

# **Corporate Social Responsibility Legislation**

**A Summary of Selected Instruments**

**Prepared for AIM-PROGRESS**

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## INTRODUCTION

There has been a significant increase in corporate social responsibility legislation over the last few years, with more legislation on the horizon. 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
- Proposed Tasmanian Modern Slavery Act
- Proposed Canadian 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
- Pending 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
- Proposed Uyghur Forced Labor Prevention 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 continuing proliferation of new CSR regulations, it has become 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 Canadian Modern Slavery Act:*** The proposed Act was introduced in the Canadian Senate on October 29, 2020. The Act would require covered companies to annually publish a modern slavery report. The Act would also amend the Customs Tariff to prohibit the importation into Canada of goods produced by child labor.
- ***Proposed Uyghur Forced Labor Prevention Act:*** On September 22, 2020, the Act was passed by the U.S. House of Representatives. It has not yet been acted on by the U.S. Senate. The Act would establish a presumption that goods produced in Xinjiang, or by persons working with the XUAR government for purposes of the poverty alleviation program or the pairing-assistance program, are produced using forced labor and therefore are prohibited from being imported into the United States pursuant to Section 307 of the Tariff Act. The Act also would impose additional reporting obligations on some U.S. public companies.
- ***Proposed EU Mandatory Human Rights Due Diligence Legislation:*** On September 11, 2020, the Committee on Legal Affairs of the European Parliament published a draft report that included the text of a recommended directive for the European

Commission's consideration. As proposed, subject undertakings also would be required to carry out due diligence with respect to human rights, environmental and governance risks, take steps to remediate identified adverse impacts and make related disclosures. As proposed, subject undertakings could be held liable for adverse impacts. The European Commission is expected to propose legislation during the first quarter of 2021.

- ***Proposed Tasmania Modern Slavery Act:*** On April 30, 2020, the proposed Act was read in the Tasmanian House of Assembly. As proposed, the Act would create modern slavery disclosure obligations for covered commercial organizations similar to those found in the Commonwealth Modern Slavery Act and New South Wales Modern Slavery Act. The proposed Act would also mandate the appointment of an independent Supply Chain (Anti-slavery) Commissioner and the establishment of a Supply Chain (Modern Slavery) Committee of Parliament, among other things.
- ***Proposed Washington State Transparency in Supply Chains Act:*** On January 13, 2020, the proposed Act was reintroduced in the Washington State Legislature. The Act would require certain retail sellers of agricultural products doing business in Washington State to prepare an annual human trafficking statement and make related inquiries of their suppliers.

We also have updated many of the existing Summaries to reflect developments over the past six months:

- ***UK Modern Slavery Act:*** The UK government's September 2020 response to its public consultation on strengthening the Act.
- ***Australian Commonwealth Modern Slavery Act:*** The August 2020 guidance published by the Australian Human Rights Commission.
- ***New South Wales Modern Slavery Act:*** The New South Wales government's September 2020 response to the inquiry into the Act by the Legislative Council's Standing Committee on Social Issues.
- ***Section 307 of the US Tariff Act:*** Additional Customs and Border Protection withhold release orders have been added and the State Department's July 2020 Xinjiang Supply Chain Advisory has been included.
- ***EU Non-financial Reporting Directive:*** Updated to reflect the anticipated proposal of a new Directive that would strengthen the existing Non-financial Reporting Directive.
- ***French Corporate Duty of Vigilance Law:*** Recent litigation and enforcement developments have been added.

- ***Swiss Mandatory Human Rights Due Diligence Legislation:*** Updated to reflect the defeat of the Responsible Business Initiative and expected next steps for the Parliament’s indirect counterproposal.

## LOOKING FURTHER OUT

In addition to the developments discussed above, the following are some of the trends we are tracking that are expected to over time impact CSR compliance and disclosure:

- We expect to continue to see forward momentum for mandatory human rights due diligence legislation in, among other countries, Austria, Finland, Germany, Norway, Sweden and the United Kingdom.
- In the United States, the change in administration may lead to a shift in the US government’s approach to some areas of human rights compliance. However, it is too early to predict how agency policy or requirements may evolve and whether any of the human-rights focused bills that have been proposed in Congress will gain traction.
- In November 2020, the UK government proposed legislation that would require due diligence regarding illegal deforestation in supply chains and related public disclosure and make it illegal for subject companies to use specified forest risk commodities that are not produced in accordance with relevant local laws. The government held a public consultation, which closed in October, to inform its views on this topic.
- The focus by investors on human rights issues continues to increase. Underscoring this focus, in October 2020, Principles for Responsible Investment released its framework for integrating human rights into investment decisions and ongoing engagement with investee companies. The framework contemplates a four-year transition for embedding respect for human rights in investment activities. PRI has over 3,000 signatories, representing over \$100 trillion in assets under management, making the framework a potent force for change in investor practices.

## **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

The following charts compare the thresholds for applicability of the adopted and pending instruments described below. Additional detail on the items below is contained in the Summaries.

### 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 turnover 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 Mandatory Human Rights Due Diligence Legislation</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	Conflict minerals and child labor	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	Prohibited conduct restrictions apply to all U.S. federal contracts  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 set by the Federal Council	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	Enterprises with their registered office, central administration or principal place of business in Switzerland	Indian companies and foreign companies doing business in India	Companies that provide goods or services to end-users based in the Netherlands

## 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.

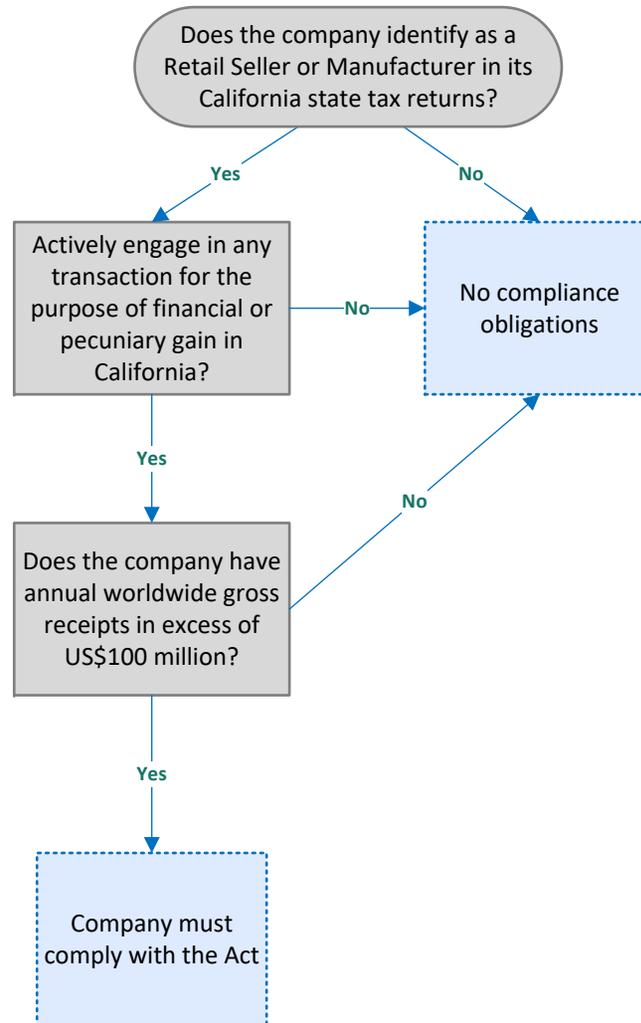
<b>Transparency in Supply Chains Act California</b>	
<b>Overview</b>	
<b>Law / State</b>	<b>California Transparency in Supply Chains Act</b> (California Civil Code S. 1714.43) (California, United States)
<b>Goal</b>	To reduce modern slavery through enhanced disclosure.
<b>Adoption / Status</b>	The Transparency 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 December 1, 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>	Slavery and human trafficking
<b>Covered Entities</b>	<p>Commercial organisations:</p> <p>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.</p> <p>Parents and sister companies:</p> <p>Having a subsidiary that is subject to the MSA does not subject entities that are above that subsidiary in the corporate chain, or sister companies under common control, to the MSA. However, depending on their business activities in the UK, multiple entities in the consolidated group, even those not primarily engaged in carrying on a business in the United Kingdom, may be subject to the MSA. A parent organization that is subject to the MSA must include in its statement the activities of its subsidiaries, even if a subsidiary does not independently meet all of the MSA’s jurisdictional requirements, if the activities of the subsidiary are part of the parent’s supply chain or business.</p> <p>Franchisees:</p> <p>In determining the total turnover of a business operating a franchise model, only the turnover of the franchiser and not that of any franchisees must be included.</p>
<b>How It Works</b>	
<b>Mandatory?</b>	Yes.
<b>Statement Requirements</b>	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>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>
<p><b>Reporting</b></p>	<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> </ul>

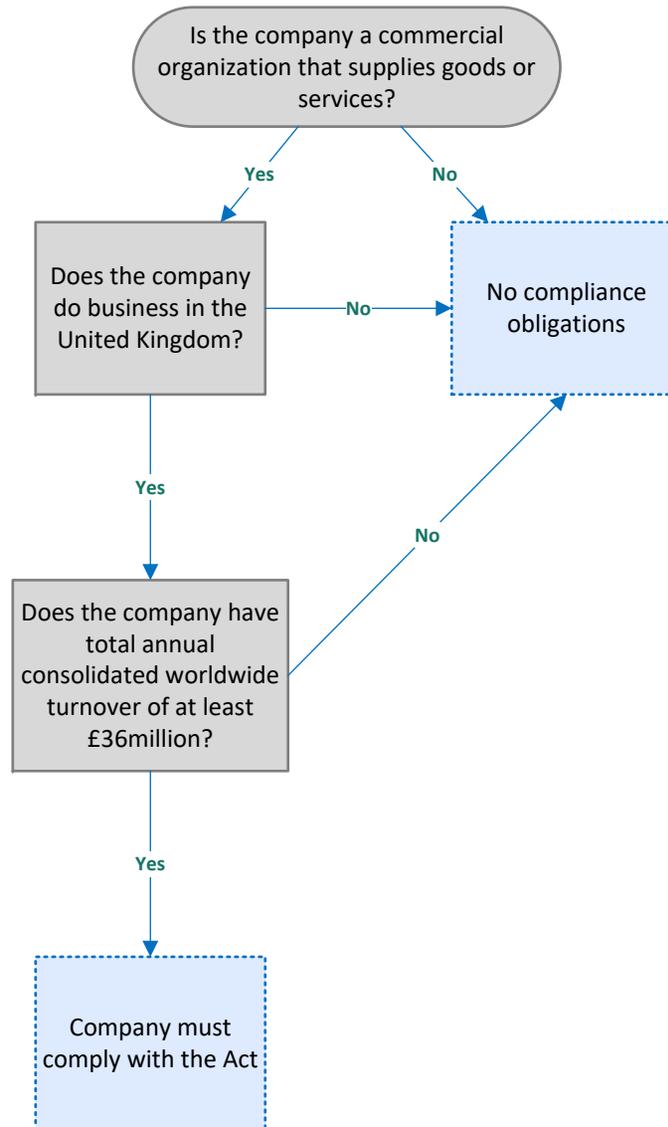
	<ul style="list-style-type: none"> <li>• Statements should include the name (physical signature not required) and job title of the signatory and the signature date.</li> </ul>
<b>Enforcement</b>	At present, there is no financial or legal penalty for non-compliance.
<b>April 2020 COVID-19 Guidance</b>	<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>Expected Amendments – September 2020 Government Response to Public Consultation</b>	<p>On September 22, 2020, the UK Government published its response to the 2019 public consultation on the MSA. The consultation solicited views on possible changes to several aspects of the transparency provisions, including (1) the topics covered by statements; (2) potential features of a new Government-run reporting service for modern slavery statements; (3) establishing a single deadline for the publication of statements; and (4) the addition of civil penalties for non-compliance.</p> <p>Many of the Government's commitments described below will require changes to the MSA. The Government indicated that these changes will be made when parliamentary time allows.</p> <p>Mandated Disclosure Topics:</p> <p>The Government indicated it will mandate the areas to be addressed in modern slavery statements. The mandatory topic areas will include the existing voluntary suggested areas, although in the shift to mandatory reporting they may be presented differently through the combination of some topic areas. If a commercial organisation does not take steps within a particular required topic area, it will be required to clearly state that. Commercial organisations also will be encouraged to provide the reason for not taking steps within a particular area.</p> <p>Statement Registry:</p> <p>The Government indicated it will require commercial organisations to publish their statement on the Government-run registry. The Government indicated it will incorporate feedback from the consultation into the ongoing research and design of the registry.</p>

	<p>Timing:</p> <p>The Government will introduce a single reporting deadline. Rather than requiring commercial organisations to report on activity undertaken during their most recently completed fiscal year, statements will cover a reporting period running from April 1 through March 31. Modern slavery statements will be due on September 30, giving commercial organisations six months to prepare their statements.</p> <p>Other Statement Enhancements:</p> <p>The Government will amend the MSA to require modern slavery statements to state the date of board (or equivalent) approval and director (or equivalent) sign-off. The Government will also amend the MSA to require group statements to name the entities covered.</p>
<b>Updated Guidance</b>	The UK Government plans to publish updated reporting guidance. This will include best practice approaches to reporting against the future required topic areas. The guidance also will highlight the importance of transparency, risk-based action and industry-level collaboration to address shared challenges. In addition, the guidance will encourage commercial organisations to be open about their priority next steps for the coming year, although this will not be required.
<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>
<b>September 2020 Response to the Public Consultation</b>	For the September 2020 Public Consultation Response, see: <a href="https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919937/Government_response_to_transparency_in_supply_chains_consultation_21_09_20.pdf">https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919937/Government_response_to_transparency_in_supply_chains_consultation_21_09_20.pdf</a>

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

(Updated December 1, 2020)

### Applying the Law



<b>Commonwealth Modern Slavery Act 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>

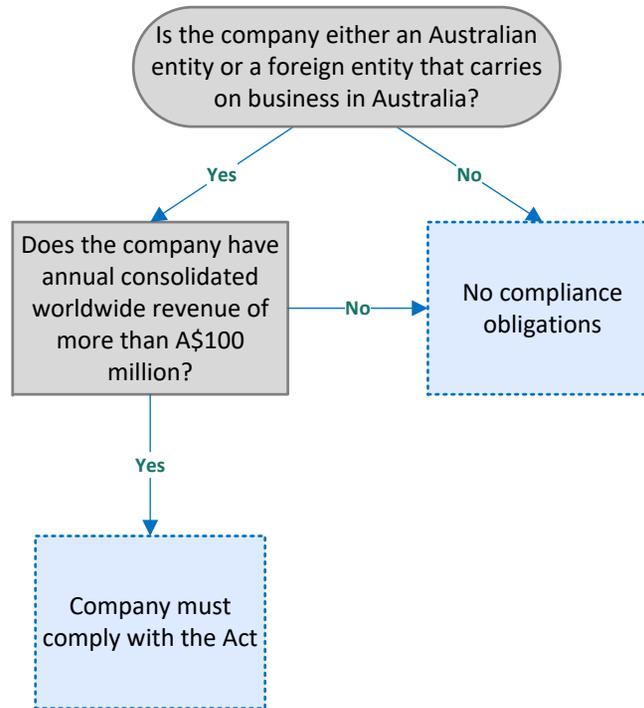
<b>Reporting</b>	<p>Timing:</p> <p>Reporting starts with the first fiscal year after the Act took effect. Statements are due within six months after fiscal year end. However, as noted below, the Australian Border Force (the “ABF”) has extended the deadline under certain circumstances due to the COVID-19 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>Australian Human Rights Commission Guidance</b>	<p>In August 2020, the Australian Human Rights Commission, an independent third-party established by an Act of Parliament that investigates complaints about discrimination and human rights breaches, launched the first of five sector-specific guides to help business effectively respond to the Act. The first guide, “Property, Construction and Modern Slavery: Practical responses to managing risks to people,” highlights modern slavery risks prevalent in the property and construction sector and provides</p>

	guidance for the property and construction sector on leading practice and a rights-based approach to managing modern slavery risk and reporting.
<b>Enforcement</b>	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.
<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> For the Australian Human Rights Commission Guidance, see: <a href="https://humanrights.gov.au/sites/default/files/document/publication/ahrc_kpmg_modernslavery_property_construction_2020.pdf">https://humanrights.gov.au/sites/default/files/document/publication/ahrc_kpmg_modernslavery_property_construction_2020.pdf</a>

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(Updated December 1, 2020)

### Applying the Law



Modern Slavery Act New South Wales	
<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. On September 24, 2020, the NSW Government published a response to the Committee’s report, as further discussed below.</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> <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>
<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>A joint statement would instead 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 joint 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 would be required to include details of the approval by the principal governing body of the commercial organisation. If a joint statement, it would be required to 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>	If a commercial organisation fails to publish a statement, or knowingly provides false or misleading information in a statement, the commercial organisation could be fined up to A\$1.1 million.
<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 recommended 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>

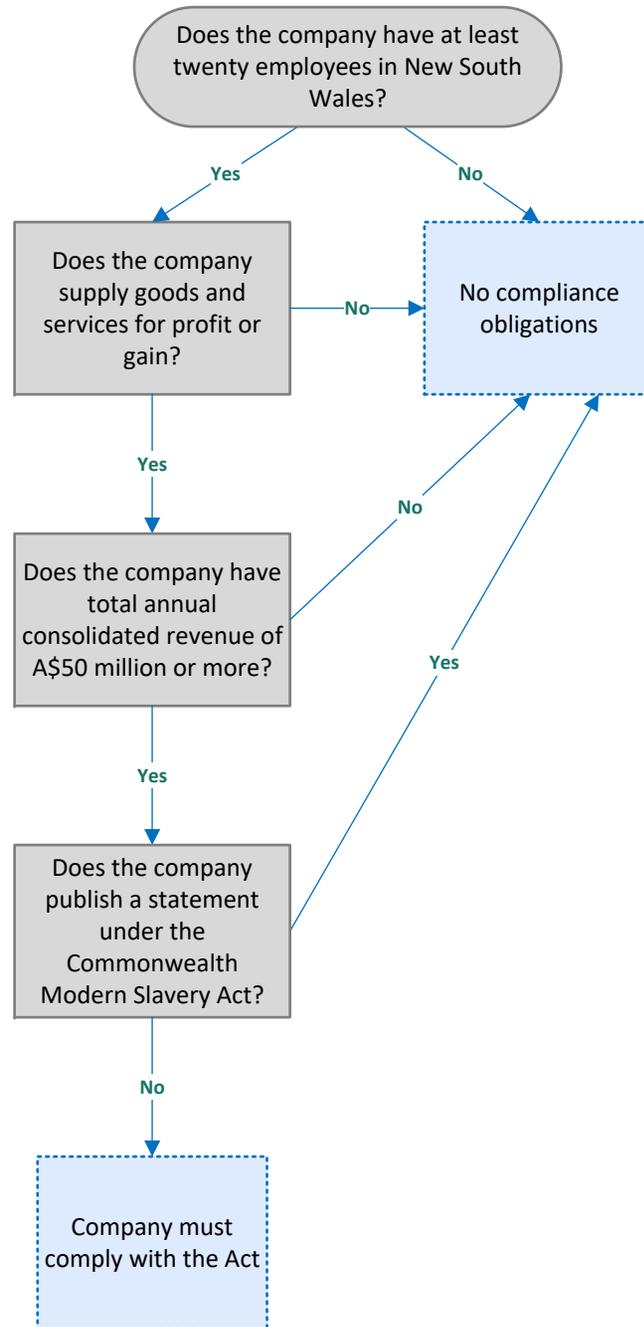
	<ul style="list-style-type: none"> <li>• The NSW Government should seek to amend the reporting threshold terminology in the Act to replace the term “turnover” with “consolidated revenue.”</li> <li>• The NSW Government should seek to amend the Act to specify a relevant authority responsible for conducting 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. This already was 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>
<p><b>September 2020 Government Response to Committee Report</b></p>	<p>On September 24, 2020, the NSW Government published a response letter to the Committee’s report. According to the response, the NSW Government plans to enter into discussions with the Commonwealth to better harmonize the Act with the Commonwealth MSA. In particular, the NSW Government noted its support for a national A\$50 million reporting threshold. The NSW Government also either noted or accepted in principle the Committee’s recommendations, including that the Act:</p> <ul style="list-style-type: none"> <li>• Commence on or before January 1, 2021.</li> <li>• Provide for a statutory review to be conducted in conjunction with the Australian Government’s statutory review of the Commonwealth MSA.</li> <li>• Replace the term “turnover” with “consolidated revenue”.</li> <li>• Specify a relevant authority responsible for conducting prosecutions that involve breaches of the reporting provisions of the Act.</li> <li>• Give victims of acts of modern slavery access to recognition payments.</li> </ul> <p>The NSW government noted that all of the Committee’s recommendations are subject to the outcomes of harmonization discussions with the Commonwealth.</p>
<p><b>Additional Information/Resources</b></p>	
<p><b>Law</b></p>	<p>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></p>
<p><b>Amendment Bill</b></p>	<p>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></p>

<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>
<b>September 2020 Government Response to Committee Report</b>	For the NSW Government response, see: <a href="https://www.parliament.nsw.gov.au/lcdocs/inquiries/2546/Government%20response%20-%20Modern%20Slavery%20Act%202018%20and%20associated%20matters%20-%20received%20on%20the%2024%20September%202020.pdf">https://www.parliament.nsw.gov.au/lcdocs/inquiries/2546/Government%20response%20-%20Modern%20Slavery%20Act%202018%20and%20associated%20matters%20-%20received%20on%20the%2024%20September%202020.pdf</a>

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### Applying the Law



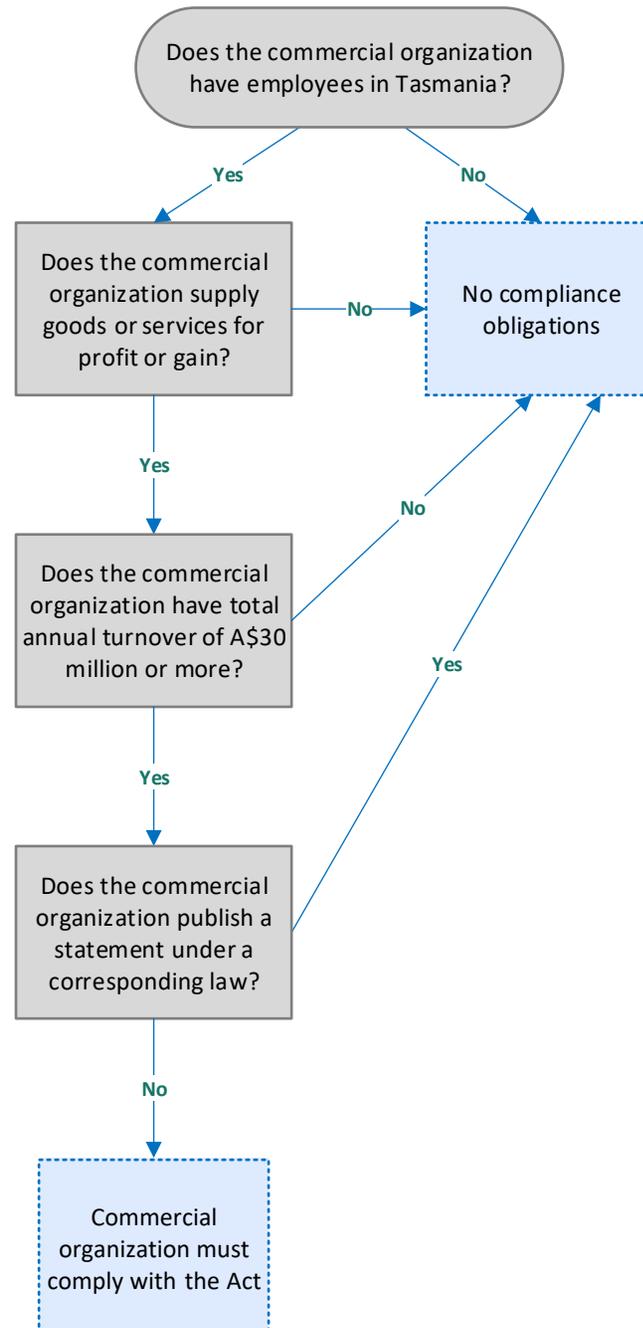
<b>Supply Chain (Modern Slavery) Act (Proposed) Tasmania</b>	
<b>Overview</b>	
<b>Law / State</b>	<b>Supply Chain (Modern Slavery) Act</b> (Tasmania, Australia) (the “Act”)
<b>Goal</b>	To combat modern slavery through enhanced disclosure, among other measures.
<b>Adoption / Status</b>	First reading in the House of Assembly on April 30, 2020. Timing for next steps to be determined.
<b>Issue Addressed</b>	<ul style="list-style-type: none"> <li>Modern slavery</li> </ul> <p>“Modern slavery” would be defined in relevant part as (1) any conduct constituting a modern slavery offence under the Commonwealth Criminal Code and (2) any conduct involving the use of any form of slavery, servitude or forced labor to exploit children or other persons taking place in supply chains. Forced labor, servitude and slavery would in turn have the definitions in the Commonwealth Criminal Code.</p> <p>Note that this summary is limited to the reporting provisions of the Act. There also are provisions addressing, among other things, the appointment of an independent Supply Chain (Anti-slavery) Commissioner, the establishment of a Supply Chain (Modern Slavery) Committee of Parliament and government procurement.</p>
<b>Covered Entities</b>	Any “commercial organisation,” including a corporation or partnership, (1) with employees in Tasmania, (2) that supplies goods and services for profit or gain and (3) has a total turnover in a financial year of the organisation of not less than A\$30 million or such other amount as may be prescribed by regulations.
<b>How It Works</b>	
<b>Mandatory?</b>	Yes. However, the transparency provisions of the Act would not apply to a commercial organisation that is subject to obligations under a law of the Commonwealth or another State or Territory that is prescribed as a corresponding law. The Commonwealth MSA and New South Wales MSA are expected to be prescribed as corresponding laws.
<b>Statement Requirements</b>	The Act would require subject commercial organisations to annually publish a modern slavery statement for each financial year of the organisation describing the steps taken during the year to ensure that the commercial organisation’s goods and services are not a product of supply chains in which modern slavery is taking place. More detailed content requirements would be established by regulation.
<b>Reporting</b>	<p>Subject commercial organisations would be required to make their modern slavery statements public. More detailed requirements would be set by regulation.</p> <p>The independent Supply Chain (Anti-slavery) Commissioner to be appointed pursuant to the Act would be required to keep a register in electronic form that (1) identifies any commercial organisation that has disclosed in a modern slavery statement that its goods and services are, or may be, a product of supply chains in which modern slavery may be taking place and whether the commercial organisation has taken steps to address the concern and (2) identifies any other organisation or body</p>

	that has voluntarily disclosed to the Commissioner that its goods and services are, or may be, a product of supply chains in which modern slavery is taking place and whether the organisation or body has taken steps to address the concern. The Commissioner would be required to make the register publicly available free of charge.
<b>Enforcement</b>	The Act may create an offence punishable by a penalty not exceeding 50 penalty units (currently A\$172 per unit).
<b>Additional Information/Resources</b>	
<b>Law</b>	For the text of the proposed Act, see: <a href="https://www.parliament.tas.gov.au/bills/Bills2020/pdf/18_of_2020.pdf">https://www.parliament.tas.gov.au/bills/Bills2020/pdf/18_of_2020.pdf</a>

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(Updated December 1, 2020)

## Applying the Law



<b>Modern Slavery Act (Proposed) Canada</b>	
<b>Overview</b>	
<b>Law / State</b>	<b>Modern Slavery Act (Canada) (the “Act”)</b>
<b>Goal</b>	To combat forced and child labor through enhanced disclosure and strengthened import restrictions.
<b>Adoption / Status</b>	S-216 was introduced in the Canadian Senate on October 29, 2020 by Senator Julie Miville-Dechêne. The bill had its second reading on November 5, 2020.  The Act would come into force on January 1 of the year following the year in which it receives royal assent.
<b>Issues Addressed</b>	<ul style="list-style-type: none"> <li>• Forced labor</li> <li>• Child labor</li> </ul>
<b>Covered Entities</b>	<p>A corporation, trust, partnership or other unincorporated organization would be subject to the reporting requirements of the Act to the extent it meets any of the following requirements:</p> <ul style="list-style-type: none"> <li>• Is listed on a stock exchange in Canada;</li> <li>• Has a place of business in Canada, does business in Canada or has assets in Canada and, based on its consolidated financial statements, meets at least two of the following conditions for at least one of its two most recent financial years: (1) has at least C\$20 million in assets, (2) has generated at least C\$40 million in revenue or (3) employs an average of at least 250 employees; or</li> <li>• Is prescribed by regulations.</li> </ul> <p>And:</p> <ul style="list-style-type: none"> <li>• Produces or sells goods in Canada or elsewhere (for purposes of the Act, the production of goods would include the manufacturing, growing, extraction and processing of goods);</li> <li>• Imports into Canada goods produced outside Canada; or</li> <li>• Controls an entity engaged in any of the foregoing activities (control can be direct or indirect).</li> </ul>
<b>Key Definitions</b>	<p>“Forced labor” would be defined as labor or service provided or offered to be provided by a person under circumstances that (1) could reasonably be expected to cause the person to believe their safety or the safety of a person known to them would be threatened if they failed to provide or offer to provide the labor or service or (2) constitute forced or compulsory labor as defined in Article 2 of the International Labour Organization’s Forced Labour Convention. That Convention defines forced or compulsory labor as all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily (subject to several narrow exceptions specified in the Convention).</p> <p>“Child labor” would be defined as labor or service provided or offered to be provided, in Canada, by persons under the age of 18 under circumstances that (1) are contrary to the laws applicable in Canada or, if provided or offered to be provided outside Canada, under circumstances that, if provided or offered to be provided in Canada, would be contrary to the laws</p>

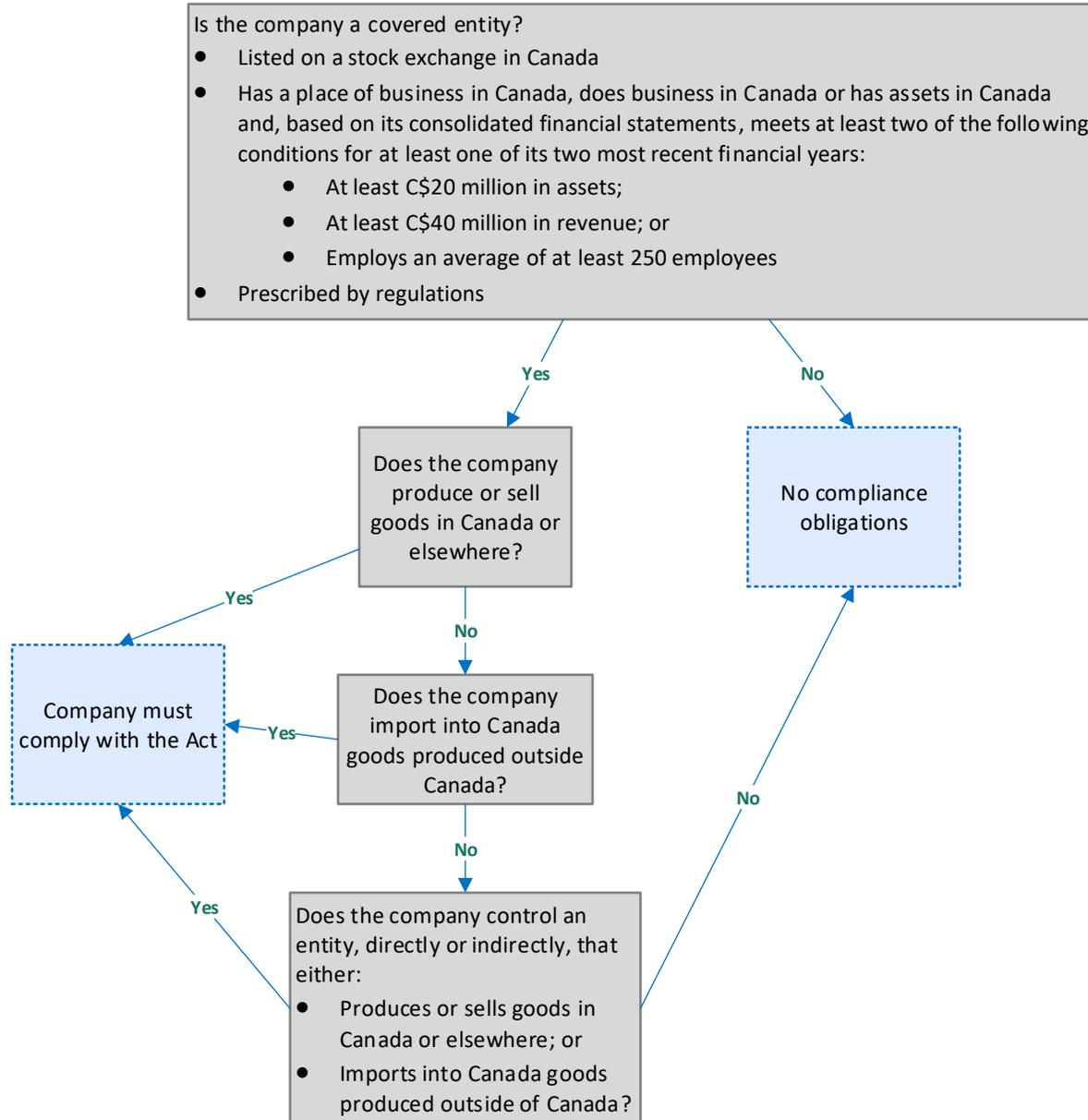
	<p>applicable in Canada or (2) constitute the worst forms of child labor as defined in Article 3 of the ILO's Worst Forms of Child Labour Convention. That Convention defines the worst forms of child labor as (1) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict, (2) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances, (3) 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, or (4) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.</p>
<b>How It Works</b>	
<b>Mandatory?</b>	Yes.
<b>Report Requirements</b>	<p>The report would be required to include the steps the entity has taken during the preceding year to prevent and reduce the risk that forced labor or child labor is used at any step of the production of goods in Canada or elsewhere by the entity or of goods imported into Canada by the entity.</p> <p>In the report, the entity also would be required to include information pertaining to:</p> <ul style="list-style-type: none"> <li>• Its structure and the goods that it produces in Canada or elsewhere or that it imports into Canada;</li> <li>• Its policies in relation to forced labor and child labor;</li> <li>• Its activities that carry a risk of forced labor or child labor being used and the steps it has taken to assess and manage that risk;</li> <li>• Any measures taken to remediate any forced labor or child labor; and</li> <li>• The training provided to employees on forced labor and child labor.</li> </ul> <p>The Minister of Public Safety and Emergency Preparedness would be empowered to specify the form and manner in which a report is to be provided.</p>
<b>Attestation Requirement</b>	The report would be required to include an attestation by a director or officer of the reporting entity that the information in the report is true, accurate and complete.
<b>Reporting</b>	<p>A subject entity annually would be required to submit its report to the Minister of Public Safety and Emergency Preparedness within 180 days after the end of the entity's fiscal year. The Minister would be required to maintain an electronic registry containing the reports provided to it. The registry would be required to be made available to the public on the Department of Public Safety and Emergency Preparedness website.</p> <p>In addition to submitting its report to the Minister, a subject entity would be required to make the report available to the public, including by publishing it in a prominent place on its website.</p>
<b>Enforcement</b>	Persons or entities that fail to submit or publish a report in accordance with the Act could be fined up to C\$250,000. In addition, every person or entity that knowingly makes a false or misleading statement or knowingly provides false or

	misleading information to the Minister or a person designated by the Minister to administer and enforce the Act, could be fined up to C\$250,000. An officer, director or agent of the person or entity who directed, authorized, assented to, acquiesced in or participated in the commission of an offense also could be held liable for the offense.
<b>Import Prohibition</b>	The Act also would amend the Customs Tariff to prohibit the importation into Canada of goods that are mined, manufactured or produced wholly or in part by child labor, or to prescribe the conditions under which those goods may be prohibited.  Note that the Customs Tariff already contains a similar prohibition on goods involving forced labor. That prohibition took effect on July 1, 2020 as part of the US-Mexico-Canada Agreement, which is the successor to NAFTA.
<b>Additional Information/Resources</b>	
<b>Law</b>	For the text of the proposed Act, see: <a href="https://www.parl.ca/DocumentViewer/en/43-2/bill/S-216/first-reading">https://www.parl.ca/DocumentViewer/en/43-2/bill/S-216/first-reading</a>

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

(Updated December 1, 2020)

### Applying the Law



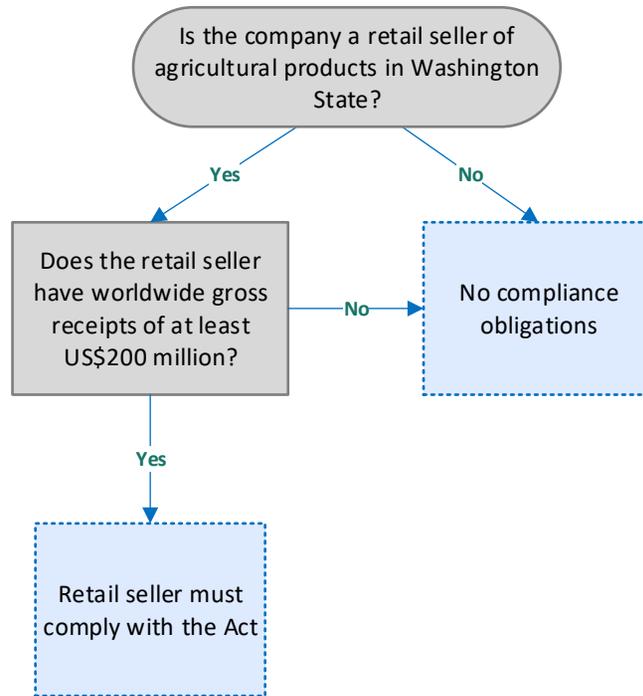
<b>Transparency in Agricultural Supply Chains Act (Proposed) Washington</b>	
<b>Overview</b>	
<b>Law / State</b>	<b>Transparency in Agricultural Supply Chains Act (SB 5693) (Washington, United States)</b>
<b>Goal</b>	To protect the rights of workers in agricultural supply chains through enhanced disclosure.
<b>Adoption / Status</b>	The Transparency in Agricultural Supply Chains Act (the “Act”) was introduced in the Washington State Legislature on January 28, 2019. On February 22, 2019, the Act was passed to the Rules Committee for a second reading. The Act was reintroduced in the 2020 regular session on January 13, 2020.
<b>Issues Addressed</b>	<ul style="list-style-type: none"> <li>• Modern slavery</li> <li>• Human trafficking</li> <li>• Workers’ rights generally</li> </ul>
<b>Covered Entities</b>	Every retail seller of agricultural products doing business in Washington State and having annual worldwide gross receipts of \$200 million or more. Agricultural products are defined as cocoa, dairy, coffee, sugar and fruit products. The definition excludes wheat, potato, onions, asparagus or other vegetable products.
<b>How It Works</b>	
<b>Mandatory?</b>	Yes.
<b>Statement Requirements</b>	<p>A retail seller subject to the Act would be required to prepare an annual statement indicating:</p> <ul style="list-style-type: none"> <li>• Specific actions taken, if any, with respect to its product supply chains to: <ul style="list-style-type: none"> <li>○ Evaluate and address risks of slavery, peonage and human trafficking;</li> <li>○ Comply with employment law obligations; and</li> <li>○ Respect workers' human rights.</li> </ul> </li> <li>• Any information reported from its suppliers as noted below.</li> </ul>
<b>Supplier Outreach</b>	<p>Subject retail sellers would be required to require their suppliers to report annually any violations of employment-related laws and incidents of slavery, peonage and human trafficking, including any:</p> <ul style="list-style-type: none"> <li>• Court or arbitration rulings;</li> <li>• Citations or other rulings by governmental agencies; and</li> <li>• Criminal convictions.</li> </ul> <p>"Supplier" is defined as an individual, business or entity in any form that is contracted by a retailer of agricultural products for the supply of agricultural products.</p>

	Failure of a supplier to report the required information to the retail seller would be a violation of the Act. The supplier would be subject to penalties, as described below.
<b>Reporting</b>	The statement would be required to be posted on the retail seller’s website “with a conspicuous and easily understood link.” In the event the retail seller does not have an internet website, it would be required to provide consumers with a written disclosure within 30 days of receiving a written request for the disclosure from a consumer.
<b>Enforcement</b>	<p>The attorney general would be able to commence a civil action in a Washington State court against a retail seller of agricultural products or a supplier for a violation of the Act.</p> <p>If a court finds that a retail seller of agricultural products or a supplier has violated the Act, the court would be able to award to the plaintiff:</p> <ul style="list-style-type: none"> <li>• Statutory damages of not less than \$500 and not more than \$7,000 for each such violation;</li> <li>• Punitive damages for willful violations;</li> <li>• Reasonable costs and attorneys’ fees; and</li> <li>• Declaratory or injunctive relief as the court deems appropriate.</li> </ul>
<b>Additional Information/Resources</b>	
<b>Law</b>	For the text of the proposed Act, see: <a href="http://lawfilesexternal.leg.wa.gov/biennium/2019-20/Pdf/Bills/Senate%20Bills/5693-S.pdf#page=1">http://lawfilesexternal.leg.wa.gov/biennium/2019-20/Pdf/Bills/Senate%20Bills/5693-S.pdf#page=1</a>

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(Updated December 1, 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 the goods were made with forced labor in another country, among other things, CBP may seize the goods and initiate forfeiture proceedings. If CPB decides 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, China)</li> <li>• Stevia and its derivatives (May 2016, Inner Mongolia Hengzheng Group Baoanzhao Agricultural and Trade LLC, China; October 2020, Inner Mongolia Hengzheng Group Baoanzhao Agriculture, Industry, and Trade Co., Ltd., China)</li> <li>• Peeled garlic (September 2016, Hongchange Fruits &amp; Vegetable Procuts Co., Ltd., China)</li> <li>• Toys (March 2018, Huizhou Mink Industrial CO.LTD., China)</li> </ul>

	<ul style="list-style-type: none"> <li>• Turkmenistan cotton (May 2018, all Turkmenistan cotton products)</li> <li>• Calcium chloride and caustic soda (March 2019, Tangshan Sanyou Group and its subsidiaries, China)</li> <li>• Artisanal rough cut diamonds (September 2019, Marange Diamond Fields, DRC)</li> <li>• Bone black (September 2019, Bonechar Carvao Ativado Do Brasil Ltda, Brazil)</li> <li>• Garments (September 2019, Hetian Taida Apparel Co., Ltd.; August 2020, Hero Vast Group, China)</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; June 2020, Lop County Meixin Hair Products Co., Ltd., China)</li> <li>• Seafood (May 2020, Fishing Vessel: Yu Long No. 2 (withhold release order revoked February 2019); August 2020, Fishing Vessel: Da Wang)</li> <li>• Disposable gloves (July 2020, Top Glove Sdn Bhd and TG Medical Sdn Bhd, Malaysia)</li> <li>• Labor (August 2020, No. 4 Vocation Skills Education Training Center (VSETC), China)</li> <li>• Palm oil and palm oil derivatives (September 2020, FGV Holdings Berhad and its subsidiaries and joint ventures)</li> <li>• Apparel (September 2020, Yili Zhuowan Garment Manufacturing Co., Ltd. and Baoding LYSZD Trade and Business Co., Ltd., China)</li> <li>• Cotton and processed cotton (September 2020, Xinjiang Junggar Cotton and Linen Co., Ltd., China; November 2020, Xinjiang Production and Construction Corporation (XPCC) and its subordinate and affiliated entities, China)</li> <li>• Computer parts (September 2020, Hefei Bitland Information Technology Co., Ltd., China)</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> </ul>

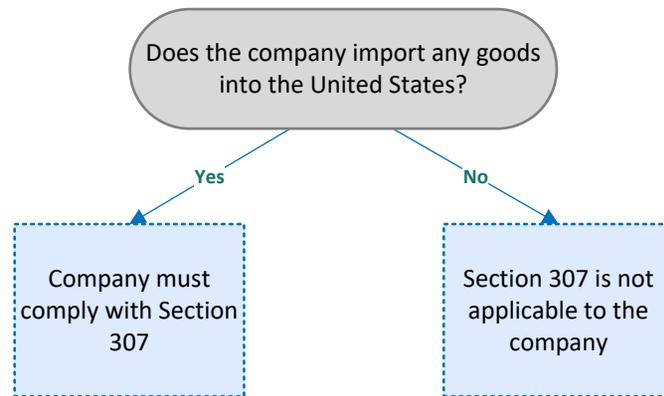
	<ul style="list-style-type: none"> <li>• Do you vet new suppliers/vendors for forced labor risks through questionnaires or some other means?</li> <li>• Do your contracts with suppliers include terms that prohibit the use of forced labor, a time frame by which to take corrective action if forced labor 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>Xinjiang Supply Chain Advisory</b>	<p>In July 2020, the US Department of State, along with the US Department of the Treasury, the US Department of Commerce and the US Department of Homeland Security, issued a business advisory concerning forced labor risks associated with Xinjiang labor. The advisory notes that, where evidence indicates that goods from Xinjiang are produced with forced, indentured or convict labor, CBP will deny US entry to those goods, which could lead to the goods being seized and forfeited, or the issuance of civil penalties against the importer and other parties.</p> <p>The advisory notes the following potential indicators of Xinjiang forced labor or labor abuses:</p> <ul style="list-style-type: none"> <li>• <b>Lack of transparency.</b> Companies operating in Xinjiang using shell companies to hide the origin of their goods, writing contracts with opaque terms and conducting financial transactions in such a way that it is difficult to determine where the goods were produced, or by whom.</li> <li>• <b>Social insurance programs.</b> Companies operating in Xinjiang disclosing high revenue but having very few employees paying into the government’s social security insurance program.</li> <li>• <b>Terminology.</b> Any mention of internment terminology (such as Education Training Centers or Legal Education Centers) coupled with poverty alleviation efforts, ethnic minority graduates or involvement in reskilling.</li> <li>• <b>Government incentives.</b> Companies operating in Xinjiang receiving government development assistance as part of the government’s poverty alleviation efforts or vocational training programs and companies involved in the mutual pairing assistance program.</li> <li>• <b>Government recruiters.</b> Companies operating in Xinjiang implementing non-standard hiring practices and/or hiring workers through government recruiters.</li> <li>• <b>Factory location.</b> Companies operating in Xinjiang located within the confines of internment camps, near internment camps or within the confines of or adjacent to industrial parks involved in poverty alleviation efforts, or new factories built near internment camps.</li> </ul> <p>The advisory includes an illustrative, non-exhaustive list of industries in Xinjiang in which public reporting has indicated labor abuses may be taking place. The advisory indicates that businesses should consider the list as an additional risk factor for human rights due diligence. The following industries are on the list: (1) agriculture (including products such as hami melons, korla pears, tomato products and garlic); (2) cell phones; (3) cleaning supplies; (4) construction; (5) cotton yarn, cotton fabric,</p>

	<p>ginning, spinning mills and cotton products; (6) electronics assembly; (7) extractives (including coal, copper, hydrocarbons, oil, uranium and zinc); (8) fake hair and human hair wigs and hair accessories; (9) food processing factories; (10) hospitality services; (11) noodles; (12) printing products; (13) footwear; (14) stevia; (15) sugar; (16) textiles (including apparel, bedding, carpets and wool); and (17) toys.</p> <p>The advisory also includes a map of pairing program participants with counterparts and high level information concerning the Xinjiang cotton supply chain.</p>
<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>	<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>
<b>Xinjiang Supply Chain Advisory</b>	<a href="https://www.state.gov/wp-content/uploads/2020/07/Xinjiang-Supply-Chain-Business-Advisory_FINAL_For-508-508.pdf">https://www.state.gov/wp-content/uploads/2020/07/Xinjiang-Supply-Chain-Business-Advisory_FINAL_For-508-508.pdf</a>

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(Updated December 1, 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 “ <b>Act</b> ”)
<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 (“ <b>CBP</b> ”) 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 (“ <b>ICE</b> ”) 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 (“ <b>HSI</b> ”) 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>

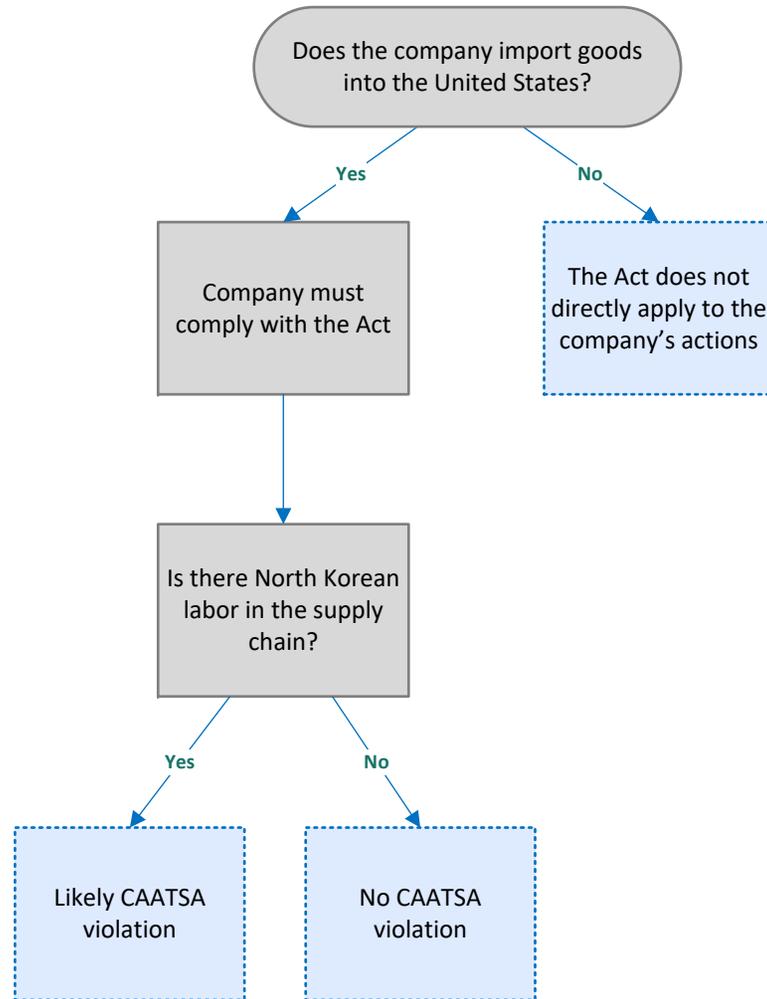
	<p>local business partners and members of civil society such as local communities, workers, trade unions, vulnerable groups and NGOs;</p> <ul style="list-style-type: none"> <li>• Integrating the foregoing commitments and assessments into internal control and oversight systems of company operations and 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 December 1, 2020)

### Applying the Law



## Uyghur Forced Labor Prevention Act (Proposed) United States

### Overview

<b>Law / Country</b>	<b>Uyghur Forced Labor Prevention Act (H.R.6210) (United States) (the “Act”)</b>
<b>Goal</b>	To address Uyghur forced labor in supply chains.
<b>Adoption / Status</b>	The Act was passed by the U.S. House of Representatives on September 22, 2020. The Act is currently sitting with the Senate Committee on Foreign Relations.
<b>Issue Addressed</b>	Uyghur forced labor
<b>Covered Entities</b>	Importers of goods into the United States. Additional reporting obligations also may apply to companies that are publicly traded in the United States.

### How It Works

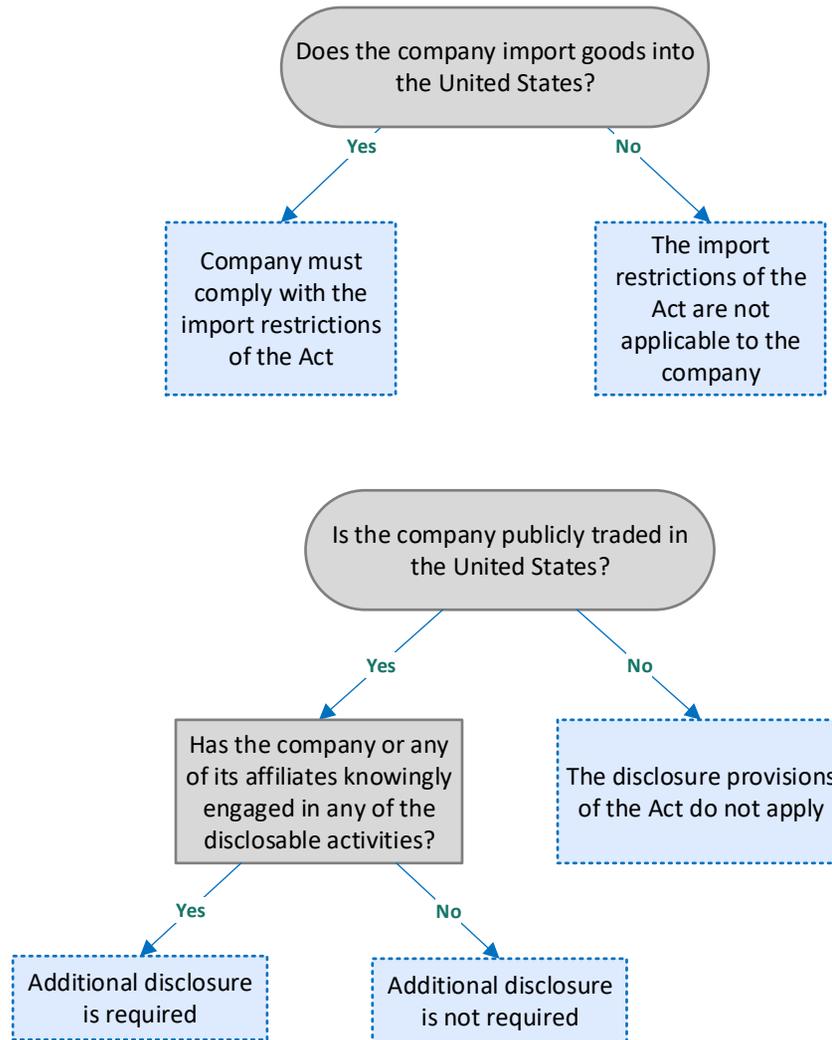
<b>Mandatory?</b>	Yes.
<b>Prohibited Imports</b>	The Act would establish a presumption that goods, wares, articles and merchandise mined, produced or manufactured wholly or in part in the Xinjiang Uyghur Autonomous Region (“XUAR”), or by persons working with the XUAR government for purposes of the poverty alleviation program or the pairing-assistance program, are produced using forced labor and therefore prohibited from being imported into the United States under Section 307 of the Tariff Act.
<b>Exceptions to the Import Prohibition</b>	The import prohibition would not apply if the Commissioner of Customs and Border Protection (“CBP”) (1) determines, by clear and convincing evidence, that any specific goods, wares, articles or merchandise were not produced wholly or in part by convict, forced or indentured labor under penal sanctions and (2) submits to the appropriate congressional committees and makes available to the public a report containing that determination.
<b>Public Company Reporting Requirements</b>	The Act would also require issuers that file periodic reports under Section 13(a) of the Exchange Act to disclose in their annual or quarterly reports under that Act if, during the period covered by the report, the issuer or any of its affiliates: <ul style="list-style-type: none"> <li>• Knowingly engaged in an activity with an entity or the affiliate of an entity engaged in creating or providing technology or other assistance to create mass population surveillance systems in the XUAR, including any entity in the XUAR included on the Department of Commerce’s Entity List;</li> <li>• Knowingly engaged in an activity with an entity or an affiliate of an entity building and running detention facilities for Uyghurs, Kazakhs, Kyrgyz and other members of Muslim minority groups in the XUAR;</li> <li>• Knowingly engaged in an activity with an entity or an affiliate of an entity the Secretary of State reports is using forced or involuntary labor in the XUAR or is acting as an agent of any such entity to import goods into the United States, including (1) any entity engaged in the pairing-assistance program or (2) any entity for which the Department of Homeland Security has issued a Withhold Release Order under Section 307 of the Tariff Act; or</li> </ul>

	<ul style="list-style-type: none"> <li>• Knowingly conducted any transaction or had dealings with (1) any person whose property and interests in property were sanctioned by the Secretary of State for the detention or abuse of Uyghurs, Kazakhs, Kyrgyz or other members of Muslim minority groups in the XUAR, (2) any person whose property and interests in property are sanctioned pursuant to the Global Magnitsky Human Rights Accountability Act or (3) any person or entity responsible for or complicit in committing atrocities in the XUAR.</li> </ul> <p>The foregoing disclosure requirement would not include activities relating to (1) the importation of manufactured goods, including electronics, food products, textiles, shoes and teas, that originated in the XUAR or (2) manufactured goods containing materials that originated or are sourced in the XUAR.</p> <p>If an issuer or one of its affiliates has engaged in any of the activities requiring disclosure, the issuer would be required to provide a detailed description of each such activity, including (1) the nature and extent of the activity, (2) the gross revenues and net profits, if any, attributable to the activity and (3) whether the issuer or its affiliate intends to continue the activity.</p> <p>In addition, the issuer would be required to separately file with the Securities and Exchange Commission, concurrently with the annual or quarterly report containing the disclosure, a notice that (1) the disclosure of that activity has been included in the report and (2) contains the information described in the preceding paragraph.</p>
<b>Enforcement</b>	<p>The Act does not contain specific penalty provisions. Liability for violations would come under existing applicable provisions of the Tariff Act and the U.S. federal securities laws.</p> <p>Note that, to date, CBP has issued several Withhold Release Orders involving XUAR goods, as described in our summary of Section 307 of the Tariff Act.</p>
<b>Additional Information/Resources</b>	
<b>Law</b>	For the text of the Act, see: <a href="https://www.congress.gov/bill/116th-congress/house-bill/6210/text">https://www.congress.gov/bill/116th-congress/house-bill/6210/text</a>

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

(Updated December 1, 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>
<b>Compliance Plan and Certifications</b>	<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>

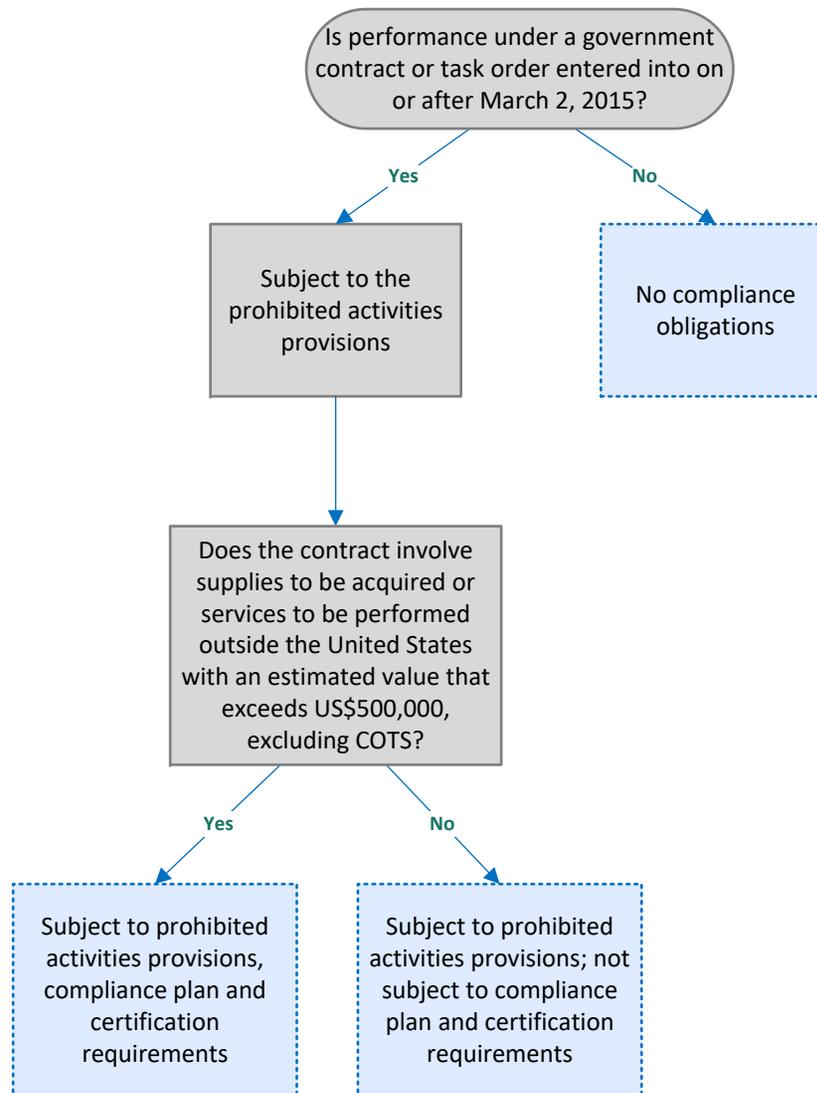
<p><b>Recruitment Fees</b></p>	<p>On December 20, 2018, the Rule was amended to clarify the prohibition on charging employees recruitment fees. Recruitment fees include fees of any type, including charges, costs, assessments or other financial obligations, that are associated with the recruiting process, 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 December 1, 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>	<p>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.</p> <p>The Directive has been subsequently transposed into national legislation in the EU member states.</p> <p>In December 2019, as part of the EU Green Deal, the European Commission (the “<b>EC</b>”) committed to reviewing the Directive as part of the EU’s strategy to strengthen the foundations for sustainable investment. The EC held two public consultations on the Directive in 2020. The EC is expected to propose additional legislation that would strengthen the Directive.</p>
<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 if the parent organization reports, even if the subsidiary is independently subject to the Directive.</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>In June 2017, the EC published 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. 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>	<p>Enforced by the individual EU member states. Enforcement varies by member state.</p>

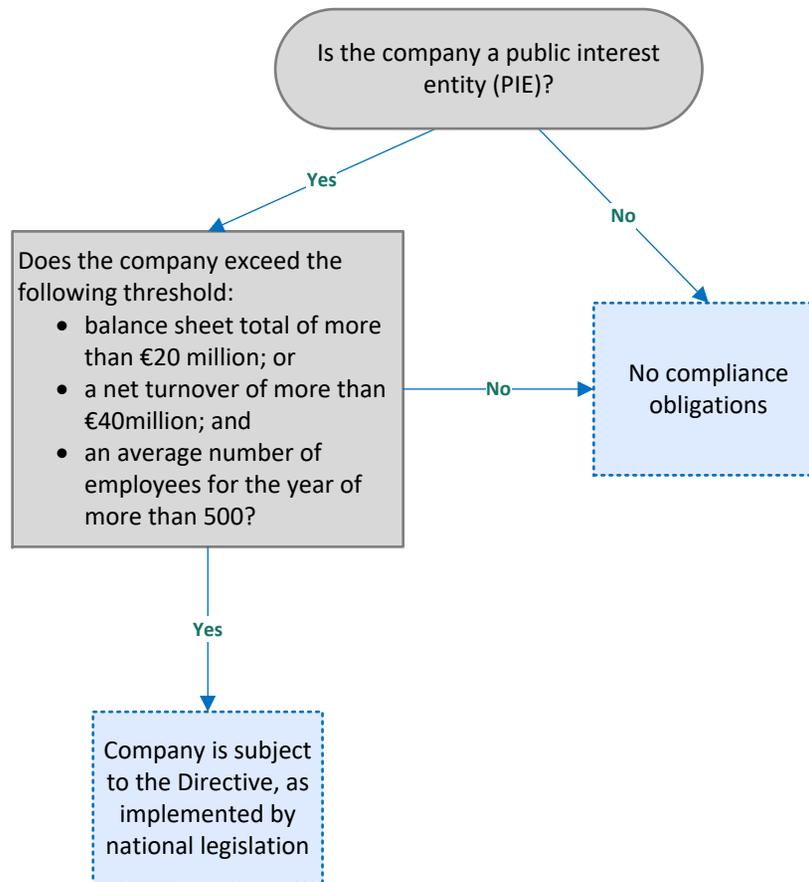
#### Additional Information/Resources

<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 December 1, 2020)

### Applying the Law\*



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

### **NON-FINANCIAL REPORTING DIRECTIVE (EU)**

<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 23, 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>

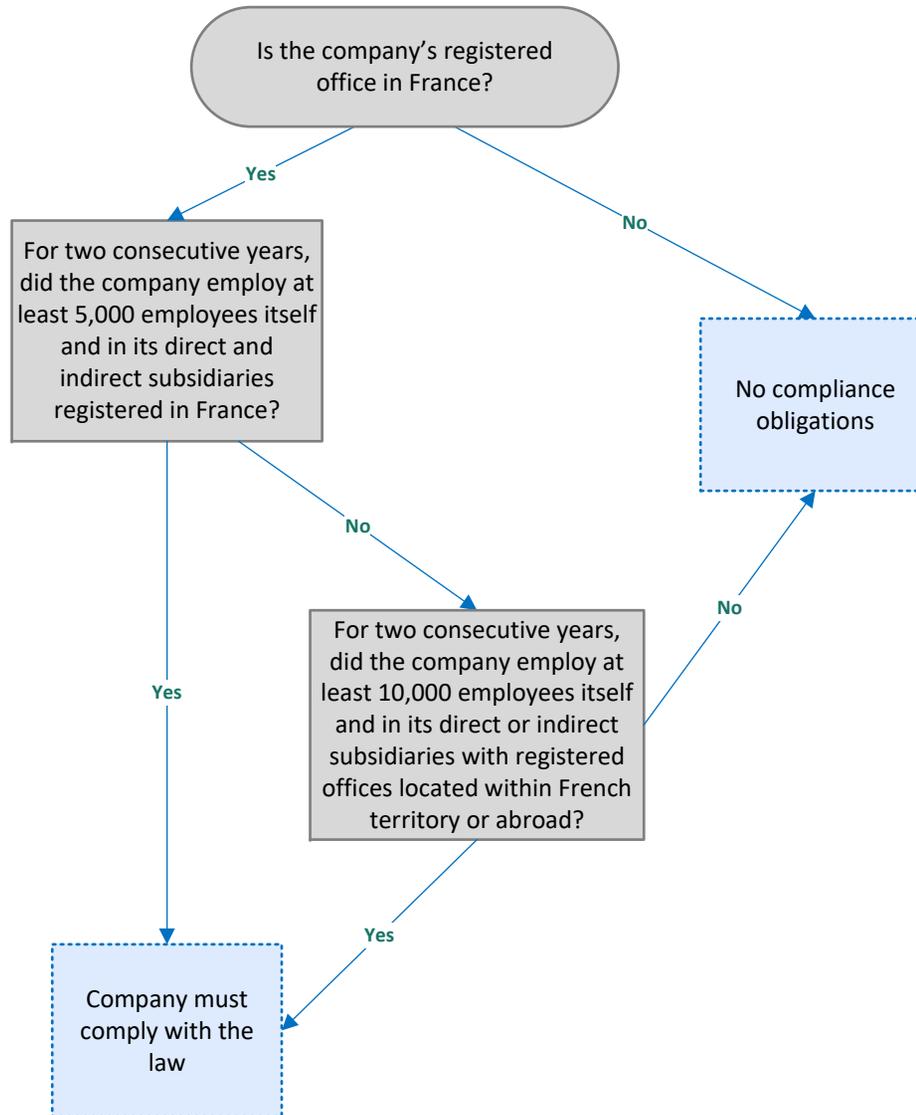
	<ul style="list-style-type: none"> <li>• procedures to regularly assess risks associated with subsidiaries, subcontractors and suppliers with which the company has a commercial relationship;</li> <li>• actions to mitigate identified risks or prevent the most serious violations;</li> <li>• mechanisms 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 2020, Mexican and international human rights organizations brought suit against a French energy company, alleging that the company has not consulted nor obtained informed consent from the indigenous community affected by the company’s planned wind farm project in Mexico. The groups initially issued a notice of non-compliance to the French company in October 2019. This case is pending.</p> <p>In September 2020, a group of French, American and Colombian NGOs issued a formal notice to a French company under the Law, due to alleged violations under the Law with respect to the company’s supply chain practices and alleged purchases from farms involved in deforestation in South America. The NGOs have also requested that the company establish risk-mapping and traceability protocols throughout its supply chains, and introduce an alert system to protect the rights of Amazonian peoples.</p> <p>In October 2019, French and Ugandan environmental groups sued a French oil company in the Nanterre High Court in France, alleging that it failed to abide by its human rights and environmental diligence plan due to the negative environmental</p>

	<p>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 appealed the decision to the Court of Appeal of Versailles, France and asked the court to rule on both the jurisdictional issue and the merits of the case. On December 10, 2020, the Court of Appeal of Versailles issued its decision, confirming the judgment of the Nanterre High Court that jurisdiction is proper in the commercial court.</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="https://www.conseil-constitutionnel.fr/decision/2017/2017750DC.htm">https://www.conseil-constitutionnel.fr/decision/2017/2017750DC.htm</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 December 1, 2020)

### Applying the Law



## Swiss Mandatory Human Rights Due Diligence Legislation – Parliament Indirect Counterproposal to the Responsible Business Initiative (Pending) Switzerland

### Overview

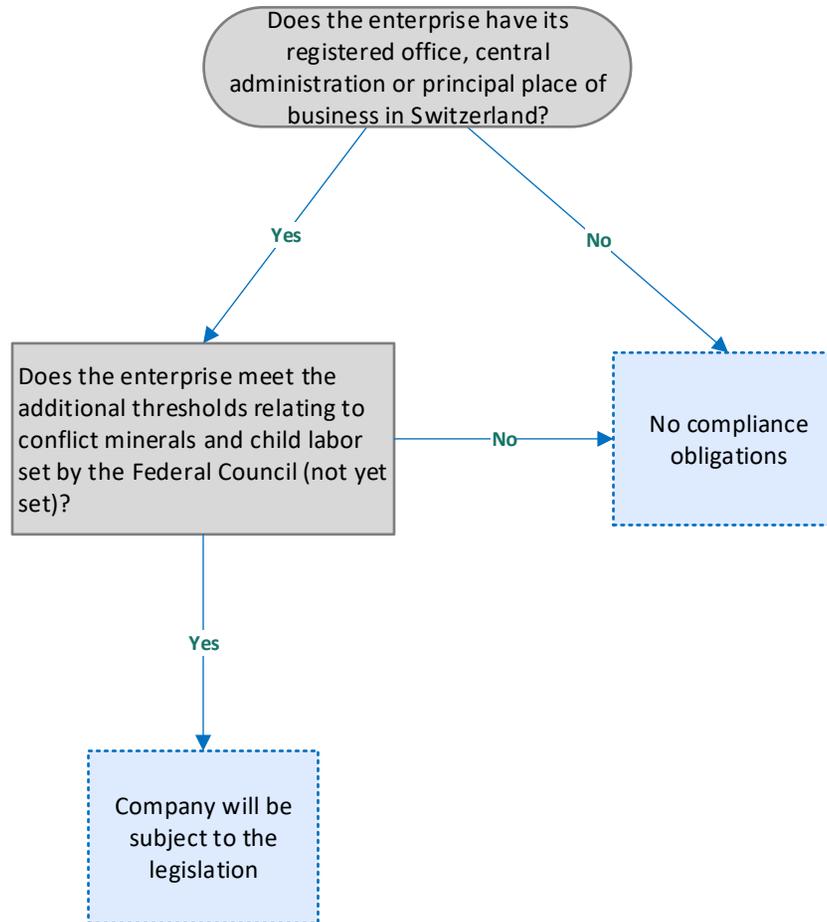
<b>Law / Country</b>	<b>Mandatory Human Rights Due Diligence Legislation - Parliament Indirect Counterproposal</b> to the Responsible Business Initiative (the “ <b>Indirect Counterproposal</b> ”) (Switzerland)
<b>Goal</b>	To further responsible business practices by Swiss companies by implementing mandatory human rights due diligence requirements for conflict minerals and child labor.
<b>Adoption / Status</b>	<p>The Indirect Counterproposal is the alternative to a failed November 29, 2020 public referendum on a more expansive human rights due diligence constitutional amendment proposed by a civil society coalition.</p> <p>At present, there are two possible near-term paths for the Indirect Counterproposal: it can either be implemented or submitted to a popular vote. A popular vote may be requested within 100 days after the official publication of the Indirect Counterproposal if a petition to hold a popular vote receives 50,000 signatures or 8 cantons request a popular vote. If a popular vote is held and the Indirect Counterproposal is voted down, it will not be implemented. If the Indirect Counterproposal is not voted down, or a popular vote is not requested, the Indirect Counterproposal will be implemented.</p> <p>If the Indirect Counterproposal is to be implemented, which is widely expected to be the case, the Federal Council (i.e., the Swiss executive branch) will need to adopt a more detailed implementing decree giving effect to the Indirect Counterproposal. The Federal Council is not required to act within a specific time frame.</p>
<b>Issues Addressed</b>	<ul style="list-style-type: none"> <li>• Conflict minerals</li> <li>• Child labor</li> </ul> <p>Conflict minerals are tin, tantalum, tungsten and gold from conflict-affected or high-risk areas that are transported into Switzerland or processed in Switzerland. Child labor is not defined in the Indirect Counterproposal.</p> <p>The Indirect Counterproposal also contemplates non-financial reporting by Swiss enterprises (1) whose shares are publicly traded in Switzerland; (2) that have issued bonds; (3) that contribute at least 20% to the assets or revenues of an enterprise coming under (1) or (2) above; or (4) that are prudentially supervised by large financial institutions, in particular certain banks and insurance companies. This portion of the Indirect Counterproposal is not discussed in this summary.</p>
<b>Covered Entities</b>	Enterprises with their registered office, central administration or principal place of business in Switzerland, if certain thresholds are met for doing business relating to conflict minerals or offering products or services that induce a justified suspicion of an involvement of child labor. These thresholds are not specified in the Indirect Counterproposal and will need to be set by the Federal Council.

<b>How It Works</b>	
<b>Mandatory?</b>	Yes.
<b>Due Diligence</b>	<p>Subject enterprises will be required to conduct due diligence in respect of conflict minerals and child labor. This will include putting in place an adequate management system to address conflict minerals and child labor risks that includes a supply chain policy and a system for tracking the supply chain. Subject enterprises also will be required to determine and evaluate the risk of adverse impacts in the supply chain, prepare a risk management plan and take appropriate measures to mitigate risks. The subject enterprise will be required to maintain records of its due diligence.</p> <p>Compliance with the conflict minerals due diligence requirements will be required to be verified by an independent external expert.</p>
<b>Reporting</b>	<p>Subject enterprises will be required to annually report on their due diligence.</p> <p>The report will be required to be approved by the highest management body (e.g., the board of directors) of the subject enterprise.</p>
<b>Enforcement</b>	Violations of the reporting and record-keeping obligations will carry a fine of up to SFr100,000, except that, in the case of negligence only (i.e., no willful misconduct), the maximum fine will be SFr50,000.
<b>Additional Information/Resources</b>	
<b>Indirect Counterproposal</b>	For the text of the Indirect Counterproposal, 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>

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(Updated December 1, 2020)

**Applying the Law**



## Human Rights Diligence and Disclosure Legislation (Proposed)

### Norway

#### Overview

<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>

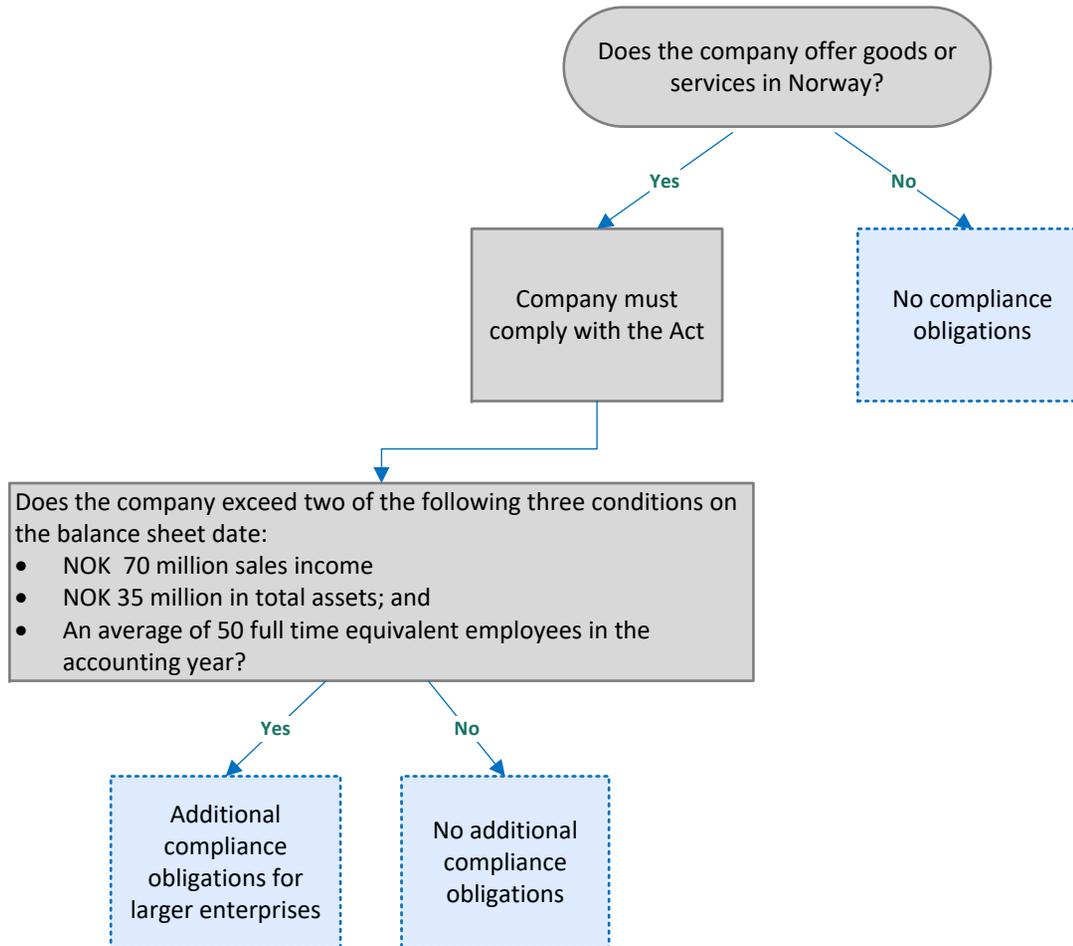
	<p>The report would be permitted to be included in the enterprise’s social responsibility report pursuant to Accounting Act section 3-3, although this would not be required.</p>
<p><b>Stakeholder Information Requests</b></p>	<p>In addition to requiring enterprises to report specified information as discussed 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-etikkrappport-web.pdf">https://www.regjeringen.no/contentassets/6b4a42400f3341958e0b62d40f484371/195794-bfd-etikkrappport-web.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 December 1, 2020)

### Applying the Law



## Mandatory Human Rights Due Diligence Legislation (Pre-proposal)

### EU

#### Overview

<b>Law / Country</b>	<b>Mandatory Human Rights Due Diligence Legislation (EU)</b>
<b>Goal</b>	Aimed at ensuring that undertakings operating in the EU internal market fulfill their duty to respect human rights, the environment and good governance and do not cause or contribute to risks to human rights, the environment and good governance in their activities and those of their business relationships.
<b>Adoption / Status</b>	<p>On April 29, 2020, EU Commissioner for Justice Didier Reynders announced that the European Commission (the “EC”) will introduce mandatory human rights due diligence Legislation in the first quarter of 2021. The legislation will be part of the EU’s COVID-19 recovery package and the European Green Deal.</p> <p>On September 11, 2020, the Committee on Legal Affairs of the European Parliament published a draft report that included the text of a recommended directive for the EC’s consideration (the “<b>Draft Directive</b>”). This summary describes the Draft Directive. The EC proposal is expected to differ in at least some respects from the Draft Directive. If the final legislation takes the form of a directive, to give the directive effect, Member States would be required to transpose the directive into national law. The Draft Directive would require this to occur within two years after the directive takes effect.</p> <p>On October 27, the EC launched a consultation on sustainable corporate governance. That consultation in part relates to the subject matter of the Draft Directive. The consultation is open until February 8, 2021.</p> <p>On December 1, as part of its Conclusions on Human Rights and Decent Work in Global Supply Chains, the European Council called on the EC to table a proposal for an EU legal framework on sustainable corporate governance, including cross-sector corporate due diligence obligations along global supply chains, which could include a definition of what kind of risk management process companies need to follow to identify, prevent, mitigate and account for its adverse human and labor rights and environmental impacts.</p>
<b>Issues Addressed</b>	<ul style="list-style-type: none"> <li>• Human rights</li> <li>• Environmental impacts</li> <li>• Good governance</li> </ul>
<b>Covered Entities</b>	<p>The Directive would apply to:</p> <ul style="list-style-type: none"> <li>• All undertakings governed by the law of an EU member state or established in the territory of the EU; and</li> <li>• Limited liability undertakings governed by the law of a non-member state and not established in the EU when they operate in the internal market selling goods or providing services.</li> </ul> <p>The Directive would apply to undertakings regardless of their size, sector and whether they are private or state-owned. However, Member States could individually exempt micro-undertakings, which are undertakings that on their balance sheet</p>

	date do not exceed the limits of at least two of the following criteria: (1) a balance sheet total of €350 000; (2) net turnover of €700 000; and (3) an average number of 250 employees during the financial year.
<b>How It Works</b>	
<b>Mandatory?</b>	Yes.
<b>Due Diligence</b>	<p>Subject undertakings would be required to carry out due diligence with respect to human rights, environmental and governance risks in their operations and business relationships.</p> <p>“Due diligence” is defined in the Draft Directive as the process put in place by an undertaking aimed at identifying, ceasing, preventing, mitigating, monitoring, disclosing, accounting for, addressing and remediating the risks posed to human rights, including social and labor rights, the environment (including through climate change) and to governance, both by its own operations and by those of its business relationships.</p> <p>“Business relationships” are defined in the Draft Directive as the network of relationships of an undertaking with business partners and other entities along its entire value chain, and any other non-State or State entity directly linked to the undertaking’s business operations, products or services.</p> <p>If an undertaking identifies any of the foregoing risks, it would be required to establish a due diligence strategy. The due diligence strategy would be required to:</p> <ul style="list-style-type: none"> <li>• Specify the risks the undertaking has identified as likely to be present in its operations and business relationships and the level of severity and urgency thereof;</li> <li>• Indicate the policies and measures that the undertaking intends to adopt with a view to ceasing, preventing or mitigating those risks;</li> <li>• Set up a prioritization policy for cases in which the undertaking is not in a position to deal with all the risks at the same time; in connection therewith, the undertaking would be required to consider the level of severity and urgency of the different risks present, the scope of the risks, their scale and how irremediable they might be and, if necessary, use the prioritization policy in dealing with the risks; and</li> <li>• Indicate the methodology followed for the definition of the strategy, including the stakeholders consulted.</li> </ul> <p>Undertakings would be required to make all reasonable efforts to identify subcontractors and suppliers in their entire value chain. “Suppliers” would be defined as all business relationships that provide a product or service to an undertaking, either directly or indirectly. “Sub-contractor” would mean all business relationships that perform a service or an activity necessary for the completion of another undertaking’s operations. “Value chain” would mean all activities, operations, business relationships and investment chains of an undertaking inside or outside the European Union and would include entities with which the undertaking has a direct or indirect business relationship, upstream and downstream, and which either (1) supply products or services that contribute to the undertaking’s own products or services or (2) receive products or services from the undertaking.</p> <p>In addition, undertakings would be required to ensure by means of contractual clauses and the adoption of codes of conduct that their business relationships put in place and carry out human rights, environmental and governance policies that are in</p>

line with the undertaking's due diligence strategy. Undertakings would be required to regularly verify that subcontractors and suppliers comply with these obligations.

An undertaking governed by the law of a non-Member State and not established in the EU would be considered in compliance with the Directive if it fulfils the due diligence requirements established in the Directive as transposed in the legislation of the Member State in which it operates.

The Draft Directive indicates that undertakings will be required to carry out value chain due diligence that is proportionate and commensurate to their specific circumstances, particularly their sector of activity, the size and length of their supply chain, the size of the undertaking, its capacity, resources and leverage. The Whereas clauses in the Draft Directive indicate that due diligence should not be limited to the first tier downstream and upstream in the supply chain, but should encompass all suppliers and sub-contractors, particularly those that, during the due diligence process, might have been identified by the undertaking as posing major risks. The Whereas clauses also indicate that undertakings should be encouraged to integrate the gender perspective into their due diligence processes.

Application to Subsidiaries and Controlled Entities:

The subsidiaries and other controlled companies of an undertaking would be deemed in compliance with the obligation to establish a due diligence strategy if their parent or controlling company includes them in its due diligence strategy.

Stakeholder Consultation:

Member States would be required to ensure that undertakings carry out in good faith effective, meaningful and informed consultations with stakeholders when establishing and implementing their due diligence strategy, in a manner that is appropriate to their size and the nature and context of their operations. "Stakeholders" would be defined broadly as individuals and groups of individuals whose rights or interests may be affected by the human rights, environmental and good governance risks posed by an undertaking or its business relationships, as well as organizations whose statutory purpose is the defense of human rights, including social and labor rights, the environment and good governance, including but not limited to workers and their representatives, local communities, indigenous peoples, citizens' associations, trade unions, civil society organizations and the undertaking's shareholders.

Member States would be required to guarantee, in particular, the right for trade unions at the relevant level to be involved in the establishment and implementation of the due diligence strategy in good faith with their undertaking. Workers or their representatives would be required to be informed and consulted on the due diligence strategy of their undertaking. In addition, consultations with indigenous peoples would be required to be undertaken in accordance with international human rights standards, including the standard of free, prior and informed consent and respecting indigenous peoples' right to self-determination. Member States also would be required to ensure that stakeholders are entitled to request from the undertaking that they are consulted.

The Draft Directive would require effective protection mechanisms and measures to be put in place by the undertaking to ensure that affected or potentially affected stakeholders are not put at risk due to participating in consultations.

	<p>Member States would be required to ensure that, if an undertaking refuses to carry out consultations with stakeholders, fails to involve trade unions in good faith or does not adequately inform and consult workers or their representatives, stakeholders and trade unions may refer the matter to the competent national authority.</p> <p>Due Diligence Expertise:</p> <p>Member States would be required to ensure that the governing body of the undertaking has the necessary qualifications, knowledge and expertise regarding due diligence.</p> <p>In addition, large undertakings (as defined for purposes of the Non-financial Reporting Directive) would be required to set up an advisory committee tasked with advising the governing body of the undertaking on due diligence matters and proposing measures to cease, monitor, disclose, address, prevent and mitigate risks. Advisory committees would be required to include stakeholders and experts in their composition.</p> <p>Evaluation and Review of Due Diligence Strategy:</p> <p>Undertakings would be required to evaluate the effectiveness and appropriateness of their due diligence strategy at least once a year, and review it accordingly when necessary. The evaluation and review would be required to be carried out in consultation with stakeholders and the involvement of trade unions, in the same manner as when establishing the due diligence strategy.</p> <p>In large companies, the advisory committee would be required to be consulted in the evaluation and review of the due diligence strategy.</p>
<p><b>Risks Defined</b></p>	<p>“Risk” is defined in the Draft Regulation as a potential or adverse impact on individuals, groups of individuals and other organizations in relation to human rights, the environment or good governance. Each of these risks is in turn defined.</p> <p>Under the Draft Directive, “human rights risk” is any potential or actual adverse impact that may impair the full enjoyment of human rights by individuals or groups of individuals in relation to internationally recognized human rights, understood at a minimum as those expressed in the International Bill of Human Rights, the United Nations human rights instruments on the rights of persons belonging to particularly vulnerable groups or communities, and the principles concerning fundamental rights set out in the ILO Declaration on Fundamental Principles and Rights at Work, as well as those recognized in the ILO Convention on freedom of association and the effective recognition of the right to collective bargaining, the ILO Convention on the elimination of all forms of forced or compulsory labor, the ILO Convention on the effective abolition of child labor, and the ILO Convention on the elimination of discrimination in respect of employment and occupation. In addition, the Draft Directive indicates that human rights risk further includes but is not limited to adverse impacts in relation to other rights recognized in a number of ILO Conventions, such as freedom of association, minimum age, occupational safety and health, and equal remuneration, and the rights recognized in the Convention on the Rights of the Child, the African Charter of Human and Peoples’ Rights, the American Convention on Human Rights, the European Convention on Human Rights, the European Social Charter, the Charter of Fundamental Rights of the European Union, and national constitutions and laws recognizing or implementing human rights.</p>

	<p>“Environmental risk” is defined as any potential or actual adverse impact that may impair the right to a healthy environment, whether temporarily or permanently, and of whatever magnitude, duration or frequency. The definition indicates that these include, but are not limited to, adverse impacts on the climate, the sustainable use of natural resources and biodiversity and ecosystems. Also as indicated in the Draft Directive, these risks include climate change, air and water pollution, deforestation, loss in biodiversity and greenhouse emissions.</p> <p>“Governance risk” is defined as any potential or actual adverse impact on the good governance of a country, region or territory, including, but not limited to, non-compliance with the OECD Guidelines for Multinational Enterprises, Chapter VII on Combatting Bribery, Bribe Solicitation and Extortion and the principles of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and situations of corruption and bribery where an undertaking exercises undue influence on, or channels undue pecuniary advantages to, public officials to obtain privileges or unfair favorable treatment in breach of the law, and including situations in which an undertaking becomes improperly involved in local political activities, makes illegal campaign contributions or fails to comply with applicable tax legislation.</p>
<b>Sectoral Due Diligence Plans</b>	The Draft Directive provides that Member States may encourage the adoption by undertakings of sectoral due diligence action plans aimed at coordinating the due diligence strategies of undertakings within an economic sector. Member States would be required to ensure that stakeholders, particularly trade unions, have the right to participate in the definition of sectoral due diligence action plans.
<b>Reporting</b>	<p>If an undertaking concludes that it does not cause or contribute to the risks covered by the Directive, it would be required to publish a statement to that effect, including its risk assessment. The undertaking would be required to review the statement in the event new risks emerge or in the event of the undertaking entering into new business relationships that can pose risks.</p> <p>If an undertaking identifies risks, as part of its due diligence strategy, it would be required to publicly disclose detailed, relevant and meaningful information about the undertaking’s value chain, including names, locations and other relevant information concerning subsidiaries, suppliers and business partners in its value chain. The undertaking would be required to indicate how its due diligence strategy relates to and integrates with its business strategy, policies (including purchasing policies) and procedures.</p> <p>Member States would be required to ensure that an undertaking makes its due diligence strategy publicly available, accessible and free of charge, especially on the undertaking’s website. In addition, undertakings would be required to communicate their due diligence strategy to their workers and business relationships and to a designated national competent authority. The Member States would be required to establish a centralized platform and ensure that undertakings upload on the platform their due diligence strategies or the statement referred to above.</p>
<b>Grievance Mechanisms</b>	Undertakings would be required to establish a grievance mechanism, both as an early-warning risk awareness and as a remediation system, allowing any stakeholder to voice concerns regarding the existence of a human rights, environmental or governance risk. Member States would be required to ensure that undertakings are enabled to provide for a grievance mechanism through collaborative arrangements with other undertakings or organizations.

	<p>The grievance mechanism would be required to be legitimate, accessible, predictable, safe, equitable, transparent, rights-compatible and adaptable, as set out in the effectiveness criteria for non-judicial grievance mechanisms in Principle 31 of the United Nations Guiding Principles on Business and Human Rights. The grievance mechanism would be required to provide for anonymous complaints. In addition, the grievance mechanism would be required to provide for timely and effective responses to stakeholders, both in instances of warnings and complaints and in instances of remediation.</p> <p>Undertakings would be required to publish concerns raised through their grievance mechanisms, as well as remediation efforts, and regularly report on progress made in those instances.</p> <p>The Draft Directive provides that grievance mechanisms will be developed in partnership with stakeholders, in particular workers' representatives, and managed in cooperation with them. Workers' representatives would be required to be given the necessary resources to carry out their responsibilities in this area, including in order to establish connections with trade unions and workers in the undertakings with which the main undertaking has business relationships.</p> <p>Grievance mechanisms would be entitled to make proposals to the undertaking on how risks should be addressed.</p> <p>To the extent sectoral due diligence actions plans are established, they may provide for a single joint grievance mechanism for the undertakings within its scope, which would be required to comply with the grievance mechanism requirements described above.</p>
<b>Extra-Judicial Remedies</b>	<p>The Draft Directive would require Member States to ensure that, when an undertaking identifies that it has caused or contributed to harm (in particular through its grievance mechanism), it provides for or cooperates with remediation.</p> <p>The Draft Directive provides that the remedy may be proposed via the grievance mechanism. In addition, the Draft Directive indicates that the remedy will be determined in consultation with the affected stakeholders and may consist of one or more of the following non-exhaustive list of remedies: financial or nonfinancial compensation, reinstatement, public apologies, restitution, rehabilitation or contribution to investigation.</p> <p>Undertakings would be required to prevent additional harm through guarantees of non-repetition.</p> <p>Member States would be required to ensure that proposal of a remedy by an undertaking does not prevent affected stakeholders from bringing civil proceedings in accordance with national law.</p>
<b>Responsibility for Due Diligence Process</b>	<p>Member States would be required to ensure that the members of the administrative, management and supervisory bodies of an undertaking, acting within the competences assigned to them by national law, have collective responsibility for ensuring that the due diligence process and the undertaking's business decisions, including remuneration policies, are consistent with the Directive. Member States also would be required to ensure that their laws, regulations and administrative provisions on liability, at least towards the undertaking, apply to the members of the administrative, management and supervisory bodies of the undertaking, in respect of breach of the foregoing duties.</p>
<b>Member State Supervision; Investigations</b>	<p>Each Member State would be required to designate one or more national competent authorities with responsibility for the supervision of the application of the transposed Directive and the dissemination of due diligence best practices.</p>

	<p>Member State competent authorities would have the power to carry out investigations to ensure that undertakings comply with their obligations under the Directive. Competent authorities would be authorized to carry out checks on undertakings and interviews with affected or potentially affected stakeholders or their representatives.</p> <p>If a competent authority identifies a failure to comply with the Directive, it would be required to grant the undertaking an appropriate period of time to take remedial action. Member States would be required to ensure that, if the failure to comply with the Directive could lead to irreparable harm, a competent authority would be able to order the adoption of interim measures by the undertaking or the temporary suspension of activities. Member States would be required to provide for penalties for undertakings that do not take remedial action within the time period granted.</p>
<b>Penalties</b>	<p>Member States would be required to provide for penalties applicable to infringements of the transposed Directive. The Draft Directive requires the penalties to be effective, proportionate and dissuasive.</p> <p>The Member States would be required to ensure that a repeated infringement by an undertaking would constitute a criminal offence when committed intentionally or with serious negligence. The Draft Directive requires Member States to ensure that these offences are punishable by effective, proportionate and dissuasive criminal penalties.</p>
<b>Civil Liability</b>	<p>The Draft Directive indicates that carrying out due diligence in compliance with the requirements of the Directive would not absolve the undertaking of any civil liability it may incur pursuant to national law.</p> <p>The Whereas clauses in the Draft Directive indicate that Member States should introduce further legislation to ensure that undertakings can be held liable for damage caused by undertakings under their control where they have, in the course of business, committed violations of internationally recognized human rights or international environmental standards and cannot prove that they took all due care to avoid the loss or damage or that the damage would have occurred even if all due care had been taken. The Draft Directive indicates that, when introducing liability regimes, Member States should consider adopting appropriate limitation periods and introducing the “loser pays” principle.</p>
<b>Liability Provisions in Companion Proposals</b>	<p>A companion recommendation would amend an existing EU Regulation to provide that EU undertakings could be held accountable for their role in human rights abuses in third countries. This new provision would extend the jurisdiction of Member State courts to civil cases against EU undertakings relating to violations of human rights caused by their subsidiaries or suppliers in third countries. In the latter case, the provision would require that the undertaking had a contractual relationship with the supplier.</p> <p>The companion recommendation also would give Member State courts jurisdiction (if they do not otherwise have jurisdiction) to decide civil claims pertaining to human rights violations by undertakings in a third country to the extent they are in the supply chain of an EU undertaking and the proceedings could not reasonably be brought or conducted or would be impossible in the third country. The provision would further require that the claim have a sufficient connection with the Member State.</p> <p>Another companion recommendation would amend a different existing EU Regulation to include a specific choice of law provision for civil claims relating to alleged business-related human rights abuses committed by EU companies in third countries. This amendment would allow victims of business-related human rights violations to choose between the law of the</p>

	country in which the damage occurred, the law of the country in which the event giving rise to the damage occurred and the law of the place where the defendant undertaking is domiciled or, lacking a domicile in the Member State, where it operates.
<b>Due Diligence Scoreboard</b>	The EC would be required to publish an annual due diligence scoreboard that is based on the information shared by national competent authorities and in cooperation with other public sector experts and stakeholders. The EC would be assisted by the European Union Agency for Fundamental Rights, the European Environmental Agency and the European Agency for Small and Medium Enterprises.
<b>Additional National Legislation</b>	The Draft Directive would require the Member States to transpose it into national law within two years after it takes effect. Member States would not be prohibited from introducing corporate human rights legislation that goes beyond the Directive. The Draft Directive expressly indicates that the Directive would not prevent member states from maintaining or introducing further general or sector-specific due diligence requirements, provided that they do not hamper the effective application of the due diligence requirements provided for in the Directive.
<b>Non-Binding Guidelines</b>	<p>The EC would be required to publish general non-binding guidelines for undertakings on how best to fulfil the due diligence obligations set out in the Directive. The guidelines would be required to be made available no later than 18 months after the date of entry into force of the Directive. The guidelines would be developed in consultation with Member States and the OECD, and with the assistance of the Fundamental Rights Agency, the European Environment Agency and the European Agency for Small and Medium Enterprises.</p> <p>The Draft Directive also allows the EC to prepare specific non-binding guidelines for undertakings operating in certain sectors. It is contemplated in the Draft Directive that this would be done in consultation with the Member States and the OECD, and with the assistance of the Fundamental Rights Agency, the European Environment Agency and the European Agency for Small and Medium Enterprises.</p> <p>The Draft Directive provides that, in preparing non-binding guidelines, due account is to be taken of the United Nations Guiding Principles on Business and Human Rights, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the OECD Due Diligence Guidance for Responsible Business Conduct, the OECD Guidelines for Multinational Enterprises, the OECD Guidance for Responsible Mineral Supply Chains, the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear sector, the OECD guidance for Responsible Business Conduct for Institutional Investors, and the OECD-FAO Guidance for Responsible Agricultural Supply Chains.</p>
<b>Additional Information/Resources</b>	
<b>Draft Directive</b>	For the Draft Directive published by the Committee on Legal Affairs of the European Parliament, see: <a href="https://www.europarl.europa.eu/doceo/document/JURI-PR-657191_EN.pdf">https://www.europarl.europa.eu/doceo/document/JURI-PR-657191_EN.pdf</a>

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

Note: An “Applying the Law” flowchart has not been included with this Summary because the Commission’s proposed directive is expected to differ in at least some respects from the Parliamentary Committee’s Draft Directive.

(Updated December 1, 2020)

section 135 of the Companies Act India	
Overview	
Law / Country	section 135 of the Companies Act (The Companies Act, 2013, amended 2015, 2017 and 2019) (India)
Goal	To further corporate social responsibility in India by requiring investment in CSR initiatives.
Adoption / Status	On August 29, 2013, 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.
Issue Addressed	<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.

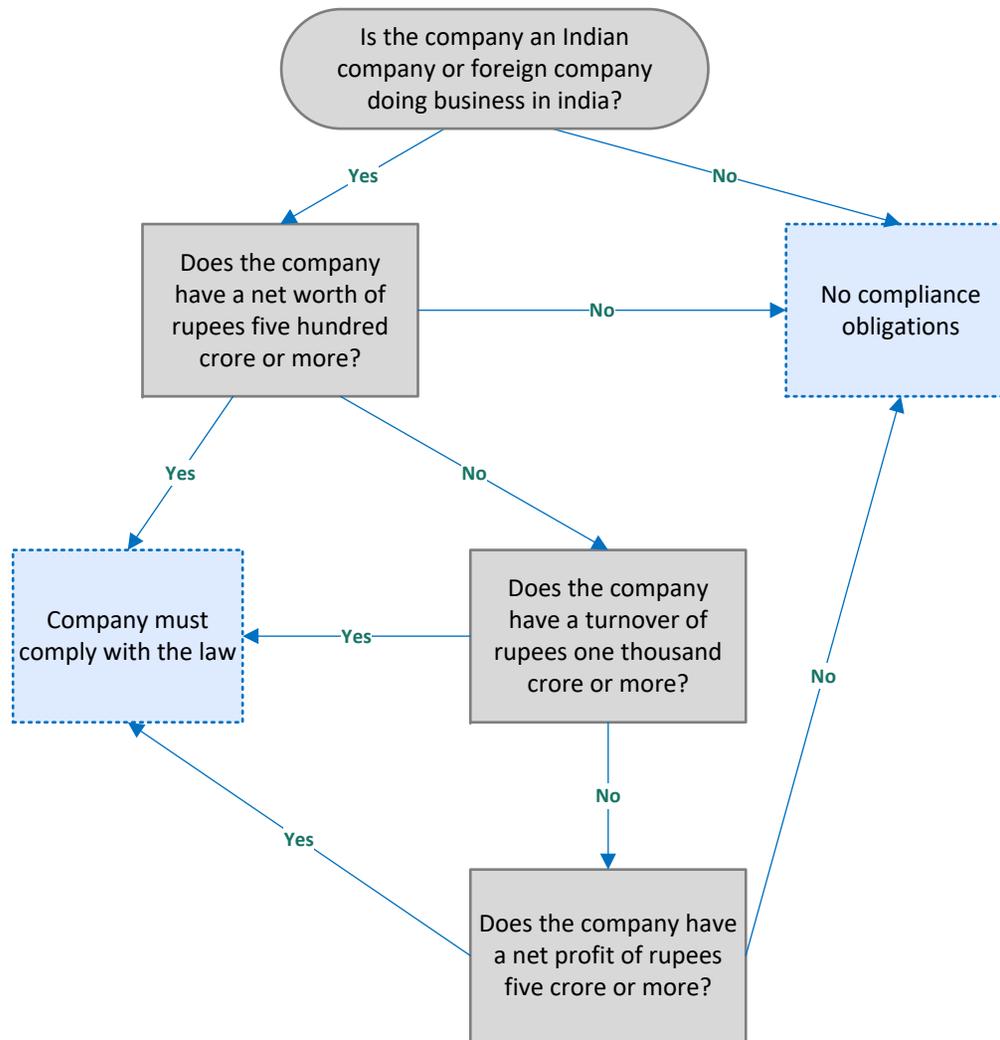
	<p>Under Section 206 of the Companies Act, the government has powers to call for information and inspect the books of a company. Additionally, the MCA created the Centralised Scrutiny and Prosecution Mechanism (“<b>CSPM</b>”) to track companies’ CSR spending records.</p>
<b>Unspent Funds</b>	<ul style="list-style-type: 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>

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

(Updated December 1, 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>

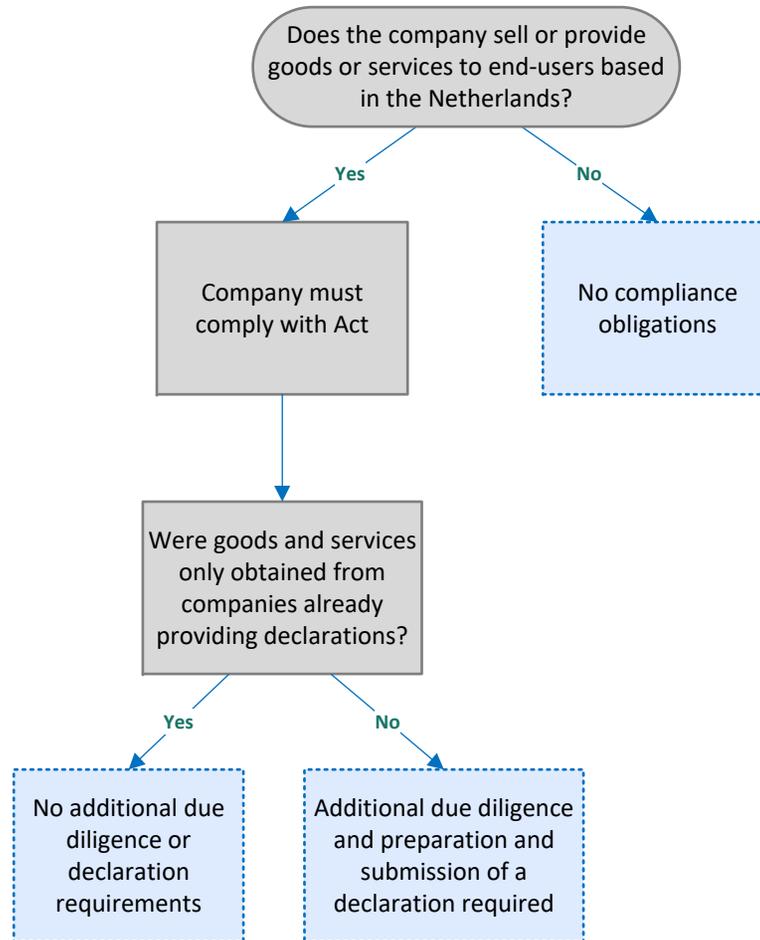
	<p>Further requirements pertaining to due diligence and the plan of action will be specified in a GAO, which will take into account the ILO-IOE Child Labour Guidance Tool for Business. The Child Labour Guidance Tool was created jointly by the International Labour Organization and the International Organisation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

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(Updated December 1, 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 December 1, 2020)