of more than A\$100 million.</li> </ul> <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>
<b>How It Works</b>	
<b>Mandatory?</b>	Yes.
<b>Statement Requirements</b>	<p>A Modern Slavery Statement must include the following:</p> <ul style="list-style-type: none"> <li>• the reporting entity;</li> <li>• the entity’s structure, operations and supply chains;</li> <li>• the potential modern slavery risks in the entity’s operations and supply chains;</li> <li>• actions the entity has taken to assess and address those risks, including due diligence and remediation processes; and</li> <li>• how the entity assesses the effectiveness of those actions.</li> </ul> <p>The statement also must describe the process of consultation with:</p> <ul style="list-style-type: none"> <li>• any entities that the reporting entity owns or controls; and</li> <li>• in the case of a joint modern slavery statement, with the other entities giving the statement.</li> </ul> <p>In addition, the statement must include any other information that the reporting entity considers relevant.</p>

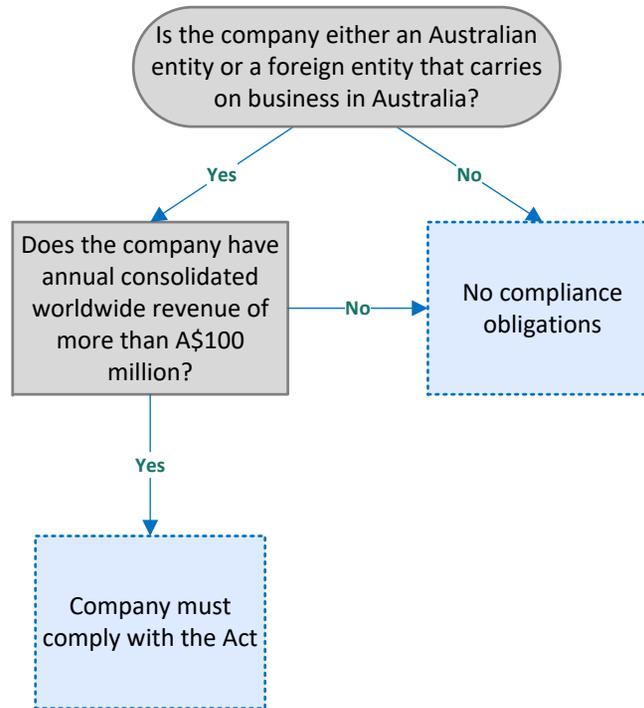
<b>Reporting</b>	<p>Timing:</p> <p>Reporting starts with the first fiscal year after the Act took effect. Statements are due within six months after fiscal year end. However, as noted below, the Australian Border Force (“ABF”) has extended the deadline under certain circumstances due to the COVID-19 pandemic.</p> <p>Publication:</p> <p>Reporting entities must submit statements to the ABF 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>
<b>Department of Home Affairs Guidance</b>	<p>The Department of Home Affairs published final guidance in September 2019. The guidance contains information related to modern slavery more generally and provides explanatory guidelines for complying with the Act. The guidance does not create additional substantive obligations under the Act.</p>
<b>April 2020 COVID-19 Guidance</b>	<p>In April 2020, the ABF published an information sheet that, among other things, explains how reporting entities can address the impact of COVID-19 in their modern slavery statements under the Act. In its information sheet, the ABF acknowledges that, due to the impact of COVID-19, some reporting entities may be unable to provide detailed responses to some of the mandatory disclosure criteria in their upcoming modern slavery statement.</p> <p>In the information sheet, the ABF encourages reporting entities affected by COVID-19 to clearly explain in their modern slavery statement how COVID-19 has impacted their capacity to assess and address modern slavery risks during their reporting period. In addition, the ABF encourages reporting entities that experienced delays in implementing key actions to combat modern slavery to include information in their modern slavery statement about relevant activities implemented or resumed between the end of their reporting period and the deadline for submitting their statement. The information sheet also includes a hypothetical case study that discusses how a reporting entity impacted by COVID-19 may choose to explain the foregoing impacts in its modern slavery statement.</p> <p>Extended Deadline:</p> <p>To support reporting entities impacted by the COVID-19 pandemic to meet their obligations under the Act, the Australian Government extended the statement due date by an additional three months for all entities whose reporting period ends on or before June 30, 2020.</p>
<b>Enforcement</b>	<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>

<b>Additional Information/Resources</b>	
<b>Law</b>	For the text of the law as adopted, see: <a href="https://www.legislation.gov.au/Details/C2018A00153">https://www.legislation.gov.au/Details/C2018A00153</a>
<b>Guidance</b>	For the September 2019 guidance, see: <a href="https://www.homeaffairs.gov.au/criminal-justice/files/modern-slavery-reporting-entities.pdf">https://www.homeaffairs.gov.au/criminal-justice/files/modern-slavery-reporting-entities.pdf</a> For the COVID-19 guidance, see: <a href="https://www.homeaffairs.gov.au/criminal-justice/files/modern-slavery-covid-19.pdf">https://www.homeaffairs.gov.au/criminal-justice/files/modern-slavery-covid-19.pdf</a>

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(Updated April 30, 2020)

### Applying the Law



<b>Modern Slavery Act New South Wales</b>	
<b>Overview</b>	
<b>Law / State</b>	<b>Modern Slavery Act</b> (Act No. 30, Part 3) (New South Wales, Australia) (the “ <b>Act</b> ”)
<b>Goal</b>	To reduce modern slavery through enhanced disclosure.
<b>Adoption / Status</b>	<p>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 (the “<b>Commonwealth MSA</b>”).</p> <p>The NSW Government determined that it was appropriate prior to the commencement of the Act for the Legislative Council’s Standing Committee on Social Issues (the “<b>Committee</b>”) to conduct a review of the Act and the consultation drafts of the Modern Slavery Bill 2019 (the “<b>Amendment Bill</b>”) and the Modern Slavery Regulation 2019 (the “<b>Regulation</b>”) prepared by the NSW Government (both the Bill and the Regulation are discussed below). Among other things, the Committee was charged with reviewing the effect of the reporting requirements of the Act on business and whether the adoption of the Commonwealth MSA renders all or part of the Act unnecessary or requires it to be amended to address inconsistencies or gaps. In March 2020, the Committee presented its report, in which, among other things, it recommended that the Act commence on or before January 1, 2021. The Committee’s recommendations are further discussed below. The NSW Government has six months to consider whether to adopt the recommendations of the Committee.</p>
<b>Issues Addressed</b>	<ul style="list-style-type: none"> <li>• Slavery</li> <li>• Forced marriage and child abuse</li> <li>• Sex trafficking</li> </ul> <p>Note that this summary is limited to the transparency provisions of the Act.</p>
<b>Covered Entities</b>	<p>A “commercial organisation” that:</p> <ul style="list-style-type: none"> <li>• has at least one employee in New South Wales;</li> <li>• supplies goods and services for profit or gain; and</li> <li>• has a total annual turnover of A\$50 million or more.</li> </ul> <p>A commercial organisation can be a company, partnership, association or other entity.</p> <p>The Amendment Bill proposes to clarify that, for purposes of calculating turnover, turnover derived from the supply of goods and services for profit or gain is to be used.</p> <p>In addition, the Regulation proposes to amend the definition of commercial organisation to change “turnover” to “consolidated revenue.” This amendment is intended to conform the Act to the terminology used in the Commonwealth MSA.</p>

<b>How It Works</b>	
<b>Mandatory?</b>	Yes. However, it is expected that entities required to comply with the Commonwealth MSA will not be required to separately comply with the Act (although they are expected to be subject to the penalty provisions discussed below).
<b>Statement Requirements</b>	<p>The Act contemplates that the information that commercial organisations will be required to report in their statement will be contained in additional regulations. Statement content, which is aligned with the Commonwealth MSA, has been proposed in the Regulation and includes the following.</p> <ul style="list-style-type: none"> <li>• The name of the subject commercial organisation.</li> <li>• A description of its structure, operations and supply chains.</li> <li>• A description of the risks of modern slavery practices in the operations and supply chains of the subject commercial organisation and any entities that it owns or controls.</li> <li>• A description of the actions taken by the subject commercial organisation and any entity it owns or controls to assess and address the risks described in the preceding bullet point, including due diligence and remediation processes.</li> <li>• A description of how the subject commercial organisation assesses the effectiveness of the actions described in the preceding bullet point.</li> <li>• A description of the process of consultation with any entities owned or controlled by the subject commercial organisation and, in the case of entities preparing a joint statement, between the entities covered by the statement.</li> <li>• Any other information that the subject commercial organisation considers relevant.</li> </ul>
<b>Reporting</b>	<p><b>Timing:</b></p> <p>The Regulation provides that statements would be due within six months after fiscal year-end. The reporting provisions would not apply in respect of any fiscal year that began before the commencement of the Regulation.</p> <p><b>Publication:</b></p> <p>The Regulation provides that modern slavery statements would be required to be submitted to the Anti-slavery Commissioner. The Commissioner would in turn be required to include the statement in a free online public register that it will be required to establish.</p> <p><b>Approval/Signatures:</b></p> <p>Under the Regulation, the statement would be required to be approved by the principal governing body of the subject commercial organisation, and signed by a responsible member of that entity.</p> <p>Subject commercial organisations that are part of the same consolidated group would be permitted to prepare a joint statement. The statement would be required to be prepared in consultation with each entity covered by the statement.</p>

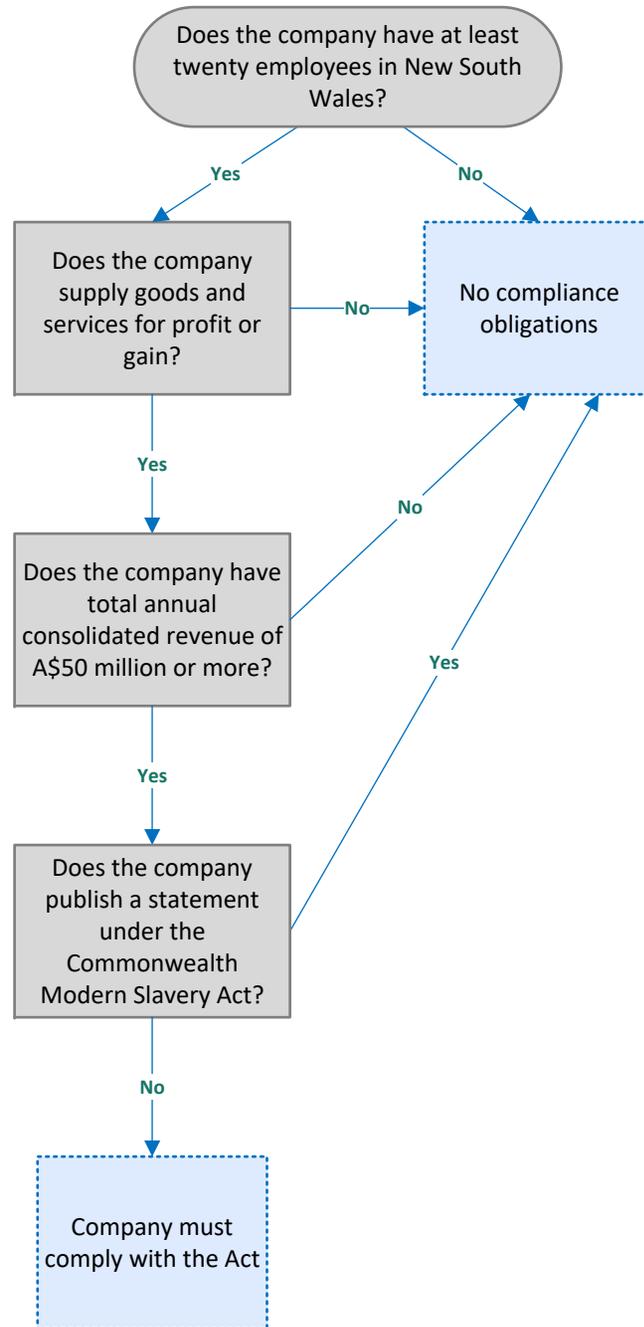
	<p>The statement also would be required to be approved by the principal governing body of each entity covered by the statement, or by a higher-level entity in a position, directly or indirectly, to influence or control each entity covered by the statement, whether or not the higher-level entity is itself covered by the statement. In addition, the statement would be required to be signed by a responsible member of each entity covered by the statement or the higher-level entity, as applicable, based on the approval process followed. However, if neither of the foregoing approval processes is practicable, the statement would be able to be approved by at least one commercial organisation covered by the statement and signed by a responsible member of the commercial organisation approving the statement.</p> <p>In addition to the statement content requirements noted earlier, if the statement is for a single commercial organisation, it must include details of the approval by the principal governing body of the commercial organisation. If a joint statement, it must include details of the approval by the relevant principal governing body or bodies. Alternatively, if it is not practicable to comply with the approval requirements otherwise applicable to joint statements (i.e., approval by each entity covered by the statement or a higher-level entity), the statement would be required to include an explanation of why it is not practicable to do so.</p> <p>Exemptions from Reporting:</p> <p>Under the Regulation, commercial organisations that meet the jurisdictional and financial thresholds for reporting would nevertheless be exempt from reporting if they satisfy any of the following conditions:</p> <ul style="list-style-type: none"> <li>• The commercial organisation is a voluntary reporter under the Commonwealth MSA or a subsidiary of a reporting entity under that Act. In either of the foregoing cases, the commercial organisation would be required to, within six months after the applicable fiscal year-end, provide the Commissioner with notice of the foregoing and a copy of the statement submitted under the Commonwealth MSA. The statement would still come under the enforcement provisions of the Act discussed below.</li> <li>• During the applicable fiscal year, the commercial organisation had less than 20 employees.</li> </ul>
<b>Enforcement</b>	<p>If a commercial organisation fails to publish a statement, or knowingly provides false or misleading information in a statement, the commercial organisation may be fined up to A\$1.1 million.</p>
<b>March 2020 Committee Report</b>	<p>In its March 2020 report, the Committee recommended the following:</p> <ul style="list-style-type: none"> <li>• Notwithstanding the adoption of the Commonwealth MSA, the NSW Government should proceed to introduce amendments to the Act taking into consideration the comments and recommendations in the Committee’s report. The Committee strongly recommends a target commencement date not later than January 1, 2021.</li> <li>• The NSW Government should work with the Australian Government to seek harmonization of the reporting thresholds under the Act and the Commonwealth MSA, ideally at the A\$50 million level, for a standard national approach to modern slavery reporting.</li> </ul>

	<ul style="list-style-type: none"> <li>• The NSW Government should seek to amend the reporting threshold terminology in the Act to replace the term “turnover” with “consolidated revenue.”</li> <li>• The NSW Government should seek to amend the Act to specify a relevant authority responsible for conducting prosecutions that involve breaches of the reporting provisions of the Act.</li> <li>• The Commissioner should, on an ongoing basis, examine and report on matters regarding the appropriateness of bringing franchisors, on behalf of franchisees not otherwise captured by the Act, within its scope.</li> <li>• The NSW Government should finalize the development of a voluntary reporting mechanism for businesses falling under the A\$50 million reporting threshold of the Act. Note that this already is in process by the NSW Government.</li> <li>• The NSW Government should seek to amend the Act to provide for a statutory review to be conducted in conjunction with the Australian Government’s statutory review of the Commonwealth MSA.</li> </ul> <p>Although not listed as a formal recommendation, in its report the Committee also indicated support for the penalty provisions of the Act.</p>
<b>Additional Information/Resources</b>	
<b>Law</b>	For the text of the Act as adopted, see: <a href="https://www.legislation.nsw.gov.au/#/view/act/2018/30/part3">https://www.legislation.nsw.gov.au/#/view/act/2018/30/part3</a>
<b>Amendment Bill</b>	For the text of the proposed Amendment Bill, see: <a href="https://www.parliament.nsw.gov.au/lcdocs/other/12300/Consultation%20Draft%20-%20Modern%20Slavery%20Amendment%20Bill%202019.pdf">https://www.parliament.nsw.gov.au/lcdocs/other/12300/Consultation%20Draft%20-%20Modern%20Slavery%20Amendment%20Bill%202019.pdf</a>
<b>Regulation</b>	For the text of the proposed Regulation, see: <a href="https://www.parliament.nsw.gov.au/lcdocs/other/12302/Consultation%20Draft%20-%20Modern%20Slavery%20Regulation%202019.pdf">https://www.parliament.nsw.gov.au/lcdocs/other/12302/Consultation%20Draft%20-%20Modern%20Slavery%20Regulation%202019.pdf</a>
<b>March 2020 Committee Report</b>	For the Parliamentary Committee Report, see: <a href="https://www.parliament.nsw.gov.au/lcdocs/inquiries/2546/Final%20Report%20No.56%20-%20Modern%20Slavery%20Act%202018%20and%20associated%20matters%20-%2025%20March%202020.pdf">https://www.parliament.nsw.gov.au/lcdocs/inquiries/2546/Final%20Report%20No.56%20-%20Modern%20Slavery%20Act%202018%20and%20associated%20matters%20-%2025%20March%202020.pdf</a>

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(Updated April 30, 2020)

**Applying the Law**



<b>Section 307 of the US Tariff Act United States</b>	
<b>Overview</b>	
<b>Law / Country</b>	<b>Section 307 of the US Tariff Act</b> (19 U.S.C. § 1307) (United States)
<b>Goal</b>	To ensure that goods being imported into the United States are not being produced using forced labor.
<b>Adoption / Status</b>	The US Tariff Act (the “ <b>Act</b> ”) 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 (“ <b>TFTEA</b> ”), which entered into force on March 10, 2016, eliminated the consumptive demand exception.
<b>Issues Addressed</b>	<ul style="list-style-type: none"> <li>• Prison labor</li> <li>• Forced labor</li> </ul>
<b>Covered Entities</b>	Importers of goods into the United States.
<b>How It Works</b>	
<b>Mandatory?</b>	Yes.
<b>Prohibited Imports</b>	<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>
<b>Enforcement</b>	<p>After Customs and Border Protection (“<b>CBP</b>”) 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"> <li>• Potassium, potassium hydroxide and potassium nitrate (March 2016, Tangshan Sunfar Silicon Industries)</li> <li>• Stevia and its derivatives (May 2016, Inner Mongolia Hengzheng Group Baoanzhao Agricultural and Trade LLC)</li> <li>• Peeled garlic (September 2016, Hongchange Fruits &amp; Vegetable Procuets Co., Ltd.)</li> <li>• Toys (March 2018, Huizhou Mink Industrial CO.LTD.)</li> <li>• Turkmenistan cotton (May 2018, all Turkmenistan cotton products)</li> <li>• Calcium chloride and caustic soda (March 2019, Tangshan Sanyou Group and its subsidiaries)</li> </ul>

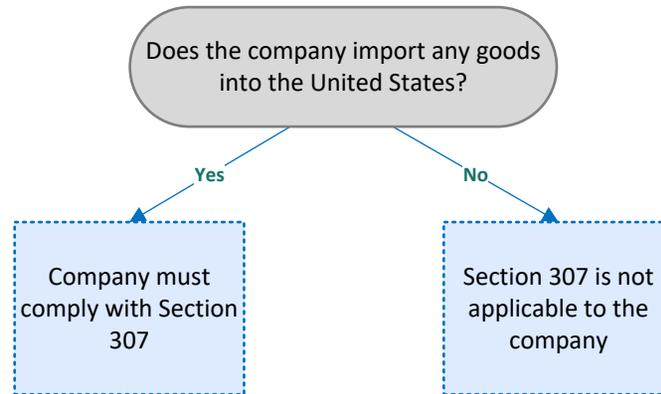
	<ul style="list-style-type: none"> <li>• Artisanal rough cut diamonds (September 2019, Marange Diamond Fields)</li> <li>• Bone black (September 2019, Bonechar Carvao Ativado Do Brasil Ltda)</li> <li>• Garments (September 2019, Hetian Taida Apparel Co., Ltd.)</li> <li>• Gold (September 2019, artisanal small mines in the eastern DRC)</li> <li>• Tobacco and products containing tobacco (November 2019, Malawi)</li> <li>• Hair products (May 2020, Hetian Haolin Hair Accessories, China)</li> <li>• Seafood (May 2020, Fishing Vessel: Yu Long No. 2; February 2019 withhold release order revoked)</li> </ul>
<p><b>Reasonable Care Guidance</b></p>	<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"> <li>• Have you established reliable procedures to ensure you are not importing goods in violation of Section 307 of the Act?</li> <li>• Do you know how your goods are made, from raw materials to finished goods, by whom, where, and under what labor conditions?</li> <li>• 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?</li> <li>• 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?</li> <li>• 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?</li> <li>• Have you established a reliable procedure of conducting periodic internal audits to check for forced labor in your supply chain?</li> <li>• 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?</li> <li>• Have you reviewed the International Labour Organization’s “Indicators of Forced Labour” booklet?</li> <li>• Do you vet new suppliers/vendors for forced labor risks through questionnaires or some other means?</li> <li>• 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?</li> <li>• Do you have a comprehensive and transparent social compliance system in place? Have you reviewed the Department of Labor’s “Comply Chain” webpage?</li> <li>• Have you developed a reliable program or procedure to maintain and produce any required customs entry documentation and supporting information?</li> </ul>

<b>Additional Information/Resources</b>	
<b>Law</b>	<p>For the text of Section 307 of the US Tariff Act, see:  <a href="https://www.gpo.gov/fdsys/pkg/USCODE-2011-title19/pdf/USCODE-2011-title19-chap4-subtitleII-partI-sec1307.pdf">https://www.gpo.gov/fdsys/pkg/USCODE-2011-title19/pdf/USCODE-2011-title19-chap4-subtitleII-partI-sec1307.pdf</a></p> <p>For the text of The Trade Facilitation and Trade Enforcement Act of 2015, see:  <a href="https://www.congress.gov/114/plaws/publ125/PLAW-114publ125.pdf">https://www.congress.gov/114/plaws/publ125/PLAW-114publ125.pdf</a></p>
<b>CPB's Reasonable Care Guidance</b>	<p><a href="https://www.cbp.gov/sites/default/files/assets/documents/2018-Mar/icprescare2017revision.pdf">https://www.cbp.gov/sites/default/files/assets/documents/2018-Mar/icprescare2017revision.pdf</a></p>

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(Updated April 30, 2020)

**Applying the Law**



## Section 321 of the Countering America’s Adversaries Through Sanctions Act United States

### Overview

<b>Law / Country</b>	<b>Section 321 of the Countering America’s Adversaries Through Sanctions Act</b> (22 U.S.C. § 9241(a)) (United States) (the “Act”)
<b>Goal</b>	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.
<b>Adoption / Status</b>	The Act was signed into law on August 2, 2017.
<b>Issue Addressed</b>	Forced labor.
<b>Covered Entities</b>	Importers of goods into the United States produced using North Korean national or citizen labor.
<b>How It Works</b>	
<b>Mandatory?</b>	Yes.
<b>Prohibited Imports</b>	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.
<b>Enforcement</b>	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.
<b>DHS Guidance – March 2018</b>	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"> <li>• A high-level statement of policy demonstrating the company’s commitment to respect human rights and labor rights;</li> <li>• 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,</li> </ul>

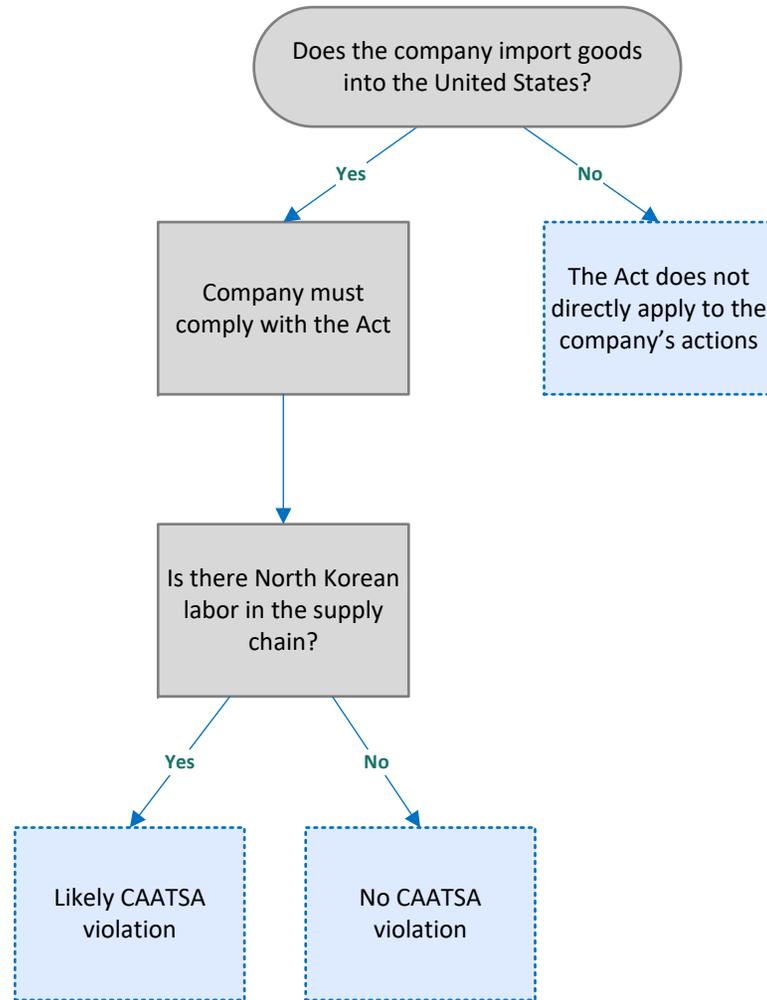
	<p>local business partners and members of civil society such as local communities, workers, trade unions, vulnerable groups and NGOs;</p> <ul style="list-style-type: none"> <li>• Integrating the foregoing commitments and assessments into internal control and oversight systems of company operations and supply chains; and</li> <li>• Tracking and reporting on areas of risk.</li> </ul> <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"> <li>• Workforce composition at the location in question;</li> <li>• Training materials on North Korean forced labor prohibitions that have been provided to suppliers and sub-contractors;</li> <li>• Company policies, and evidence of implementation, on using North Korean laborers;</li> <li>• Contracts with suppliers and sub-contractors that state the company’s policy on North Korean forced labor;</li> <li>• 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;</li> <li>• Information on how and to whom wages are paid at the location;</li> <li>• Information demonstrating that recruitment agencies are within the scope of any third-party audit with suppliers;</li> <li>• Documents verifying the use of authorized recruitment agencies and brokers or that the company uses direct recruitment;</li> <li>• Documents verifying that the fee structure presented by the recruitment agency is transparent and has been verified through worker interviews;</li> <li>• If the company has reimbursed any fees paid, verification of such reimbursement,</li> <li>• Demonstrated commitment to human rights and labor due diligence at the highest levels of the company; and</li> <li>• Results of the company’s human rights and labor impact assessments.</li> </ul>
<p><b>DoS Guidance – July 2018</b></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 &amp; 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"> <li>• Withholding wages, making unreasonable pay deductions, paying wages late and making in-kind payments;</li> <li>• Long-term contracts that require a large upfront payment to the North Korean government;</li> </ul>

	<ul style="list-style-type: none"> <li>• Unsafe and unsanitary housing conditions provided by the employer and excessive costs for those accommodations; collective housing and isolation from laborers of other nationalities;</li> <li>• 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</li> <li>• Contract details are hidden and it is difficult to determine the ultimate beneficiary of financial transactions; laborers cannot be interviewed without a “minder” present.</li> </ul> <p>In addition, the guidance identifies 12 industries and 41 countries in which North Korean overseas labor was present in 2017-2018.</p>
<b>Additional Information/Resources</b>	
<b>Law</b>	<p>For the text of the law as adopted, see:  <a href="https://www.treasury.gov/resource-center/sanctions/Programs/Documents/hr3364_pl115-44.pdf">https://www.treasury.gov/resource-center/sanctions/Programs/Documents/hr3364_pl115-44.pdf</a></p>
<b>Guidance</b>	<p>March 2018 DHS Guidance: <a href="https://www.dhs.gov/news/2018/03/30/caatsa-title-iii-section-321b-faqs">https://www.dhs.gov/news/2018/03/30/caatsa-title-iii-section-321b-faqs</a>  July 2018 DoS Guidance: <a href="https://www.treasury.gov/resource-center/sanctions/Programs/Documents/dprk_supplychain_advisory_07232018.pdf">https://www.treasury.gov/resource-center/sanctions/Programs/Documents/dprk_supplychain_advisory_07232018.pdf</a></p>

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(Updated April 30, 2020)

**Applying the Law**



<b>Federal Acquisition Regulation Anti-Human Trafficking Rule United States</b>	
<b>Overview</b>	
<b>Law / Country</b>	<b>Federal Acquisition Regulation Combatting Trafficking in Persons Rule (42 CFR 22.17) (United States) (the “Rule”)</b>
<b>Goal</b>	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.
<b>Adoption / Status</b>	The effective date of the Rule was 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.”
<b>Issues Addressed</b>	<ul style="list-style-type: none"> <li>• Human trafficking</li> <li>• Forced labor</li> </ul>
<b>Covered Entities</b>	<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"> <li>• 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</li> <li>• Has an estimated value that exceeds US\$500,000.</li> </ul> <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>
<b>How It Works</b>	
<b>Mandatory?</b>	Yes.
<b>Prohibited Activities</b>	<p>The Rule prohibits contractors, subcontractors, their respective employees and agents from:</p> <ul style="list-style-type: none"> <li>• Engaging in severe forms of trafficking in persons during the contract performance period;</li> <li>• Procuring commercial sex acts during the period of contract performance;</li> <li>• Using forced labor in the performance of the contract;</li> <li>• Destroying, concealing, confiscating or otherwise denying access by an employee to the employee’s identity or immigration documents;</li> <li>• 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;</li> </ul>

	<ul style="list-style-type: none"> <li>• Charging recruitment fees to employees;</li> <li>• 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;</li> <li>• Providing or arranging housing that fails to meet the host country housing and safety standards; or</li> <li>• 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.</li> </ul>
<p><b>Compliance Plan and Certifications</b></p>	<p>If a compliance plan is required, the contractor must certify:</p> <ul style="list-style-type: none"> <li>• 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</li> <li>• After having conducted due diligence, either: <ul style="list-style-type: none"> <li>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</li> <li>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.</li> </ul> </li> </ul> <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"> <li>• An awareness program to inform contractor employees about the Rule or government policies relating to the Rule as well as consequences for violations.</li> <li>• 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.</li> <li>• 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.</li> <li>• If the contractor or subcontractor intends to provide housing, any related housing plan must meet host-country housing and safety standards.</li> <li>• 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.</li> </ul> <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>

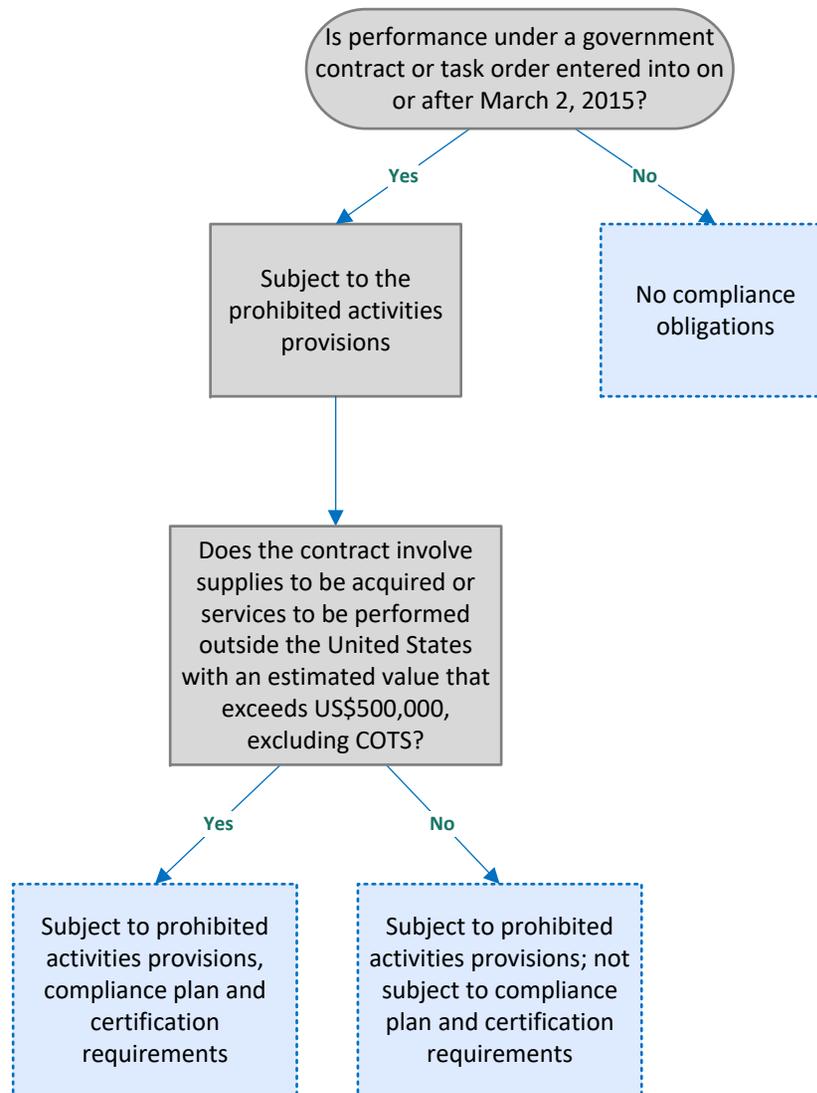
<p><b>Recruitment Fees</b></p>	<p>On December 20, 2018, the Rule was amended to clarify the prohibition on charging employees recruitment fees. Recruitment fees include fees of any type, including charges, costs, assessments or other financial obligations, that are associated with the recruiting process, 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"> <li>• Soliciting, identifying, considering, interviewing, referring, retaining, transferring, selecting, training, providing orientation to, skills testing, recommending or placing employees or potential employees;</li> <li>• Obtaining permanent or temporary labor certification;</li> <li>• Processing applications and petitions; and</li> <li>• Acquiring visas.</li> </ul>
<p><b>OMB Guidance</b></p>	<p>In October 2019, the U.S. Office of Management and Budget issued a memorandum to support agency compliance with the Rule. The memorandum describes risk management best practices and mitigating factors for U.S. federal officials to take into account when working with contractors to address their obligations under the Rule. The stated purpose of the memorandum is to enhance the effectiveness of the Rule while helping federal government contractors manage and reduce the burden associated with meeting their compliance responsibilities. Although the memorandum is directed to personnel at U.S. executive departments and agencies, it provides helpful guidance for U.S. government contractors.</p> <p>The risk management best practices discussed in the memorandum include the following internal and external aspects of compliance by government contractors: (1) internal accountability; (2) the code of conduct and policies; (3) continuous improvement; (4) due diligence; (5) corrective action plans; and (6) subcontractor compliance. The memorandum notes that the risk management practices discussed are illustrative, not exhaustive, and that the memorandum is not intended to represent a compliance floor or to augment or otherwise change existing regulatory requirements.</p>
<p><b>Violations / Enforcement</b></p>	<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"> <li>• Requiring the contractor to remove an employee from the performance of the contract or terminate a subcontract;</li> <li>• Postponement of contract payments until the contractor has taken applicable remedial action;</li> <li>• Loss of award fees for the performance period during which the contractor was noncompliant;</li> <li>• Declining to implement available contract options;</li> <li>• Terminating the contract for default or cause based on the contract terms; or</li> <li>• Suspension or debarment.</li> </ul> <p>Failure to comply with the Rule may also result in criminal liability and liability under the False Claims Act.</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.
<b>Additional Information/Resources</b>	
<b>Law</b>	For the text of the law as adopted, see: <a href="https://www.govinfo.gov/content/pkg/FR-2018-12-20/pdf/2018-27541.pdf">https://www.govinfo.gov/content/pkg/FR-2018-12-20/pdf/2018-27541.pdf</a> For the text of the recruitment fee amendment, see: <a href="https://www.govinfo.gov/content/pkg/FR-2018-12-20/pdf/2018-27544.pdf">https://www.govinfo.gov/content/pkg/FR-2018-12-20/pdf/2018-27544.pdf</a>
<b>OMB Guidance</b>	For the guidance, see: <a href="https://www.whitehouse.gov/wp-content/uploads/2019/10/M-20-01.pdf">https://www.whitehouse.gov/wp-content/uploads/2019/10/M-20-01.pdf</a>

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(Updated April 30, 2020)

### Applying the Law



## Non-financial Reporting Directive European Union

### Overview

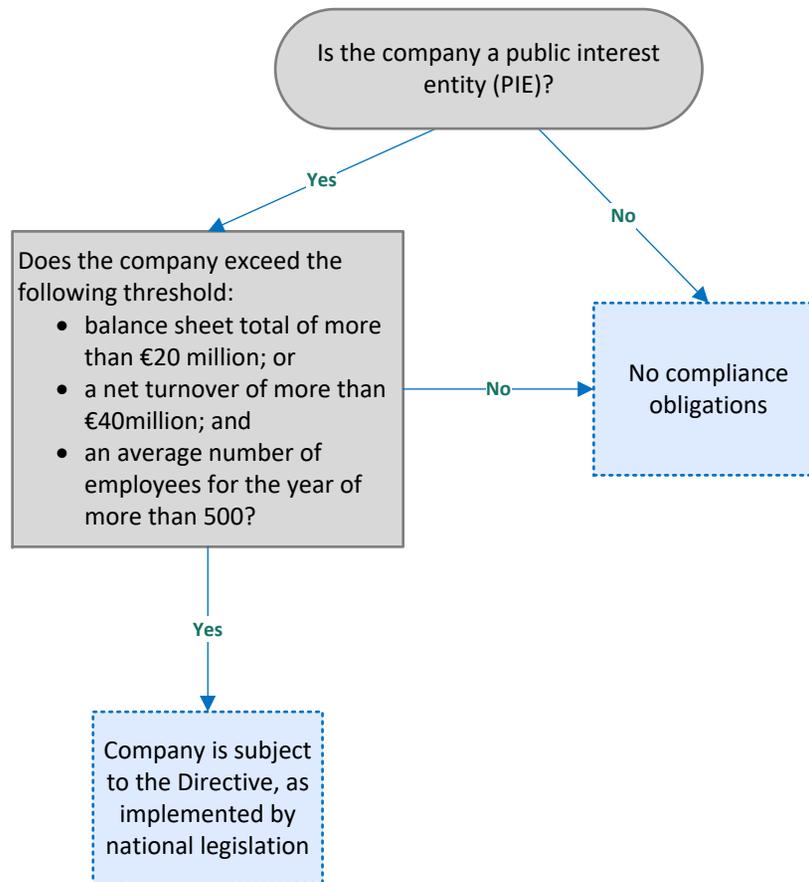
<b>Law / Country</b>	<b>EU Non-financial Reporting Directive (2014/95/EU) (European Union)</b>
<b>Goal</b>	To drive improvements in social, human rights and environmental matters through enhanced disclosure.
<b>Adoption / Status</b>	The EU Non-financial Reporting Directive (the “ <b>Directive</b> ”) 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.
<b>Issues Addressed</b>	<ul style="list-style-type: none"> <li>• Environment</li> <li>• Social and employee matters</li> <li>• Human rights</li> <li>• Corruption and bribery</li> <li>• Diversity</li> </ul>
<b>Covered Entities</b>	<p>EU-listed companies, banks, insurance companies and other companies designated by national authorities as public interest entities (“<b>PIEs</b>”) that meet the following criteria (note that the threshold for diversity disclosure is different):</p> <ul style="list-style-type: none"> <li>• balance sheet total of more than €20 million or a net turnover of more than €40 million; and</li> <li>• an average number of employees for the year of more than 500.</li> </ul> <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>
<b>How It Works</b>	
<b>Mandatory?</b>	Yes.
<b>Reporting</b>	<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"> <li>• environmental protection;</li> <li>• social responsibility and employee matters;</li> <li>• respect for human rights;</li> <li>• anti-corruption; and</li> <li>• bribery matters.</li> </ul> <p>The non-financial statement should include:</p>

	<ul style="list-style-type: none"> <li>• a brief description of the company’s business model;</li> <li>• a description of the policies pursued by the company in relation to non-financial aspects, including due diligence processes implemented;</li> <li>• the outcome of those policies;</li> <li>• 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;</li> <li>• non-financial key performance indicators relevant to the particular business; and</li> <li>• 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.</li> </ul> <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>
<b>Additional Guidelines</b>	<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"> <li>• appropriate corporate governance arrangements (for instance, certain independent board members or a board committee entrusted with responsibility over sustainability and/or transparency matters);</li> <li>• robust and reliable evidence, internal control and reporting systems;</li> <li>• effective stakeholder engagement; and</li> <li>• independent external assurance.</li> </ul> <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>
<b>Enforcement</b>	Enforced by the individual EU member states. Enforcement varies by member state.
<b>Additional Information/Resources</b>	
<b>Text of the Directive</b>	For the full text of the Directive, see: <a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0095">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0095</a>
<b>Official Guidelines</b>	For the June 2017 guidelines, see: <a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52017XC0705(01)">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52017XC0705(01)</a> For the June 2019 guidelines, see: <a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52019XC0620(01)">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52019XC0620(01)</a>

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(Updated April 30, 2020)

### Applying the Law\*



\*Note that the threshold for diversity disclosure is different.

<b>Corporate Duty of Vigilance Law France</b>	
<b>Overview</b>	
<b>Law / Country</b>	<b>Corporate Duty of Vigilance Law (No. 2017-399) (France)</b>
<b>Goal</b>	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.
<b>Adoption / Status</b>	The Corporate Duty of Vigilance Law (the “ <b>Law</b> ”) was adopted on February 21, 2017 by the French National Assembly and became effective on March 27, 2017.  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 subject companies not in compliance with the Law.
<b>Issues Addressed</b>	<ul style="list-style-type: none"> <li>• Serious violations of 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 “<b>UN Guiding Principles</b>”) (link below);</li> <li>• The health and safety of people; and</li> <li>• The environment.</li> </ul>
<b>Covered Entities</b>	<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"> <li>• at least 5,000 employees itself and in its direct or indirect subsidiaries with registered offices in France; or</li> <li>• at least 10,000 employees itself and in its direct or indirect subsidiaries with registered offices located within French territory or abroad.</li> </ul> <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>
<b>How It Works</b>	
<b>Mandatory?</b>	Yes.
<b>Vigilance Plan Requirements</b>	<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 and subcontractors and suppliers with which the company has an established relationship.</p> <p>The vigilance plan must include:</p> <ul style="list-style-type: none"> <li>• procedures to identify and analyze the risks of human rights violations or environmental harms in connection with the company’s operations;</li> </ul>

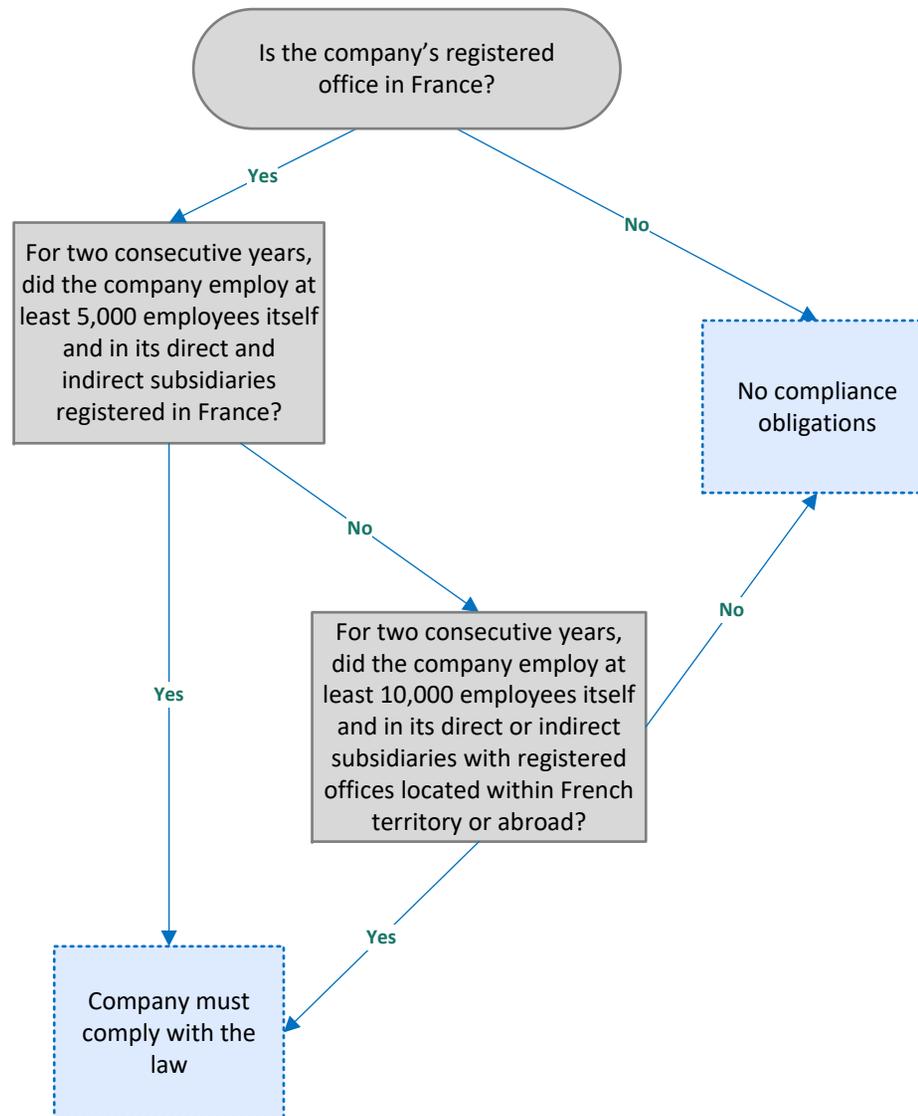
	<ul style="list-style-type: none"> <li>• procedures to regularly assess risks associated with subsidiaries, subcontractors and suppliers with which the company has a commercial relationship;</li> <li>• actions to mitigate identified risks or prevent the most serious violations;</li> <li>• mechanisms to alert the company to risks and collect signals of potential or actual risk; and</li> <li>• mechanisms to assess measures that have been implemented as part of the company’s plan and their effectiveness.</li> </ul> <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 partnership with the company’s trade union representative.</p>
<b>Reporting</b>	<p>Companies must make public their vigilance plan and a regular report on the implementation of the plan. Companies must include their vigilance plan and report on implementation in their annual management report.</p>
<b>Enforcement</b>	<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 requiring 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> <p>Selected Enforcement Activity:</p> <p>Civil society organizations have been seeking to compel compliance by companies they believe are not meeting their obligations under the Law.</p> <p>In October 2019, French and Ugandan environmental groups sued a French oil company in the Nanterre High Court in Paris, France, alleging that it failed to abide by its human rights and environmental diligence plan due to the negative environmental and social impacts of a Ugandan oil project. The court concluded that it did not have jurisdiction to hear the complaint and that the case should instead be pursued in a French commercial court. The plaintiffs have appealed the decision to the Court of Appeals in Versailles, France and have asked the court to rule on both the jurisdictional issue and the merits of the case.</p> <p>In January 2020, 14 French local authorities and several NGOs filed a lawsuit under the Law against the same oil company, alleging that it is failing to limit its carbon emissions or to mitigate the effects of climate change caused by its operations, and that its climate change plan falls short of the goals set out in the 2015 Paris Agreement. This case is pending.</p> <p>In October 2019, a notice of non-compliance was submitted to the French subsidiary of a U.S.-based company. Several unions alleged the company was not meeting the minimum requirements of the Law, particularly with respect to workers’ rights.</p>

<b>Additional Information/Resources</b>	
<b>Law</b>	For the text of the law as adopted, see: <a href="http://www.assemblee-nationale.fr/14/pdf/ta/ta0924.pdf">http://www.assemblee-nationale.fr/14/pdf/ta/ta0924.pdf</a>
<b>Constitutional Council Decision</b>	For the text of the decision, see: <a href="http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank/pdf/conseil-constitutionnel-148858.pdf">http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank/pdf/conseil-constitutionnel-148858.pdf</a>
<b>UN Guiding Principles</b>	For the UN Guiding Principles in multiple languages, see: <a href="https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf">https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf</a>

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(Updated April 30, 2020)

### Applying the Law



## Swiss Responsible Business Initiative – National Council and Council of States Counter-proposal Bills Switzerland

### Overview

<b>Law / Country</b>	<b>National Council and Council of States Counter-proposal Bills to the Swiss Responsible Business Initiative</b> (L’initiative pour des multinationales responsables) (Switzerland)
<b>Goal</b>	To further responsible business practices by Swiss companies and their suppliers by implementing mandatory human rights due diligence requirements.
<b>Adoption / Status</b>	<p>In October 2016, a coalition of Swiss civil society organizations working in human rights, development and environmental protection proposed the Responsible Business Initiative (the “<b>RBI Initiative</b>”). In November 2017, the Legal Affairs Committee of the Council of States (upper house) made an initial counter-proposal. The Legal Affairs Committee of the National Council (lower house) rejected the Council of States’ initial counter-proposal in December 2017.</p> <p>The National Council’s Legal Affairs Committee released its own counter-proposal (the “<b>National Council Bill</b>”) to the RBI Initiative in April 2018. The National Council Bill scaled back the RBI Initiative, including by proposing (1) limiting due diligence to large companies or companies that operate in high risk sectors, (2) limitations on liability, (3) a narrower definition of controlled entities, and (4) a mandatory conciliation proceeding before a claim of liability could be brought. The National Council voted to adopt its Bill in June 2018. In March 2019, the Council of States rejected the National Council Bill. In June 2019, the National Council voted to maintain the National Council Bill.</p> <p>In September 2019, the Legal Affairs Committee of the Council of States again requested that the Council of States adopt the National Council Bill, with some amendments. However, the Council of States declined to do so. Instead, in the summer of 2019, Federal Councillor Keller-Sutter of the Council of States launched another counter-proposal, which is narrower in scope than the National Council Bill. In December 2019, the Council of States adopted Keller-Sutter’s counter-proposal, which was also supported by the Swiss government (the “<b>Council of States Bill</b>”). Both the Council of States Bill and the National Council Bill are described below.</p> <p>In March 2020, the National Council again voted to maintain its support of the National Council Bill, while the Council of States again voted to support the Council of States Bill. The Council of States and the National Council were to continue deliberating the counter-proposals to the RBI Initiative throughout March. Later in March, however, the Swiss Parliament postponed the remainder of its parliamentary session due to the COVID-19 pandemic. As a result, the Council of States and the National Council have not yet come to a consensus on the RBI Initiative and their respective counter-proposals. The Swiss Parliament is scheduled to reconvene in June 2020.</p>

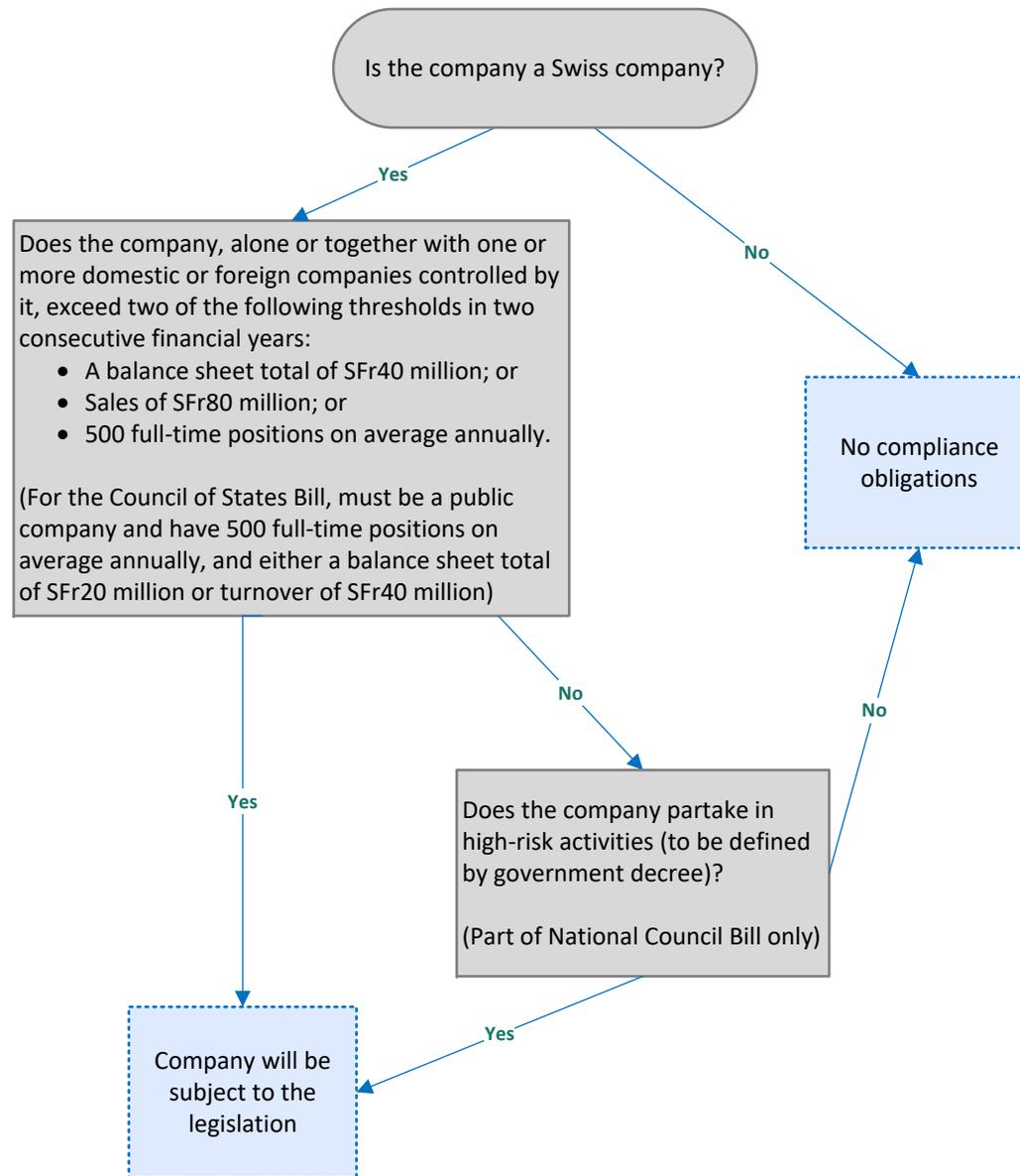
<b>Issues Addressed</b>	<p>National Council Bill:</p> <ul style="list-style-type: none"> <li>• Human rights</li> <li>• Environment</li> </ul> <p>Council of States Bill:</p> <ul style="list-style-type: none"> <li>• Conflict minerals</li> <li>• Child labor</li> </ul>
<b>Covered Entities</b>	<p>National Council Bill:</p> <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"> <li>• A balance sheet total of SFr40 million;</li> <li>• Turnover of SFr80 million; or</li> <li>• 500 full-time positions on average annually.</li> </ul> <p>In addition, companies engaged in high-risk activities may be subject to the legislation, regardless of size. High-risk activities would be defined by government decree.</p> <p>Council of States Bill:</p> <p>Swiss public companies which, alone or together with one or more domestic or foreign companies controlled by them, have 500 full-time positions on average annually, and exceed one of the following thresholds in two consecutive financial years:</p> <ul style="list-style-type: none"> <li>• A balance sheet total of SFr20 million; or</li> <li>• Turnover of SFr40 million.</li> </ul>
<b>How It Works</b>	
<b>Mandatory?</b>	Yes.
<b>Requirements</b>	<p>For both the National Council Bill and Council of States Bill, under supervision of the Board, the subject company would be required to:</p> <ul style="list-style-type: none"> <li>• Take measures to ensure that it complies with provisions for the protection of human rights issues covered by the Bill;</li> <li>• 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 issues covered by the Bill;</li> <li>• Taking into account the company’s ability to exert influence, take effective measures to minimize the identified risks concerning human rights issues covered by the Bill; and</li> <li>• Monitor the effectiveness of the measures adopted and report on them.</li> </ul>

	As earlier noted, for the Council of States Bill, the human rights covered by the Bill and subsequently in a company’s due diligence report would be limited to child labor and conflict minerals.
<b>Reporting</b>	For both the National Council Bill and the Council of States Bill, subject companies would be required to prepare a report describing their compliance with the requirements of the legislation. The report would be required to be made publicly available.
<b>Enforcement</b>	<p>National Council Bill:</p> <p>If due diligence is not exercised, subject companies would be liable for damage to “life, limb or property” arising out of a violation of law by the subject company or a company controlled by it, whether the violation occurred in Switzerland or abroad.</p> <p>Subject companies would not be liable for violations by controlled companies if the subject company was not able to influence the conduct of the controlled company in connection with the violation.</p> <p>Board members and natural persons would not be liable for injuries suffered abroad as a result of the actions of a controlled company.</p> <p>Council of States Bill:</p> <p>If due diligence is not exercised for child labor and conflict minerals or if a company provides a false or misleading statement in its report, the subject company may be fined.</p>
<b>Additional Information/Resources</b>	
<b>RBI; National Council and Council of States Bills</b>	<p>For the text of the RBI initiative with accompanying explanations, see: <a href="https://corporatejustice.ch/wp-content/uploads//2018/06/KVI_Factsheet_5_E.pdf">https://corporatejustice.ch/wp-content/uploads//2018/06/KVI_Factsheet_5_E.pdf</a></p> <p>For the text of the National Council Bill and the Council of States Bill, see: <a href="https://www.parlament.ch/centers/eparl/curia/2016/20160077/S2-44%20F.pdf">https://www.parlament.ch/centers/eparl/curia/2016/20160077/S2-44%20F.pdf</a></p>

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(Updated April 30, 2020)

## Applying the Law



<b>Human Rights Diligence and Disclosure Legislation (Proposed) Norway</b>	
<b>Overview</b>	
<b>Law / Country</b>	<b>Human Rights Diligence and Disclosure Legislation (Norway) (the “Act”)</b>
<b>Goal</b>	To provide consumers, trade unions, civil society organizations and others with information on the impact of businesses on fundamental human rights and labor conditions in order to enable consumers to make informed choices and question responsible business conduct. The Act also aspires to advance fundamental human rights and labor principles in order to improve working conditions in businesses and their supply chains globally.
<b>Adoption / Status</b>	On November 28, 2019, the Ethics Information Committee convened by the Norwegian Government recommended the adoption of mandatory corporate human rights legislation. The timeline for further action is unclear at this time.
<b>Issues Addressed</b>	<ul style="list-style-type: none"> <li>• Human rights</li> <li>• Labor conditions</li> </ul>
<b>Covered Entities</b>	As proposed, the Act would apply to enterprises that offer goods and services in Norway. Enterprises are defined expansively to include companies, cooperative societies, associations, sole proprietorships, foundations or other forms of organizations. Covered enterprises also include publicly owned enterprises offering goods or services.  The draft Act is not by its terms limited to entities organized under Norwegian law.
<b>How It Works</b>	
<b>Mandatory?</b>	Yes
<b>General Disclosure Requirements for Consumer-facing Companies</b>	Covered enterprises that distribute goods to consumers would be required to publish the manufacturing sites of the goods. This information would be required to be published on the enterprise’s website or otherwise made easily accessible to the public.  The draft Act contemplates that additional regulations may be adopted exempting particular sectors and enterprise groups from this requirement.
<b>Duty to Know</b>	Each covered enterprise would be required to know of salient risks that may have an adverse impact on fundamental human rights and decent work in the enterprise’s business and supply chains.  “Fundamental human rights” are defined as the internationally recognized human rights expressed in the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the International Labour Organization’s fundamental conventions covering fundamental principles and rights at work. As used in the draft Act, “decent work” is work that respects fundamental human rights, protects health, safety and the environment in

	<p>the workplace and provides a living wage. “Supply chains” are defined as entities supplying goods and services that deliver products or factor inputs to an enterprise.</p> <p>The scope of the duty to know would be facts-and-circumstances-based, depending on factors such as the size of the enterprise, its ownership and structure, activities and industry and type of goods or services the entity provides. The duty to know would apply where the risk of adverse impact is most severe, such as the risk of forced labor and other slavery-like labor, child labor, discrimination in employment and at work and lack of respect for the right to form and join trade unions and undertake collective bargaining and risks to health, safety and the environment in the workplace.</p>
<p><b>Additional Requirements for Larger Enterprises</b></p>	<p>The Act would impose more stringent due diligence and reporting requirements on larger enterprises. Larger enterprises are those covered by section 1-5 of the Norwegian Accounting Act, or which exceed two of the following three conditions on the balance sheet date:</p> <ul style="list-style-type: none"> <li>• NOK 70 million of sales income;</li> <li>• NOK 35 million in total assets; and</li> <li>• An average of 50 full-time equivalent employees in the accounting year.</li> </ul> <p>Due Diligence:</p> <p>Larger enterprises would be required to exercise due diligence in order to identify, prevent and mitigate any adverse impacts to fundamental human rights and decent work. The due diligence standard is intended to be aligned with the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises.</p> <p>Disclosure:</p> <p>Larger enterprises would be required to, at a minimum, publicly report on the following aspects of their own activities and supply chains:</p> <ul style="list-style-type: none"> <li>• A description of the enterprise’s structure, area of operations and supply chains, including management systems and early warning channels for preventing or reducing any adverse impact on fundamental human rights and working conditions;</li> <li>• Due diligence carried out by the enterprise, including information about any actual or potential adverse impact on fundamental human rights and decent work and salient risk of such impact; and</li> <li>• Results of the due diligence, including measures to limit serious risk or injury and mitigate adverse impact where this is required.</li> </ul> <p>The report would be required to include information on risks and measures in relation to forced labor and other slavery-like labor, child labor, discrimination in employment and at work and lack of respect for the right to form and join trade unions and undertake collective bargaining, as well as health, safety and the environment.</p> <p>The report would be required to be signed by the general manager and the board.</p>

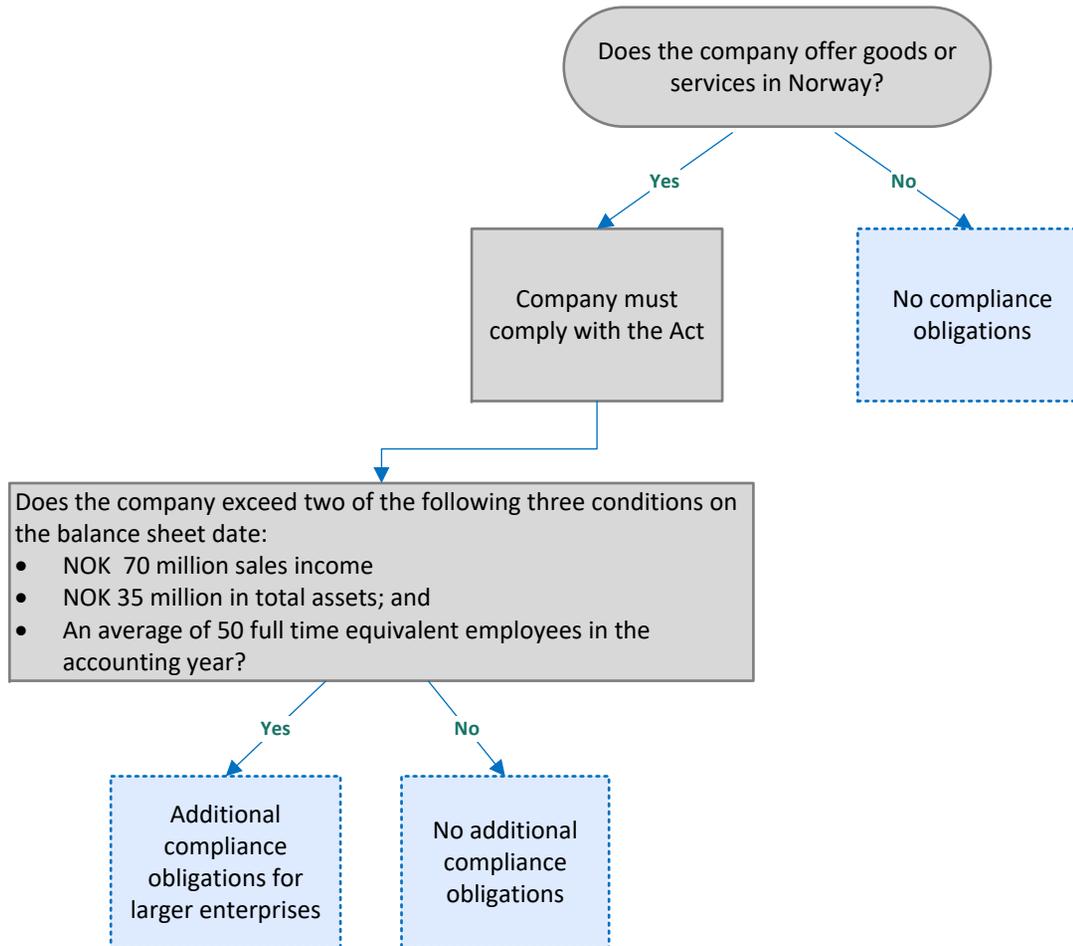
	<p>The report would be permitted to be included in the enterprise’s social responsibility report pursuant to Accounting Act section 3-3, although this would not be required.</p>
<p><b>Stakeholder Information Requests</b></p>	<p>In addition to requiring enterprises to report specified information as discussed above, the Act would entitle persons to information concerning how the enterprise conducts itself with respect to fundamental human rights and decent work within the enterprise and its supply chains. This portion of the Act would be applicable to all subject enterprises, not just larger enterprises. In particular, persons would be able to request the following information, verbally or in writing:</p> <ul style="list-style-type: none"> <li>• General information about the enterprise’s work, systems and the steps taken to prevent or reduce adverse impacts on human rights and working conditions; and</li> <li>• Information about any adverse impact on human rights and working conditions, significant risks of such impacts occurring and how the enterprise manages this risk, including any risk associated with a particular product or service.</li> </ul> <p>If the request is accepted, the enterprise generally would be required to respond within three weeks of receiving the request. However, if that time frame is unreasonably burdensome, the enterprise would have two months to respond, although it would be required to within three weeks of the request explain to the requesting person the reason for the extension and when the information is expected to be provided.</p> <p>An enterprise would have flexibility in how it provides requested information. It would be able to disclose the information in the form that it determines to be appropriate. If the request could be satisfied by referring the requesting party to published information, the enterprise would be able to do so.</p> <p>An information request would be able to be rejected if it is too broadly formulated or provides an inadequate basis for identifying the information to which the request applies. In addition, an enterprise would be able to reject an information request for any of the following reasons:</p> <ul style="list-style-type: none"> <li>• The request is clearly unreasonable;</li> <li>• It concerns information about an individual’s personal affairs; or</li> <li>• The information requested relates to operational or commercial matters subject to legitimate confidentiality requirements, which may include business strategies, business concepts, formulae or production methods.</li> </ul> <p>However, a request for information known to the enterprise about violations of fundamental human rights related to the enterprise and its supply chains would not be able to be rejected on the grounds described in the foregoing bulleted items.</p> <p>If the enterprise rejects a request for information, it would be required to explain its justification for rejecting the request and provide the requesting person with information regarding the process for appealing the rejection to the Consumer Authority. The requesting person generally would be able to appeal the rejection until the earlier of three weeks after (1) receiving the rejection and (2) if a response to the request was not received, the date that is two months after the request was received by the enterprise.</p>

<b>Enforcement</b>	The Consumer Authority and the Market Council would be charged with monitoring compliance with the Act. The Consumer Authority and Market Council would determine penalties for failure to comply with the Act. Under the proposed Act, the applicable ministry may adopt more detailed rules governing penalties for non-compliance.
<b>Additional Information/Resources</b>	
<b>Law</b>	For the text of the Act as proposed, see: <a href="https://www.regjeringen.no/contentassets/6b4a42400f3341958e0b62d40f484371/195794-bfd-etikkrapport-web.pdf">https://www.regjeringen.no/contentassets/6b4a42400f3341958e0b62d40f484371/195794-bfd-etikkrapport-web.pdf</a>

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(Updated April 30, 2020)

### Applying the Law



section 135 of the Companies Act India	
<b>Overview</b>	
<b>Law / Country</b>	<b>section 135 of the Companies Act</b> (The Companies Act, 2013, amended 2015, 2017 and 2019) (India)
<b>Goal</b>	To further corporate social responsibility in India by requiring investment in CSR initiatives.
<b>Adoption / Status</b>	On August 29, 2013, section 135 of the Indian Companies Act (the “ <b>Law</b> ”) was adopted. Since that time, Rules have been adopted under the Law and there have been several amendments to the Law, as indicated below. In March 2020, the Ministry of Corporate Affairs (the “ <b>MCA</b> ”) released for public comment proposed amendments to the Rules adopted in 2014 under the Law, as further described below.
<b>Issue Addressed</b>	<p>Schedule VII of the Companies Act outlines the recognized CSR activities:</p> <ul style="list-style-type: none"> <li>• eradicating extreme hunger and poverty;</li> <li>• promotion of education, gender equality and empowering women;</li> <li>• reducing child mortality and improving maternal health;</li> <li>• combating human immunodeficiency virus, acquired immune deficiency syndrome, malaria and other diseases;</li> <li>• ensuring environmental sustainability; and</li> <li>• employment enhancing vocational skills and social business projects.</li> </ul> <p>Schedule VII has been amended multiple times since the adoption of the Law to include additional CSR activities such as rural development, slum area development and disaster management, including relief, rehabilitation and reconstruction. Schedule VII also has been amended to include as recognized CSR activities contributions to:</p> <ul style="list-style-type: none"> <li>• Incubators funded by the Central Government or a state Government or any agency;</li> <li>• Public Sector Undertakings (“<b>PSUs</b>”) of the Central Government or a state Government;</li> <li>• Public funded universities such as the Indian Institute of Technology; and</li> <li>• Autonomous Bodies which have been established under the auspices of the Indian Council of Agricultural Research, Indian Council of Medical Research, Council of Scientific and Industrial Research, Department of Atomic Energy, Defense Research and Development Organisation, Department of Science and Technology and Ministry of Electronics and Information Technology.</li> </ul> <p>Contributions to incubators, agencies, PSUs, universities and autonomous bodies will qualify as recognized CSR activities if they are engaged in conducting research in science, technology, engineering and medicine aimed at promoting the UN Sustainable Development Goals.</p>

	In addition, on March 23, 2020, the MCA issued a clarification indicating that expenditures relating to COVID-19 are eligible CSR activities.
<b>Covered Entities</b>	The Law applies to Indian companies and foreign companies doing business in India that, during the immediately preceding financial year: <ul style="list-style-type: none"> <li>• have a net worth of rupees five hundred crore or more;</li> <li>• turnover of rupees one thousand crore or more; or</li> <li>• a net profit of rupees five crore or more.</li> </ul>
<b>How It Works</b>	
<b>Mandatory?</b>	Yes
<b>CSR Committee</b>	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: <ul style="list-style-type: none"> <li>• formulate and recommend to the board, a Corporate Social Responsibility Policy (the “<b>CSR Policy</b>”) that indicates the activities to be undertaken by the company (see the summary of Schedule VII above for recognized activities);</li> <li>• recommend the amount of expenditure to be incurred on the above activities; and</li> <li>• monitor the CSR Policy of the company from time to time.</li> </ul>
<b>Implementation and Disclosure of CSR Policy</b>	The board of every covered company must: <ul style="list-style-type: none"> <li>• 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;</li> <li>• ensure that the activities included in the CSR Policy are undertaken by the company; and</li> <li>• 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.</li> </ul> <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>
<b>Enforcement</b>	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. 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.

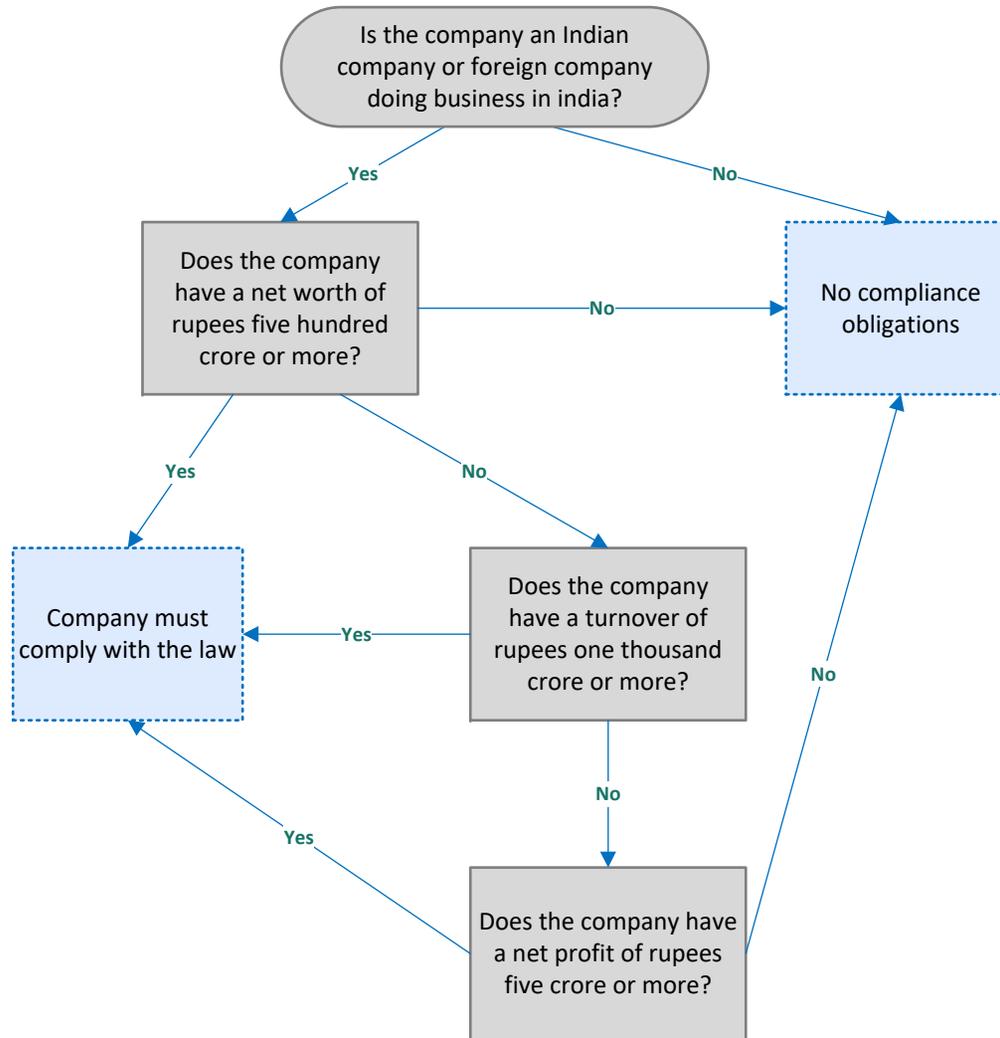
	<p>Under Section 206 of the Companies Act, the government has powers to call for information and inspect the books of a company. Additionally, the MCA created the Centralised Scrutiny and Prosecution Mechanism (“<b>CSPM</b>”) to track companies’ CSR spending records.</p>
<b>Unspent Funds</b>	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> </ul>
<b>2020 Proposed Rules</b>	<p>Amendments to the 2014 Rules adopted under the Law were proposed in March 2020. The amended Rules are intended to operationalize the 2019 amendments to the Law reflected above in this Summary. Among other things, the 2020 proposed amendments would amend the 2014 Rules as described below. Note that not all of the following changes are substantive changes to the 2014 Rules. Some of the changes would result solely from the proposed substantial reorganization of the Rules.</p> <ul style="list-style-type: none"> <li>• Amend and restate the definition of CSR. The amended and restated definition would, among other things, exclude (1) activities undertaken pursuant to the normal course of business of the company, (2) any activity undertaken by the company outside India, (3) direct or indirect contributions to political parties and (4) activities that significantly benefit the employees of the company and their families, except that any activity having less than 25% employees as its beneficiary would be deemed to be a CSR activity.</li> <li>• Amend and restate the definition of CSR Policy. Under the amended and restated definition, a CSR Policy would mean a statement containing the approach and direction given by the board, as per recommendations of its CSR Committee, for selection, implementation and monitoring of activities to be undertaken in areas or subjects specified in Schedule VII of the Law.</li> <li>• Entities undertaking CSR activities would be required to register with the central government by filing a CSR-1 electronic form.</li> <li>• The company board would be required to satisfy itself that funds have been utilized as approved, and the chief financial officer or person responsible for financial management would be required to certify to that effect.</li> <li>• The description of the role of the CSR Committee would be enhanced. This sub-rule would be amended and restated to indicate that the CSR Committee is required to formulate and recommend to the board an annual action plan in pursuance of its CSR Policy that includes the following: (1) a list of CSR projects or programs approved to be undertaken in areas or subjects specified in Schedule VII of the Law; (2) the manner of execution of such projects or</li> </ul>

	<p>programs; (3) the modalities of utilization of funds and implementation schedules for the projects or programs; (4) monitoring and reporting mechanisms for the projects or programs; and (5) details of any need or impact assessment undertaken by the company.</p> <ul style="list-style-type: none"> <li>• A company with an average CSR obligation of at least rupees five crore in the preceding three fiscal years would be required to undertake an impact assessment for its CSR projects or programs and disclose the details of the assessment in its annual CSR report.</li> <li>• For a company undertaking an impact assessment, CSR expenditures would include administrative overhead not exceeding 10% of total CSR expenditures for the financial year (rather than 5% otherwise). CSR expenditures also would include amounts used for the creation or acquisition of assets to be held by a charitable entity established to engage in CSR activities.</li> <li>• Enhanced website disclosure would be required. The board would be required to mandatorily disclose the composition of the CSR Committee, CSR Policy and projects approved by the board, as contemplated by e-form CSR-1.</li> </ul>
<b>Additional Information/Resources</b>	
<b>Text of Section 135</b>	<p>For the text of the Law, see: <a href="http://www.mca.gov.in/SearchableActs/Section135.htm">http://www.mca.gov.in/SearchableActs/Section135.htm</a></p> <p>For the 2017 Amendments, see: <a href="http://www.mca.gov.in/Ministry/pdf/CAAct2017_05012018.pdf">http://www.mca.gov.in/Ministry/pdf/CAAct2017_05012018.pdf</a></p> <p>For the 2019 Amendments, see: <a href="http://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf">http://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf</a></p> <p>For the proposed 2020 Amendments, see: <a href="http://feedapp.mca.gov.in/csr/pdf/drafrules.pdf">http://feedapp.mca.gov.in/csr/pdf/drafrules.pdf</a></p> <p>For the 2018 Clarification of Section 135(5), see: <a href="http://www.mca.gov.in/Ministry/pdf/GeneralCircular2805_29052018.pdf">http://www.mca.gov.in/Ministry/pdf/GeneralCircular2805_29052018.pdf</a></p> <p>For the 2020 Clarification, see <a href="http://www.mca.gov.in/Ministry/pdf/Covid_23032020.pdf">http://www.mca.gov.in/Ministry/pdf/Covid_23032020.pdf</a></p>
<b>Indian Companies Act</b>	For the full text of the 2013 Companies Act, see: <a href="http://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf">http://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf</a>

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(Updated April 30, 2020)

**Applying the Law**



<b>Child Labor Due Diligence Act Netherlands</b>	
<b>Overview</b>	
<b>Law / Country</b>	<b>Child Labor Due Diligence Act (No. 34 506) (Netherlands)</b>
<b>Goal</b>	To reduce child labor in the supply chain.
<b>Adoption / Status</b>	<p>The Dutch Parliament adopted the Child Labor Due Diligence Act (the “<b>Act</b>”) 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 “<b>GAO</b>”), which has yet to be published.</p>
<b>Issue Addressed</b>	Child labor
<b>Covered Entities</b>	<p>Companies covered include:</p> <ul style="list-style-type: none"> <li>• Companies established in the Netherlands that sell or provide goods or services to end-users based in the Netherlands.</li> <li>• Companies established outside the Netherlands that sell or provide goods or services to end-users based in the Netherlands.</li> </ul> <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>
<b>Definition of Child Labor</b>	<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"> <li>• 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;</li> </ul>

	<ul style="list-style-type: none"> <li>• the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;</li> <li>• 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</li> <li>• 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.</li> </ul> <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"> <li>• any form of work performed by persons who are subject to compulsory schooling or who have not yet reached the age of 15 and</li> <li>• 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.</li> </ul> <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"> <li>• not likely to be harmful to their health or development; and</li> <li>• 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.</li> </ul>
<b>How It Works</b>	
<b>Mandatory?</b>	Yes.
<b>Due Diligence and Action Plan</b>	<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>

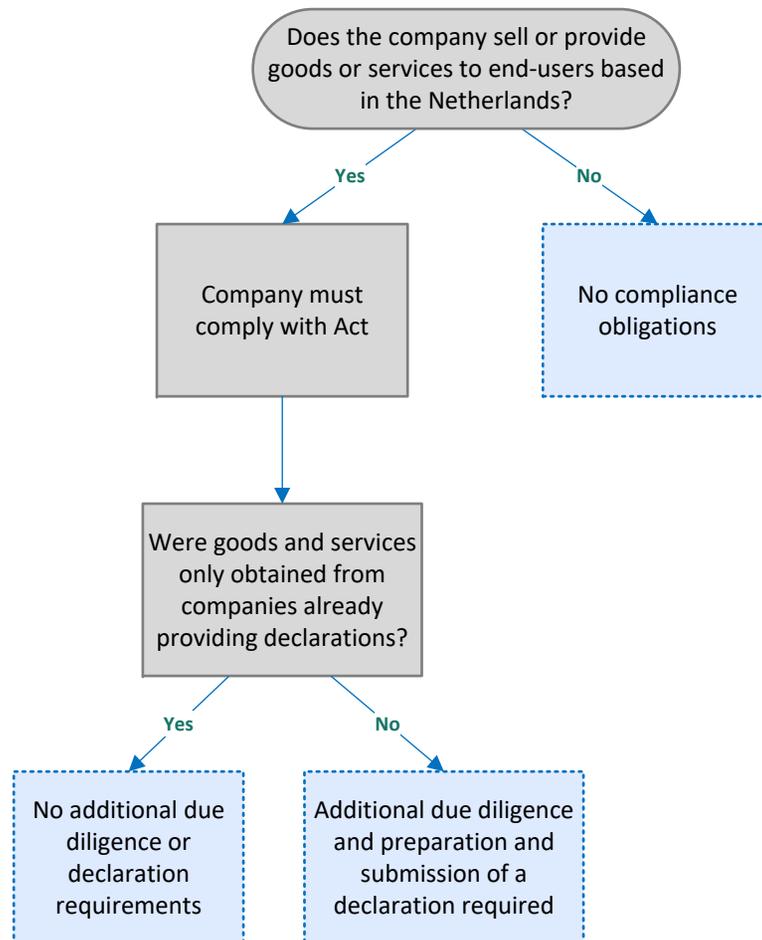
	<p>Further requirements pertaining to due diligence and the plan of action will be specified in a GAO, which will take into account the ILO-IOE Child Labour Guidance Tool for Business. The Child Labour Guidance Tool was created jointly by the International Labour Organization and the International Organisation 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>
<b>Reporting</b>	<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>
<b>Enforcement</b>	<p><b>Complaints:</b></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><b>Penalties:</b></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>

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

Note: This summary is derived from an unofficial translation by Ropes & Gray, is for informational purposes only and does not constitute legal advice.

(Updated April 30, 2020)

## Applying the Law



<b>Trafficking Victims Protection Reauthorization Act United States</b>	
<b>Overview</b>	
<b>Law / Country</b>	<b>Trafficking Victims Protection Reauthorization Act</b> (TVPA, 2000 and TVPRA, 2003, amended 2005, 2008, 2013, 2015, 2017 and 2019) (United States)
<b>Goal</b>	To combat human trafficking and forced labor and ensure effective punishment of persons engaging in the foregoing conduct.
<b>Adoption / Status</b>	In 2000, Congress enacted the Trafficking Victims Protection Act (“ <b>TVPA</b> ”). In 2003, Congress reauthorized the TVPA as the Trafficking Victims Protection Reauthorization Act (“ <b>TVPRA</b> ”) to include additional provisions that extended the U.S. government’s ability to combat and prosecute human trafficking. Congress has amended the TVPRA multiple times since 2003 to allow for enhanced protective measures for U.S. citizen survivors, establish additional crimes and penalties and establish and strengthen anti-human trafficking programs, among other things. The TVPA and TVPRA, including all amendments, are discussed in conjunction below.
<b>Issues Addressed</b>	<ul style="list-style-type: none"> <li>• Forced labor</li> <li>• Human trafficking</li> </ul> <p>Note that this Summary is focused primarily on the forced labor prohibition of the TVPRA.</p>
<b>Covered Persons</b>	U.S. persons and persons present in the United States. The TVPRA applies to both natural persons and legal entities.
<b>How It Works</b>	
<b>Mandatory?</b>	Yes.
<b>Prohibited Conduct</b>	<p>Knowingly providing or obtaining the labor or services of a person by means of:</p> <ul style="list-style-type: none"> <li>• Force, threats of force, physical restraint or threats of physical restraint to that person or another person;</li> <li>• Serious harm or threats of serious harm to that person or another person;</li> <li>• The abuse or threatened abuse of law or legal process; or</li> <li>• Any scheme, plan or pattern intended to cause the person to believe that, if he/she did not perform the labor or services, they or another person would suffer serious harm or physical restraint.</li> </ul> <p>Knowingly benefitting, financially or by receiving anything of value, from participation in a venture which has engaged in the providing or obtaining of labor or services by any of the means described in the list above, knowing or in reckless disregard of the fact that the venture has engaged in the providing or obtaining of labor or services by any of such means.</p> <p>The TVPRA applies to conduct both within and outside of the United States.</p>

	<p>“Abuse or threatened abuse of law or legal process” means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.</p> <p>“Serious harm” means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm.</p>
<b>Jurisdiction and Liability</b>	<p>Under the TVPRA, U.S. courts have extra-territorial jurisdiction over any offense (or any attempt or conspiracy to commit an offense) if (1) the alleged offender is a U.S. national or permanent resident or (2) the alleged offender is present in the United States, irrespective of the nationality of the alleged offender.</p> <p>Violations of the TVPRA can result in criminal or civil liability. Criminal penalties include both fines and imprisonment, depending upon the nature of the conduct. Selected recent civil suits alleging TVPRA violations are discussed below.</p> <p>As earlier noted, liability is not limited to labor exploitation that occurs in the United States.</p>
<b>Selected Litigation</b>	<p>Civil suits have recently been filed alleging violations of the TVPRA by well-known large companies. These suits allege violations of the “venture” prong of the TVPRA.</p> <p><i>Doe v. Apple Inc. et al. (U.S., 2019)</i></p> <p>In December 2019, International Rights Advocates filed a class action lawsuit in the D.C. District Court against Apple, Google, Dell, Microsoft and Tesla on behalf of 14 “John Doe” child plaintiffs from the Democratic Republic of the Congo. The plaintiffs are alleging participation by the defendants in a venture with their supply chains that the defendants knew or should have known engaged in forced labor in violation of the TVPRA.</p> <p><i>M.A. et al. v. Wyndham Hotels &amp; Resorts Inc. et al. (U.S., 2019)</i></p> <p>In March 2019, a sex trafficking survivor filed a lawsuit against hotel chains in Ohio. The plaintiff alleged that the defendants knowingly benefited from participating in a venture which they knew was engaged in illegal sex trafficking in violation of the TVPRA. The complaint noted that the defendants engaged in acts and omissions that were intended to support and facilitate the trafficking by ignoring multiple red flags. The complaint further alleges that the hotel chains failed to take appropriate measures to combat the trafficking while simultaneously accepting profits, thus making them directly complicit.</p>
<b>Additional Information/Resources</b>	
<b>TVPRA</b>	<p>For the text of the TVPA, see: <a href="https://www.govinfo.gov/content/pkg/PLAW-106publ386/pdf/PLAW-106publ386.pdf">https://www.govinfo.gov/content/pkg/PLAW-106publ386/pdf/PLAW-106publ386.pdf</a></p> <p>For the text of the TVPRA (2003), see: <a href="https://www.govinfo.gov/content/pkg/BILLS-108hr2620enr/pdf/BILLS-108hr2620enr.pdf">https://www.govinfo.gov/content/pkg/BILLS-108hr2620enr/pdf/BILLS-108hr2620enr.pdf</a></p> <p>For all additional amendments to the TVPRA, see: <a href="https://www.state.gov/international-and-domestic-law/">https://www.state.gov/international-and-domestic-law/</a></p>

Note: This summary is for informational purposes only and does not constitute legal advice. We have not included a summary flow chart for this legislation because it operates as a general prohibition on specified conduct, rather than imposing specific compliance requirements on particular categories of persons.

(Updated April 30, 2020)