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Corporate Social Responsibility Legislation

A Summary of Selected Instruments

Furnished for use by AIM-PROGRESS members

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INTRODUCTION

There has been a significant increase in corporate social responsibility legislation over the last several years, with more legislation on the horizon. In light of these developments, AIM-PROGRESS requested that Ropes & Gray LLP provide summaries of selected adopted, pending and proposed 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 broad 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, source responsibly or take other remedial action. Disclosure-only legislation is intended to increase transparency, to in turn encourage a "race to the top."

Examples:

- Australian Commonwealth Modern Slavery Act
- California Transparency in Supply Chains Act
- Canadian Fighting Against Forced Labour and Child Labour in Supply Chains Act
- Massachusetts Act Eradicating Human Trafficking and Promoting Transparency in the Retail Supply Chain (Proposed)
- U.K. Modern Slavery Act
- U.S. Securities and Exchange Commission climate-risk disclosure rules
- U.S. Uyghur Forced Labor Disclosure Act (Proposed)
- Washington State Act Relating to Transparency in Supply Chains (Proposed)

Due Diligence: This type of legislation goes beyond mere disclosure, requiring companies to take affirmative steps to assess and address risks and adverse impacts.

Examples:

- French Corporate Duty of Vigilance Law
- German Due Diligence in the Supply Chain Act
- Norwegian Transparency Act
- U.K. Environment Act provisions addressing use of forest risk commodities
- U.S. Federal Acquisition Regulation Anti-Human Trafficking Rule

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

Examples:

- U.S. Countering America's Adversaries Through Sanctions Act, Section 321
- U.S. Tariff Act, Section 307
- U.S. 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, spend a specified portion of their net profits on CSR activities. In addition, keep in mind that, although not commonly thought of as CSR legislation, there is a significant body of civil and criminal legislation globally that intersects with corporate social responsibility to varying degrees addressing modern slavery and other employment practices, environmental, health and safety matters, truth in advertising, consumer protection and data privacy, among 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 assets; these typically take into account the consolidated financials of the particular entity, but typically (although not always) 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 is 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. With the proliferation of new CSR regulations, 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. In any event, disclosures should be globally harmonized.

- Leverage existing procedures for new regulations. For example, if flexible, existing supply chain traceability, audit, training and risk assessment protocols usually can accommodate new supply chain-related 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 guidance and recommendations, as well as non-binding government guidance and NGO commentary. Note that voluntary frameworks are outside the scope of the Summaries. As noted in the Summaries, voluntary frameworks are expressly taken into account in many CSR regulations.

UPDATES SINCE LAST REVISION

In the last several months, there have continued to be many developments regarding CSR-related legislation: regulations taking effect; new proposals; other legal developments pertaining to current regulations; and the stalemate or veto of others. We have updated, added and/or removed summaries reflecting many of these developments.

New summaries include the following:

- ***Proposed South Korean Act on Human Rights and Environmental Protection for Sustainable Management of Companies:*** The Act was proposed by National Assembly members from the Democratic Party of Korea on September 1, 2023. The Act would require subject companies – including in some cases foreign multinationals doing business in South Korea – to assess and address human rights and environmental risks and adverse impacts in their operations and supply chains. Under the Act, subject companies would also be required to implement specified management systems, publish information on their due diligence and respond to interested parties' information requests.

- ***Proposed U.K. Commercial Organisations and Public Authorities Duty (Human Rights and Environment) Act:*** The bill proposing the Act was introduced in the UK House of Lords on November 28, 2023. Under the Act, commercial organisations would have a duty to prevent human rights and environmental harms, so far as reasonably practicable, with respect to their own operations, products and services and those of their subsidiaries, and throughout their value chains. The Act would require reasonable due diligence and, for entities that meet a certain threshold, the publication of an annual report.

- ***California Voluntary Carbon Market Disclosures Act:*** The Act was signed by the Governor of California on October 7, 2023. Among other things, the Act requires an entity doing business in California that makes claims (1) regarding the achievement of net zero emissions, (2) that the entity, a related entity or a product is "carbon neutral" or (3) implying the entity, a related entity or a product does not add net carbon dioxide or greenhouse gases to the climate or has made significant reductions to its carbon dioxide or greenhouse gas emissions, to make certain public discloses to support such claims and/or each applicable project or program.

- ***Proposed Illinois Climate Corporate Accountability Act:*** The Act was introduced to Illinois' General Assembly on December 13, 2023. Under the Act, business entities with total consolidated revenues in excess of $1 billion that do business in Illinois would be required to publicly disclose their Scope 1, Scope 2 and Scope 3 greenhouse gas emissions. Emissions disclosures also would be required to be independently verified by an Illinois-established emissions registry or an approved third-party auditor.

- ***Proposed New York Climate-related Financial Risk Reporting Act:*** The Act was introduced to the New York Senate on October 16, 2023. Under the Act, U.S.-organized entities doing business in New York with total annual revenues exceeding $500 million would be required to biennially prepare and publicly disclose a climate-related financial risk report.

We also have updated many of the pre-existing summaries to reflect developments since the last installment. Some of the updates include the following:

- ***Australia Commonwealth Modern Slavery Act***: Updated to reflect an amendment to the Act, introduced on November 30, 2023, that would establish an Anti-Slavery Commissioner.

- ***Proposed Washington State Act Providing Transparency in Supply Chains:*** Updated to reflect the Act's reintroduction to the Washington State Senate on January 8, 2024. As proposed, if passed, the Act would take effect January 1, 2025.

- ***Political Agreement - EU Forced Labor Regulation:*** On March 5, 2024, the European Parliament and the European Council reached a provisional agreement on the text of the Regulation. The Regulation has been sent to the Parliament for a final adoption vote during its April plenary. If approved by the Parliament, the Regulation is expected to be published in the Official Journal of the European Union during Q2 2024. The summary has been updated to reflect proposed changes in the agreed-upon text.

- ***Pending EU Corporate Sustainability Reporting Directive:*** On October 17, 2023, the European Commission adopted a delegated directive that adjusted the reporting threshold for large undertakings. This summary has also been updated to provide an overview of (1) EU Member States' progress in transposing the Directive into national law and (2) the adoption of the first 12 European Sustainability Reporting Standards and postponement of sector-specific standards.

- ***Political Agreement - EU Corporate Sustainability Due Diligence Directive:*** On December 14, 2023, the European Parliament and the European Council first reached provisional political agreement on the Directive. However, after insufficient support from EU Member States, the Council's approval vote was postponed numerous times. After much back and forth and concessions, on March 15, 2024, the Council approved the Directive. The Directive has been sent to the Parliament for a final adoption vote during its April plenary. If enacted, the Directive would be required to be transposed into EU Member State national law. The summary has been updated to reflect proposed changes in the agreed-upon Directive.

- ***French Corporate Duty of Vigilance Law:*** Recent litigation and enforcement developments have been added.

- ***German Due Diligence in the Supply Chain Act:*** Recent allegations of violations have been added.

- ***Norwegian Transparency Act:*** Updated to reflect new guidance from the (1) Norwegian Consumer Authority on the Act and (2) Norwegian National Human Rights Institution, in partnership with the National Contact Point for Responsible Business Conduct Norway, on certain human rights risks.

- ***Pending California Corporate Data Accountability Act:*** The Act was signed by the Governor of California on October 7, 2023; however, in connection with his approval of this Act, the Governor published a signing message that contained caveats that may impact how the Act is implemented. Additionally, on January 30, 2024, a lawsuit was filed challenging the Act, seeking the court to declare the Act null, void and with no force or effect and enjoin California from implementing or enforcing the Act.

- ***Pending California Climate-Related Financial Risk Act:*** The Act was signed by the Governor of California on October 7, 2023; however, in connection with his approval of this Act, the Governor published a signing message noting that the implementation deadlines set forth in the Act fall short in providing the California Air Resources Board with sufficient time to adequately carry out the requirements of the Act. Additionally, on January 30, 2024, a lawsuit was filed challenging the Act, seeking the court to declare the Act null, void and with no force or effect and enjoin California from implementing or enforcing the Act.

- ***Proposed Singapore Mandatory Climate Reporting:*** On February 28, 2024, after consideration of the feedback from the public consultation on the recommendations to implement mandatory climate reporting requirements, final recommendations for mandatory climate reporting were published. In parallel, the Second Minister for Finance announced that Singapore will introduce mandatory climate-related disclosures in a phased approach, in line with the final recommendations. Under the final recommendations, climate reporting by non-listed companies with annual revenue of at least $1 billion Singapore dollars and total assets of at least S$500 million would start in fiscal 2027.

- ***Pending EU Deforestation Regulation:*** Updated to reflect FAQs on the Regulation issued by the Directorate-General for Environment.

- ***Pending U.K. Environment Act – Use of Forest Risk Commodities in Commercial Activity:*** Updated to reflect the U.K. Department for Environment, Food & Rural Affairs' press release from December 9, 2023, announcing the upcoming secondary legislation, which will provide details on covered entities, the initial list of forest risk commodities and civil sanctions. According to the press release, the initial list of forest risk commodities covered by the Act will include palm oil, cocoa, beef, leather and soy, and any products deriving from those commodities.

- ***Proposed U.S. Fostering Overseas Rule of law and Environmentally Sound Trade Act:*** Updated to reflect the Act's reintroduction, including certain modifications, to the U.S. Senate on November 30, 2023.

- ***Proposed New York Tropical Deforestation-Free Procurement Act:*** This summary was removed as the Act was vetoed by the Governor of New York on December 22, 2023.

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 or 1-212-596-9160.

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Assessing the Applicability of Modern Slavery Legislation

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

Modern Slavery Disclosure-based Legislation

	CA Transparency in Supply Chains Act	UK MSA	Australia Commonwealth MSA	Canadian Fighting Against Forced Labour and Child Labour in Supply Chains Act	New Zealand Modern Slavery Act (Proposed)
Jurisdiction	California, United States	United Kingdom	Australia (federal)	Canada	New Zealand
Quantitative Threshold	Retailer or manufacturer with annual worldwide gross receipts in excess of US$100 million	Total annual turnover of at least £36 million	Annual consolidated worldwide revenue of more than A$100 million	Listed on a Canadian stock exchange or meets two of the following: (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	Small entity – Annual revenue below NZ$20 million; Medium entity – Annual revenue above NZ$20 million and below NZ$50 million; and Large entity – Annual revenue above NZ$50 million
Jurisdictional Nexus	Identifies as a retail seller or manufacturer in its CA tax returns	Carries on a business (including a trade or profession) or part of a business in the UK	Australia-based entity or carries on business in Australia	Does business in Canada or has assets in Canada and either produces or imports goods in/into Canada	New Zealand-based entity or carries on business in New Zealand

Modern Slavery Legislation – Trade Based

	US Tariff Act	US CAATSA	US Uyghur Forced Labor Prevention Act	Canada Customs Tariff	Mexico Administrative Regulation related to Forced Labor
Issue Addressed	Forced labor	North Korean forced labor	Uyghur forced labor	Forced labor and child labor	Forced labor
Jurisdiction	United States	United States	United States	Canada	Mexico
Compliance Threshold	N/A	N/A	N/A	N/A	N/A
Jurisdictional Nexus	Imports good into the United States	Imports good into the United States produced using North Korean national or citizen labor	Imports good into the United States using Uyghur labor	Imports good into Canada	Imports good into Mexico

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

Assessing the Applicability of Selected Other Human Rights Legislation

	US FAR Anti-Human Trafficking Rule	French Corporate Duty of Vigilance Law	Swiss Child Labor/Conflict Minerals Due Diligence Legislation	German Due Diligence in the Supply Chain Act	Norwegian Transparency Act
Issue(s) Addressed	Forced labor	Human rights, health and safety and the environment	Conflict minerals and child labor	Human rights risks and selected environmental risks	Fundamental human rights and decent working conditions
Jurisdiction	United States	France	Switzerland	Germany	Norway
Compliance Threshold	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	At least 5,000 employees in French entities or 10,000 employees worldwide	Subject to specified exceptions, (1) imports or processes 3TG minerals or metals or (2) products or services are conclusively made with child labor or is not an SME (i.e., exceeds two of the following thresholds for two years: (a) assets of SFr20 million; (b) sales of SFr40 million; and (c) 250 full-time employees on average)	As of 2024, at least 1,000 employees	Large enterprises covered by Section 1-5 of the Norwegian Accounting Act or that meet two of the following: sales of NOK 70 million, balance sheet amount of NOK 35 million or average number of employees during the fiscal year of 50
Jurisdictional Nexus	Contract with the U.S. federal government, as a prime contractor, subcontractor or agent	Registered office in France	Registered office, central administration or principal place of business in Switzerland	Head office, principal place of business, administrative headquarters, registered office or branch office in Germany	Domiciled in Norway or offering goods and services in Norway that are taxable in Norway

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

Modern Slavery Act Comparison

	CA Transparency in Supply Chains Act	UK MSA	Australia Commonwealth MSA	Canadian Fighting Against Forced Labour and Child Labour in Supply Chains Act	New Zealand Modern Slavery Act (Proposed)
Subject Companies	Manufacturer or retailer	Commercial organisation that supplies goods or services	Any entity that meets the turnover and jurisdictional nexus below	Listed on a Canadian stock exchange or meets two of the following: (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; and meets the jurisdictional nexus below	Any entity that meets the turnover and jurisdictional nexus below
Annual Turnover Threshold	US$100 million	£36 million	A$100 million	See above	No threshold for general obligations For reporting requirements, NZ$20 million
Jurisdictional Nexus	Identifies as a retail seller or manufacturer in its CA tax returns	Carries on a business (including a trade or profession) or part of a business in the UK	Australia-based entity or carries on business in Australia	Does business in Canada or has assets in Canada and either produces or imports goods in/into Canada	New Zealand-based entity or carries on business in New Zealand
Covered Business Activities	Direct supply chain for tangible goods offered for sale	Any of the subject entity's supply chains, and any part of its own business	The subject entity's operations and supply chains	The subject entity's operations and supply chains	The subject entity's operations and supply chains
Statement Content (Similar, but not identical, across all jurisdictions)	Required topics	Suggested topics	Required topics	Required topics	Required topics
Publication	Website, with a conspicuous and easily understood homepage link, or upon written request	Website, with a prominent homepage link, or upon written request	Submission to the Australian Border Force for inclusion in a central Modern Slavery Statements Register	Submission to the Minister of Public Safety and Emergency Preparedness and publication, in a prominent place, on website	To be decided
Signature/Board Approval	None	Required	Required	Required	To be decided
Frequency	Not specified; on an as-needed basis	Annual	Annual	Annual	To be decided
Due Date	Not specified	No mandatory due date; expected within six months after fiscal year end	Within six months after fiscal year end	On or before May 31 of each year	To be decided
Specified Penalties	None	None	None	Fines up to C$250,000	To be decided

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

Overview of Selected Trade-based Modern Slavery Legislation

	US Tariff Act	US CAATSA	US Uyghur Forced Labor Prevention Act	Canada Customs Tariff	Mexico Administrative Regulation related to Forced Labor
Covered Activities	Imports into the US	Imports into the US	Imports into the US	Imports into Canada	Imports into Mexico
Prohibited Activities	Importing goods produced using prison or forced labor	Importing goods produced using North Korean labor, whether in North Korea or abroad	Importing goods produced in Xinjiang or using government-sponsored Uyghur labor	Importing goods produced using prison or forced labor or child labor	Importing goods produced or manufactured by forced or compulsory labor
Risk Assessment / Remediation	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	No specific requirements, but extensive due diligence guidance has been issued	No specific requirements, but guidance notes that it is the responsibility of the importer to conduct due diligence on its supply chains to ensure that goods it imports into Canada are not produced using prison or forced labor	No specific requirements, but guidance covering due diligence has been issued
Management Systems	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	No specific requirements, but extensive due diligence guidance has been issued	No specific requirements	No specific requirements
Reporting	N/A	N/A	N/A	N/A	N/A

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

Overview of Selected Due Diligence-based Modern Slavery and MHRDD Legislation

	US FAR Anti-Human Trafficking Rule	French Corporate Duty of Vigilance Law	German Due Diligence in the Supply Chain Act	Swiss Child Labor/Conflict Minerals Due Diligence Legislation	Norwegian Transparency Act
Covered Activities	US government contracts	All business operations	All business operations	All business operations	All business operations
Due Diligence	Required for contracts with foreign performance over specified dollar threshold	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	The duty of care is based on the UN Guiding Principles on Business and Human Rights and is higher for direct suppliers	Generally must carry out due diligence in respect of conflict minerals and child labor	Must carry out due diligence in accordance with the OECD Guidelines for Multinational Enterprises
Due Diligence Requirements	If due diligence/ certifications are required, must also have compliance plan meeting specified requirements	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	Must include a risk management system, risk analysis, human rights policy statement, preventative and remedial measures to address adverse impacts and a complaint mechanism	Must include management systems, a risk assessment, a risk management plan and risk mitigation	Must include accountability, mapping and risk assessment, measures to mitigate adverse impacts, tracking of measures implemented, communication with affected stakeholders and cooperation with remediation
Reporting	Compliance certifications at time of contract award and annually	Must make public vigilance plan and regular reports on the implementation of the plan	Annual reporting that discusses risks identified, measures taken to fulfill the duty of care, how the measures taken are assessed and conclusions drawn from assessments for future measures	Annual reporting on due diligence	Annual statement discussing the business, the process for addressing adverse impacts, adverse impacts and risks uncovered through due diligence and measures to address adverse impacts and the results of the measures

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

Commonwealth Modern Slavery Act 2018 **Australia**	
Overview	
Law / Country	**Australia Commonwealth Modern Slavery Act** (No. 153, 2018) (the **"Act"**) (Australia)
Goal	To reduce modern slavery occurring in the supply chains of goods and services through enhanced disclosure.
Adoption / Status	Effective January 1, 2019.
Issue Addressed	• Modern slavery
Covered Entities	A reporting entity under the Act is an entity that: • At any time in the reporting period is either an Australian entity or carries on business in Australia; and • Has annual consolidated worldwide revenue of more than A$100 million. 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. Note that this summary is limited to the transparency provisions of the Act.
How It Works	
Mandatory?	Yes.
Statement Requirements	A Modern Slavery Statement must include the following: • The reporting entity; • The entity's structure, operations and supply chains; • The potential modern slavery risks in the entity's operations and supply chains; • Actions the entity has taken to assess and address those risks, including due diligence and remediation processes; and • How the entity assesses the effectiveness of those actions. The statement also must describe the process of consultation with: • Any entities that the reporting entity owns or controls; and • In the case of a joint modern slavery statement, with the other entities giving the statement. In addition, the statement must include any other information that the reporting entity considers relevant.

Reporting	Timing Statements are due within six months after fiscal year end. Publication Reporting entities must submit statements to the Attorney-General's Department for publication in an online central register. Approval/Signatures A statement must be approved by the principal governing body of the subject entity and signed by a responsible member for the entity.
Enforcement	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.
Government Review and Proposed Reforms	On May 25, 2023, the Australian Government Attorney-General's Department tabled a report, which reviews the first three years of practice under the Act (the **"Report"**). The Report expresses the concern that the Act has not caused meaningful change for people living in conditions of modern slavery and outlines 30 recommendations for the Government's consideration in reforming the Act. Notable recommendations in the Report include: • Lowering the threshold for reporting entities from A$100 million to A$50 million in annual consolidated revenue; • Replacing the phrase "operations and supply chains" with "operations and supply networks" in the mandatory reporting criteria; • Adding new mandatory reporting criteria to report on identified modern slavery incidents or risks, available grievance and complaint mechanisms and internal and external consultation undertaken by a reporting entity; • Introducing a mandatory due diligence requirement; • Permitting entities to submit a full Modern Slavery Statement once every three years, with shorter updates submitted in the interim years; • Introducing penalties for failing to submit a statement, submitting a statement that includes knowingly false statements, failing to implement a due diligence system and failing to comply with a request by the Minister to take remedial action to comply with the Act; • Creating a formal mechanism for stakeholders and other members of the public to submit complaints to the Australian Government Attorney-General's Department; and • Establishing the office of an Anti-Slavery Commissioner. To help facilitate reporting for entities captured by the proposed lower reporting threshold, the Report proposes providing tailored guidance to small and medium-sized entities, modifying reporting mechanisms to make it easier to submit reports and introducing a grace period of two years during which a reporting entity with consolidated revenue between A$50 million and

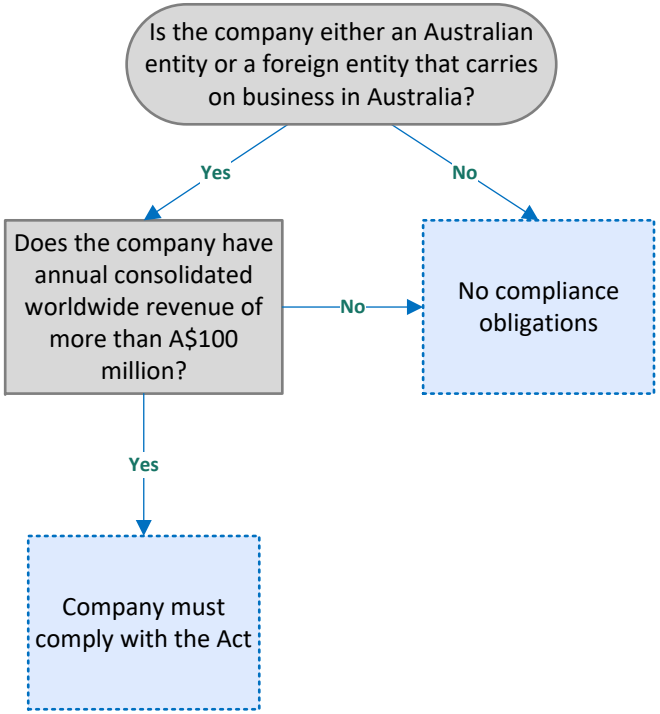
	A$100 million would not be required to implement a due diligence system or be subject to penalties for non-compliance with the Act. The Australian Government is currently conducting a formal review of the Report and will consult with stakeholders in formulating a response to the recommendations. The Australian Government has not yet confirmed its formal position in relation to the Report's recommendations but has previously indicated support for (1) introducing penalties for non-compliance, (2) a mandatory due diligence obligation and (3) establishing an office of the Anti-Slavery Commissioner. On November 30, 2023, an amendment to the Act (the **"Amendment"**) was introduced in the House of Representatives that would establish an Anti-Slavery Commissioner. The Anti-Slavery Commissioner would serve as an independent statutory officeholder within the Attorney General's portfolio to provide an independent mechanism for victims and survivors, business and civil society to engage on issues and strategies to address modern slavery. The Amendment is currently being read for the second time in the Federation Chamber.
Additional Information/Resources	
Law	For the text of the Act, see: https://www.legislation.gov.au/Details/C2018A00153. For the text of the Amendment, see: https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r7122.
Government Guidance	The Attorney-General's Department published updated guidance in May 2023 to reflect that the Modern Slavery and Human Trafficking function moved from the Australian Border Force to the Attorney-General's Department and to provide further clarification on voluntary statements and the requirement to consult with entities that the reporting entity owns or controls. 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. For the May 2023 guidance, see: https://modernslaveryregister.gov.au/resources/Commonwealth_Modern_Slavery_Act_Guidance_for_Reporting_Entities.pdf 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 five sector-specific guides to help business effectively respond to the Act. Four of the sector guides have been published: (1) property and construction; (2) financial services; (3) resources and energy; and (4) health services. • For the property and construction guidance, see: https://humanrights.gov.au/our-work/business-and-human-rights/publications/property-construction-and-modern-slavery-2020 • For the financial services sector guidance, see: https://humanrights.gov.au/our-work/business-and-human-rights/publications/financial-services-and-modern-slavery-practical • For the resources and energy sector guidance, see: https://humanrights.gov.au/our-work/business-and-human-rights/publications/resources-energy-and-modern-slavery-practical

	• For the health services sector guidance, see: https://humanrights.gov.au/our-work/business-and-human-rights/publications/modern-slavery-health-services-sector
Report of the Statutory Review of the Act	For the report of the statutory review of the Act, see: https://www.ag.gov.au/sites/default/files/2023-05/Report%20-%20Statutory%20Review%20of%20the%20Modern%20Slavery%20Act%202018.PDF.
Ropes & Gray Resources	Client alerts related to the Act: • ESG disclosures in 2024 – key compliance dates for U.S.-based multinationals (January 22, 2024): https://www.ropesgray.com/en/insights/viewpoints/102ixoo/esg-disclosures-in-2024-key-compliance-dates-for-u-s-based-multinationals • Proposed Changes to Australia's Modern Slavery Act Would Introduce New Obligations for Multinationals (June 28, 2023): https://www.ropesgray.com/en/newsroom/alerts/2023/06/proposed-changes-to-australias-modern-slavery-act-would-introduce-new-obligations-for-multinationals?utm_source=alert&utm_medium=email&utm_campaign=proposed-changes-to-australias-modern-slavery-act-would-introduce-new-obligations-for-multinationals&utm_content=ESG • The Australian Modern Slavery Act Three Years In – The Government Review and Public Feedback Process May Usher In Enhanced Compliance Requirements (November 8, 2022): https://www.ropesgray.com/en/newsroom/alerts/2022/november/the-australian-modern-slavery-act-three-years-in-the-government-review-and-public-feedback-process • Modern Slavery Compliance For U.S.-based (and Other) Multinationals: A Review of Recent Compliance and Disclosure Developments in the United States and Abroad (April 22, 2019): https://www.ropesgray.com/en/newsroom/alerts/2019/04/modern-slavery-compliance-for-us-based-and-other-multinationals-a-review-of-recent-compliance • New Australian Modern Slavery Reporting Requirements on the Horizon – A Primer for Multinationals (August 17, 2018): https://www.ropesgray.com/en/newsroom/alerts/2018/08/new-australian-modern-slavery-reporting-requirements-on-the-horizon-a-primer-for-multinationals • Australia Proposes Modern Slavery Reporting Requirements for Multinationals – An Overview and Comparison to Existing Corporate Modern Slavery Disclosure Legislation (September 20, 2017): https://www.ropesgray.com/en/newsroom/alerts/2017/09/australia-modern-slavery-reporting-requirements-multinationals-corporate-disclosure-legislation

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

(Updated February 29, 2024)

Applying the Law



Transparency in Supply Chains Act California	
Overview	
Law / State	**Transparency in Supply Chains Act** (California Civil Code S. 1714.43) (the **"Act"**) (California, United States)
Goal	To reduce modern slavery through enhanced disclosure.
Adoption / Status	The Act was adopted on September 30, 2010 and went into effect on January 1, 2012.
Issues Addressed	• Human trafficking • Slavery
Covered Entities	A company is subject to the Act if it: • Identifies as a Retail Seller or Manufacturer in its California state tax returns; • Actively engages in any transaction for the purpose of financial or pecuniary gain in California; and • Has annual worldwide gross receipts in excess of US$100 million.
How It Works	
Mandatory?	Yes.
Statement Requirements	A company subject to the Act must prepare a statement indicating to what extent it: • Engages in verification of product supply chains to evaluate and address risks of human trafficking and slavery. The disclosure must specify if the verification was not conducted by a third party. • Conducts audits of suppliers to evaluate supplier compliance with company standards for trafficking and slavery in supply chains. The disclosure must specify if the verification was not an independent, unannounced audit. • Requires direct suppliers to certify that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business. • Maintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking. • Provides company employees and management who have direct responsibility for supply chain management with training on human trafficking and slavery, particularly with respect to mitigating risks within product supply chains.
Reporting	The statement must be posted on the company's website using a "conspicuous and easily understood link." If the company does not have a website, the company must provide consumers with written disclosures within 30 days of receipt of a written request.

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

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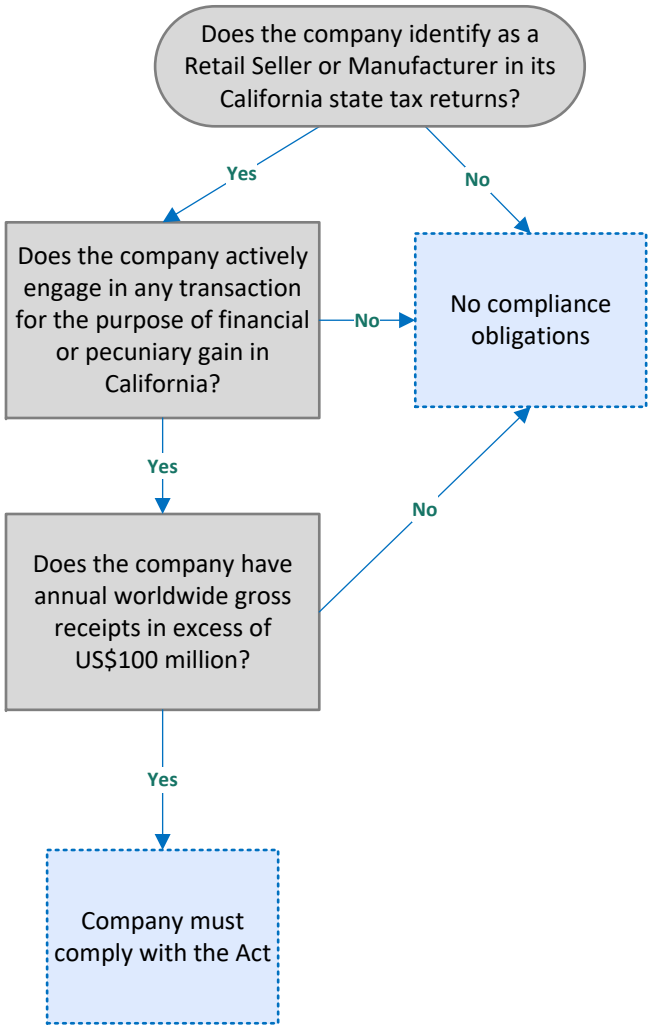

Fighting Against Forced Labour and Child Labour in Supply Chains Act Canada	
Overview	
Law / Country	**Fighting Against Forced Labour and Child Labour in Supply Chains Act** (S-211) (the **"Act"**) (Canada)
Goal	To combat and prevent forced and child labor through the imposition of reporting obligations on entities producing goods in or importing goods into Canada.
Adoption / Status	The Act received Royal Assent on May 11, 2023 and went into effect on January 1, 2024. The first modern slavery reports are due May 31, 2024 and annually thereafter. On December 20, 2023, Public Safety Canada published guidance (the **"Guidance"**) and the online questionnaire that reporting entities will need to complete when they submit reports under the Act (as discussed below).
Issues Addressed	• Child labor • Forced labor
Covered Entities	A corporation, trust, partnership or other unincorporated organization is subject to the reporting requirements of the Act to the extent it meets any of the following requirements: • Is listed on a stock exchange in Canada; • 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 The Guidance indicates that entities should use the ordinary meaning of the words "place of business," "doing business" or "having assets" in Canada and the criteria applied by the Canada Revenue Agency since specific definitions and tests are not included in the Act. The Guidance notes that, for tax- and employment-related purposes, it should already be clear whether an entity has a place of business in Canada, does business in Canada or has assets in Canada. The Guidance also indicates that doing business in Canada does not require having a place of business in Canada. "Employee" has the same meaning as in Canadian common law. Employees include full-time, part-time and temporary individuals but does not include independent contractors. Under the Act, assets, revenue and employees are to be calculated based on consolidated financial statements. The Guidance indicates that asset and revenue values should be converted into Canadian dollars if those statements use a different currency.

	The Guidance indicates that the size-related thresholds refer to total (global) assets, revenue and employees. Assets are not restricted to assets located in Canada, revenue is not restricted to revenue from business activities in Canada and the number of employees includes those residing or employed in Canada or in another jurisdiction. • Is prescribed by regulations. And: • Produces, sells or distributes goods in Canada or elsewhere (for purposes of the Act, the production of goods includes the manufacturing, growing, extraction and processing of goods); • Imports into Canada goods produced outside Canada; or • Controls an entity engaged in any activity described in the two foregoing bullets (control can be direct or indirect). "Goods" is not a defined term under the Act. The Guidance indicates that this term refers to goods that are the subject of trade and commerce, as understood in the ordinary sense of the word. "Selling," "distributing" and "importing" are not defined in the Act. However, the Guidance notes that these terms are not intended to capture services that solely support the production, sale, distribution or importation of goods. These include, for example, marketing, administrative services, financial services and software services. According to the Guidance, entities should apply the ordinary sense of these words to determine whether they are engaged in any of these activities. An entity is considered to be importing goods into Canada if the entity is responsible for accounting for the goods under the Customs Act. Purchasing goods produced outside Canada from a third party that is the importer for purposes of the Customs Act does not count as importing goods. There is no minimum value threshold for the goods an entity produces, sells, distributes or imports for the Act to apply. However, the Guidance indicates that the terms as they are used in the Act should be understood as excluding very minor dealings. The Act also applies to government institutions, but such obligations are not addressed in this summary.
Key Definitions	**"Forced labor"** is 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). **"Child labor"** is defined as labor or service provided or offered to be provided by persons under the age of 18 and that: (1) are provided or offered to be provided in Canada under circumstances that are contrary to the laws applicable in Canada; (2) are provided or offered to be provided under circumstances that are mentally, physically, socially or morally dangerous to the persons providing the labor; (3) interfere with their schooling by depriving them of the opportunity to attend school, obliging them to leave school prematurely or requiring them to attempt to combine school attendance with excessively long and

	heavy work; or (4) 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 (a) 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, (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances, (c) 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 (d) 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.
How It Works	
Mandatory?	Yes.
Report Requirements	The report is required to include the steps the entity has taken during the preceding fiscal 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. In the report, the entity also is required to include information pertaining to: • Its structure, activities and supply chain; • Its policies and its due diligence processes in relation to forced labor and child labor; • The parts of its business and supply chains that carry a risk of forced labor or child labor being used and the steps it has taken to assess and manage that risk; • Any measures taken to remediate any forced labor or child labor; • Any measures taken to remediate the loss of income to the most vulnerable families that results from any measure taken to eliminate the use of forced labor or child labor in the entity's activities and supply chains; • The training provided to employees on forced labor and child labor; and • How the entity assesses its effectiveness in ensuring that forced labor and child labor are not being used in its business and supply chains. The report must be in English or French, or both. The Guidance recommends that the report not exceed 10 pages in length. The report's PDF file must not exceed 100MB in size.
Online Questionnaire	In addition to preparing a report under the Act, reporting entities must complete an online questionnaire. The questionnaire includes both open and closed-ended questions that address each of the requirements under the Act. Some of the open-ended questions are optional. The optional questions allow reporting entities to elaborate on their responses to the mandatory questions and provide additional information if desired. Reporting entities are required to submit their annual report under the Act via the online questionnaire. .

Approval and Attestation Requirement	The report needs to be approved, in the case of a report on a single entity, by its governing body. In the case of a joint report, the report needs to be approved by the governing body of each entity included in the report or, if applicable, the governing body of the entity that controls each entity included in the joint report. The approval of the report needs to be evidenced by a statement that sets out which of the aforementioned governing bodies it was approved by and the manual signature of one or more members of the governing body of each entity that approved the report. According to the Guidance, the attestation included in the report should use the following format: "In accordance with the requirements of the Act, and in particular section 11 thereof, I attest that I have reviewed the information contained in the report for the entity or entities listed above. Based on my knowledge, and having exercised reasonable diligence, I attest that the information in the report is true, accurate and complete in all material respects for the purposes of the Act, for the reporting year listed above." Full name Title Date Signature, accompanied by the statement "I have the authority to bind [Name of Entity]." The online questionnaire requires an attestation for it to be submitted. The person submitting the questionnaire on behalf of the reporting entity is required to attest that they have reviewed the information contained in the report for the entity and that, based on their knowledge, and having exercised reasonable diligence, the information in the report is true, accurate and complete in all material respects for the purposes of the Act, for the listed reporting year.
Reporting	A subject entity annually is required to submit its report to the Minister of Public Safety and Emergency Preparedness (the **"Minister"**) on or before May 31 of each year. A subject entity is able to meet its annual report requirement by providing a report on solely the subject entity or by being part of a joint report for multiple entities. In the case of a joint report, the report requirements is required to be addressed for each subject entity. Submitted reports will be made publicly available by Public Safety Canada in a searchable online catalogue. Only the PDF reports and select identifying information submitted through the online questionnaire will be published on the Public Safety Canada website. In addition to submitting its report via the online questionnaire, a subject entity is required to make their submitted report available to the public, including by publishing it in a prominent place on its website. Any entity that is incorporated under the Canada Business Corporations Act or any other Act of Parliament is required to provide the report or revised report to each shareholder, along with its annual financial statements.

Enforcement	If, on the basis of information obtained, the Minister is of the opinion that an entity is not in compliance with its reporting obligations, the Minister is able to, by order, require the entity to take any measures that the Minister considers to be necessary to ensure compliance. Persons or entities that fail to submit or publish a report in accordance with the Act can 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, can 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 can be held liable for the offense. The Minister may designate persons or classes of persons for the purposes of the administration and enforcement of the Act.
Import Prohibition	The Act also amended 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.
Additional Information/Resources	
Law	For the text of the Act, see: https://www.parl.ca/DocumentViewer/en/44-1/bill/S-211/royal-assent
Public Safety Canada's Guidance and the Online Questionnaire	For Public Safety Canada's Guidance and the link to the online questionnaire, see: https://www.publicsafety.gc.ca/cnt/cntrng-crm/frcd-lbr-cndn-spply-chns/index-en.aspx
Ropes & Gray Resources	Client alerts related to the Act: • ESG disclosures in 2024 – key compliance dates for U.S.-based multinationals (January 22, 2024): https://www.ropesgray.com/en/insights/viewpoints/102ixoo/esg-disclosures-in-2024-key-compliance-dates-for-u-s-based-multinationals • Preparing for new Canadian forced and child labor reporting – Unpacking the new Government guidance (December 27, 2023): https://www.ropesgray.com/en/insights/viewpoints/102iw06/preparing-for-new-canadian-forced-and-child-labor-reporting-unpacking-the-new-g • Preparing for new Canadian forced and child labor reporting – a detailed look at the online questionnaire (December 27, 2023): https://www.ropesgray.com/en/insights/viewpoints/102iw07/preparing-for-new-canadian-forced-and-child-labor-reporting-a-detailed-look-at

	• Canada to Implement New Modern Slavery Reporting Requirements and Child Labor Import Ban – Slotting into Global Compliance by U.S.-based Multinationals (May 8, 2023): https://www.ropesgray.com/en/newsroom/alerts/2023/05/canada-to-implement-new-modern-slavery-reporting-requirements-and-child-labor-import-ban

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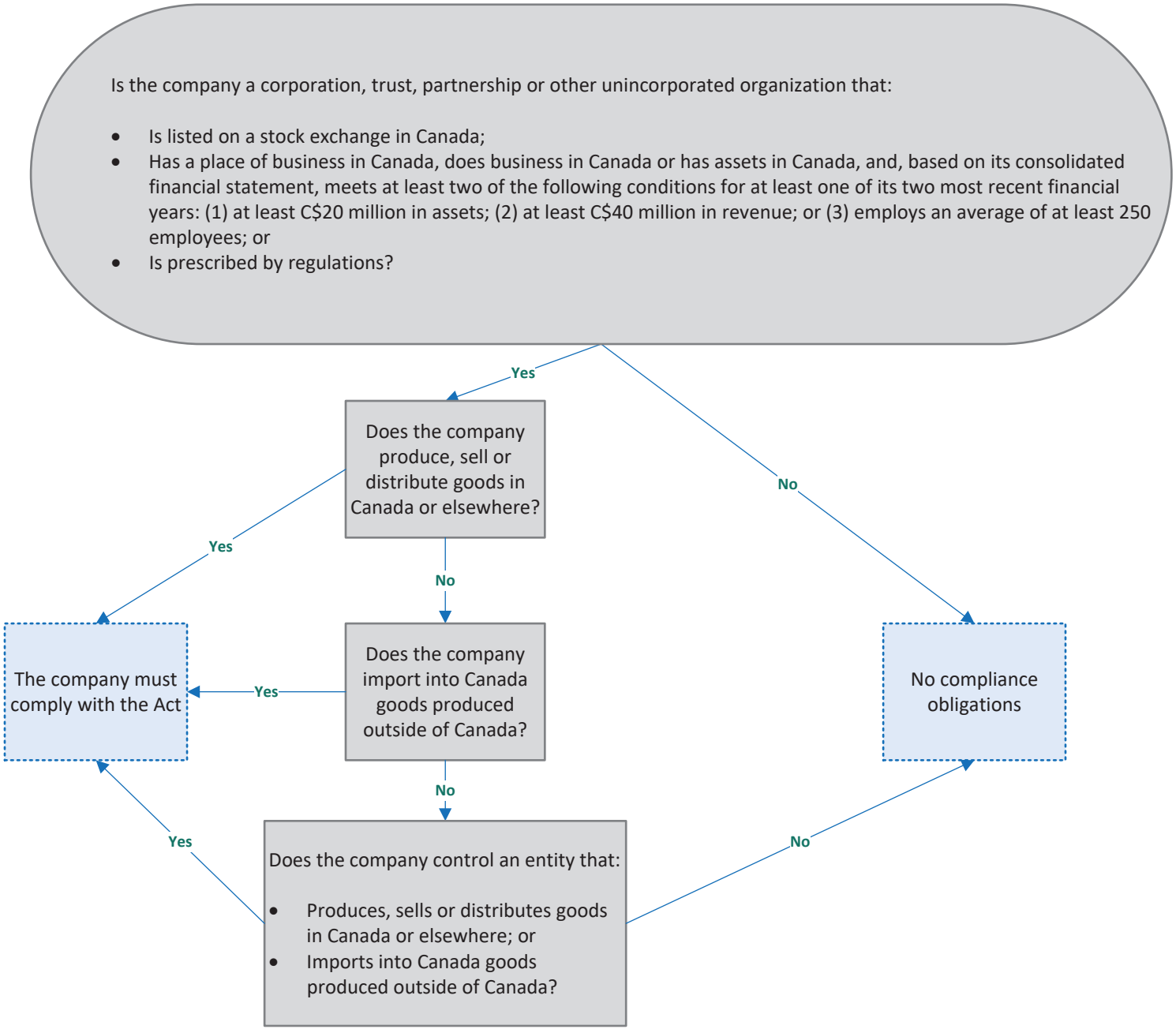

An Act Eradicating Human Trafficking and Promoting Transparency in the Retail Supply Chain (Proposed) Massachusetts	
Overview	
Law / Country	**An Act Eradicating Human Trafficking and Promoting Transparency in the Retail Supply Chain** (S967) (the **"Act"**) (Massachusetts, United States)
Goal	To eradicate human trafficking and promote transparency in the retail supply chain.
Adoption / Status	Introduced by Senator Paul R. Feeney to the Massachusetts House on February 16, 2023; pending in the Massachusetts Joint Judiciary Committee.
Issue Addressed	• Human trafficking
Covered Entities	Retail sellers and manufacturers doing business in Massachusetts (a **"Reporting Entity"**) that have annual worldwide gross receipts in excess of US$100 million would be subject to the Act. • A **"Retail seller"** would be a business entity which lists retail trade as its principal business activity in Massachusetts, as reported on the entity's Massachusetts business tax return. • A **"Manufacturer"** would be a business entity which lists manufacturing as its principal business activity in Massachusetts, as reported on the entity's Massachusetts business tax return.
How It Works	
Mandatory?	Yes.
Disclosure Requirements	A Reporting Entity would be required to disclose its efforts to eradicate human trafficking from its direct supply chain for tangible goods offered for sale. Specifically, a Reporting Entity would need to disclose to what extent it does each of the following: • Engages in verification of product supply chains to evaluate and address risks of human trafficking; such disclosure would need to specify if the verification was not conducted by a third party; • Conducts audits of suppliers to evaluate supplier compliance with company standards for human trafficking in supply chains; such disclosure would need to specify if the verification was not an independent, unannounced audit; • Requires direct suppliers to certify that materials incorporated into the product comply with the laws regarding human trafficking of the country or countries in which they are doing business; • Maintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding human trafficking; and • Provides company employees and management who have direct responsibility for supply chain management training on human trafficking, particularly with respect to mitigating risks within the supply chain of products.

	The aforementioned disclosures would need to be posted on the Reporting Entity's website, with a clear and easily understood link to the required information placed on its homepage. If a Reporting Entity does not have an website, it would have to provide consumers with written disclosure within 30 days of receiving a written request for the disclosure.
Enforcement	For a violation of the Act, the Attorney General would be able to bring an action for injunctive relief.
Additional Information/Resources	
Law	For the text of the proposed Act, see: https://legiscan.com/MA/text/S967/id/2737773/Massachusetts-2023-S967-Introduced.pdf

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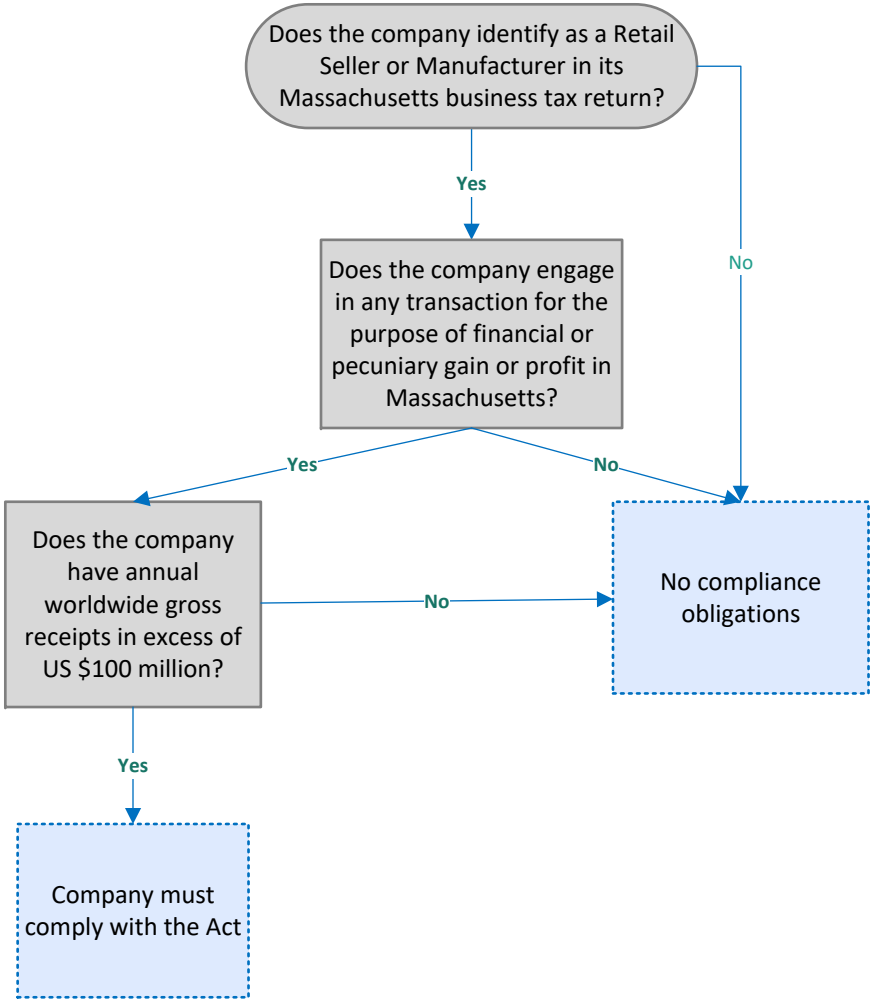

Modern Slavery Act United Kingdom	
Overview	
Law / Country	**Modern Slavery Act** (S. 54) (the **"MSA"**) (United Kingdom)
Goal	To reduce modern slavery through enhanced disclosure.
Adoption / Status	The MSA transparency provisions came into force on October 29, 2015. The transparency disclosure requirements are addressed in Section 54 of the MSA. Note that this summary is largely limited to the transparency provisions of the MSA.
Issues Addressed	• Human trafficking • Slavery
Covered Entities	<u>Commercial Organisations</u> 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. <u>Parents and Sister Companies</u> 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 organisation 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. <u>Franchisees</u> 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.
How It Works	
Mandatory?	Yes.

Statement Requirements	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. While the MSA does not provide for mandatory disclosures, there are six encouraged disclosure topics: • The structure of the commercial organisation, its business model and its supply chain relationships. • Policies relating to slavery and human trafficking. • Due diligence and auditing processes in relation to slavery and human trafficking in its business and supply chains. • The parts of its business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps it has taken to assess and manage that risk. • Its effectiveness in ensuring that slavery and human trafficking are not taking place in its business or supply chains, measured against such key performance indicators as it considers appropriate. • Slavery and human trafficking training available to its staff.
Reporting	<u>Timing</u> 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. <u>Publication</u> 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. <u>Approval/Signatures</u> 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. <u>Additional Content Guidance</u> Home Office guidance pertaining to statement content indicates that: • Group statements published by parent entities should clearly name the entities covered by the statement. • Statements should indicate the date of the fiscal year end and the period covered. • Statements should clearly indicate the board approval date.

	• Statements should include the name (physical signature not required) and job title of the signatory and the signature date.
Enforcement	At present, there is no financial or legal penalty for non-compliance.
Potential Amendments – September 2020 Government Response to Public Consultation	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. 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. <u>Mandated Disclosure Topics</u> 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. <u>Statement Registry</u> The Government indicated it will require commercial organisations to publish their statement on the Government-run registry. <u>Timing</u> 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. <u>Other Statement Enhancements</u> 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. <u>Penalties</u> The Government has indicated it intends to propose penalties for failure to comply with the requirements of the transparency provisions.

	The Queen's speech delivered on May 10, 2022 also announced the intention to strengthen the MSA.
Statement Registry	In March 2021, the Government established an online registry to house MSA statements. At present, submitting statements to the Registry is voluntary.
Private Member's Bill to Amend the Act	On June 15, 2021, a Modern Slavery (Amendment) Bill (the **"Bill"**) was tabled in the House of Lords. The Bill would have (1) added a new criminal offense for false information in modern slavery statements, (2) added a new civil offense for continuing to source from a supplier after they receive a formal warning from the Independent Anti-Slavery Commissioner for failing to demonstrate a minimum standard of transparency, (3) required subject commercial organisations to publish information on the country of origin of sourcing inputs and report the use of employment agents acting on behalf of an oversees government and (4) arranged for credible inspections and verify country of origin information. The Bill was first read in the House of Lords, but the Bill did not pass before the end of the 2021-2022 Parliamentary session. To date, the Bill has not been re-introduced in Parliament.
Additional Information/Resources	
U.K. Modern Slavery Act	For the text of the MSA, see: http://www.legislation.gov.uk/ukpga/2015/30/pdfs/ukpga_20150030_en.pdf
September 2020 Response to the Public Consultation	For the UK Government's response to the 2019 public consultation on the MSA, see: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/448200/Consultation_Government_Response__final__2_pdf.pdf
Modern Slavery (Amendment) Bill	For the text of the Bill, see: https://bills.parliament.uk/publications/41860/documents/390
Ropes & Gray Resources	Client alerts related to the MSA: • Proposed Amendments to the UK Modern Slavery Act Introduced in Parliament (June 28, 2021): https://www.ropesgray.com/en/newsroom/alerts/2021/june/proposed-amendments-to-the-uk-modern-slavery-act-introduced-in-parliament • UK Government Announces Commitment to Significantly Increase Modern Slavery Act Reporting Requirements (October 12, 2020): https://www.ropesgray.com/en/newsroom/alerts/2020/10/UK-Government-Announces-Commitment-to-Significantly-Increase-Modern-Slavery-Act-Reporting • Modern Slavery Compliance for U.S.-based (and Other) Multinationals: A Review of Recent Compliance and Disclosure Developments in the United States and Abroad (April 22, 2019): https://www.ropesgray.com/en/newsroom/alerts/2019/04/Modern-Slavery-Compliance-For-US-based-and-Other-Multinationals-A-Review-of-Recent-Compliance • UK Home Office Ramps Up Modern Slavery Statement Expectations – Recent Developments and Compliance Recommendations for Multinationals (November 12, 2018):

	https://www.ropesgray.com/en/newsroom/alerts/2018/11/UK-Home-Office-Ramps-Up-Modern-Slavery-Statement-Expectations • The UK Modern Slavery Act – Ropes & Gray Resources for Compliance (May 21, 2018): https://www.ropesgray.com/en/newsroom/alerts/2018/05/The-UK-Modern-Slavery-Act-Ropes-and-Gray-Resources-for-Compliance

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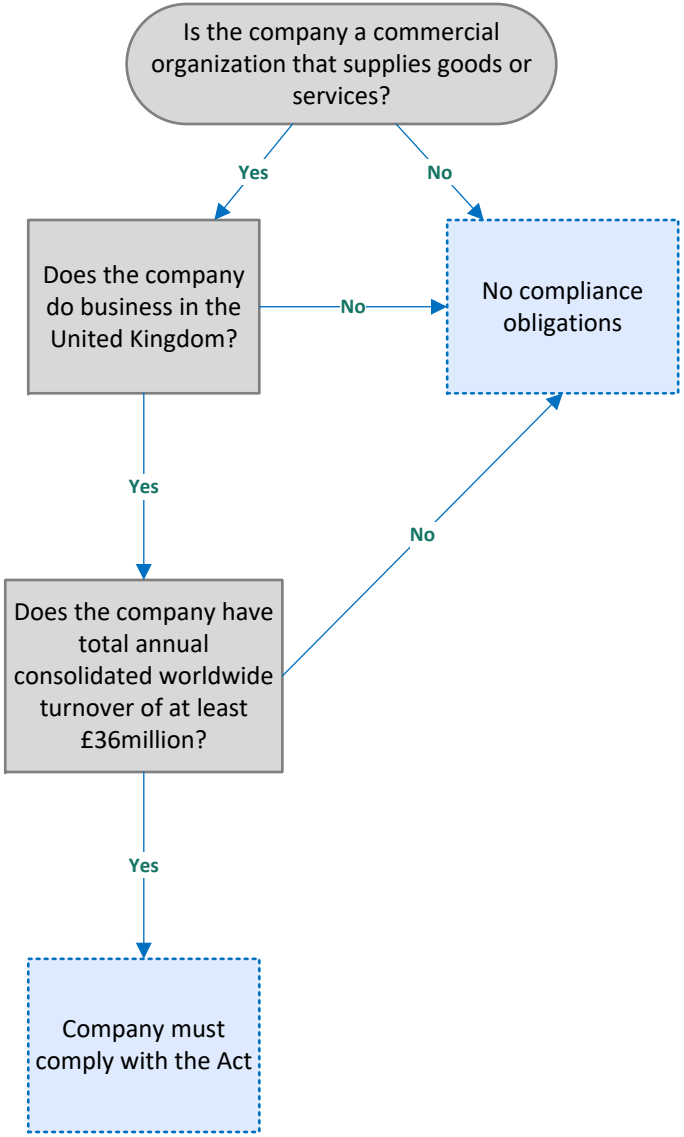

Transaction and Sourcing Knowledge Act (Proposed) United States	
Overview	
Law / Country	**The Transaction and Sourcing Knowledge Act** (also known as the TASK Act) (S.864) (the **"Act"**) (United States)
Goal	Disclosure of risks associated with products linked to the Xinjiang Uyghur Autonomous Region of China (the **"XUAR"**) and companies complicit in genocide and the use of slave labor.
Adoption / Status	Introduced in the Senate by Senator Rick Scott (R-FL) on April 27, 2022, and referred to the Committee on Banking, Housing and Urban Affairs. Re-introduced to the Senate and entered into the Congressional Record on March 16, 2023.
Issue Addressed	• Forced labor (XUAR)
Covered Entities	Publicly traded companies in the United States.
How It Works	
Mandatory?	Yes.
Reporting Requirements	The Act would require the U.S. Securities and Exchange Commission to mandate reporting by publicly traded companies of the following: • Sourcing and due diligence activities involving supply chains of products imported into the United States that are directly linked to products utilizing forced labor from the XUAR; • Transactions with companies that have been: (1) placed on the Entity List by the Department of Commerce, or (2) designated by the Department of the Treasury as Chinese Military-Industrial Complex Companies; and • If the Company has facilities in China: (1) whether there is a Chinese Communist Party committee in the operations of the company, and (2) a summary of the actions and corporate decisions in which the committee may have participated. The **"Entity List"** by the Department of Commerce's Bureau of Industry and Security contains the names of foreign persons—including businesses, research institutions, government and private organizations, individuals and other types of legal persons—that are subject to specific license requirements for the export, reexport and/or transfer (in-country) of specified items. **"Chinese Military-Industrial Complex Companies"** are included on a list published by the Department of the Treasury's Office of Foreign Assets Control.

Additional Information/Resources	
Law	For the text of the Act, see: https://www.congress.gov/bill/118th-congress/senate-bill/864/text?s=2&r=1&q=%7B%22search%22%3A%22Transaction+and+Sourcing+Knowledge+Act%22%7D
Ropes & Gray Resources	Client alerts related to the Act: • The TASK Act – Proposed Disclosure Requirements for Public Companies Relating to Xinjiang Labor and Other China Activities (July 5, 2022): https://www.ropesgray.com/en/newsroom/alerts/2022/july/the-task-act-proposed-disclosure-requirements-for-public-companies-relating-to-xinjiang-labor

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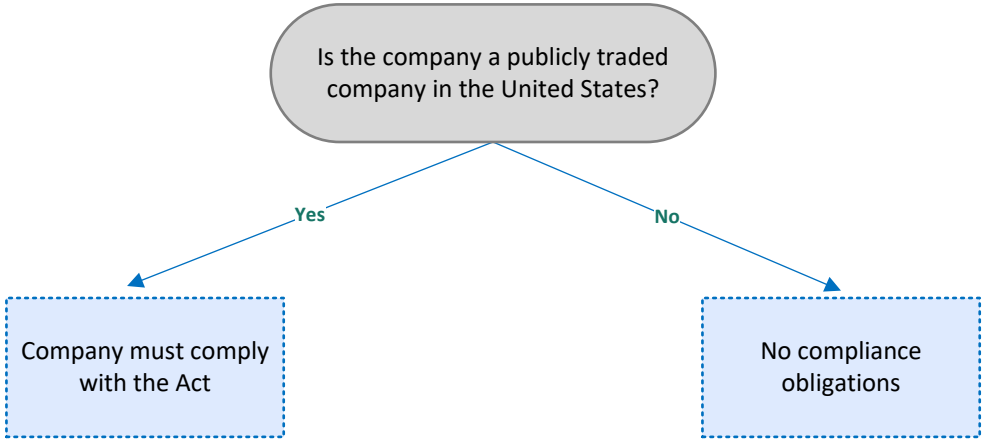

Uyghur Forced Labor Disclosure Act (Proposed) United States	
Overview	
Law / Country	**Uyghur Forced Labor Disclosure Act** (H.R. 4840, originally introduced in 2020 as H.R. 6270 (the **"Original Bill"**) and reintroduced in 2021 as H.R. 2072) (the **"Bill"** or the **"Act"**) (United States)
Goal	To address Uyghur forced labor in supply chains.
Adoption / Status	The Original Bill was passed by the House of Representatives on September 30, 2020. It was received in the Senate on October 1, 2020 and referred to the Committee on Banking, Housing, and Urban Affairs. The Original Bill was reintroduced in the House on March 18, 2021. The text of the Original Bill was also included in the Corporate Governance Improvement and Investor Protection Act (H.R. 1187), which was passed by the House of Representatives on June 16, 2021 and received in the Senate on June 17, 2021. The Bill (with modifications from the Original Bill) was then reintroduced in the House on July 24, 2023 and referred to the Committee on Financial Services.
Issue Addressed	• Forced labor
Covered Entities	Companies that have a class of securities registered, or are seeking registration, under the Securities Exchange Act (the **"Exchange Act"**).
How It Works	
Mandatory?	Yes.
Annual Reporting of Activities Relating to the XUAR	No later than 180 days after the date of enactment, the Securities and Exchange Commission (the **"Commission"**) would be required to adopt rules requiring issuers to indicate in their annual report or proxy statement whether, during the covered fiscal year, the issuer or any of its affiliates directly or indirectly engaged with another entity to use or source goods from the Xinjiang Uyghur Autonomous Region (the **"XUAR"**) or mined, produced or manufactured wholly or in part by specified entities on the entity list published pursuant to the Uyghur Forced Labor Prevention Act (**"UFLPA"**). For applicable goods, the issuer would be required to disclose (1) whether the goods have supply chain links to facilities that employ forced labor, (2) the nature and extent of the commercial activity, (3) the gross revenue and net profits, (4) the alternative sourcing options, (5) a description of the measures taken by the issuer to exercise due diligence on the source and chain of custody of the goods and (6) other entities and facilities affiliated with the facility employing forced labor, including the physical location of the facilities and the supplier's headquarters. Under the Act, any labor in the XUAR, as well as certain other state-sponsored labor programs, would be presumed to be forced labor unless otherwise designated by applicable U.S. authorities.

	The issuer also would be required to disclose whether it or any of its affiliates was directly or indirectly involved in the development or provision of surveillance goods, services or technologies used to facilitate gross human rights abuses.
Disclosure of Activities Relating to the XUAR for New Exchange Listings	No later than 180 days after the date of enactment, the Commission would be required to adopt rules requiring an issuer, in connection with a new listing on a U.S. securities exchange, to include in its application and file with the SEC documentation indicating whether the issuer or any of its affiliates has in its supply chain goods (1) sourced from the XUAR, (2) mined, produced or manufactured wholly or in part by specified entities on the entity list published pursuant to the UFLPA or (3) produced by an entity engaged in labor transfers from the XUAR or forced labor. The issuer would be required to list the name, address and quantities sourced from each entity mining, producing or manufacturing the goods. The issuer would be required to obtain independent verification by a third-party auditor of the documentation submitted. The issuer would be required to maintain the confidentiality of the auditor's identity, unless waived by the auditor. The issuer also would be required to establish policies to respond to reprisals against the third-party auditor. The Bill does not address auditing requirements related to annual reporting. If an issuer fails to meet the foregoing requirements, the applicable securities exchange would not be permitted to approve the issuer's listing application and the issuer would not be able to refile the application for one year.
Availability of Information	All documentation received by the Commission in connection with annual reporting or a registration statement would be publicly available.
Government Reporting	The Commission would be required to conduct an annual assessment of issuer compliance with the requirements of the Act and issue a report to Congress containing the results of the assessment. The Government Accountability Office would be required to periodically evaluate and report to Congress on the effectiveness of the Commission's oversight of the Act's disclosure requirements.
Repeal	The Act would be repealed on the earlier of (1) eight years after the date of its enactment and (2) the date on which the President submits to Congress a determination that the Government of the People's Republic of China has ended mass internment, forced labor and any other gross violations of human rights experienced by Uyghurs, Kazakhs, Kyrgyz and members of other persecuted groups in the XUAR.
Additional Information/Resources	
Law	For the text of the Bill: https://www.congress.gov/118/bills/hr4840/BILLS-118hr4840ih.pdf For the Bill's legislative status see: https://www.congress.gov/bill/118th-congress/house-bill/4840?s=1&r=88 For the text of the Corporate Governance Improvement and Investor Protection Act, see: https://www.congress.gov/bill/117th-congress/house-bill/2072?q=%7B%22search%22%3A%5B%22hr2072%22%2C%22hr2072%22%5D%7D&r=1&s=1

UYGHUR FORCED LABOR DISCLOSURE ACT (US) (PROPOSED)

	For the text of the reintroduced Original Bill, see: https://www.congress.gov/bill/117th-congress/house-bill/2072?q=%7B%22search%22%3A%5B%22hr2072%22%2C%22hr2072%22%5D%7D&s=1&r=1 For the text of the Original Bill, see: https://www.congress.gov/bill/116th-congress/house-bill/6270
Ropes & Gray Resources	Client alerts related to the Bill: • Uyghur Forced Labor Disclosure Act reintroduced – will disclosures relating to China sourcing become a requirement for public companies in the U.S.? (August 14, 2023): https://insights.ropesgray.com/post/102ilxs/uyghur-forced-labor-disclosure-act-reintroduced-will-disclosures-relating-to-ch

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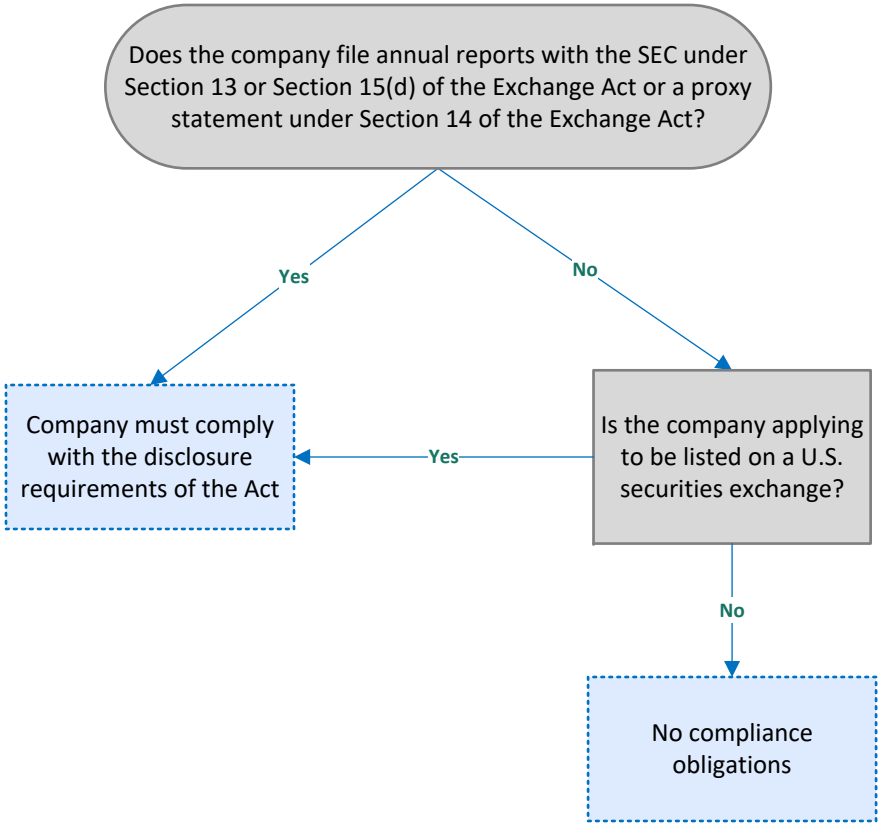

An Act Relating to Transparency in Supply Chains Washington State	
Overview	
Law / State	**An Act Relating to Transparency in Supply Chains** (SB 5541) (the **"Act"**) (Washington State, United States)
Goal	To eradicate human trafficking and forced labor from direct supply chains through enhanced disclosure.
Adoption / Status	The Act was originally introduced January 24, 2023. On January 8, 2024, the Act was reintroduced and retained its status in the Ways & Means Committee. If passed, the Act would take effect January 1, 2025.
Issues Addressed	• Forced labor • Human trafficking
Covered Entities	Retail sellers and manufacturers doing business in Washington State (a **"Reporting Entity"**) that have annual worldwide gross receipts of at least $100 million would be subject to the Act. • A **"retail seller"** would be a person engaging in the business of making sales at retail locations within Washington State. • In line with the Revised Code of Washington section 82.04.110, a **"manufacturer"** would be person who, either directly or by contracting with others for the necessary labor or mechanical services, manufactures for sale or for commercial or industrial use from his or her own materials or ingredients any articles, substances or commodities.
How It Works	
Mandatory?	Yes.
Disclosure Requirements	A Reporting Entity would be required to disclose its efforts to eradicate human trafficking and forced labor from its direct supply chain for tangible goods offered for sale. Specifically, a Reporting Entity would need to disclose to what extent it does each of the following: • Engages in verification of product supply chains to evaluate and address risks of human trafficking and forced labor. Such disclosure would need to specify if the verification was not conducted by a third party, and if verification occurs, which tiers of suppliers were verified; • Conducts third-party assessments of suppliers to evaluate supplier compliance with the Reporting Entity's standards for human trafficking and forced labor in supply chains. Such disclosure would need to specify if the verification was not an independent, unannounced audit; • Requires direct suppliers to certify that materials incorporated into the product comply with the laws regarding forced labor and human trafficking of the country or countries in which they are doing business; • Maintains internal accountability standards, a supplier code of conduct and procedures for employees or contractors failing to meet the Reporting Entity's standards regarding forced labor and trafficking in its direct supply chain; and

	• Provides employees and management who have direct responsibility for supply chain management with training on human trafficking and forced labor, particularly with respect to mitigating risks within product supply chains. The aforementioned disclosures would need to be posted on the Reporting Entity's website, with a clear and easily understood link to the required information placed on its homepage. If a Reporting Entity does not have a website, it would have to provide consumers with written disclosure within 30 days of receiving a written request for the disclosure.
Enforcement	For a violation of the Act, the Attorney General would be able to bring an action for injunctive relief. Beginning in 2025, by November 30 of each year, the Washington Department of Revenue would be required to submit a list of noncompliant sellers and manufacturers to the Washington Attorney General and Legislature.
Additional Information/Resources	
Law	For the text of the Act, see: https://lawfilesext.leg.wa.gov/biennium/2023-24/Pdf/Bills/Senate%20Bills/5541-S.pdf?q=20230828090756 For the Act's legislative status, see: https://app.leg.wa.gov/billsummary?BillNumber=5541&Initiative=false&Year=2023
Senate Bill Report	For the Senate Bill Report, see: https://lawfilesext.leg.wa.gov/biennium/2023-24/Pdf/Bill%20Reports/Senate/5541%20SBR%20LC%20OC%2023.pdf?q=20230828090756

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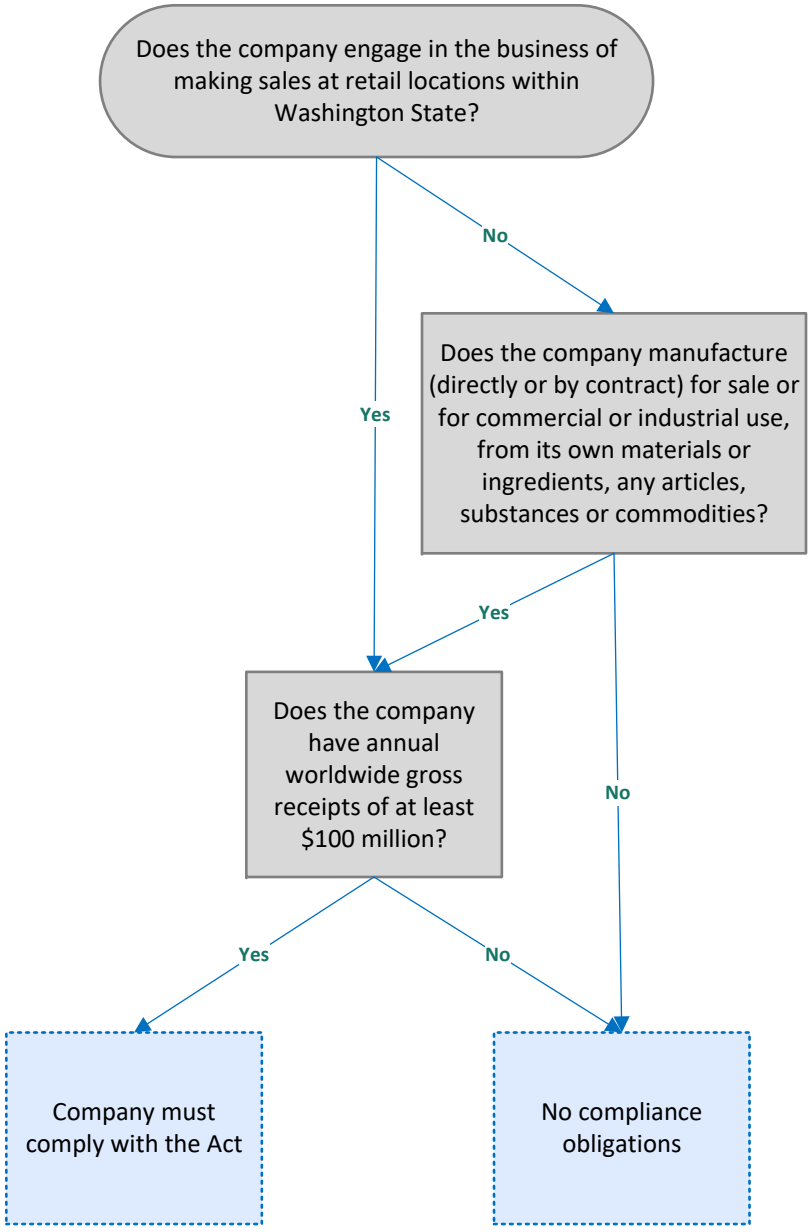

Customs Amendment (Banning Goods Produced By Forced Labour) Bill 2022 (Proposed) Australia	
Overview	
Law / Country	**Customs Amendment (Banning Goods Produced By Forced Labour) Bill 2022** (the **"Bill"**) (Australia)
Goal	To prohibit importing goods produced or manufactured by forced labor.
Adoption / Status	On November 22, 2022, the Bill was introduced in the Australian Senate. An identical version of this Bill (the Customs Amendment (Banning Goods Produced By Forced Labour) Bill 2021) was passed by the Australian Senate on August 23, 2021 but lapsed at dissolution of the House on April 11, 2022. Since the 2021 version lapsed following a dissolution, a new bill had to be introduced.
Issue Addressed	• Forced labor
Covered Entities	Importers of goods into Australia.
How It Works	
Mandatory?	Yes.
Prohibited Imports	The Bill would amend the Customs Act to prohibit the importation into Australia of goods produced or manufactured, in whole or in part, through the use of forced labor. Australia allows prohibited goods to be imported with written permission under certain circumstances. Some goods, however, are under absolute prohibition and no importation is allowed under any circumstance. The Bill would prohibit such goods absolutely.
Penalty	Not specified in the Bill. However, the Bill's explanatory memorandum notes that the importation into Australia of any goods found to have been produced by forced labor would be subject to the penalties that apply to the importation of other goods designated as prohibited imports by regulations made under the Customs Act. The Australian government's website notes that importing prohibited goods is punishable by up to 2,500 penalty units or 10 years imprisonment, or both. As of July 1, 2023, a penalty unit is A$313.

Additional Information/Resources	
Proposed Amendment	For the text of the Bill, see: https://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/s1356_first-senate/toc_pdf/22S1220.pdf;fileType=application%2Fpdf For the Bill's legislative status and explanatory memorandum, see: https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=s1356

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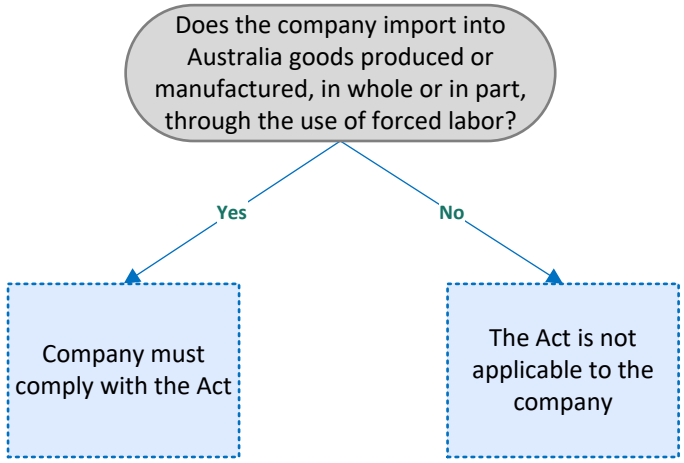

Customs Tariff Canada	
Overview	
Law / State	**Customs Tariff, Tariff Item 9897.00** (Canada)
Goal	To prohibit importing goods produced or manufactured by forced or child labor.
Adoption / Status	As part of the U.S.-Mexico-Canada Agreement, which is the successor to NAFTA, the Canada-United States-Mexico Agreement Implementation Act amended the Canada Customs Tariff to include the prohibition against imports produced or manufactured by forced labor. The prohibition took effect on July 1, 2020. As part of the Fighting Against Forced Labour and Child Labour in Supply Chains Act, which went into effect January 1, 2024, the above prohibition was expanded to include imports produced or manufactured by child labor. The Fighting Against Forced Labour and Child Labour in Supply Chains Act is discussed in a separate summary.
Issue Addressed	• Child labor • Forced labor
Covered Entities	Importers of goods into Canada.
Key Definitions	**"Forced labor"** means 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 Forced Labour Convention (1930) (the **"Forced Labour Convention"**). The Forced Labour 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 certain exceptions specified in the Forced Labour Convention). **"Child labor"** means labor or service provided or offered to be provided by persons under the age of 18 and that: (1) are provided or offered to be provided in Canada under circumstances that are contrary to the laws applicable in Canada; (2) are provided or offered to be provided under circumstances that are mentally, physically, socially or morally dangerous to the persons providing the labor; (3) interfere with their schooling by depriving them of the opportunity to attend school, obliging them to leave school prematurely or requiring them to attempt to combine school attendance with excessively long and heavy work; or (4) constitute the worst forms of child labor as defined in Article 3 of the Worst Forms of Child Labour Convention (1999) (the **"Child Labour Convention"**). The Child Labour Convention defines the worst forms of child labor as (a) 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, (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances, (c) 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 (d) 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.
How It Works	
Mandatory?	Yes.
Prohibited Imports	Prohibits importing into Canada goods mined, manufactured or produced wholly or in part by forced or child labor.
Enforcement	The Canada Border Services Agency (**"CBSA"**) is responsible for enforcing prohibitions under the Customs Tariff.
Additional Information/Resources	
Law	For the text of the Customs Tariff, Tariff Item 9897, see: https://www.cbsa-asfc.gc.ca/trade-commerce/tariff-tarif/2022/01-99/ch98-2022-eng.pdf For the text of the Fighting Against Forced Labour and Child Labour in Supply Chains Act, see: https://www.parl.ca/DocumentViewer/en/44-1/bill/S-211/royal-assent For the text of the Canada–United States–Mexico Agreement Implementation Act introducing the prohibition against imports produced or manufactured by forced labor, see: https://laws-lois.justice.gc.ca/PDF/2020_1.pdf
Guidelines and General Information	The Canada Border Services Agency has updated Memorandum D9-1-6 as of May 28, 2021. The Memorandum contains guidelines and general information relating to the Customs Tariff's forced labor prohibition. For the text of the Memorandum, see: https://www.cbsa-asfc.gc.ca/publications/dm-md/d9/d9-1-6-eng.pdf On November 1, 2023, the Canada Border Services Agency released Memorandum D11-11-3, which provided information on seeking an advanced ruling on whether tariff items fall under Tariff Item 9897. For the text of the Memorandum, see: https://www.cbsa-asfc.gc.ca/publications/dm-md/d11/d11-11-3-eng.pdf

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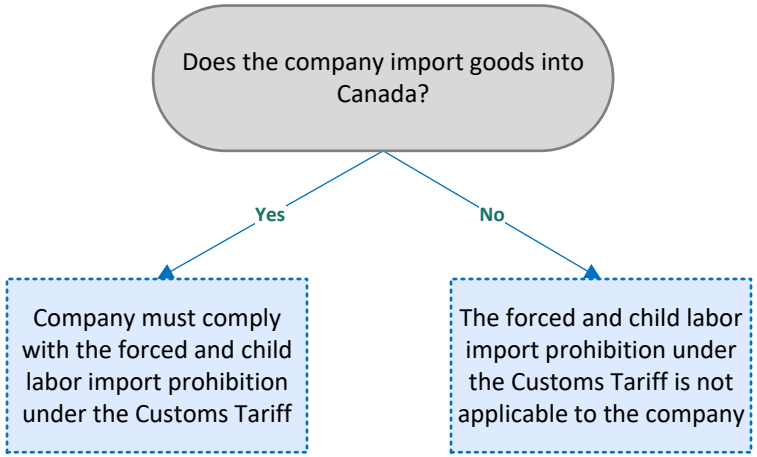

Xinjiang Manufactured Goods Importation Prohibition Act (Proposed) **Canada**	
Overview	
Law / Country	**Xinjiang Manufactured Goods Importation Prohibition Act** (Bill S-204) (the **"Act"**) (Canada)
Goal	To prohibit importation of goods produced or manufactured in the Xinjiang Uyghur Autonomous Region of China (the **"XUAR"**).
Adoption / Status	The Act seeks to amend the Customs Tariff. On November 24, 2021, the Act was introduced to the Senate by Senator Leo Housakos as a private member's bill. The Act contemplates taking effect one year after it receives Royal Assent.
Issue Addressed	• Forced labor
Covered Entities	Importers of goods into Canada.
How It Works	
Mandatory?	Yes.
Prohibited Imports	Importation into Canada of goods manufactured or produced, in whole or in part, in the XUAR would be prohibited.
Enforcement	The Canada Border Services Agency would be responsible for enforcing the prohibitions. There are no penalties specific to the Act. Penalties for violations of the Customs Tariff would apply.
Additional Information/Resources	
Proposed Act	For the text of the Act, see: https://www.parl.ca/DocumentViewer/en/44-1/bill/S-204/first-reading For the Act's legislative status, see: https://www.parl.ca/legisinfo/en/bill/44-1/s-204

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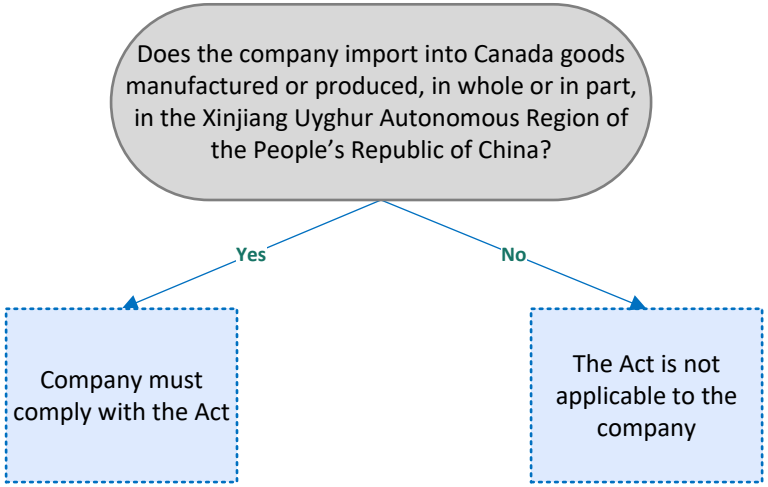

Forced Labor Regulation (Political Agreement) European Union	
Overview	
Law / Country	**Regulation Prohibiting Products Made with Forced Labour on the Union Market** (the **"Regulation"**) (European Union)
Goal	To decrease use of forced labor worldwide by eliminating products made with forced labor from the EU market.
Adoption / Status	On March 5, 2024, the European Parliament (the **"Parliament"**) and the European Council (the **"Council"**) reached a provisional agreement on the text of the Regulation. On March 13, 2024, the Council approved the adoption of the Regulation. On March 20, 2024, a joint committee of the Parliament's Committee on International Market and Consumer Protection and Committee on International Trade endorsed the Regulation. The Regulation has been sent to the Parliament for a final adoption vote during its April plenary, scheduled for the week of April 22, 2024. If approved by the Parliament, the Regulation is expected to be published in the Official Journal of the European Union during Q2 2024. The Regulation would take effect 36 months after its formal publication.
Issues Addressed	• Forced labor
Covered Entities	Any natural or legal person or association of persons who is placing or making available products on the EU market or exporting products from the European Union (each, an **"Economic Operator"**).
How It Works	
Mandatory?	Yes.
Prohibition	Economic operators would be prohibited from placing and making available on the EU market or exporting from the EU market products made with forced labor. The prohibition would include products offered for sale online or through other means of distance selling if the offer is targeted at end-users in the EU (not just those products physically made for sale on the EU market). An offer for sale would be considered to be targeted at end-users in the EU if the relevant Economic Operator directs, by any means, its activities to one or more Member States. The prohibition would apply to all products of any type, including their components, irrespective of the sector or origin of the products.
Selected Definitions	**"Product"** would mean any product that can be valued in money and is capable, as such, of forming the subject of commercial transactions, whether it is extracted, harvested, produced or manufactured, including working or processing related to a product at any stage of its supply chain. **"Supply chain"** would mean the system of activities, processes and actors involved at all stages upstream of the product being made available on the market, namely the extraction, harvesting, production and manufacturing of a product in whole or in part, including working or processing related to the product at any of those stages.

	"Product made with forced labor" would mean a product for which forced labor has been used in whole or in part at any stage of its extraction, harvest, production or manufacture, including working or processing related to the product at any stage of its supply chain. **"Forced labor"** would mean forced or compulsory labor, including forced child labor, as defined in Article 2 of the Convention on Forced Labour, 1930 (No. 29) of the International Labour Organization (the **"ILO"**). **"Placing on the market"** would mean the first making available of a product on the EU market. **"Making available on the market"** would mean any supply of a product for distribution, consumption or use on the EU market in the course of a commercial activity, whether in return for payment or free of charge.
Forced Labor Single Portal	The European Commission (the **"Commission"**) would be required to develop a Forced Labor Single Portal, a public website including key information and tools related to the Regulation. The Forced Labor Single Portal would include: • A list of, and contact information for, all Member State Authorities (defined below); • Guidelines to be issued by the Commission (further discussed below); • A database of forced labor risk areas or products containing indicative, non-exhaustive, evidence-based, verifiable and regularly updated information on forced labor risks in specific geographic areas or with respect to specific products or product groups, including with regard to forced labor imposed by state authorities (the information would be required to be sourced from international organizations, in particular the ILO and the United Nations Organization, or from institutional, research or academic institutions); The database would not publicly disclose information that directly names Economic Operators. • A list of publicly available information sources of relevance for the implementation of the Regulation, including sources which make available disaggregated data on the impact and victims of forced labor, such as gender-disaggregated data or data about forced child labor, allowing to identify age- and gender-specific trends; • A dedicated centralized mechanism for the submission of information on alleged violations of the Regulation, including information on the Economic Operator or products concerned, reasons and evidence for substantiating the allegation and, where possible, supporting documents (the **"Single Information Submission Point"**); and • Any decisions taken under the Regulation to ban a particular product, as well as any withdrawal of such a ban and the result of reviews.
Investigations	<u>Enforcement Authorities</u> Within 12 months of the Regulation entering into force, Member States would be required to designate competent authorities responsible for enforcing the Regulation (the **"Member State Authorities**,**"** each a **"Member State Authority"**). If the suspected forced labor is taking place outside the territory of the EU, the Commission would act as the lead authority conducting investigations and taking decisions (the **"Lead Competent Authority"**). If the suspected forced labor is taking place in the territory of a Member State, the relevant Member State Authority would act as the Lead Competent Authority. In the event a submission is received through the Single Information Submission Point, the Commission would be required to discard any submissions that are manifestly incomplete or unfounded or made in bad faith and would distribute the remaining submissions to the Lead Competent Authority in charge of the assessment, who would be responsible for assessing

	the information, acknowledging receipt of the submission and providing information on the outcome of the assessment of the submission. Risk-Based Approach Member State Authorities and the Commission would be required to follow a risk-based approach in (1) assessing the likelihood of a violation of the Regulation, (2) initiating and conducting the preliminary phase of the investigation and (3) identifying the products and Economic Operators concerned. Assessing the Likelihood of a Violation In assessing the likelihood of a violation, Member State Authorities and the Commission would be required to use the following criteria to prioritize products suspected to have been made with forced labor: • Scale and severity of the suspected forced labor, including whether forced labor imposed by state authorities should be a concern; • Quantity or volume of products placed or made available on the EU market; and • Share of the part suspected to have been made with forced labor in the final product. The assessment of the likelihood of a violation would be required to be based on all relevant, factual and verifiable information available, including, but not limited to, the following: • Information and decisions encoded in the information and communication system referred to in Article 34 of Regulation (EU) 2019/1020 (on market surveillance and compliance of products), including any past cases of compliance or non-compliance of an Economic Operator with the Regulation; • The database of forced labor risk areas or products housed on the Forced Labor Single Portal; • The risk indicators and other information provided pursuant to guidelines to be issued by the Commission; • Submissions made via the Single Information Submission Point; • Information received by the Member State Authority or the Commission from other authorities relevant for the implementation of the Regulation, such as Member States' due diligence, labor, health or fiscal authorities, on the products and Economic Operators under assessment; and • Any issues arising from meaningful consultations with relevant stakeholders, such as civil society organizations and trade unions. Preliminary Phase of Investigations Before initiating an investigation, Lead Competent Authorities would be required to request from the Economic Operator under assessment and, where relevant, other product suppliers, information on their relevant actions taken to identify, prevent, mitigate, bring to an end or remediate risks of forced labor in their operations and supply chains with respect to the products under assessment. Lead Competent Authorities also may request information on those actions from other relevant stakeholders, including the persons or associations having submitted relevant, factual and verifiable information to the Single Information Submission Point and any other natural or legal persons related to the products and geographical areas under assessment, as well as from the European External Action Service and EU Delegations in relevant third countries. When initiating a preliminary investigation, Lead Competent Authorities would be required to focus on the Economic Operators, and, where relevant, product suppliers involved in the steps of the supply chain as close as possible to where the

	forced labor likely occurs, and with the highest leverage to prevent, mitigate and bring to an end the use of forced labor. They also would be required to take into account the size and economic resources of the Economic Operators, in particular whether the Economic Operator is a small or medium-sized enterprise (**"SME"**) and the complexity of the supply chain. Within 30 business days from the date of receipt of a request from the Lead Competent Authority, the Economic Operator would be required to submit a response, including any other information they may deem useful to the investigation. Within 30 business days of receiving such response from the Economic Operator, the Lead Competent Authority would be required to conclude the preliminary phase of the investigation and determine whether there is a substantiated concern of violation of the Regulation. For the purposes of the Regulation, a **"substantiated concern"** would mean a reasonable indication based on objective, factual and verifiable information, for the Lead Competent Authority to suspect that products were likely made with forced labor. If the Lead Competent Authority determines that there is no substantiated concern of a violation of the Regulation or that the reasons that motivated the existence of a substantiated concern have been eliminated (e.g., due to the applicable legislation, guidelines, recommendations or any other due diligence in relation to forced labor being applied in a way that mitigates, prevents or brings to an end the risk of forced labor), the Lead Competent Authority would not be permitted to initiate an investigation. **"Due diligence in relation to forced labor"** would mean the efforts by an Economic Operator to implement mandatory requirements, voluntary guidelines, recommendations or practices to identify, prevent, mitigate or bring to an end the use of forced labor with respect to products that are to be placed or to be made available on the EU market or to be exported. <u>Investigations</u> If the Lead Competent Authority determines there is a substantiated concern of a violation of the Regulation, they would be required to initiate an investigation on the products and Economic Operators concerned and inform the Economic Operators subject to the investigation within three business days from the date of the decision to initiate the investigation, including information on the following: • The initiation of the investigation and the possible consequences thereof; • The products subject to the investigation; • The reasons for the initiation of the investigation, unless it would jeopardize the outcome of the investigation; and • The possibility for the Economic Operators to submit any other document or information to the Lead Competent Authority and the date by which such information must be submitted. Upon request, Economic Operators under investigation would be required to submit any information relevant and necessary for the investigation, including information identifying the products under investigation and, where appropriate, identifying the part of the product to which the investigations should be limited and the manufacture, producer or product supplier of those products or parts thereof. Economic Operators would be provided between 30 and 60 business days to submit any such information, subject to the right to request an extension of that deadline with a justification. During the investigation, Lead Competent Authorities would be permitted to collect information from or interview any relevant persons who consent to be interviewed for the purpose of collecting information relating to the subject matter of the investigation, including relevant Economic Operators and any other stakeholders.

	In exceptional situations, Lead Competent Authorities may conduct field inspections. Where the risk of forced labor is located in the territory of a Member State, the Lead Competent Authority may conduct its own inspections. Where the risk of forced labor is located outside of the territory of the EU, the Commission may carry out all necessary checks and inspections, provided that the Economic Operators concerned provide their consent and the government of the third country in which the inspections are to take place has been notified and raises no objection. Decisions Within a reasonable period of time, and ideally within nine months, from the date of initiating the investigation, Lead Competent Authorities would be required to adopt a decision as to whether the products concerned have been placed or made available on the market or are being exported in violation of the Regulation (the **"Decision"**). If the Lead Competent Authority cannot establish a violation, they would be required to close the investigation and inform the Economic Operator of the Decision. If the Lead Competent Authority finds a violation of the Regulation, they would be required to adopt a Decision containing the following: • A prohibition on placing or making the relevant products available on the EU market and exporting them from the European Union; • An order for the Economic Operator to withdraw from the EU market the products concerned that have already been placed or made available on the EU market or to remove content from an online interface referring to the products or listings of the products concerned; and • An order for the Economic Operator to dispose of the products or parts of the products concerned by recycling them or, in the case of perishable products, by donating the products concerned for charitable or public interest purposes (or, in each case, when that is not possible, by rendering those products inoperable). In the event disposal of the product concerned would disrupt a supply chain of strategic or critical important for the EU, the Lead Competent Authorities may instead order the product concerned to be withheld for a defined period of time, which shall be no longer than the time necessary to eliminate forced labor for the product concerned, at the cost of the Economic Operator. If, during this time, the Economic Operator demonstrates that they have eliminated forced labor from the supply chain of the product without changing the product and by having brought to an end the forced labor identified in the Decision, the Lead Competent Authority would review such Decision. If the Economic Operator does not demonstrate that they have eliminated forced labor from the supply chain of the products concerned, they would be required to dispose of the products in the manner set forth above. In all cases, a Decision would be required to contain the following: • The findings of the investigation and the information and evidence underpinning the findings; • Reasonable time limits for the Economic Operator to comply with the orders, which shall not be less than 30 business days (in the case of perishable goods, animals and plants, not less than 10 business days); • All relevant information and in particular the details allowing the identification of the product concerned, including details about the manufacturer, producer, product suppliers and, where appropriate, production site; • Where available and applicable, information required under customs legislation; and • Information on the possibilities for a judicial review against the Decision.

	The Commission would be required to adopt implementing acts further specifying the details of the information to be included in the Decision. Review of Decisions Economic Operators affected by a Decision would be permitted, at any time, to submit a request for a review containing new substantial information that was not brought to the attention of the Lead Competent Authority during the investigation and which demonstrates that the products are in compliance with the Regulation. The Lead Competent Authority would be required to issue a decision on the request for a review within 30 business days of receipt of the request. If an Economic Operator is able to provide evidence it has complied with the Decision and eliminated forced labor from its operations or supply chain with respect to the products concerned, the Lead Competent Authority would be required to withdraw its Decision for the future, inform the Economic Operator and remove it from the Forced Labor Single Portal. Economic Operators that have been affected by a Decision of a Member State Authority pursuant to the Regulation would have access to a court or a tribunal to review the procedural and substantive legality of the decision.
Enforcement	If an Economic Operator fails to comply with a Decision by a Lead Competent Authority within the time limit provided, the relevant Member State Authority or the Commission, as applicable, would be responsible for enforcing the Decision by ensuring the following: • The Economic Operator is prohibited from placing or making available the products concerned on the EU market and exporting them from the EU market; • The products concerned already placed or made available on the EU market are withdrawn by relevant authorities, in accordance with EU and national laws; • The products concerned remaining with the Economic Operator are disposed of in accordance with the Regulation, at the expense of the Economic Operator; and • Access to the products and to listings referring to the products concerned is restricted by requesting the relevant third party to implement such measures. Customs authorities would, in cooperation with the Lead Competent Authority, enforce the Regulation by controlling entry into or exit from the European Union of products made with forced labor. The Regulation would also empower the Commission to adopt delegated acts supplementing the Regulation that identify products or product groups for which information would be required to be provided to customs authorities in decisions. Where customs authorities identify a product entering or leaving the EU market that may, according to a Decision, be in violation of the Regulation, the customs authorities would be required to suspend the release for free circulation or export of that product until either of the following conditions has been satisfied: • The Member State Authorities or the Commission, as applicable, have not requested the customs authorities to maintain the suspension within four business days of the initial suspension (two business days for perishable products, animals and plants); or • The Member State Authorities or the Commission, as applicable, informed the customs authorities of their approval for release for free circulation or export pursuant to the Regulation.

	Union Network Against Forced Labour Products The Regulation would also create the Union Network Against Forced Labour Products, a platform for coordination and cooperation between the Member State Authorities and the Commission and to streamline the practices of enforcement of the Regulation within the European Union. The Network would be composed of representatives from each Member State, the Commission and, where appropriate, customs authorities. The Network's tasks would include, among other things: • Facilitating the identification of common enforcement priorities to achieve the objectives of prohibiting products made with forced labor on the EU market and contributing to the fight against forced labor; • Facilitating the coordination of investigations; • Following up on the enforcement of Decisions; • Contributing to the development of guidelines to be issued by the Commission; • Contributing to uniform risk-based approaches and administrative practices for the implementation of the Regulation; and • Promoting best practices in the application of penalties.
Penalties	If an Economic Operator fails to comply with a Decision, the relevant Member State Authority or the Commission, as applicable, would be required to impose penalties on the Economic Operator. Member States would be required to lay down rules on penalties applicable to non-compliance with a Decision. The penalties would be required to give due regard to the following, as applicable: • The gravity and duration of the infringement; • Any relevant previous infringements by the Economic Operator; • The degree of cooperation with the competent authorities; and • Any other mitigating or aggravating factor applicable to the circumstances of the case, such as financial benefits gains, or losses avoided, directly or indirectly, from the infringement.
Guidelines	Within 18 months of the Regulation entering into force, the Commission, in consultation with relevant stakeholders, would be required to issue guidelines. The guidelines would be required to include the following, among other things: • Guidance on due diligence in relation to forced labor, including forced child labor, that takes into account applicable national and EU legislation, setting out due diligence requirements with respect to forced labor, guidelines and recommendations from international organizations, the size and economic resources of Economic Operators, different types of suppliers along the supply chain and different sectors; • Guidance on due diligence in relation to forced labor imposed by state authorities; • Guidance on best practices for bringing to an end and remediating different types of forced labor; • Information on risk indicators of forced labor, including on how to identify them, based on independent and verifiable information, including reports from international organizations, in particular the ILO, civil society, business organizations and experience from implementing EU legislation setting out due diligence requirements with respect to forced labor; • Guidance on how to engage in dialogue with Member State Authorities, in particular on the type of information to be submitted; • Guidance on how to submit information via the Single Information Submission Point;

	• Guidance for Member States on the method for calculating financial penalties and the applicable thresholds; and • Further information to facilitate Member State Authorities' implementation of the Regulation. The guidance referred to in the first, second and third bullet points above would focus in particular on assisting SMEs in complying with the Regulation.
Commission Evaluation	The Commission would be required to carry out an evaluation of the enforcement and implementation of the Regulation within two years of the Regulation entering into force, and every five years thereafter.
Additional Information/Resources	
Text of the Regulation	For the text of the Regulation, see: https://data.consilium.europa.eu/doc/document/ST-7542-2024-INIT/en/pdf
Press Releases	For the Council's press release regarding the provisional agreement on the Regulation between the Parliament and the Council, see: https://www.consilium.europa.eu/en/press/press-releases/2024/03/05/council-and-parliament-strike-a-deal-to-ban-products-made-with-forced-labour/#:~:text=The%20Council%20and%20the%20European,products%20made%20with%20forced%20labour For the Parliament's press release regarding the provisional deal on the Regulation between Parliament and the Council, see: https://www.europarl.europa.eu/news/en/press-room/20240301IPR18592/deal-on-eu-ban-on-products-made-with-forced-labour
Ropes & Gray Resources	Client alert related to the Regulation: • European Commission Proposes Sweeping Regulation to Ban Products Made with Forced Labor (September 22, 2022): https://www.ropesgray.com/en/newsroom/alerts/2022/september/european-commission-proposes-sweeping-regulation-to-ban-products-made-with-forced-labor

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

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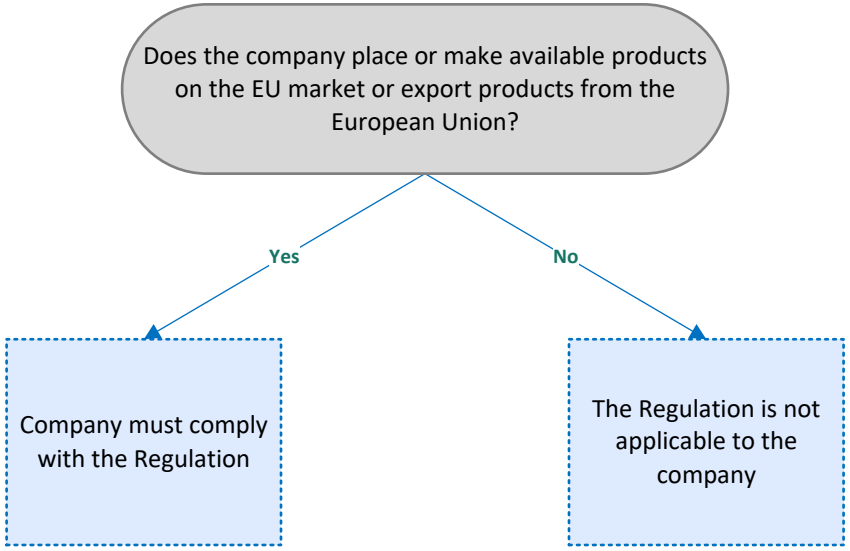
Applying the Law



Administrative Regulation related to Forced Labor Mexico	
Overview	
Law / State	**Administrative regulation that sets forth the goods for which importation is subject to regulation by the Ministry of Labor and Social Welfare** (the **"Regulation"**) (Acuerdo que establece las mercancías cuya importación está sujeta a regulación a cargo de la Secretaría del Trabajo y Previsión Social) (Mexico)
Goal	To prohibit imports produced or manufactured by forced or compulsory labor.
Adoption / Status	On February 17, 2023, Mexico's Ministry of Economy published the Regulation. The Regulation implements Mexico's obligation to prohibit imports produced with forced labor under the United States-Mexico-Canada Agreement, which is the successor to NAFTA. The Regulation became effective on May 18, 2023.
Issue Addressed	• Forced labor
Covered Entities	Importers of goods into Mexico.
How It Works	
Mandatory?	Yes.
Prohibited Imports	Prohibits importing goods into Mexico that have been produced, in whole or part, through forced or compulsory labor, including child labor. Prohibited goods will be specified in a resolution, as further discussed below. If there is no resolution for a particular good, it is deemed to comply with the prohibition.
Enforcement	The Ministry of Labor and Social Welfare (the **"Ministry"**) may initiate, on its own or at the request of a private party, an investigation into whether goods were produced using forced labor. If a private person requests an investigation, such person will need to provide specified information to the Ministry, including the legal basis of the request, the nature and technical specifications of the goods in question and evidence supporting the claim that forced labor was used. If the Ministry finds that there is sufficient evidence to initiate an investigation, the Ministry will seek to confirm whether such goods are produced using forced labor. If the Ministry determines that the goods were made with forced labor, its finding, in the form of a resolution, will be published on the Ministry's website. Thereafter the covered goods will be prohibited from entering Mexico.
Review Procedure	When the Ministry has formally admitted a request for review or unofficially determines that it has sufficient evidence to initiate an investigation, it will observe the following procedure: • Request relevant information from foreign authorities or institutions responsible for forced or compulsory labor in the applicable countries, including the country of origin of the goods under review or countries through which the goods passed.

	• If foreign authorities or institutions do not determine forced labor was used in the production of the goods under review, the Ministry will request that the importer of the goods provide any other relevant information or documentation related to the purchase and production of the goods within 20 business days. • The Ministry may also submit follow-up requests to the importer of the goods, seek input from civil society organizations and other public entities or collaborate with local authorities in other countries. • The Ministry will issue a determination within 180 business days from the date of submission of the application. If a person requests the review of a prior determination to have it rescinded because the use of forced labor in the production of the goods has ceased, and the person provides all necessary documentation in support of such assertion, the Ministry will cooperate with trading partners and re-initiate the review procedure.
Additional Information/Resources	
Law	For the text of the Regulation, see: https://dof.gob.mx/nota_detalle.php?codigo=5679955&fecha=17/02/2023#gsc.tab=0
Guide for Implementation	For the Mexican government's guide for implementation of the Regulation (Spanish), see: https://www.gob.mx/stps/documentos/guia-para-la-instrumentacion-del-mecanismo-para-restringir-la-importacion-de-mercancias-producidas-con-trabajo-forzoso-u-obligatorio
Ropes & Gray Resources	Client alert related to the Regulation: • Mexico Bans Imports Made with Forced Labor in Alignment with the USMCA (March 6, 2023): https://www.ropesgray.com/en/newsroom/alerts/2023/03/mexico-bans-imports-made-with-forced-labor-in-alignment-with-the-usmca

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

(Updated February 29, 2024)

Applying the Law

Countering America's Adversaries Through Sanctions Act, Section 321 United States	
Overview	
Law / Country	**Section 321 of the Countering America's Adversaries Through Sanctions Act** (22 U.S.C. § 9241(a)) (the **"Act"**) (United States)
Goal	Intended to primarily address North Korean state-sponsored labor in other countries, which helps to mitigate the effect of sanctions by providing hard currency to the North Korean government through workers' remittances.
Adoption / Status	The Act was signed into law on August 2, 2017.
Issue Addressed	• Forced labor
Covered Entities	Importers of goods into the United States produced using North Korean national or citizen labor.
How It Works	
Mandatory?	Yes.
Prohibited Imports	If goods were produced, manufactured or mined by North Korean nationals or North Korean citizens in any country, the Act creates a rebuttable presumption that the goods involved forced labor. Goods produced using forced labor may not be imported into the United States under Section 307 of the Tariff Act. Under the Act, such goods may be imported into the United States only if the Commissioner of U.S. Customs and Border Protection (**"CBP"**) finds by clear and convincing evidence that the goods were not produced using slave or forced labor. The burden of proof is held by the importer of the goods in question and is difficult to satisfy.
Enforcement	CBP and U.S. Immigration and Customs Enforcement (**"ICE"**) enforce the Act though both civil and criminal enforcement actions. If CBP finds evidence that goods have been produced with North Korean forced labor, CBP will deny entry and may detain, seize or seek forfeiture of the goods. ICE Homeland Security Investigations (**"HSI"**) may commence a criminal investigation. CBP and HSI consider a company's due diligence when contemplating enforcement action.
DHS Guidance – March 2018 (updated February 2021)	In March 2018, the U.S. Department of Homeland Security published FAQs relating to the Act. Updated FAQs were published on February 11, 2021. 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: • A high-level statement of policy demonstrating the company's commitment to respect human rights and labor rights; • A rigorous continuous risk assessment of actual and potential human rights and labor impacts or risks of company activities and relationships, which is undertaken in consultation with relevant stakeholders, such as governments,

	local business partners and members of civil society such as local communities, workers, trade unions, vulnerable groups and NGOs; • Integrating the foregoing commitments and assessments into internal control and oversight systems of company operations and supply chains; and • Tracking and reporting on areas of risk. 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: • Information demonstrating meaningful engagement with affected stakeholders, including workers and trade unions, as part of the due diligence process; • Workforce composition at the location in question; • Training materials on North Korean forced labor prohibitions that have been provided to suppliers and sub-contractors; • Company policies, and evidence of implementation, on using North Korean laborers; • Contracts with suppliers and sub-contractors that state the company's policy on North Korean forced labor; • Publishing the full names of all authorized production units and processing facilities, the worksite addresses, the parent company of the business at the worksite, the types of products made, and the number of workers at each worksite; • Information on how and to whom wages are paid at the location; • Information demonstrating that recruitment agencies are within the scope of any third-party audit with suppliers; • Documents verifying the use of authorized recruitment agencies and brokers or that the company uses direct recruitment; • Documents verifying that the fee structure presented by the recruitment agency is transparent and has been verified through worker interviews; • If the company has reimbursed any fees paid, verification of such reimbursement; • Demonstrated commitment to human rights and labor due diligence at the highest levels of the company; and • Results of the company's human rights and labor impact assessments.
DoS Guidance – July 2018	In July 2018, the U.S. State Department, with Treasury's Office of Foreign Assets Control and CBP and ICE, issued a North Korea Sanctions & Enforcement Actions Advisory. 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. The advisory also discusses five categories of potential indicators of North Korean overseas labor, including: • Withholding wages, making unreasonable pay deductions, paying wages late and making in-kind payments;

	• Long-term contracts that require a large upfront payment to the North Korean government; • Unsafe and unsanitary housing conditions provided by the employer and excessive costs for those accommodations; collective housing and isolation from laborers of other nationalities; • No access to/control over bank accounts; the employer retains passports and/or confiscates or destroys laborers'; personal documents; little to no time off and required to attend mandatory self-criticism sessions; and • Contract details are hidden and it is difficult to determine the ultimate beneficiary of financial transactions; laborers cannot be interviewed without a "minder" present. In addition, the guidance identifies 12 industries and 41 countries in which North Korean overseas labor was present in 2017-2018.
Additional Information/Resources	
Law	For the text of the Act, see: https://congress.gov/115/plaws/publ44/PLAW-115publ44.pdf
Guidance	For the updated February 2021 DHS Guidance, see: https://www.dhs.gov/news/2021/02/11/countering-america-s-adversaries-through-sanctions-act-faqs For the July 2018 DoS Guidance, see: https://ofac.treasury.gov/media/7721/download?inline
Ropes & Gray Resources	Client alerts related to the Act: • Complying with Restrictions on North Korean Content and Labor in Supply Chains – U.S. Government Publishes New Advisory (July 30, 2018): https://www.ropesgray.com/en/newsroom/alerts/2018/07/complying-with-restrictions-on-north-korean-content-and-labor-in-supply-chains • Department of Homeland Security Publishes FAQs on North Korean Labor in Supply Chains (April 5, 2018): https://www.ropesgray.com/en/newsroom/alerts/2018/04/department-of-homeland-security-publishes-faqs-on-north-korean-labor-in-supply-chains • U.S. Legislation Requires Enhancements to Modern Slavery Compliance Procedures to Address North Korean Labor Risks (December 18, 2017): https://www.ropesgray.com/en/newsroom/alerts/2017/12/us-legislation-requires-enhancements-to-modern-slavery-compliance-procedures

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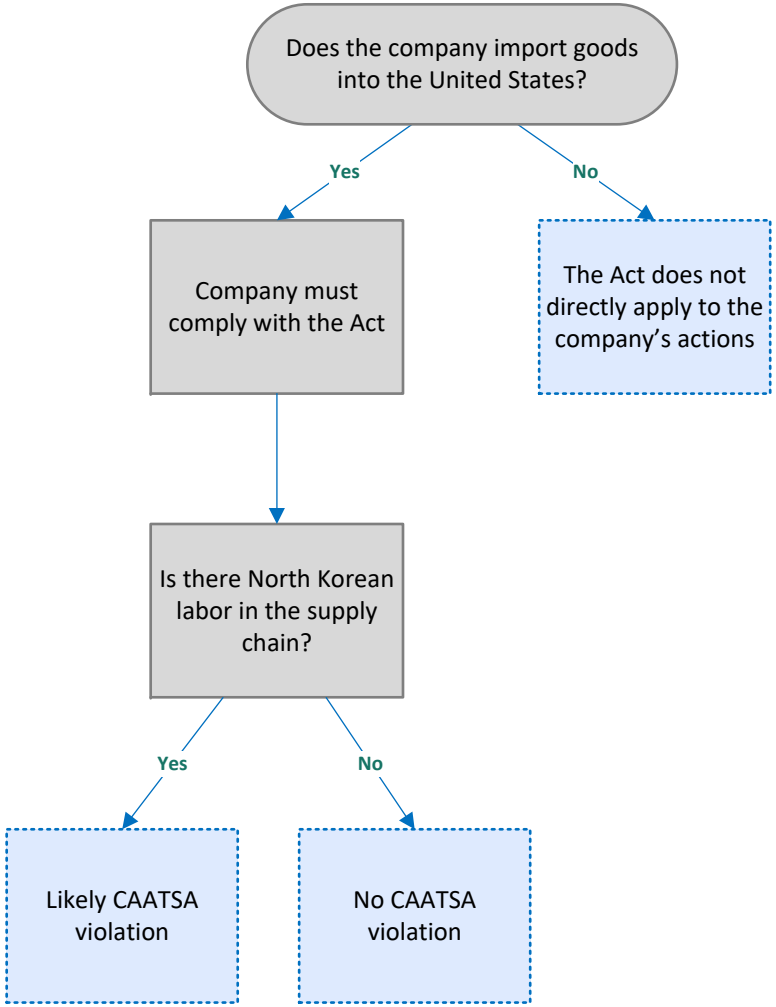

Countering China's Exploitation of Strategic Metals and Minerals and Child and Forced Labor in the Democratic Republic of the Congo Act (Proposed) **United States**	
Overview	
Law / Country	**Countering China's Exploitation of Strategic Metals and Minerals and Child and Forced Labor in the Democratic Republic of the Congo Act** (H. R. 4443) (the **"Act"**) (United States)
Goal	To ensure that certain goods made with child labor or forced labor in the Democratic Republic of the Congo (the **"DRC"**) do not enter the United States market and to counter control of strategic metals and minerals by the People's Republic of China (the **"PRC"**).
Adoption / Status	The Act was introduced in the United State House of Representatives by New Jersey Representative Christopher H. Smith on June 30, 2023. The Act was referred to the House Committee on Foreign Affairs, the House Committee on Ways and Means and the House Judiciary Committee for consideration.
Issue Addressed	• Child labor • Forced labor
Covered Entities	Importers of goods into the United States.
How It Works	
Mandatory?	Yes.
Prohibited Imports	The Act would establish a rebuttable presumption that Covered DRC Goods are produced using child labor or forced labor and therefore are prohibited from being imported into the United States under Section 307 of the Tariff Act of 1930 (19 U.S.C. 1307) (**"Section 307"**). The presumption under the Act would take effect 120 days after the enactment of the Act. For a further discussion of Section 307, see the separate summary discussing that provision. **"Covered DRC Goods"** would mean goods, wares, articles or merchandise containing metals or minerals, in particular cobalt and lithium and their derivatives, mined, produced, smelted or processed, wholly or in part, by child labor or forced labor in the DRC. **"Child labor"** would mean work that deprives children of their childhood, their potential and their dignity, and that is harmful to their physical and mental development. **"Forced labor"** would mean all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily.

Rebutting the Child Labor or Forced Labor Presumption	The presumption established by the Act would not apply if the Commissioner of U.S. Customs and Border Protection (**"CBP"**): • Determines, based on clear and convincing evidence, including information produced by due diligence reviews by importers of their supply chains, that the Covered DRC Goods were not mined, produced or manufactured wholly or in part by child labor or forced labor; and • Submits to the appropriate congressional committees and makes available to the public a report that contains such determination.
Enforcement Strategy	No later than 120 days after the enactment of the Act, the Forced Labor Enforcement Task Force (**"FLETF"**) would be required to submit to the appropriate congressional committees a report (the **"Strategy"**) that: • Contains an enforcement strategy to effectively address child labor and forced labor in the mining, production, smelting or processing of metals or minerals, in particular cobalt and lithium and their derivatives, in the DRC; • Describes the specific strategy of the U.S. Government for enforcing Section 307 to prevent the importation into the United States of Covered DRC goods; • Describes the perpetration of child labor and forced labor by mining companies in the DRC owned or controlled by PRC entities or financed by PRC state-owned banks or institutions; and • Recommends development and promotion of alternative sources of supply and production, including within the DRC and the United States domestically. The Strategy would also be required to include: • A list of (1) Covered DRC Goods and (2) businesses that have sold Covered DRC Goods in the United States. • A list of U.S.-based facilities and entities that source metals and minerals, in particular cobalt and lithium and their derivatives, from the mining industry of the DRC, including artisanal and small-scale mining sectors. • A list of mining companies, including China Molybdenum, in the DRC owned or controlled by PRC entities, or financed by PRC state-owned banks or institutions. • A list of high-priority sectors for enforcement, which would include electric vehicles production, with a sector-specific enforcement plan for each high-priority sector. • A description of the additional resources necessary for CBP and other Federal entities, including the FLETF, to effectively implement the strategy. • A strategy to coordinate and collaborate with appropriate nongovernmental organizations and private sector entities to implement the enforcement strategy for Covered DRC goods. No later than 270 days after the enactment of the Act, and at least annually thereafter, the President of the United States would be required to submit a report to the appropriate congressional committees that identifies each foreign person, including any official of the Government of the DRC, that the President determines: • Knowingly engages in, is responsible for, or facilitates the child labor and forced labor in the mining industry of the DRC, including artisanal and small-scale mining; and

	• Knowingly engages in, contributes to, assists or provides financial, material or technological support for efforts to contravene U.S. law regarding the importation of Covered DRC Goods. Each foreign person identified in the report would be subject to sanctions, including asset blocking and ineligibility for visas, admission or parole. A foreign person that violates, attempts to violate, conspires to violate or causes a violation of the Act would be subject to the following penalties: • A civil penalty in an amount not to exceed the greater of $250,000 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed; and/or • A criminal fine of not more than $1,000,000 or if a natural person, imprisonment for not more than 20 years, or both.
Enforcement Sunset	The enforcement provisions of the Act would cease to have effect on the earlier of (1) the date that is eight years after the enactment of the Act or (2) the date on which the President submits to the appropriate congressional committees a determination that the DRC has ended child labor and forced labor in the mining industry of the DRC, including artisanal and small-scale mining.
Additional Information/Resources	
Law	For the text of the Act, see: https://www.congress.gov/bill/118th-congress/house-bill/4443/text?s=1&r=8

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(Updated February 29, 2024)

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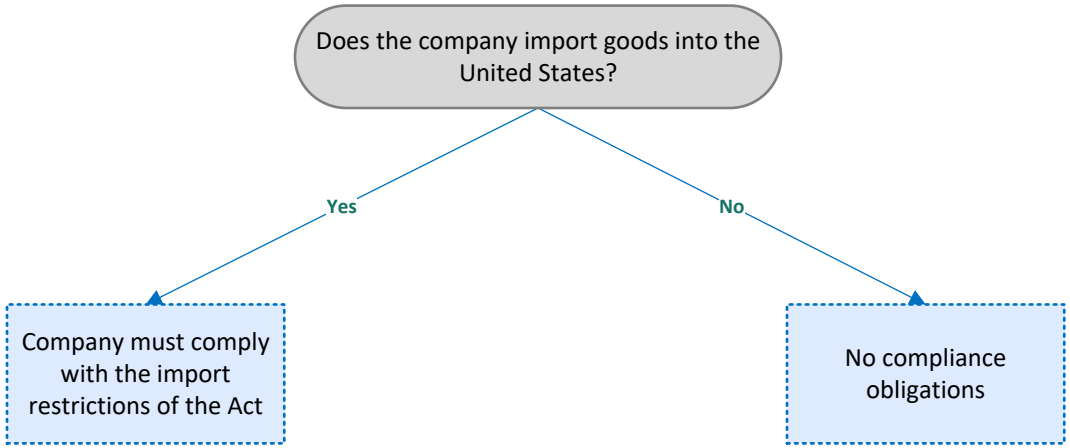


Customs Trade Partnership Against Terrorism (CTPAT) – Security and Trade Compliance Programs United States	
Overview	
Program / Country	Customs Trade Partnership Against Terrorism (**"CTPAT"**) – Security and Trade Compliance Programs (United States)
Goal	To promote U.S. border security and combat terrorism.
Adoption / Status	Originally, known as CTPAT Security, the program functioned as a voluntary collaboration between U.S. Customs and Border Protection (**"CBP"**) and supply chain stakeholders – including importers, carriers, consolidators, licensed custom brokers and manufacturers – to promote U.S. border security and combat terrorism. In 2016, CTPAT launched its Trusted Trader Strategy to incorporate trade compliance elements from the Importer Self-Assessment program (the **"ISA"**). The effort to integrate the ISA program resulted in the March 2020 establishment of CTPAT Trade Compliance, a program that allows importers to assume responsibility for monitoring their own compliance with trade laws and regulations. In 2022, new forced labor requirements were added to the CTPAT Security and Trade Compliance Programs. Note that this summary is largely limited to the forced labor requirements of the CTPAT programs.
Issues Addressed	• Border security • Forced labor • Terrorism
Eligibility	The eligibility and minimum security criteria for the CTPAT Security program vary according to industry. For an importer to be eligible to join the CTPAT Security program, the importer must meet the following threshold requirements: • Be an active U.S. importer or non-resident Canadian importer that has imported goods into the United States within the last 12 months of applying; • Have an active U.S. importer of record number; • Have a valid continuous import bond registered with CBP; • Operate a business office staffed in the United States or Canada; • Designate a company officer who will be the primary cargo security officer responsible for CTPAT; • Sign the CTPAT Importer Agreement, committing to maintain the CTPAT supply chain security criteria; • Create and provide a supply chain security profile in the CTPAT portal that identifies how the importer will meet and maintain CTPAT importer security criteria; and • Have no unpaid debt owed to CBP at the time of the application for which a final judgment or administrative disposition has been rendered.

	Eligibility for the CTPAT Trade Compliance program requires that importers have Tier II or Tier III account holder status including the following: • Be a U.S. or Canadian resident importer; • Have a minimum of two years import experience; and • Maintain no evidence of financial debt to CBP.
How It Works	
Mandatory?	No.
Compliance Requirements	CTPAT Security CTPAT Security partners are required to have a documented social compliance program in place that addresses how the partner ensures that goods imported into the United States were not mined, produced or manufactured, wholly or in part, with forced, imprisoned or indentured child labor. CTPAT partners are required to upload to the applicable CTPAT portal evidence that they have implemented a social compliance program addressing forced labor prevention, including a copy of the partner's code of conduct. CTPAT Trade Compliance CTPAT Trade Compliance partners must meet the following six forced labor prevention compliance requirements: • **Risk-based mapping**. Partners must conduct risk-based mapping that outlines supply chains in their entirety, including regions and suppliers that they feel pose the most risk for forced labor. CBP may request unredacted proof of supply chain mapping. • **Code of conduct**. Partners must put in place a code of conduct statement indicating their position against the use of forced labor in any part of their supply chains. FAQs published by CBP in July 2022 indicate that the commitment to business mapping (see above) should be included in the code of conduct. The code of conduct also must be included in the importer's social compliance program that focuses on forced labor. In addition, partners must have policies and procedures that operationalize the code of conduct. The code of conduct statement must be uploaded to the CTPAT online portal and published publicly. • **Evidence of implementation**. Partners must provide CBP with evidence of the implementation of their social compliance program, including, if requested, their risk assessment. Examples of evidence include unredacted audits of high-risk supply chains related to forced labor, internal training programs for employees on identifying signs of forced labor and mechanisms used to show the supply chain is free of forced labor. • **Due diligence and training**. Partners must provide training to suppliers on the partner's social compliance program requirements that identifies the specific risks and helps identify and prevent forced labor in the supply chain. Training should exemplify the partner's position against forced labor as stated in its code of conduct and must ensure that the supplier's business model and code of conduct expressly state that it will not partner with businesses that use forced labor. Proof of training must be made available to CBP upon request.

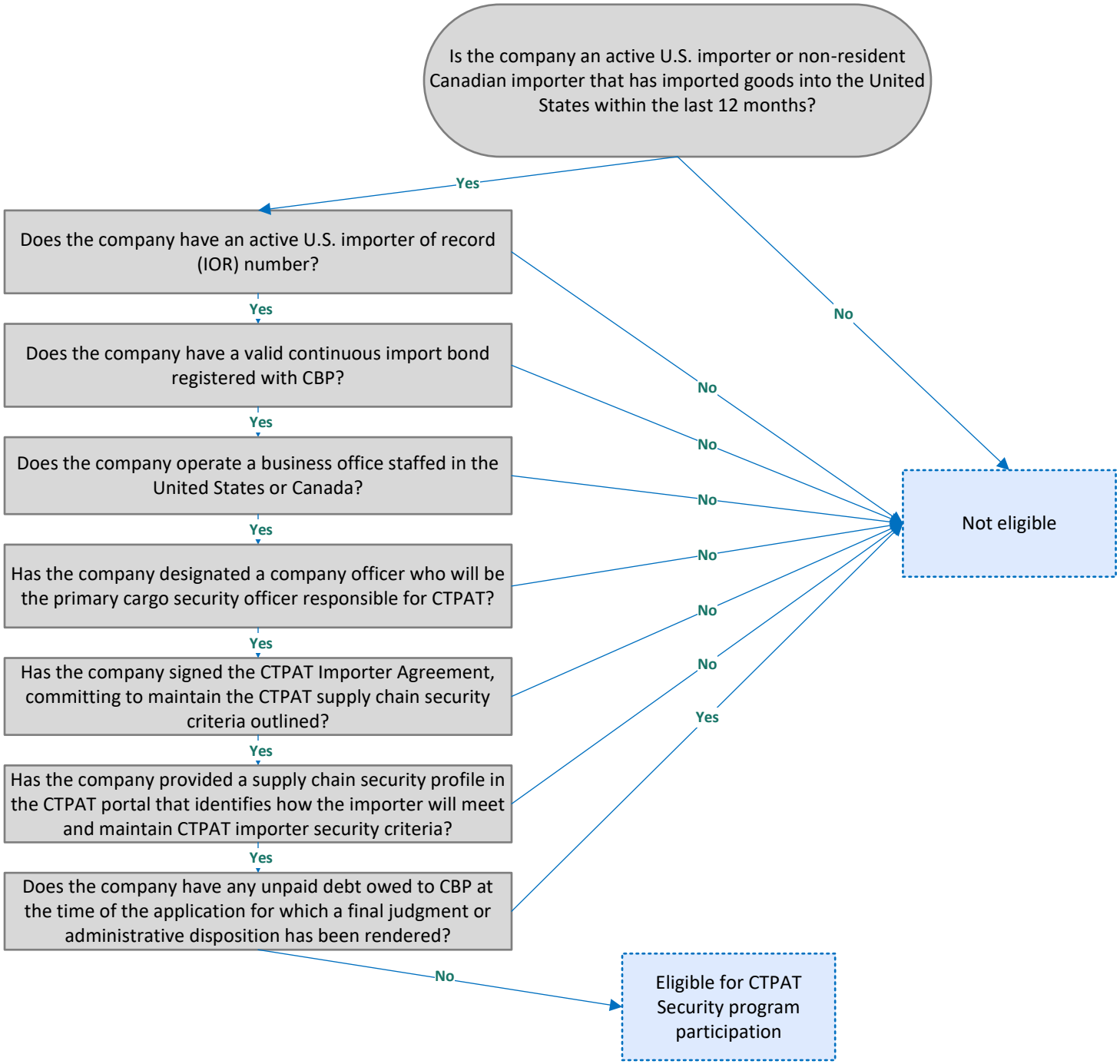
	• **Remediation plan**. Partners must have remediation plans in the event that forced labor is identified in their supply chains. A remediation plan must include the process for disclosing information to CBP and outline the necessary steps for the partner's employees and suppliers to correct the issue. Remediation plan information must be provided to CBP upon request. • **Shared best practices**. Partners are required to share best practices with the CTPAT Trade Compliance program, as appropriate, to help mitigate the risk of forced labor.
Enforcement	CTPAT partners who fail to comply with the forced labor requirements may be subject to suspension or removal from the program.
Benefits	Partner companies that demonstrate compliance with program requirements receive various trade facilitation benefits, including the following: • Reduced number of CBP examinations; • Front of the line inspections; • Possible exemption from Stratified Exams; • Shorter wait times at the border; • Assignment of a Supply Chain Security Specialist to the company; • Access to the Free and Secure Trade (FAST) Lanes at land borders; • Access to the CTPAT web-based portal system and a library of training materials; • Possibility of enjoying additional benefits by being recognized as a trusted trade partner by foreign customs administrations that have signed mutual recognition with the United States; • Eligibility for other U.S. government pilot programs, such as the Food and Drug Administration's Secure Supply Chain program; • Business resumption priority following a natural disaster or terrorist attack; • Importer eligibility to participate in the Importer Self-Assessment Program; and • Priority consideration at CBP's industry-focused Centers of Excellence and Expertise. In November 2022, CTPAT's Director sent a letter to trade partners announcing the addition, with immediate effect, of three forced labor compliance-related benefits for Trade Compliance partners: • **Front of the line admissibility review**. CTPAT Trade Compliance partners who have shipments detained due to forced labor will have their admissibility packages prioritized for review by the appropriate Center of Excellence and Expertise. • **Redelivery hold**. If a shipment that arrived at a CTPAT Trade Compliance partner's facility is later determined to be held due to ties to forced labor, the partner may hold the shipment at its facility, rather than redelivering the goods to CBP, until an admissibility determination is made or a physical inspection is required.

	• **Movement of detained WRO shipments to a bonded facility**. CTPAT Trade Compliance partners who have a shipment detained by CBP due to a Withhold Release Order will be allowed to move the goods to a bonded facility to be held intact until an admissibility determination is made by CBP.
Additional Information/Resources	
Program Application	For information on how to become a CTPAT partner, see https://ctpat.cbp.dhs.gov/trade-web/index
Applying for CTPAT FAQs	https://www.cbp.gov/sites/default/files/documents/applying_faqs_3.pdf
Trade Compliance FAQs	https://www.cbp.gov/border-security/ports-entry/cargo-security/ctpat/trade-compliance/FAQs
Trade Compliance Handbook	https://www.cbp.gov/sites/default/files/assets/documents/2023-Sep/Handbook%204.0%20September%202023%20%28508%29_0.pdf
Importer's Minimum Security Criteria	https://www.cbp.gov/border-security/ports-entry/cargo-security/ctpat-customs-trade-partnership-against-terrorism/apply/security-criteria
Ropes & Gray Resources	Client alerts related to CTPAT: • Preparing for New CTPAT Forced Labor Compliance Requirements (December 5, 2022): https://www.ropesgray.com/en/newsroom/alerts/2022/december/preparing-for-new-ctpat-forced-labor-compliance-requirements

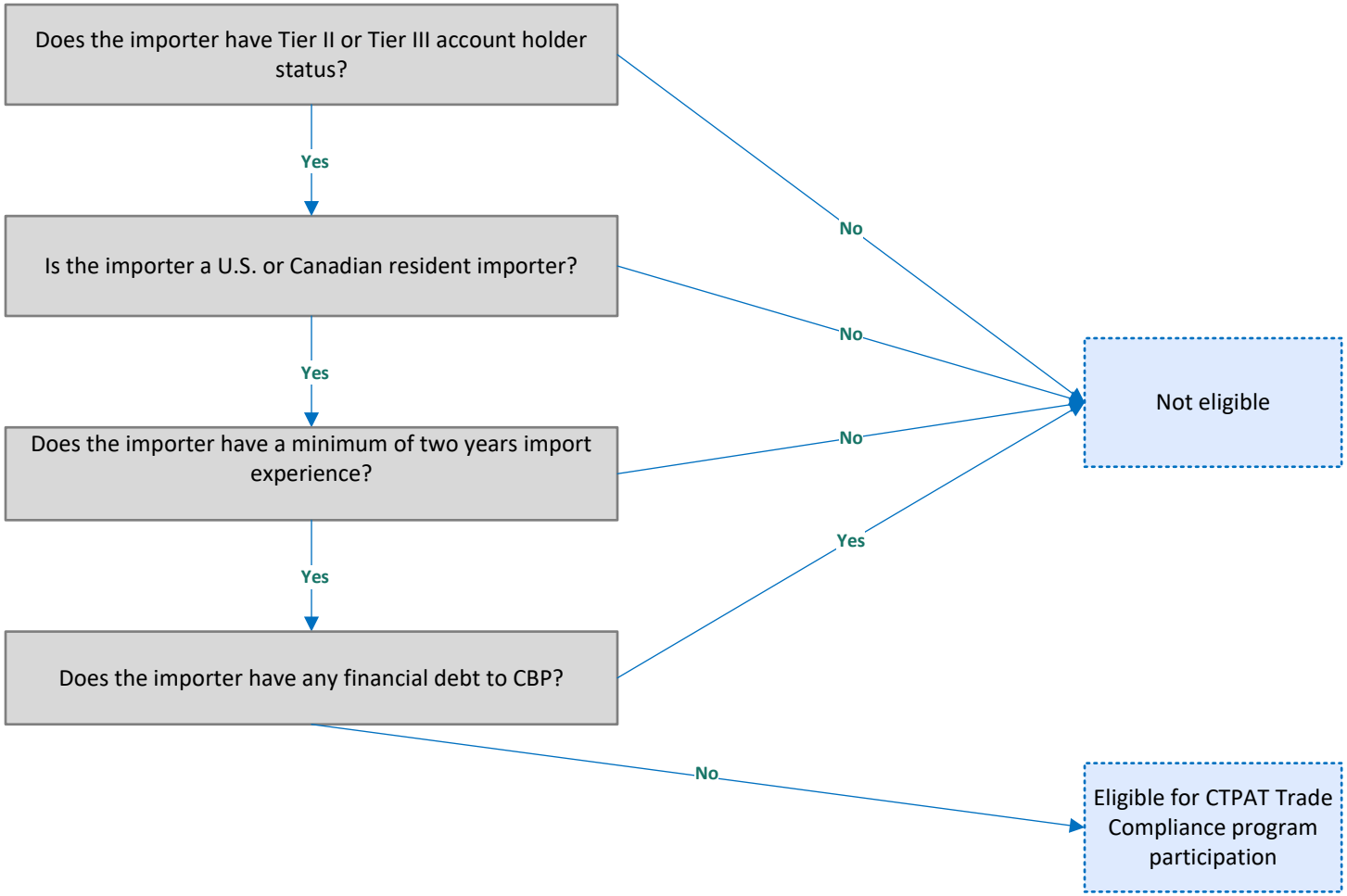
Note: This summary is for informational purposes only and does not constitute legal advice.

(Updated February 29, 2024)

Eligibility for CTPAT Security Program



Eligibility for CTPAT Trade Compliance Program



U.S. Tariff Act, Section 307 United States	
Overview	
Law / Country	**Section 307 of the U.S. Tariff Act** (19 U.S.C. § 1307) (United States)
Goal	To ensure that goods being imported into the United States are not being produced using forced labor.
Adoption / Status	The U.S. Tariff Act (the **"Act"**) came into force in 1930. However, an exception to Section 307, known as the "consumptive demand exception," substantially curtailed the applicability of Section 307. The Trade Facilitation and Trade Enforcement Act of 2015 (**"TFTEA"**), which entered into force on March 10, 2016, eliminated the consumptive demand exception.
Issues Addressed	• Forced labor • Prison labor
Covered Entities	Importers of goods into the United States.
How It Works	
Mandatory?	Yes.
Prohibited Imports	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. 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.
Enforcement	After Customs and Border Protection (**"CBP"**) receives a petition from customs officers or an interested party, CBP can begin an investigation into the goods in question. If CBP decides conclusively 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. Since the repeal of the consumptive demand exception, CBP has issued withhold release orders (**"WRO"**) covering the following goods (only active and partially active WROs listed below): • All products (March 2018, Huizhou Mink Industrial CO.LTD., China; August 2020, No. 4 Vocational Skills Education Training Center, China) • Apparel (September 2020, Yili Zhuowan Garment Manufacturing Co., Ltd. and Baoding LYSZD Trade and Business Co., Ltd., China)

	• Artisanal rough cut diamonds (September 2019, Marange Diamond Fields, Zimbabwe) • Computer parts (September 2020, Hefei Bitland Information Technology Co., Ltd., China) • 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, China; January 2021, all cotton products produced in the Xinjiang Uyghur Autonomous Region of China (the **"XUAR"**)) • Disposable gloves (December 2021, Brightway Holdings Sdn Bhd, Laglove (M) Sdn Bhd, and Biopro (M) Sdn Bhd, Malaysia) • Garments (September 2019, Hetian Taida Apparel Co., Ltd., China; August 2020, Hero Vast Group, China) • Gold (September 2019, artisanal small mines in the DRC (CBP removed imports by the Chambers Federations from the order in May 2020)) • Hair products (May 2020, Hetian Haolin Hair Accessories, China; June 2020, Lop County Meixin Hair Products Co., Ltd., China; August 2020, Lop County Hair Product Industrial Park, China) • Palm oil and palm oil derivatives (September 2020, FGV Holdings Berhad and its subsidiaries and joint ventures, Malaysia) • Peeled garlic (September 2016, Hongchange Fruits & Vegetable Procucts Co., Ltd., China) • Raw sugar and sugar-based products (November 2022, Central Romana Corporation Limited, Dominican Republic) • Seafood (May 2020, Fishing Vessel: Yu Long No. 2; August 2020, Fishing Vessel: Da Wang; December 2020, Fishing Vessel: Lien Yi Hsing No. 12; May 2021, Fishing Vessels owned by Dalian Ocean Fishing Co. Ltd; August 2021, Fishing Vessel: Hangton No. 112) • Silica-based products (June 2021, Hoshine Silicon Industry Co. Ltd. and subsidiaries, China) • Soda ash, calcium chloride and caustic soda (March 2016, Tangshan Sanyou Group and its subsidiaries, China) • 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) • Tobacco and products containing tobacco (November 2019, Malawi (CBP removed products produced by Premium Tobacco Malawi Lt (PTML), Limbe Leaf Tobacco Company Limited (LLTC) and Alliance One International from the order in March 2021, July 2020 and June 2020, respectively) • Tomatoes (January 2021, all tomato products produced in the XUAR; October 2021, all tomato products produced by Agropecuarios Tom S.A. de C.V. and Horticola Tom S.A. de C.V. and their subsidiaries, Mexico) • Turkmenistan cotton (May 2018, all Turkmenistan cotton products) In addition, since the repeal of the consumptive demand exception, CBP has published the following findings (only active findings listed below): • In October 2020, a finding was issued covering stevia extracts and derivatives produced by Mongolia Hengzheng Group Baoanzhao Agriculture, Industry, and Trade Co. • In January 2022, a finding was issued covering seafood from Da Wang fishing vessels (China).

	In August 2021, CBP assessed a $575,000 penalty in a civil enforcement action against an importer of 20+ shipments of stevia powder and derivatives produced from stevia leaves pressed in China with prison labor.
Reasonable Care Guidance	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: • Have you established reliable procedures to ensure you are not importing goods in violation of Section 307 of the Act? • Do you know how your goods are made, from raw materials to finished goods, by whom, where, and under what labor conditions? • Have you reviewed CBP's "Forced Labor" webpage, which includes a list of active WROs and findings, as well as forced labor fact sheets? • Have you reviewed the Department of Labor's "List of Goods Produced by Child Labor or Forced Labor" to familiarize yourself with at-risk country and commodity combinations? • Have you obtained a "ruling" from CBP regarding the admissibility of your goods under Section 307 of the Act and, if so, have you established reliable procedures to ensure that you followed the ruling and brought it to CBP's attention? • Have you established a reliable procedure of conducting periodic internal audits to check for forced labor in your supply chain? • Have you established a reliable procedure of having a third-party auditor familiar with evaluating forced labor risks conduct periodic, unannounced audits of your supply chain for forced labor? • Have you reviewed the International Labour Organization's "Indicators of Forced Labour" booklet? • Do you vet new suppliers/vendors for forced labor risks through questionnaires or some other means? • Do your contracts with suppliers include terms that prohibit the use of forced labor, a time frame by which to take corrective action if forced labor is identified, and the consequences if corrective action is not taken, such as the termination of the contractual relationship? • Do you have a comprehensive and transparent social compliance system in place? Have you reviewed the Department of Labor's "Comply Chain" webpage? • Have you developed a reliable program or procedure to maintain and produce any required customs entry documentation and supporting information?
Xinjiang Supply Chain Advisory	In July 2021, the U.S. Department of State, along with the U.S. Department of the Treasury, the U.S. Department of Commerce, the U.S. Department of Homeland Security, the Office of the U.S. Trade Representative and the Department of Labor, issued an updated business advisory concerning forced labor risks associated with XUAR labor. This updates the original business advisory issued by U.S. government agencies on July 1, 2020. The updated advisory notes that, where evidence indicates that goods from Xinjiang are produced with forced, indentured or convict labor, CBP will deny U.S. 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.

	In some respects, the advisory is superseded by the Uyghur Forced Labor Prevention Act (**"UFLPA"**) and the strategy and guidance issued in connection with the UFLPA. CPB's guidance advises importers to review the advisory as a resource for supply chain due diligence, tracing and management. On September 26, 2023, the same U.S. government agencies issued an addendum to the July 2021 advisory. The addendum highlights and summarizes reports from governmental and non-governmental resources about the continuing human rights abuses in the XUAR and the risks in supply chains posed by state-sponsored forced labor and other human rights abuses in the XUAR. The addendum also indicates that the strategy and guidance issued in connection with the UFLPA may be of interest to businesses, and it provides an update on UFLPA enforcement and other updates and U.S. government actions to address human rights abuses in the XUAR. The advisory notes the following warning signs of forced labor in the operating environment in the XUAR: • ***Lack of transparency***. Companies operating in the XUAR 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. • ***Social insurance programs***. Companies operating in the XUAR disclosing high revenue but having very few employees paying into the government's social security insurance program. • ***Terminology***. 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. • ***Government incentives***. Companies operating in the XUAR 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 or companies receiving subsidies for energy, transportation, and labor costs. • ***Government recruiters***. Companies operating in the XUAR implementing non-standard hiring practices and/or hiring workers through government recruiters. • ***Any XPCC Affiliates***. XPCC-affiliated entities are part of the prison labor system and manufacture goods beyond cotton products. In July 2020, the Department of the Treasury sanctioned XPCC pursuant to its Global Magnitsky sanctions authority, and XPCC, including XPCC Public Security Bureau, is on the Department of Commerce's Entity List (see further detail below). Exports, reexports or transfers (in-country) of items subject to the Export Administration Regulations (the **"EAR"**), where XPCC or XPCC Public Security Bureau are a party to the transaction (e.g., end-user, purchaser, intermediate or ultimate consignee), require a license from the U.S. Department of Commerce's Bureau of Industry and Security (**"BIS"**). CBP has also issued a WRO against XPCC cotton (see below). • ***Business Location and Affiliation***. Companies operating in the XUAR located within the confines of or near internment camps and prisons or within the confines of or adjacent to industrial parks involved in the government's poverty alleviation efforts are at increased risk of forced labor. New factories built near internment camps and prisons are also suspect. Any businesses owned by or contracting with a prison enterprise are very likely engaged in forced labor. • ***Goods Included on the U.S. Department of Labor's List of Goods Produced by Child Labor or Forced Labor***. The Department of Labor maintains the Trafficking Victims Protection Reauthorization Act (**"TVPRA"**) List, a list of goods

	and their source countries which it has reason to believe are produced by child labor or forced labor in violation of international standards. • ***Companies on the U.S. Department of Commerce's Entity List***. The Department of Commerce's Entity List identifies entities reasonably believed to be involved, or to pose a significant risk of being or becoming involved, in activities contrary to the national security or foreign policy interests of the United States. Exports, reexports or transfers (in-country) of items subject to the EAR where such entities are a party to the transaction (e.g., end-user, purchaser, intermediate or ultimate consignee) require a license from BIS. • ***Companies and Products under Customs and Border Protection Withhold Release Orders***. WROs are issued based on information available that reasonably but not conclusively indicates that merchandise within the purview of Section 307 is being or is likely to be imported into the United States. • ***Entities on the U.S. Department of Treasury's Specially Designated Nationals and Blocked Persons List***. The Department of the Treasury's Office of Foreign Asset Control's (**"OFAC"**) List of Specially Designated Nationals and Blocked Persons (**"SDN List"**) includes Chinese officials and entities that are subject to economic sanctions. All property and interests in property with respect to such sanctioned entities (and any entities 50 percent or more owned, directly or indirectly, individually or in the aggregate, by one or more blocked persons) are blocked, and U.S. persons are generally prohibited from conducting transactions or dealings with such blocked persons unless the activity is exempt or authorized by OFAC. The advisory includes an illustrative, non-exhaustive list of industries in the XUAR 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 raw cotton, hami melons, korla pears, tomato products and garlic); (2) cell phones; (3) cleaning supplies; (4) construction; (5) cotton, cotton yarn, cotton fabric, 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) footwear; (11) gloves; (12) hospitality services; (13) metallurgical grade silicon; (14) noodles; (15) printing products; (16) renewable energy (polysilicon, ingots, wafers, crystalline silicon solar cells and crystalline silicon solar photovoltaic modules); (17) stevia; (18) sugar; (19) textiles (including apparel, bedding, carpets and wool); and (20) toys.
Uyghur Forced Labor Prevention Act	The UFLPA took effect on June 21, 2022. The ULFPA establishes a rebuttable presumption that goods produced or manufactured, wholly or in part, in the XUAR or by persons working with the XUAR government for purposes of pairing and other government-sponsored labor programs are produced using forced labor and therefore prohibited from being imported into the United States under Section 307 of the U.S. Tariff Act. Please see the separate summary of the UFLPA for more information.
Additional Information/Resources	
Law	For the text of Section 307 of the Act, see: https://www.gpo.gov/fdsys/pkg/USCODE-2011-title19/pdf/USCODE-2011-title19-chap4-subtitleII-partI-sec1307.pdf

	For the text of The Trade Facilitation and Trade Enforcement Act of 2015, see: https://www.congress.gov/114/plaws/publ125/PLAW-114publ125.pdf
CPB's Reasonable Care Guidance	https://www.cbp.gov/sites/default/files/assets/documents/2018-Mar/icprescare2017revision.pdf
Xinjiang Supply Chain Advisory Update & Addendum	For the Xinjiang Supply Chain Advisory Update, see: https://www.dhs.gov/sites/default/files/publications/xinjiang-business-advisory-13july2021-1.pdf For the Xinjiang Supply Chain Advisory Update Addendum, see: https://www.state.gov/wp-content/uploads/2023/09/Xinjiang-Business-Advisory-Addendum-July-2023-FINAL-Accessible-09.26.2023.pdf
TVPRA List	https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2019/2020_TVPRA_List_Online_Final.pdf
Commerce Entity List	https://www.bis.doc.gov/index.php/documents/regulations-docs/2326-supplement-no-4-to-part-744-entity-list-4/file
WRO List	https://www.cbp.gov/trade/forced-labor/withhold-release-orders-and-findings
OFAC SDN List	https://www.treasury.gov/ofac/downloads/sdnlist.pdf
Ropes & Gray Resources	Client alerts related to the Act: • U.S. Congressional committee seeks stronger Uyghur Forced Labor Prevention Act enforcement (February 5, 2024): https://www.ropesgray.com/en/insights/viewpoints/102iyy7/u-s-congressional-committee-seeks-stronger-uyghur-forced-labor-prevention-act-en • Updated Uyghur Forced Labor Prevention Act enforcement stats released (September 26, 2023): https://www.ropesgray.com/en/insights/viewpoints/102iol4/updated-uyghur-forced-labor-prevention-act-enforcement-stats-released • Recently Released UFLPA Enforcement Statistics Underscore the Need for Robust Due Diligence Processes (March 22, 2023): https://www.ropesgray.com/en/insights/alerts/2023/03/recently-released-uflpa-enforcement-statistics-underscore-the-need-for-robust • Complying with the Uyghur Forced Labor Prevention Act – A detailed Compliance Roadmap (June 28, 2022): https://www.ropesgray.com/en/insights/alerts/2022/06/complying-with-the-uyghur-forced-labor-prevention-act-a-detailed-compliance-roadmap • President Biden Signs Uyghur Forced Labor Prevention Act – Overview and Near-Term Compliance Recommendations (January 4, 2022): https://www.ropesgray.com/en/insights/alerts/2022/01/president-biden-signs-uyghur-forced-labor-prevention-act-overview-and-near-term-compliance • U.S., Canadian and U.K. Governments Put Additional Pressure on Xinjiang Sourcing and Related Corporate Compliance Programs (January 19, 2021): https://www.ropesgray.com/en/insights/alerts/2021/01/us-canadian-and-uk-governments-put-additional-pressure-on-xinjiang-sourcing

TARIFF ACT, SECTION 307 (US)

	• House Passes Legislation that Would Restrict U.S. Imports of Xinjiang Goods and Require Disclosure of Xinjiang-related Activities by Public Companies (September 28, 2020): https://www.ropesgray.com/en/insights/alerts/2020/09/house-passes-legislation-that-would-restrict-us-imports-of-xinjiang-goods • U.S. Government Agencies Issue Xinjiang Supply Chain Advisory (July 22, 2020): https://www.ropesgray.com/en/insights/alerts/2020/07/us-government-agencies-issue-xinjiang-supply-chain-advisory

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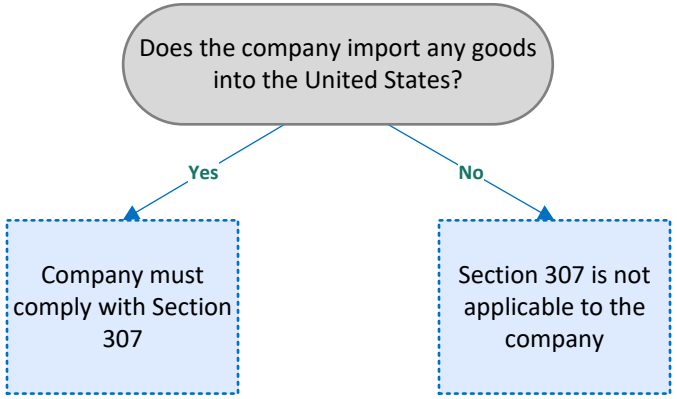
(Updated February 29, 2024)

Applying the Law



Uyghur Forced Labor Prevention Act United States	
Overview	
Law / Country	**Uyghur Forced Labor Prevention Act** (Public Law 117-78) (the **"Act"**) (United States)
Goal	To address forced labor in supply chains.
Adoption / Status	The Act was signed into law by President Biden on December 23, 2021. The Act directs the Forced Labor Enforcement Task Force (the **"FLETF"**) to issue enforcement strategies. On June 17, 2022, the FLETF issued the Strategy to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People's Republic of China (the **"Strategy"**). Updates to the Strategy were issued on July 26, 2023 (the "**Strategy Updates**"). In addition, on June 13, 2022, Customs and Border Protection issued Operational Guidance for Importers that complements the Strategy (the **"Operational Guidance"**). The Strategy and Operational Guidance are further discussed in this Summary. The forced labor presumption went into effect on June 21, 2022. On January 19, 2024, the House Select Committee on the Chinese Communist Party sent a letter to Department of Homeland Security Secretary regarding strengthening enforcement of the Act. If implemented, the actions detailed in the letter would impact importers and, in many cases, their downstream commercial customers.
Issue Addressed	• Forced labor
Covered Entities	Importers of goods into the United States.
How It Works	
Mandatory?	Yes.
Prohibited Imports	The Act establishes a rebuttable presumption that goods, wares, articles and merchandise mined, produced or manufactured wholly or in part (for brevity, **"goods"** that are **"produced"**) in the Xinjiang Uyghur Autonomous Region of China (the **"XUAR"**), or by persons working with the XUAR government for purposes of pairing and other government-sponsored labor programs, are produced using forced labor and therefore are prohibited from being imported into the United States under Section 307 of the Tariff Act. Specific entities found by the Department of Homeland Security (**"DHS"**) to be associated with forced labor in the XUAR are set forth on a published list (the **"Entity List"**). DHS expanded the Entity List to include additional entities effective June 12, 2023. A significant number of the entities on the Entity List were previously the subject of Withhold Release Orders and all were noted in the U.S. State Department's July 2021 Xinjiang Supply Chain Business Advisory. As framed in the Strategy, U.S Customs and Border Protection (**"CBP"**) indicated it would initially focus on enforcement in four high-risk sectors and the highest-risk goods, which includes goods imported directly from the XUAR into the United States and from entities on the Entity List. The Strategy identifies these four high priority sectors: (i) apparel, (ii) cotton and cotton

	products, (iii) silica-based products (including polysilicon) and (iv) tomatoes and downstream products. However, goods involving other sectors also are being detained, as further discussed in this Summary. The Strategy Updates reiterated these high priority sectors. The Act supersedes prior Withhold Release Orders relating to the XUAR for goods imported on or after June 21, 2022. The Act authorizes the Commissioner of CBP (the **"Commissioner"**) to amend any other regulations relating to Withhold Release Orders in order to implement this portion of the Act.
Rebutting the Forced Labor Presumption	The forced labor presumption established by the Act applies unless it is determined by the Commissioner that it has been rebutted. In order to find that an exception exists, the Commissioner must find that: • By clear and convincing evidence, the goods in question were not produced wholly or in part with forced labor; • The importer has fully complied with guidance and implementing regulations issued pursuant to the Act; and • The importer has completely and substantively responded to all inquiries for information submitted by the Commissioner to ascertain whether the goods were produced wholly or in part with forced labor.
Admissibility Submissions	In the event an importer wishes to import detained goods, the Operational Guidance organizes required documentation into five categories: 1. Due diligence system information; 2. Supply chain tracing information; 3. Information on supply chain management measures; 4. Evidence goods were not produced in the XUAR; and 5. Evidence goods originating in China were not produced with forced labor. For importers contending imports are not within the purview of the Act, the second (supply chain tracing information) and fourth (evidence goods were not produced in the XUAR) categories of information apply. Importers requesting an exception to the UFLPA's forced labor presumption are to look to the first (due diligence system information), second (supply chain tracing information), third (information on supply chain management measures) and fifth (evidence goods originating in China were not produced with forced labor) categories. As noted above, importers seeking to import detained goods must respond to all inquiries for information submitted by the Commissioner to ascertain whether the goods were produced using forced labor. The Strategy and Operational Guidance provide examples of documentation that could be used to satisfy the required showing under each category above. The Operational Guidance is not intended to be an exhaustive list of the documentation CBP may request. In February 2023, CBP issued additional guidance for importers when submitting documentation for an applicability review by CBP: Best Practices for Applicability Reviews: Importer Responsibilities (the **"Best Practices"**) and Guidance on Executive Summaries and Sample Tables of Contents: Preparing a UFLPA Applicability Review Submission (the **"Submission Guidance"**). Like the Operational Guidance, neither the Best Practices nor the Submission Guidance are exhaustive, but they provide

	examples of the document submissions that an importer may present to CBP when seeking to have a detention lifted. The examples set forth in the Best Practices include: • **Documents Demonstrating the Parties Participating in the Transaction**: Records illustrating all parties involved in the sourcing, manufacture, manipulation, transportation, and/or export of a particular good (e.g., summaries of the roles of parties involved as substantiated by other supporting documents, and a flow chart of the supply chain); • **Documentation Relating to the Payment and Transportation of Raw Materials:** Documents demonstrating the origin of the raw materials and records showing that business transactions related to the payment and transport of inputs (e.g., invoices, contracts, and purchase orders) have occurred, including financial documents substantiating the transaction (e.g., proof of payments) and documents demonstrating that the goods were physically transferred from one entity to another; and • **Transaction and Supply Chain Records:** Full records of transactions and supply chain documentation that demonstrate the country of origin of the imported good and of its components (e.g., packing list, bill of lading, and manifest). The Best Practices note that CBP takes into consideration the totality of the information provided by the importer. The Best Practices also give examples of documents that could be provided by a solar panel importer and an apparel importer. The Submission Guidance provides illustrative guidance on executive summaries and tables of contents for importer applicability review submissions. The Submission Guidance notes that each package of documents should be well organized and include an executive summary explaining the documents contained in the package, including the following: • **Annotated document list:** An index of the documents provided, listed out according to supply chain level, and a brief explanation of the purpose of the document and, in some cases, the significance of the document or a highlight of the relationship of the document to the others in the package. The executive summary should also mention any key pieces of information shown on a document (e.g., purchase order, contract number, or other relevant data). Documents should be numbered for ease of reference. • **Summary of supply chain:** The executive summary should include key information that connects each step in the transportation and manufacturing processes, such as detention number, entry number, bill of lading number, container numbers, contract numbers, purchase order numbers, production or work order numbers and other relevant information. This information may be provided in a spreadsheet or other type of document that illustrates the flow of the supply chain across each level. • **Additional summary information:** Additional context or other information that the importer believes will be helpful for CBP to understand the documentation provided.
Due Diligence	The Act required the FLETF to provide guidance to importers on due diligence, effective supply chain tracing and supply chain management measures to ensure that importers do not import goods produced with forced labor from China, especially from the XUAR.

	As used in the Strategy, due diligence includes assessing, preventing and mitigating forced labor risk in the production of goods imported into the United States. This construct is consistent with the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises. While systems may vary from industry to industry, the Strategy indicates that an effective due diligence system in any industry may include the following elements: • Engaging stakeholders and partners; • Assessing risks and impacts; • Developing a code of conduct; • Communicating and training across the supply chain; • Monitoring compliance; • Remediating violations; • Independent review; and • Reporting performance and engagement.
Enforcement	CBP may detain, exclude and seize and forfeit shipments that are within the scope of the Act. Importers may request an exception to the rebuttable presumption during a detention, after an exclusion or during the seizure process. CBP has five business days after being presented with goods to determine whether to release or detain the goods. If not released within the five business days, then the goods are considered detained. If CBP detains goods under the Act, then it will issue a detention notice to the importer, detailing the reason for detention and the anticipated length of detention. An importer is allowed 30 days to address the detention by either exporting the detained goods or providing documentation to contest the detention. If additional time beyond this 30-day period is needed to provide requested documents, an importer may request an extension from the Port Director or the Director of the applicable Center. To request an extension, importers should email the point of contact identified on the detention notice prior to the expiration of the initial 30-day detention period. Since the Act went into effect in June 2022, CBP's enforcement efforts initially focused on the three high-risk sectors listed in the Act: cotton, polysilicon and tomatoes. However, in October 2022, CBP began issuing detention notices which included aluminum as a fourth priority sector and subsequently initiated enforcement efforts against aluminum products, with a specific focus on products used in automotive parts. As of February 2023, CBP has begun issuing detention notices for polyvinyl chloride (**"PVC"**) products such as vinyl flooring and is asking importers to trace these PVC items back to their originating chemicals such as chlorine, carbon and ethylene. It is expected that the range of products CBP detains will continue to expand. CBP reports enforcement statistics on CBP.gov. This information includes an interactive dashboard containing data on the total number and value of shipments detained pursuant to the Act.

	Selected Litigation On June 9, 2023, the printing and imaging company Ninestar and its affiliates were added to the Entity List. Ninestar denies that it used forced labor and sued the U.S. government. On January 18, 2024, the U.S. Court of International Trade heard arguments in Ninestar's request for a preliminary injunction to remove Ninestar from the Entity List. This is the first case challenging an entity's inclusion on the UFLPA Entity List.
Additional Information/Resources	
Law	For the text of the Act, see: https://www.govinfo.gov/content/pkg/PLAW-117publ78/html/PLAW-117publ78.htm
Entity List	For the Entity List, see: https://www.dhs.gov/uflpa-entity-list
Enforcement Statistics	For the Uyghur Forced Labor Prevention Act Statistics, see: https://www.cbp.gov/newsroom/stats/trade/uyghur-forced-labor-prevention-act-statistics
Strategy	For the text of the Strategy, see: https://www.dhs.gov/sites/default/files/2022-06/22_0617_fletf_uflpa-strategy.pdf For the text of the Strategy Updates, see: https://www.dhs.gov/sites/default/files/2023-08/23_0728_plcy_uflpa-strategy-2023-update-508.pdf
Guidance Documents	For the Operational Guidance, see: https://www.cbp.gov/sites/default/files/assets/documents/2022-Jun/CBP_Guidance_for_Importers_for_UFLPA_13_June_2022.pdf For the Best Practices, see: https://www.cbp.gov/sites/default/files/assets/documents/2023-Feb/Best%20Practices%20for%20Applicability%20Reviews_Importer%20Responsibilities_0.pdf For the Submission Guidance, see: https://www.cbp.gov/sites/default/files/assets/documents/2023-Feb/Guidance%20on%20Executive%20Summaries%20and%20Sample%20Tables%20of%20Contents_0.pdf
FAQs	For Frequently Asked Questions about the Act, see: https://www.cbp.gov/trade/programs-administration/forced-labor/faqs-uflpa-enforcement
House Select Committee on the Chinese Communist Party Letter	For the House Select Committee on the Chinese Communist Party letter sent to Department of the Homeland Security Secretary, see: https://selectcommitteeontheccp.house.gov/sites/evo-subsites/selectcommitteeontheccp.house.gov/files/evo-media-document/1-19-24-dhs-letter-on-uflpa.pdf
Ropes & Gray Resources	Client alerts related to the Act: • U.S. Congressional committee seeks stronger Uyghur Forced Labor Prevention Act enforcement (February 5, 2024): https://www.ropesgray.com/en/insights/viewpoints/102iyy7/u-s-congressional-committee-seeks-stronger-uyghur-forced-labor-prevention-act-en

	• Updated Uyghur Forced Labor Prevention Act enforcement stats released (September 26, 2023): https://www.ropesgray.com/en/insights/viewpoints/102iol4/updated-uyghur-forced-labor-prevention-act-enforcement-stats-released • Recently Released UFLPA Enforcement Statistics Underscore the Need for Robust Due Diligence Processes (March 22, 2023): https://www.ropesgray.com/en/insights/alerts/2023/03/recently-released-uflpa-enforcement-statistics-underscore-the-need-for-robust • Complying with the Uyghur Forced Labor Prevention Act – a Detailed Compliance Roadmap (June 28, 2022): https://www.ropesgray.com/en/newsroom/alerts/2022/06/complying-with-the-uyghur-forced-labor-prevention-act-a-detailed-compliance-roadmap • President Biden Signs Uyghur Forced Labor Prevention Act – Overview and Near-term Compliance Recommendations (January 4, 2022): https://www.ropesgray.com/en/newsroom/alerts/2022/january/president-biden-signs-uyghur-forced-labor-prevention-act-overview-and-near-term-compliance

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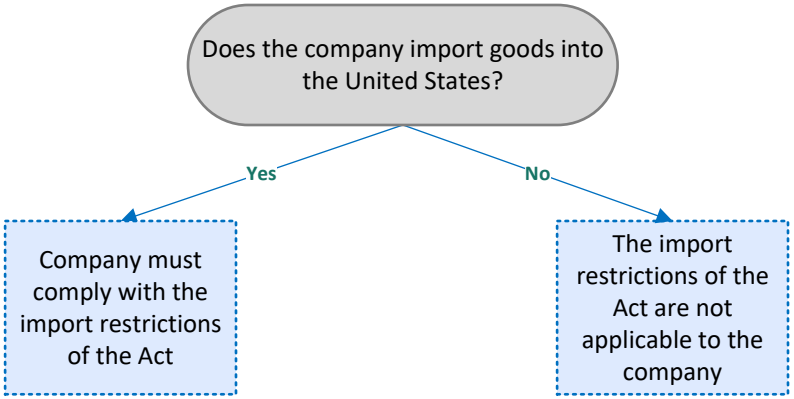

Federal Acquisition Regulation Anti-Human Trafficking Rule United States	
Overview	
Law / Country	**Federal Acquisition Regulation Combating Trafficking in Persons Rule** (42 CFR 22.17) (the **"Rule"**) (United States)
Goal	To ensure that contractors, subcontractors, their respective employees and agents do not engage in human trafficking or commercial sex acts or use forced labor in connection with U.S. federal contracts.
Adoption / Status	The effective date of the Rule 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."
Issues Addressed	• Forced labor • Human trafficking
Covered Entities	The Rule applies to parties that contract with the U.S. federal government, their subcontractors and 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: • Is for supplies, other than commercially available off-the-shelf (COTS) items, to be acquired outside the United States, or services to be performed outside the United States; and • Has an estimated value that exceeds US$500,000. 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.
How It Works	
Mandatory?	Yes.
Prohibited Activities	The Rule prohibits contractors, subcontractors and their respective employees and agents from: • Engaging in severe forms of trafficking in persons during the contract performance period; • Procuring commercial sex acts during the period of contract performance; • Using forced labor in the performance of the contract; • Destroying, concealing, confiscating or otherwise denying access by an employee to the employee's identity or immigration documents; • Using misleading or fraudulent practices during the recruitment of employees or offering of employment and using recruiters that do not comply with local labor laws;

	• Charging recruitment fees to employees; • Under certain circumstances, failing to provide or pay for return transportation upon the end of employment for employees brought into the country for the purpose of working on the contract or subcontract; • Providing or arranging housing that fails to meet the host country housing and safety standards; or • If required by law or contract, failing to provide an employment contract, recruitment agreement or other required work document in writing, and failing to satisfy certain other related requirements.
Compliance Plan and Certifications	If a compliance plan is required, the contractor must certify: • That it has implemented a compliance plan and procedures to prevent any activities prohibited by the Rule and to monitor, detect and terminate the contract with a subcontractor or agent engaging in prohibited activities; and • After having conducted due diligence, that either: o To the best of the contractor's knowledge and belief, neither it nor any of its agents or subcontractors are engaged in any such activities; or o If abuses relating to any of the prohibited activities identified in the Rule have been found, the contractor, subcontractor or agent has taken the appropriate remedial and referral actions. Certifications are required in connection with the contract award and annually. At a minimum, a compliance plan must include the following: • An awareness program to inform contractor employees about the Rule or government policies relating to the Rule as well as consequences for violations. • A mechanism for employees to report, without fear of retaliation, any activities inconsistent with the Rule and related government trafficking policies. To satisfy this requirement, at a minimum, a Global Human Trafficking hotline and its email address must be provided. • A recruitment and wage plan that only authorizes the use of recruitment companies with trained employees, prohibits charging recruitment fees to employees and guarantees that wages meet host-country legal requirements or clarifies any discrepancy. • If the contractor or subcontractor intends to provide housing, any related housing plan must meet host-country housing and safety standards. • Procedures to prevent all subcontractors and agents from engaging in human trafficking and to observe, identify and terminate any subcontracts, subcontractor employees or agents that have engaged in such activities. 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.

Recruitment Fees	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. The Rule applies, but is not limited to, fees (when associated with recruitment) for: • Soliciting, identifying, considering, interviewing, referring, retaining, transferring, selecting, training, providing orientation to, skills testing, recommending or placing employees or potential employees; • Obtaining permanent or temporary labor certification; • Processing applications and petitions; and • Acquiring visas.
OMB Guidance	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. 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.
Violations / Enforcement	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. Remedies may include: • Requiring the contractor to remove an employee from the performance of the contract or terminate a subcontract; • Postponement of contract payments until the contractor has taken applicable remedial action; • Loss of award fees for the performance period during which the contractor was noncompliant; • Declining to implement available contract options; • Terminating the contract for default or cause based on the contract terms; or • Suspension or debarment. Failure to comply with the Rule may also result in criminal liability and liability under the False Claims Act.

	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.
Additional Information/Resources	
Law	For the text of the Rule as adopted, see: https://www.govinfo.gov/content/pkg/FR-2018-12-20/pdf/2018-27541.pdf For the text of the recruitment fee amendment, see: https://www.govinfo.gov/content/pkg/FR-2018-12-20/pdf/2018-27544.pdf
OMB Guidance	For the U.S. Office of Management and Budget's October 2019 memorandum, see: https://www.whitehouse.gov/wp-content/uploads/2019/10/M-20-01.pdf
Ropes & Gray Resources	Client alerts related to the Rule: • Anti-human Trafficking Compliance Guidance for U.S. Government Contractors Published (December 9, 2019): https://www.ropesgray.com/en/newsroom/alerts/2019/12/anti-human-trafficking-compliance-guidance-for-us-government-contractors-published • Modern Slavery Compliance For U.S.-based (and Other) Multinationals: A Review of Recent Compliance and Disclosure Developments in the United States and Abroad (April 22, 2019): https://www.ropesgray.com/en/newsroom/alerts/2019/04/modern-slavery-compliance-for-us-based-and-other-multinationals-a-review-of-recent-compliance

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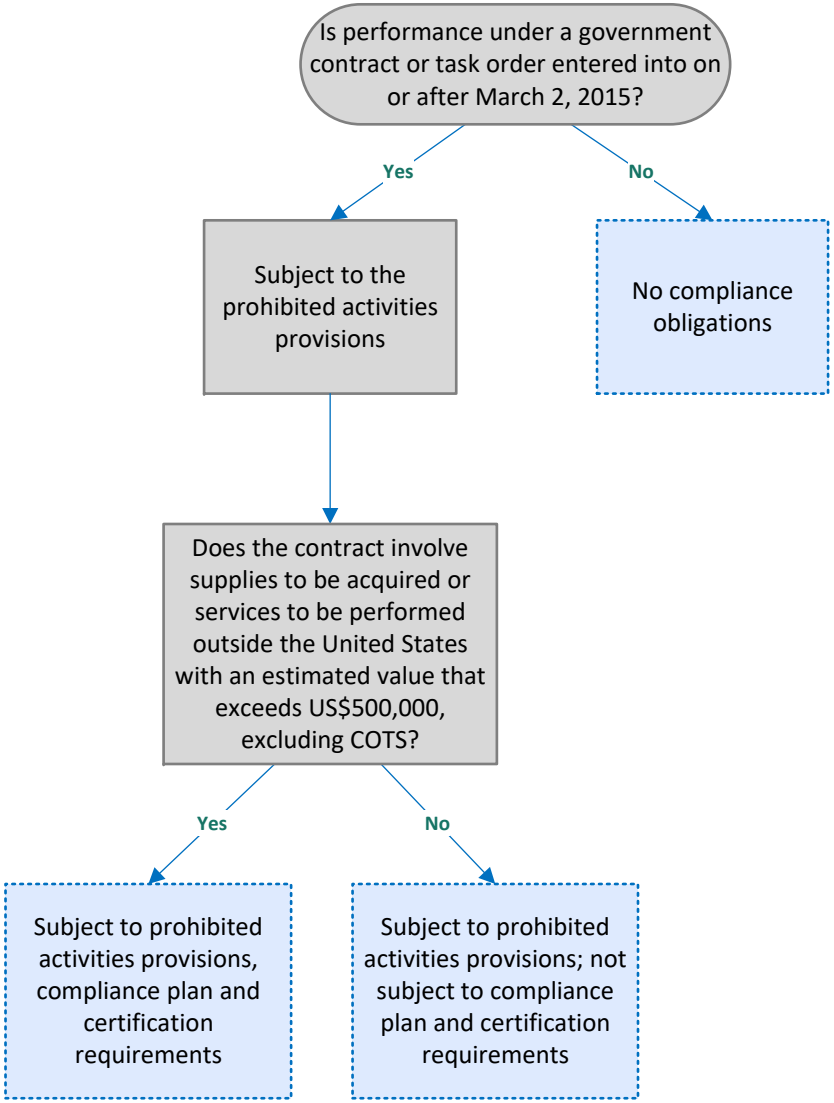

Trafficking Victims Protection Reauthorization Act United States	
Overview	
Law / Country	**Trafficking Victims Protection Act** (2000) (the **"TVPA"**) and **Trafficking Victims Protection Reauthorization Act** (2003, as further amended) (collectively, the **"TVPRA"**) (United States)
Goal	To combat human trafficking and forced labor and ensure effective punishment of persons engaging in the foregoing conduct.
Adoption / Status	In 2000, Congress enacted the TVPA. In 2003, Congress reauthorized the TVPA as the TVPRA to include additional provisions that extended the U.S. government's ability to combat and prosecute human trafficking. Congress has reauthorized and amended the TVPA 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 reauthorizations and amendments, are discussed in conjunction below.
Issues Addressed	• Forced labor • Human trafficking Note that this summary is focused primarily on the forced labor provisions of the TVPRA and related corporate litigation.
Covered Persons	U.S. persons and persons present in the United States. The TVPRA applies to both natural persons and legal entities.
How It Works	
Mandatory?	Yes.
Prohibited Conduct	Knowingly providing or obtaining the labor or services of a person by means of: • Force, threats of force, physical restraint or threats of physical restraint to that person or another person; • Serious harm or threats of serious harm to that person or another person; • The abuse or threatened abuse of law or legal process; or • 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. 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. The TVPRA applies to conduct both within and outside of the United States.

	"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. **"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.
Annual Federal Contractor Certification	The 2022 reauthorization added a requirement that contractors to the U.S. federal government certify to their contracting officer on an annual basis after receiving an award that (1) to the best of their knowledge, neither the contractor nor any of its subcontractors has engaged in any activities prohibited by the TVPRA and (2) if any such violations were identified, appropriate remedial actions have been taken.
Jurisdiction and Liability	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. 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. As earlier noted, liability is not limited to labor exploitation that occurs in the United States.
Selected Litigation	Civil suits have been filed alleging violations of the TVPRA by well-known large companies. These suits allege violations of the "venture" prong of the TVPRA. Selected suits are discussed below. *Coubaly et al. v. Nestle USA, Inc. et al. (U.S., 2021)* In February 2021, International Rights Advocates filed a class action lawsuit against Nestle, Cargill, Mars, Mondelez, Hershey, Barry Callebaut and Olam on behalf of eight Malian children for forced child labor and trafficking in their cocoa supply chains in Cote D'Ivoire. The plaintiffs are alleging the defendants have been participating in a venture using child labor in violation of the TVPRA. On June 28, 2022, the D.C. District Court dismissed the case, holding that the plaintiffs lacked standing. The decision is now under appeal. *Doe et al. v. Apple Inc. et al. (U.S., 2019)* 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 ("DRC"). The plaintiffs alleged that the defendants knowingly participated in a supply chain for cobalt in the DRC that relies upon child labor in violation of the TVPRA. In November 2021, the D.C. District Court dismissed the case, holding that participation as a purchaser in the global cobalt supply chain is insufficient to support a claim under the TVPRA.

	M.A. et al. v. Wyndham Hotels & Resorts Inc. et al. (U.S., 2019) 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 alleged that the hotel chains failed to take appropriate measures to combat the trafficking while simultaneously accepting profits, thus making them directly complicit.
Additional Information/Resources	
TVPRA	For the text of the TVPA, see: https://www.govinfo.gov/content/pkg/PLAW-106publ386/pdf/PLAW-106publ386.pdf For the text of the TVPRA (2003), see: https://www.govinfo.gov/content/pkg/BILLS-108hr2620enr/pdf/BILLS-108hr2620enr.pdf For all additional amendments to the TVPRA, see: https://www.state.gov/international-and-domestic-law/

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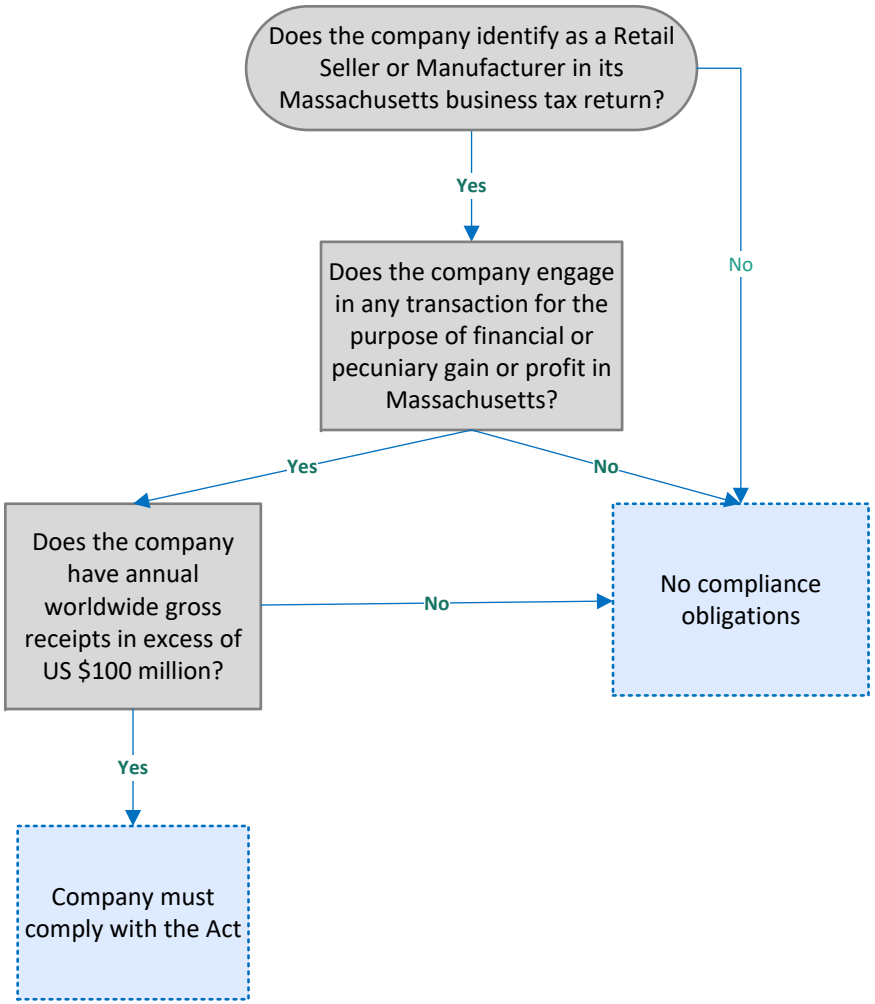

Duty of Vigilance Law (Proposed) Belgium	
Overview	
Law / Country	**Duty of Vigilance Law** (Doc 55 1903/001) (the **"Act"**) (Belgium)
Goal	To require companies to monitor the corporate social responsibility of their value chains, and to provide additional legal claims for adverse impacts.
Adoption / Status	The Act was approved by the Belgian Chamber of Representatives on April 22, 2021. The Act was sent to special commissions of the Belgian Parliament before being presented to the Parliament. On September 29, 2021, the Belgian Council of State, Belgium's administrative supreme court and an advisory institution, published an opinion on the Act, criticizing it for its vagueness, not imposing a duty of vigilance on small and medium-sized enterprises, and certain difficulties of enforcement. The Act may be reconsidered or amended to address such concerns. Under the Act's terms, it would enter into effect six months after its publication in the *Moniteur Belge*. In March 2024, the European Council and the European Parliament reached political agreement on the Corporate Sustainability Due Diligence Directive (the **"CSDDD"**). If the CSDDD is adopted, the Act will need to be harmonized with the CSDDD (assuming it is not superseded by other proposed legislation). The CSDDD is discussed in a separate summary.
Issue Addressed	• Environmental rights • Human rights • Labor rights
Covered Entities	The Act would apply to all companies established or active in Belgium. However, large enterprises and those enterprises operating in a high-risk sector or region would have greater obligations under the Act, as further discussed below. **"Large enterprises"** would be defined as enterprises employing 250 or more persons and with annual turnover exceeding €50 million or an annual balance sheet total exceeding €43 million. The commentary to the Act indicates that high-risk sectors are those that may fuel, directly or indirectly, armed conflict, human rights violations or support corruption and money laundering, such as the trade in minerals and metals. The commentary indicates that high-risk regions are those characterized by political instability or repression, weak institutions, insecurity, the collapse of civilian infrastructure, widespread violence or systematic violations of human rights and violations of national and international law.
How It Works	
Mandatory?	Yes.
Duty of Vigilance	All companies established or active in Belgium would be required to respect human and labor rights and the environment and put in place mechanisms to continuously identify, prevent, stop, minimize and remedy potential or actual violations of human,

	labor and environmental rights in their value chain. The obligation also would extend to subsidiaries of the subject enterprise. The duty of vigilance would be proportional to the size of the subject enterprise and the means at its disposal to identify risks and take effective preventive measures. A subject enterprise's **"value chain"** would include all entities with whom the enterprise has a commercial relationship because the entities (1) provide goods or services, including financial services, that are involved in the development of the subject enterprise's products or business services or (2) receive products or services, including financial services, from the subject enterprise. **"Human rights"** would be those rights encompassed by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. **"Labor rights"** would be the rights set out in the Declaration on Fundamental Principles and Rights at Work of the International Labour Organization (which are further enumerated in the Act to include those relating to freedom of association and collective bargaining, slavery and forced labor, child labor and non-discrimination).
Vigilance Plan	Each subject enterprise that is a large enterprise or operating in a high-risk sector or region would be required to establish a vigilance plan. At a minimum, the vigilance plan would be required to provide for the following: • A description of the value chain; • Risk mapping for identifying, analyzing and prioritizing risks; • Procedures for regularly assessing identified risks at subsidiaries and entities in the value chain; • Measures to mitigate risk and prevent serious injury; • A grievance mechanism that provides for whistleblower protection; • An effective complaint and redress mechanism; and • A mechanism for monitoring the measures taken and evaluating their effectiveness. In establishing its vigilance plan, a subject enterprise would be required to take into account enumerated European and international standards, including the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises. The vigilance plan also would be required to be developed in good faith consultation with interested persons and groups, including workers' and trade union organizations and civil society. The subject enterprise would be required to seek consultation via its website and allow for at least a one-month consultation period.
Reporting	Subject enterprises that are required to prepare a vigilance plan would be required to make the vigilance plan public and report on its effectiveness at least annually. Reporting would be on the subject enterprise's website. For small and medium enterprises that are not active in high-risk sectors or regions, the King may establish reporting requirements.

Further Requirements and Guidance	Under the Act, the King would be empowered to specify procedures for drawing up a vigilance plan, supplement the required vigilance measures, supplement the reporting procedures and specify provisions applicable to enterprises active in high-risk sectors or regions. The supervisory authority designated by the King also would be authorized to prepare guidance and instructions for compliance with the Act. The commentary to the Act notes the regulator is likely to be FPS Economy.
Liability and Enforcement	If there is a breach of the duty of vigilance, the subject enterprise could be ordered to comply with the Act or subject to sanctions, which could result in fines of up to €1,600,000 and one year in jail. It also could be excluded from participating in public contracts. The King would determine the governmental body responsible for enforcing the Act. The Act also would provide for compensation for violations of human or labor rights or damage to health or the environment if the subject enterprise fails to demonstrate that it has taken necessary and reasonable measures in its control to prevent the adverse impact. In assessing whether there is a failure to meet the duty of care, the ability of the enterprise to control and influence a subsidiary or entity in its value chain would be taken into account. The Act would allow class actions to be brought on behalf of victims, including by civil society organizations and trade unions. If damages are attributable to multiple organizations that fail to exercise their duty of care, damages would be joint and several (the payor would have a right of contribution against other entities that are jointly and severally liable).
Additional Information/Resources	
Law	For the text of the Act, see: https://www.lachambre.be/FLWB/PDF/55/1903/55K1903001.pdf.

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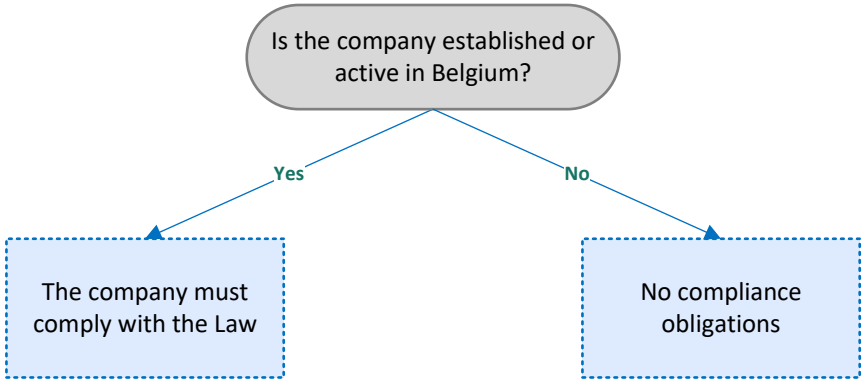
Applying the Law



Corporate Sustainability Due Diligence Directive (Political Agreement) European Union	
Overview	
Law / Country	**Corporate Sustainability Due Diligence Directive** (the **"Directive"**) (European Union)
Goal	To ensure that companies active in the EU internal market contribute to sustainable development and the sustainability transition of economies and societies through the identification, prevention and mitigation, cessation and minimization of potential and actual adverse human rights and environmental impacts connected with companies' own operations, subsidiaries and chain of activities.
Adoption / Status	On December 14, 2023, the European Parliament (the **"Parliament"**) and the European Council (the **"Council"**) first reached provisional political agreement on the Directive. After several weeks of delays due to insufficient support from the EU Member States, notably from Germany and Italy, on March 5, 2024, the Belgian EU Council Presidency shared with other Member States and the Parliament an updated text of the Directive with certain concessions. After much back and forth and further concessions, on March 15, 2024, the Council approved the Directive. On March 19, 2024, the JURI Committee of the Parliament voted to approve the Directive. The Directive has been sent to the Parliament for a final adoption vote during its April plenary, scheduled for April 23-25. If enacted, the Directive would be required to be transposed into EU Member State national law. Member States would have two years to transpose the Directive into national law. The Directive would not directly contain obligations binding on companies; however, for brevity, this summary refers to obligations under the Directive, rather than the EU Member State laws transposing the Directive.
Issues Addressed	• Climate change • Environmental • Human rights
Covered Entities	All companies above a certain size generally would be covered, as well as parent companies of groups that reach these thresholds. Additionally, companies with a franchising or licensing business model that meet the specified size thresholds also would be captured. As described below, however, the applicability of the Directive would be phased in over five years after the Directive's entry into force, starting with the largest companies having to comply with the Directive first. EU companies that fulfil one of the following would be covered: • More than 1,000 employees on average and net worldwide turnover of more than €450 million for the last two financial years for which annual financial statements have been or should have been adopted; • The ultimate parent company of a group that reaches the thresholds set forth above in the last two financial years for which consolidated annual financial statements have been or should have been adopted; or

	• Entered into or is the ultimate parent company of a group that entered into franchising or licensing agreements in the European Union in return for royalties with independent third-party companies where (1) these agreements ensure a common identity, a common business concept and the application of uniform business methods, (2) the royalties exceed €22.5 million in the last two financial years and (3) the company had or is the ultimate parent company of a group that had net worldwide turnover of more than €80 million in the last two financial years. Non-EU companies that fulfil one of the following would be covered: • Generated net turnover of more than €450 million in the European Union in the two financial years preceding the last financial year; • The ultimate parent company of a group that on a consolidated basis reaches the thresholds set forth above in the two financial years preceding the last financial year; or • Entered into or is the ultimate parent company of a group that entered into franchising or licensing agreements in the European Union in return for royalties with independent third-party companies where (1) these agreements ensure a common identity, a common business concept and the application of uniform business methods, (2) the royalties exceed €22.5 million in the European Union in the two financial years preceding the last financial year and (3) the company generated or is the ultimate parent company of a group that generated net turnover of more than €80 million in the European Union in the two financial years preceding the last financial year. An ultimate parent company that has as its main activity the holding of shares in operational subsidiaries and does not engage in taking management, operational or financial decisions affecting the group or one or more subsidiaries would be exempt from the obligations under the Directive provided that one of its subsidiaries fulfills such obligations on behalf of the shell parent company, including with respect to other subsidiaries of the parent company. The parent company, however, would remain jointly liable with the designated subsidiary for the failure of the subsidiary to comply with the Directive. Applicability of the Directive would be phased in over five years after the Directive's entry into force. The following applicability thresholds for company compliance will apply. • Three years after the Directive's entry into force, the following companies would be covered: o EU companies with more than 5,000 employees on average and that generated net worldwide turnover of more than €1.5 billion in the last financial year. o Non- EU companies that generated net worldwide turnover of more than €1.5 billion in the last financial year. • Four years after the Directive's entry into force, the following companies would be covered: o EU companies with more than 3,000 employees on average and generated a net worldwide turnover of €900 million in the last financial year. o Non-EU companies that generated net worldwide turnover of €900 million in the last financial year. • Five years after the Directive's entry into force, the Directive would apply to all covered companies (as described above).

	"Company" would be defined broadly, encompassing most types of legal entities. It also would specifically include, regardless of form, a long list of types of regulated financial undertakings, including among others alternative investment fund managers, UCITS management companies, insurance and reinsurance undertakings and crypto-asset service providers. For purposes of the employee thresholds, part-time employees would be calculated on a full-time equivalent basis. Temporary agency workers and other workers in non-standard forms of employment would be included in the employee count in the same manner as if they were workers employed directly for the same period of time by the company. Net turnover generally would be the amount derived from the sale of products and the provision of services after deducting sales rebates and value added tax and other taxes directly linked to turnover. If a company applies international accounting standards or was formed outside the European Union, net revenue instead would be defined by or within the meaning of the financial reporting framework used in connection with the preparation of the company's financial statements.
How It Works	
Mandatory?	Yes.
Selected Definitions	**"Adverse environmental impact"** would mean an adverse impact on the environment resulting from the breach of a prohibition or obligation pursuant to one of sixteen specified international environmental conventions set forth on an Annex, taking into account national legislation linked to the provisions of the instruments listed therein. **"Adverse human rights impact"** would mean an impact on a person resulting from: • An abuse of one of the human rights listed in the Annex to the Directive, as those human rights are enshrined in listed international instruments; • An abuse of a human right not listed in the Annex, but included in the listed human rights instruments, provided, that: o The human right can be abused by a company or legal entity; o The human right abuse directly impairs a legal interest protected in the listed human rights instruments; and o The company could have reasonably foreseen the risk that such human right may be affected, taking into account the circumstances of the specific case, including the nature and extent of the company's business operations and its chain of activities, characteristics of the economic sector and geographical and operational context. **"Adverse impact"** would mean an adverse environmental impact or adverse human rights impact. **"Appropriate measures"** would mean measures that are capable of achieving the objectives of due diligence by effectively addressing adverse impacts in a manner commensurate to the degree of severity and the likelihood of the adverse impact, and reasonably available to the company, taking into account the circumstances of the specific case, including the nature and extent of the adverse impact and relevant risk factors.

	"Business partner" would mean an entity (1) with whom the company has a commercial agreement related to the operations, products or services of the company or to whom the company provides services in the chain of activities (a **"direct business partner"**), or (2) which is not a direct business partner but which performs business operations related to the products or services of the company (an "**indirect business partner"**). **"Business relationship"** would mean a relationship of the company with its business partner. **"Chain of activities"** would mean (1) activities of a company's upstream business partners related to the production of goods or the provisions of services by the company, including the design, extraction, sourcing, manufacture, transport, storage and supply of raw materials, products or parts of the products and development of the product or the service, and (2) activities of a company's downstream business partners related to the distribution, transport and storage of the product, where the business partners carry out those activities for the company or on behalf of the company, excluding the distribution, transport and storage of the product being subject to export control under the EU's Dual-Use Export Controls or export control relating to weapons, munitions or war materials, after the export of the product is authorized. **"Severe adverse impact"** would mean an adverse impact that is especially significant by its nature, such as an impact that entails harm to human life, health and liberty, or by its scale, scope or irremediable character, taking into account its gravity, including the number of individuals that are or may be affected, the extent to which the environment is or may be damaged or otherwise affected, its irreversibility and the limits on the ability to restore affected individuals or the environment to a situation equivalent to their situation prior to the impact within a reasonable period of time. **"SME"** would mean a micro, small or medium-sized undertaking, irrespective of its legal form, that is not part of a large group. **"Stakeholders"** would mean the company's employees, the employees of its subsidiaries, trade unions and workers' representatives, consumers and other individuals, groups, communities or entities whose rights or interests are or could be affected by the products, services and operations of the company, its subsidiaries and its business partners, including the employees of the company's business partners, trade unions and workers' representatives, national human rights and environmental institutions, civil society organizations whose purpose includes the protection of the environment, and the legitimate representatives of those individuals, groups, communities or entities.
Due Diligence	**"Due diligence"** generally is aligned with the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises. At a high level, risk-based due diligence would consist of the following actions: • Integrating due diligence into policies and risk management systems; • Identifying and assessing actual or potential adverse impacts and, where necessary, prioritizing potential and actual adverse impacts; • Preventing and mitigating potential adverse impacts and bringing actual adverse impacts to an end and minimizing their extent; • Providing remediation to actual adverse impacts; • Carrying out meaningful engagement with stakeholders; • Establishing and maintaining a notification mechanism and complaints procedure;

	• Monitoring the effectiveness of the due diligence policy and measures taken; and • Publicly communicating on due diligence. Companies would be required to retain documentation regarding fulfilment of their due diligence obligations for five years. A parent company falling under the scope of the Directive may fulfil its obligations on behalf of its subsidiaries, subject to the following conditions: • The subsidiary and parent company provide each other with all the necessary information and cooperate to fulfil the obligations in the Directive; • The subsidiary abides by its parent company's due diligence policy; • The subsidiary integrates due diligence into all its policies and risk management systems, clearly describing which obligations are to be fulfilled by the parent company, and, where necessary, communicating so to relevant stakeholders; • Where necessary, the subsidiary continues to take appropriate measures and fulfil its obligations under the Directive; and • Where relevant, the subsidiary fulfils the obligation to seek contractual assurances or to temporarily suspend or terminate a business relationship. <u>Integrating Due Diligence into Policies and Risk Management</u> Companies would be required to integrate due diligence into their relevant policies and risk management systems and have in place a due diligence policy that ensures risk-based due diligence. The due diligence policy would be required to be developed in prior consultation with the company's employees and their representatives, and contain all of the following: • A description of the company's approach, including in the long term, to due diligence; • A code of conduct describing rules and principles to be followed throughout the company and its subsidiaries, and by the company's direct and indirect business partners; and • A description of the processes put in place to integrate due diligence into the relevant policies and to implement due diligence, including the measures taken to verify compliance with the code of conduct and to extend its application to business partners. Companies would be required to update their diligence policy without undue delay after a significant change occurs, and review and, where necessary, update it at least every 24 months. <u>Identifying and Assessing Adverse Impacts</u> Companies would be required to take appropriate measures to identify and assess actual and potential adverse impacts arising from their own operations or those of their subsidiaries and, where related to their chains of activities, those of their

	business partners. As part of this obligation, taking into account relevant risk factors, companies would be required to take appropriate measures to: • Map their own operations, those of their subsidiaries and, where related to their chains of activities, those of their business partners, in order to identify general areas where adverse impacts are most likely to occur and to be most severe; and • Based on the results of that mapping, carry out an in-depth assessment of their own operations, those of their subsidiaries and, where related to their chains of activities, those of their business partners, in the areas where adverse impacts were identified to be most likely to occur and most severe. Where information necessary for in-depth assessment can be obtained from business partners at different levels of the chain of activities, the company should prioritize requesting such information, where reasonable, directly from business partners where the adverse impacts are most likely to occur. <u>Prioritization of Identified and Potential Adverse Impacts</u> Where it is not feasible to prevent, mitigate, bring to an end or minimize all identified adverse impacts at the same time to their full extent, companies would need to prioritize the adverse impacts identified. The prioritization of adverse impacts would need to be based on their severity and likelihood of the adverse impact. Once the most severe and likely adverse impacts are addressed, the company would address less severe and less likely adverse impacts. <u>Preventing and Mitigating Potential Adverse Impacts</u> Companies would be required to take appropriate measures to prevent or, if prevention is not possible or immediately possible, adequately mitigate potential adverse impacts that have been, or should have been, identified through the measures required to identify these impacts. To determine the appropriate measures, companies should take due account of (1) whether the potential adverse impact may be caused only by the company, whether it may be caused jointly by the company and its subsidiary or business partner, through acts or omissions, or whether it may be caused only by the company's business partner in the chain of activities, (2) whether the potential adverse impact may occur in the operations of the subsidiary, direct business partner or indirect business partner and (3) the ability of the company to influence the business partner causing or jointly causing the potential adverse impact. More specifically, companies would be required to take the following appropriate measures, where relevant: • Where necessary due to the nature or complexity of the measures required for prevention, without undue delay develop and implement a prevention action plan, with reasonable and clearly defined timelines for the implementation of appropriate measures and qualitative and quantitative indicators for measuring improvement. Companies would be able to develop their actions plans in cooperation with industry or multi-stakeholder initiatives. The prevention action plan would be required to be adapted to companies' operations and chain of activities.

	• Seek contractual assurances from a direct business partner that the partner will ensure compliance with the company's code of conduct and, as necessary, prevention action plan, including by establishing corresponding contractual assurances from its partners to the extent their activities are part of the company's chain of activities. If contractual assurances are obtained, measures to verify compliance would be required to be taken. • Make necessary financial or non-financial investments, adjustments or upgrades, such as into facilities, production or other operational processes and infrastructures. • Make necessary modifications of, or improvements to, the company's own business plan, overall strategies and operations, including purchasing practices, design and distribution practices. • Provide targeted and proportionate support for an SME which is a business partner of the company, where necessary in light of the resources, knowledge and constraints of the SME, including by providing or enabling access to capacity-building, training or upgrading management systems, and where compliance with the code of conduct or prevention action plan would jeopardize the viability of the SME, providing targeted and proportionate financial support, such as direct financing, low-interest loans, guarantees of continued sourcing or assistance in securing financing. • Collaborate with other entities, including where relevant to increase the company's ability to prevent or mitigate the adverse impact, in particular, where no other measure is suitable or effective. Companies may take, where relevant, appropriate measures in addition to those listed above, such as engaging with a business partner regarding the company's expectations with regard to preventing and mitigating the potential adverse impacts, or providing or enabling access to capacity-building, guidance, administrative and financial support such as loans or financing, taking into consideration the resources, knowledge and constraints of the business partner. If these measures cannot prevent or adequately mitigate potential adverse impacts, the company would expressly be permitted to seek contractual assurances with an indirect business partner, with a view to achieving compliance with the company's code of conduct or prevention action plan. As a last resort, the company would be required to refrain from entering into new or extending existing relations with a business partner connected to or in the chain of activities of which the impact has arisen. In addition, where the law governing the relationship entitles the company to do so, it would be required to take the following actions as a last resort: • Adopt and implement an enhanced prevention action plan for the specific adverse impact without undue delay, by using or increasing the company's leverage through the temporary suspension of business relationships with respect to the activities concerned, as long as there is reasonable expectation that these efforts will succeed. The action plan would be required to include a specific and appropriate timeline for the adoption and implementation of all actions therein, during which the company may also seek alternative business partners. • If there is no reasonable expectation that these efforts would succeed, or if the implementation of the enhanced prevention action plan failed to prevent or mitigate the adverse impact, terminate the business relationship with respect to the activities concerned if the potential adverse impact is severe. Prior to temporarily suspending or terminating the business relationship, the company would be required to assess whether the adverse impacts of doing so can be reasonably expected to be manifestly more severe than the adverse impact that could

	not be prevented or adequately mitigated. Should that be the case, the company would not be required to suspend or terminate the business relationship, and instead would be required to report such decision to a supervisory authority. Under the Directive, Member States would be required to provide for the availability of an option to temporarily suspend or terminate the business relationship in contracts governed by their laws, except for contracts where parties are obliged by law to enter into them. Where the company decides not to temporarily suspend or terminate the business relationship, the company would be required to monitor the potential adverse impact and periodically reassess its decision and whether further appropriate measures are available. Where the company decides to temporarily suspend or terminate the business relationship, the company would be required to take steps to prevent, mitigate or bring to an end the impacts of suspension or termination, provide reasonable notice to the business partner and keep that decision under review. <u>Addressing an Actual Adverse Impact</u> Companies would be required to take appropriate measures to bring to an end actual adverse impacts that have been, or should have been, identified pursuant to the due diligence measures required to be taken. If the adverse impact cannot immediately be brought to an end, the company would be required to minimize the extent of the impact. Companies specifically would be required to take the following appropriate measures, where relevant: • Neutralize the adverse impact or minimize its extent. This action would be required to be proportionate to the severity of the adverse impact and the company's implication in the adverse impact. • Where necessary due to the fact that the adverse impact cannot immediately be brought to an end, without undue delay, develop and implement a corrective action plan with reasonable and clearly defined timelines for the implementation of appropriate measures and qualitative and quantitative indicators for measuring improvement. Companies would be able to develop their actions plans in cooperation with industry or multi-stakeholder initiatives. The corrective action plan would be required to be adapted to companies' operations and chain of activities. • Seek contractual assurances from a direct business partner that the partner will ensure compliance with the company's code of conduct and, as necessary, corrective action plan, including by establishing corresponding contractual assurances from its partners to the extent their activities are part of the company's chain of activities. • Make necessary financial or non-financial investments, adjustments or upgrades such as to facilities, production or other operational processes and infrastructures. • Make necessary modifications of, or improvements to, the company's own business plan, overall strategies and operations, including purchasing practices, design and distribution practices. • Provide targeted and proportionate support for an SME which is a business partner of the company, where necessary in light of the resources, knowledge and constraints of the SME, including by providing or enabling access to capacity-building, training or upgrading management systems, and, where compliance with the code of conduct or the corrective action plan would jeopardize the viability of the SME, providing targeted and proportionate financial support, such as direct financing, low-interest loans, guarantees of continued sourcing or assistance in securing financing.

	• Collaborate with other entities, including, where relevant, to increase the company's ability to bring the adverse impact to an end or minimize the extent of such impact, in particular where no other measure would be suitable or effective. • Provide remediation. Companies may carry out, where relevant, appropriate measures in addition to the measures listed above, such as engaging with a business partner regarding the company's expectations with regard to bringing adverse impacts to an end or minimizing the extent of such impacts, or providing or enabling access to capacity-building, guidance, administrative and financial support such as loans or financing, taking into consideration the resources, knowledge and constraints of the business partner. If the actual adverse impact cannot be brought to an end or the extent of which cannot be adequately minimized by the appropriate foregoing measures, the company expressly would be permitted to seek contractual assurances with an indirect business partner, with a view to achieving compliance with the company's code of conduct or corrective action plan. If the above measures cannot minimize or end an actual adverse impact, the company would need to, as a last resort, refrain from entering into new or extending existing relationships with the business partner connected to or in the chain of activities of which the impact has arisen. In addition, where the law governing the relationship entitles the company to do so, it would be required to take the following actions, as a last resort: • Adopt and implement an enhanced corrective action plan for the specific adverse impact without undue delay, including by using or increasing the company's leverage through the temporary suspension of business relationships with respect to the activities concerned, as long as there is a reasonable expectation that these efforts will succeed. The action plan would be required to include a specific and appropriate timeline for the adoption and implementation of all actions therein, during which the company may also seek alternative business partners. • If there is no reasonable expectation that these efforts would succeed, or if the implementation of the enhanced corrective action plan failed to bring to an end or minimize the extent of the adverse impact, terminate the business relationship with respect to the activities concerned if the actual adverse impact is severe. Prior to temporarily suspending or terminating the business relationship, the company would be required to assess whether the adverse impacts of doing so can be reasonably expected to be manifestly more severe than the adverse impact that could not be brought to an end or the extent of which could not be adequately minimized. Should that be the case, the company would not be required to suspend or to terminate the business relationship, but instead would be required to report such decision to a supervisory authority. Under the Directive, Member States would be required to provide for the availability of an option to temporarily suspend or terminate the business relationship in contracts governed by their laws, except for contracts where the parties are obliged by law to enter into them. Where the company decides to temporarily suspend or terminate the business relationship, the company would be required to take steps to prevent, mitigate or bring to an end the impacts of suspension or termination, provide reasonable notice to

	the business partner and keep that decision under review. Where the company decides not to temporarily suspend or terminate the business relationship in line with the foregoing, the company would be required to monitor the potential adverse impact and periodically reassess its decision and whether further appropriate measures are available. <u>Remediation</u> Where a company has caused or jointly caused an actual adverse impact, that company would be required to provide remediation. Where the actual adverse impact is caused only by the company's business partner, remediation voluntarily may be provided by the company. The company also may use its ability to influence the business partner causing the adverse impact to enable remediation. **"Remediation"** would mean restitution of the affected person or persons, communities or environment to a situation equivalent or as close as possible to the situation they would be in had the actual adverse impact not occurred, proportionate to the company's implication in the adverse impact, including financial or non-financial compensation provided by the company to a person or persons affected by the actual adverse impact and, where applicable, reimbursement of the costs incurred by public authorities for any necessary remedial measures. <u>Monitoring</u> Companies would be required to carry out periodic assessments to assess the implementation and monitor the adequacy and effectiveness of the identification, prevention, mitigation, cessation and minimization of adverse impacts. The assessment would be required to take into account the company's own operations and measures, those of its subsidiaries and, where related to the chains of activities of the company, those of their business partners. The assessment would be required to be based, where appropriate, on qualitative and quantitative indicators. The assessment would be required to be carried out without undue delay after a significant change occurs, but at least every 12 months and whenever there are reasonable grounds to believe that new risks of the occurrence of those adverse impacts may arise. Where appropriate, the due diligence policy, the identified adverse impacts and the derived appropriate measures would be required to be updated to take into account the outcome of the assessment and with due consideration of relevant information from stakeholders.
Compliance Verification	Contractual assurances from an indirect business partner in connection with addressing adverse impacts would be required to be accompanied by appropriate measures to verify compliance. The company would be permitted to refer to independent third-party verification, including through industry or multi-stakeholder initiatives. If a contractual assurance is obtained from or a contract is entered into with an SME, the terms used would be required to be fair, reasonable and non-discriminatory. The company also would need to also assess whether the contractual assurances with an SME should be accompanied by other appropriate measures for SMEs. The company would be required to bear the cost of the independent third-party verification when verifying SME compliance. In case the SME requests to pay at least a

	part of the cost, or in agreement with the company, the SME would be able to share the results of verifications with other companies. An **"industry or multi-stakeholder initiative"** would be defined as a combination of voluntary due diligence procedures, tools and mechanisms, developed and overseen by governments, industry associations, interested organizations, including civil society organizations, or groupings or combinations thereof, that companies may participate in in order to support the implementation of due diligence obligations. **"Independent third-party verification"** would mean verification of the compliance by a company, or parts of its chain of activities, with human rights and environmental requirements resulting from the provisions of the Directive by an expert that is objective, completely independent from the company, free from any conflicts of interests and from external influence, has experience and competence in environmental or human rights matters, according to the nature of the adverse impact, and is accountable for the quality and reliability of the verification.
Stakeholder Engagement	Companies would be required to take appropriate measures to carry out effective engagement with stakeholders. When consulting with stakeholders, companies would be required, as appropriate, to provide relevant and comprehensive information to stakeholders, in order to carry out effective and transparent consultations. Consulted stakeholders would be allowed to make a reasoned request for relevant additional information, which the company would be required to provide within a reasonable period of time and in an appropriate and comprehensible format. If the company refuses a request for additional information, the consulted stakeholder would be entitled to written justification for that refusal. Companies would be required to consult stakeholders in the following steps of the due diligence process: • To gather the necessary information on actual or potential adverse impacts, in order to identify, assess and prioritize adverse impacts; • The development of prevention and corrective action plans, and the development of enhanced prevention and corrective action plans; • The decision to terminate or suspend a business relationship; • The adoption of appropriate measures to remediate adverse impacts; and • As appropriate, when developing qualitative and quantitative indicators for the monitoring. Where it is not reasonably possible to carry out effective engagement with stakeholders to the extent necessary to comply with the requirements of the Directive, companies should instead consult additionally with experts who can provide credible insights into potential or actual adverse impacts. In consulting stakeholders, companies would be required to identify and address barriers to engagement and ensure that participants are not the subject of retaliation or retribution, including by maintaining confidentiality or anonymity. The use of industry and multi-stakeholder initiatives would not be sufficient to fulfil the obligation to consult the company's own employees and their representatives. Engagement with employees and their representatives would be required to be

	without prejudice to relevant European Union and national legislation in the field of employment and social rights as well as applicable collective agreements.
Notification Mechanism and Complaints Procedure	Companies would be required to have a complaints mechanism available for submission of legitimate concerns regarding actual or potential adverse impacts in the companies' own operations, the operations of their subsidiaries or the operations of their business partners in the companies' chains of activities. Companies would be required to establish a fair, publicly available, accessible, predictable and transparent procedure for addressing complaints, including complaints the company considers to be unfounded. The company would be required to inform the relevant workers, representatives and trade unions of the complaints procedures. The mechanism would be required to ensure that notifications can be made either anonymously or confidentially in accordance with national law. Companies would need to take reasonably available measures to prevent any form of retaliation by ensuring the confidentiality of the identity of the person or organization submitting the complaint, in accordance with national law. The company may inform the persons submitting notifications about steps and actions taken or to be taken, where relevant. The company complaint mechanism would be required to enable the following to submit concerns: • Natural or legal persons affected or who have reasonable grounds to believe they might be affected by an adverse impact, and the legitimate representatives of such persons on behalf of them, such as civil society organizations and human rights defenders; • Trade unions and other workers' representatives representing individuals working in the chain of activities concerned; and • Civil society organizations active and experienced in the areas related to the environmental adverse impact that is the subject matter of the complaint. Where the complaint is well founded, the company would be required to take remediation measures to address the adverse impact that is the subject matter of the complaint. Complainants would be entitled to request appropriate follow-up on the complaint from the company. In addition, they would be entitled to meet with the company's representatives at an appropriate level to discuss potential or actual severe adverse impacts that are the subject matter of the complaint and potential remediation. Further, complainants would be entitled to be provided with the reasoning as to whether a complaint has been considered founded or unfounded and, where founded, to be provided with information on the steps and actions taken or to be taken. The company would be required to take reasonably available measures to prevent any form of retaliation by ensuring the confidentiality of the identity of the person or organization submitting the complaint, in accordance with national law. Where information needs to be shared, it would be required to be done in a manner that does not endanger the complainant's safety, including by not disclosing their identity.
Reporting	Companies would be required to annually report on the matters covered by the Directive. No later than March 31, 2027, the European Commission (the **"Commission"**) would be required to adopt delegated acts regarding reporting content and criteria. These would be required to specify sufficiently detailed information on the description of due diligence, potential and

	actual adverse impacts identified and appropriate measures taken with respect to those impacts. Statements would be required to be published on the company's website in at least one of the official languages of the European Union of the Member State of the supervisory authority and, where different, in a language customary in the sphere of international business. Publication would be required to occur within a reasonable period of time, but no later than 12 months after the balance sheet date of the financial year for which it is drawn up, or, for companies voluntarily reporting, by the date of publication of the annual financial statements. Companies would not have to report under the Directive if they are required to report under the Corporate Sustainability Reporting Directive (the **"CSRD"**).
Climate Change Transition Plan	Companies would be required to adopt and put into effect a transition plan for climate change mitigation which aims to ensure, through best efforts, that their business model and strategy are compatible with the transition to a sustainable economy and with limiting global warming to 1.5°C in line with the Paris Agreement and compatible with the objective of achieving climate neutrality and 2050 climate neutrality targets, and where relevant, the exposure of the company to coal-, oil- and gas-related activities. This transition plan would be required to contain: • Time-bound targets related to climate change for 2030 and in five-year steps up to 2050 based on conclusive scientific evidence and including, where appropriate, absolute emission reduction targets for greenhouse gas for scope 1, scope 2 and scope 3 greenhouse gas emissions for each significant category; • A description of decarbonization levers identified and key actions planned to reach the foregoing targets, including where appropriate changes in the undertaking's product and service portfolio and the adoption of new technologies; • An explanation and quantification of the investments and funding supporting the implementation of the transition plan; and • A description of the role of the administrative, management and supervisory bodies with regard to the plan. The transition plan would be required to be updated every 12 months and contain a description of the progress the company has made towards achieving its targets. Companies that already have transition plans under the CSRD would be deemed to have complied with the climate change provisions of the Directive.
Additional Guidance and Guidelines	The Commission, in consultation with Member States and stakeholders, would be required to adopt guidance pertaining to voluntary model contractual clauses, no later than 30 months from the entry into force of the Directive. These clauses could be used if the company sought required contractual assurances as part of preventing or ending adverse impacts. The Commission, in consultation with Member States and stakeholders, the European Union Agency for Fundamental Rights, the European Environment Agency, the European Labour Authority, and where appropriate with international organizations and other bodies having expertise in due diligence, would be required to issue guidelines to provide support to companies or Member State authorities on how companies should fulfill their due diligence obligations in a practical manner, and to provide support to stakeholders. Among other things, guidelines would be issued for specific sectors or specific adverse impacts. The guidelines would be required to include:

	• Guidance and best practices on how to conduct due diligence, particularly, the identification process, the prioritization of impacts, appropriate measures to adapt purchasing practices, responsible disengagement, appropriate measures for remediation and on how to identify and engage with stakeholders, including through established mechanisms; • Practical guidance on climate change plans; • Sector-specific guidance; • Guidance on the assessment of company-level, business operations, geographic and contextual, product and service and sectoral risk factors, including those associated with conflict-affected and high-risk areas; • References to data and information sources available for compliance with the obligations in the Directive, and to digital tools and technologies that could facilitate and support compliance; • Information on how to share resources and information among companies and other legal entities for the purpose of compliance with national provisions adopted pursuant to the Directive, in line with the protection of trade secrets and the protection from potential retaliation and retribution; and • Information for stakeholders and their representatives on how to engage throughout the due diligence process. The guidelines would be made available in all the official languages of the European Union and be periodically reviewed and adapted by the Commission. The Commission, in collaboration with Member States, also would be expressly empowered to issue guidance for assessing the fitness of third-party verifiers, and guidance for monitoring the accuracy, effectiveness and integrity of third party verification.
Enforcement	Each Member State would be required to designate one or more supervisory authorities to supervise compliance with the due diligence and climate change-related obligations adopted under national law pursuant to the Directive. The Member State supervisory authorities would be required to be given adequate powers and resources to carry out their tasks, including the power to require companies to provide information and carry out investigations. Supervisory authorities generally would be required to have at least the power to (1) order a company to end infringing conduct and abstain from future infringements and, where appropriate, order remedial action proportionate to the infringement necessary to bring it to an end, (2) impose penalties and (3) adopt interim measures in case of imminent risk of severe and irreparable harm. In addition, the Commission would be required to establish a European Network of Supervisory Authorities composed of representatives of the Member State supervisory authorities. The Network would facilitate the cooperation of the supervisory authorities and the coordination and alignment of regulatory, investigative, sanctioning and supervisory practices of the supervisory authorities and, as appropriate, sharing of information. However, the Network would not be an enforcement body.

Penalties	The Directive does not specify particular penalties. Instead, it provides a framework for determining penalties. Under the Directive, Member States would be required to establish rules on penalties, including pecuniary penalties, in the event of a violation of national provisions adopted pursuant to the Directive. Penalties would be required to be effective, proportionate and dissuasive. In deciding whether to impose penalties and, if so, in determining their nature and appropriate level, due consideration would be required to be given to: • The nature, gravity and duration of the infringement, and the severity of the impacts resulting from that infringement; • Any investments made and any targeted support provided; • Any collaboration with other entities to address the impacts concerned; • Where relevant, the extent to which prioritization decisions were made; • Any relevant previous infringements by the company of national provisions adopted pursuant to the Directive found by a final decision; • The extent to which the company carried out any remedial action with regard to the concerned subject matter; • The financial benefits gained from or losses avoided by the company due to the infringement; and • Any other aggravating or mitigating factors applicable to the circumstances of the case. The Directive provides for pecuniary sanctions and, if the company fails to comply with the decision imposing a pecuniary penalty within the applicable time-limit, a public statement indicating the company responsible and the nature of the infringement. If pecuniary sanctions are imposed, they would be required to be based on the company's net worldwide turnover. The maximum limit of pecuniary penalties would be not less than 5% of the net worldwide turnover of the company in the financial year preceding the fining decision. If a supervisory authority identifies a failure by a company to comply with national requirements adopted pursuant to the Directive, the company would be required to be given an appropriate period of time to take remedial action, if possible. However, remedial action would not preclude a supervisory authority from imposing penalties or civil liability if there are damages.
Civil Liability of Companies and a Right to Full Compensation	Victims would be required to be able to bring a civil liability claim in appropriate Member State courts. Member States would be required to ensure that companies could be held liable for damage caused to a natural or legal person, provided that: • The company intentionally or negligently failed to comply with the obligations under the Directive, when the right, prohibition or obligation is aimed to protect the natural or legal person; and • As a result of a failure, as referred to in the previous bullet point, a damage to the natural or legal person's legal interest protected under national law was caused.

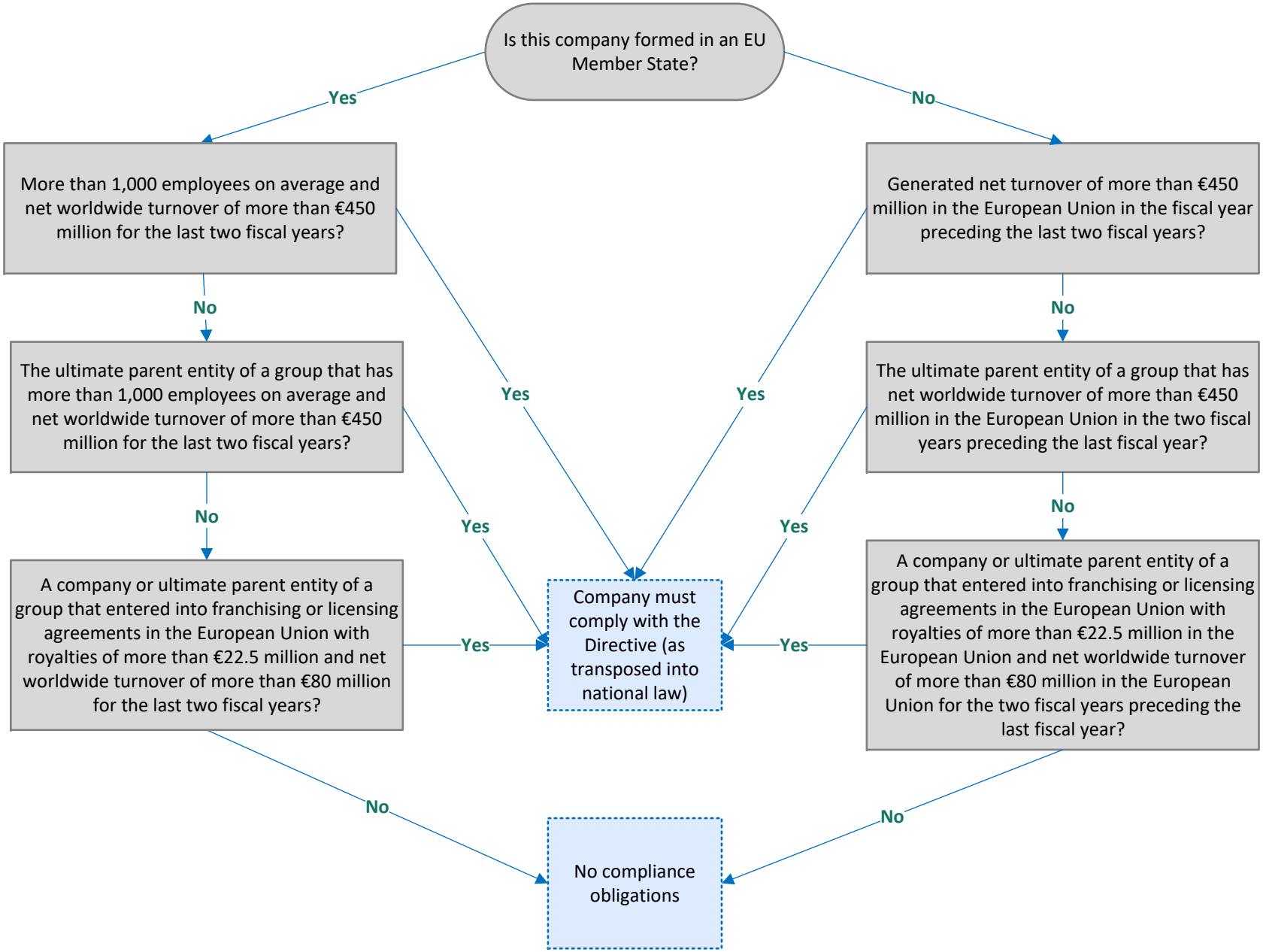
	A company cannot be held liable if the damage was caused only by its business partners in its chain of activities. If a company is held liable, a natural or legal person would have the right to full compensation for the damage occurred in accordance with national law, which does not include overcompensation, whether by means of punitive, multiple or other types of damages. The limitation period for bringing actions for damages under the Directive would be at least 5 years and, in any case, not lower than the limitation period laid down under general civil liability national regimes. Member States would be required to provide for reasonable conditions under which an alleged injured party may authorize a trade union, non-governmental organization or national human rights' institution to bring actions to enforce the rights of the alleged injured party. Companies that participated in industry or multi-stakeholder initiatives, or used third-party verification or contractual clauses to support the implementation of due diligence obligations can still be held liable.
Transposition into National Law	Member States would be required to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive within 2 years after the Directive enters into force. The effective date of the Directive has not yet been set. As noted above, applicability of the Directive would be phased in over five years after the Directive's entry into force. See the "Covered Entities" section for the phased in applicability thresholds.
Relationship to Other Existing Requirements	By its terms, the Directive would not constitute grounds for reducing the level of human rights, environmental or climate protection under EU Member State laws or applicable collective agreements in effect when the Directive is adopted. By its terms, the Directive also would not modify obligations relating to human, employment and social rights, protection of the environment or climate change under other EU legislation. If the Directive conflicts with a provision of another EU law providing for more extensive or specific obligations, the more restrictive requirement would apply.
Additional Information/Resources	
The Directive	For the text of the Directive approved by the Council, see: https://www.vbw-bayern.de/Redaktion/Frei-zugaengliche-Medien/Abteilungen-GS/Sozialpolitik/2024/Downloads/RS44_Anlage.pdf

Ropes & Gray Resources	Client alerts related to the Directive: • Provisional agreement reached on EU Corporate Sustainability Due Diligence Directive – Christmas gift or lump of coal for U.S.-based multinationals? (December 2023): https://www.ropesgray.com/en/insights/viewpoints/102ivcx/provisional-agreement-reached-on-eu-corporate-sustainability-due-diligence-direct • European Commission (Finally) Proposes Mandatory Human Rights and Environmental Due Diligence Directive – A Deep Dive Q&A on the Commission Proposal (February 28, 2022): https://www.ropesgray.com/en/newsroom/alerts/2022/february/european-commission-finally-proposes-mandatory-human-rights

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

(Updated March 31, 2024)

Applying the Law



Corporate Duty of Vigilance Law France	
Overview	
Law / Country	**Corporate Duty of Vigilance Law** (No. 2017-399) (the **"Law"**) (France)
Goal	To prevent severe human rights violations and violations of the health and safety of people or the environment, including those associated with subsidiaries, subcontractors and supply chain members.
Adoption / Status	The Law 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. In March 2024, the European Council and the European Parliament reached political agreement on the Corporate Sustainability Due Diligence Directive (the **"CSDDD"**). If the CSDDD is adopted, the Law will need to be harmonized with the CSDDD. The CSDDD is discussed in a separate summary.
Issues Addressed	• Environment • Health and safety • Human rights
Covered Entities	Any company with its registered office in France that employs, for a period of two consecutive financial years: • At least 5,000 employees itself and in its direct or indirect subsidiaries with registered offices in France; or • At least 10,000 employees itself and in its direct or indirect subsidiaries with registered offices located within French territory or abroad. A company is considered to be a subsidiary if another company owns more than 50% of its capital. 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.
How It Works	
Mandatory?	Yes.
Vigilance Plan Requirements	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.

	The vigilance plan must include: • Procedures to identify and analyze the risks of human rights violations or environmental harms in connection with the company's operations; • Procedures to regularly assess risks associated with subsidiaries, subcontractors and suppliers with which the company has a commercial relationship; • Actions to mitigate identified risks or prevent the most serious violations; • Mechanisms to alert the company to risks and collect signals of potential or actual risk; and • Mechanisms to assess measures that have been implemented as part of the company's plan and their effectiveness. 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.
Reporting	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.
Enforcement	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. 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. 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. After much debate over which court has jurisdiction to hear lawsuits concerning the Law, the Paris Judicial Court has been given jurisdiction. On December 15, 2021, in the *Total in Uganda* case, the Commercial Chamber of the Court of Cassation (the French Supreme Court) ruled that the Law's vigilance plan does not constitute a commercial transaction and that, while the preparation and implementation of such a plan has a direct link with the management of a company—justifying the jurisdiction of the Commercial Court—the non-trading plaintiff had the choice of bringing the matter either before the Judicial Court or the Commercial Court. Then, on December 24, 2021, Article L. 211-21 was implemented by the French legislature, providing that the Paris Judicial Court has jurisdiction over actions relating to the Law. <u>Selected Litigation and Enforcement Activity</u> Civil society organizations have been seeking to compel compliance by companies they believe are not meeting their obligations under the Law.

	Sherpa, ActionAid France, Petrol-Iş & former employees v. Yves Rocher: In March 2022, Sherpa, ActionAid France, the Turkish trade union Petrol-Iş and 34 former employees of a Turkish subsidiary of the Yves Rocher Group filed a lawsuit against Yves Rocher in the Paris Judicial Court for failing to meet its obligations under the Law with respect to trade union freedom and fundamental rights of workers in its subsidiary in Turkey. In November 2023, an additional 47 former employees joined the lawsuit. *Comissao Pastoral da Terra & Notre Affaire a Tous v. BNP Paribas:* In February 2023, a Brazilian NGO and a French NGO filed a lawsuit under the Law against BNP Paribas, a French bank, for providing financial services to companies that allegedly contribute to the deforestation of the Amazon rainforest and violate human and indigenous rights in the region. *Oxfam, Friends of the Earth, & Notre Affaire a Tous v. BNP Paribas*: In February 2023, three French NGOs also filed a lawsuit under the Law against BNP Paribas, a French bank, for its alleged loans to oil and gas firms. The NGOs argue that the bank's loans both directly and indirectly support new fossil fuel projects and thus the bank breached its duty under the Law to ensure its activities do not harm the environment. In October 2022, the NGOs provided the bank with a formal notice requesting that the bank comply with the Paris Agreement 1.5°C goal by immediately halting support for new fossil fuel projects and threatened to take legal action if the bank failed to comply with the Law. *MENA Rights Group v. TotalEnergies:* In February 2023, a Swiss NGO filed a lawsuit under the Law against TotalEnergies, a French oil company, on behalf of two people who said they were subjected to detention and torture by UAE forces at a gas liquefaction plant operated by Yemen LNG, of which the oil company is the biggest shareholder with a 39.6% stake. *ClientEarth, Zero Waste France & Surfrider Foundation Europe v. Danone*: In January 2023, three NGOs filed a lawsuit against Danone over its plastic use, accusing it of failing to sufficiently account for all the plastic used along its production cycle. Prior to filing the claim in Paris, ClientEarth served "legal warnings" on Danone and certain other French companies, including Auchan, Carrefour, Casino, Lactalis, McDonald's France, Les Mousquetaires, Picard and Nestlé France. On September 18, 2023, the claimants and Danone announced an agreement to enter into a mediation procedure ordered by the court. *Sud PTT v. La Poste*: In December 2021, the French labor union Sud PTT filed a lawsuit against La Poste, alleging breaches of the duty of vigilance for La Poste's failure to include in its vigilance plan a mapping of the risks and serious violations on human rights, fundamental freedoms, health and safety resulting from its activities. The court ruled in favor of Sud PTT, ordering La Poste to (1) amend its vigilance plan by including a risk map designed to identify, analyze and prioritize La Poste's risks; (2) implement procedures for assessing subcontractors based on the risks identified under the risk map; (3) amend its vigilance plan by including an alert mechanism after collaborating with relevant stakeholders; and (4) publish an appropriate system for monitoring vigilance measures. La Poste appealed the ruling. *Observatorio Ciudadano et al v. Suez*: In July 2021, four NGOs filed a lawsuit against Suez for its alleged failure to take necessary measures to prevent health crises in Chile due to the behavior of its subsidiaries, including in connection with the contamination of the drinking water supply in Osorno, Chile after an incident at a treatment plant controlled by Suez. On July 1, 2023, the court ruled that the claims were inadmissible for procedural reasons. The NGOs announced that they would file an appeal.

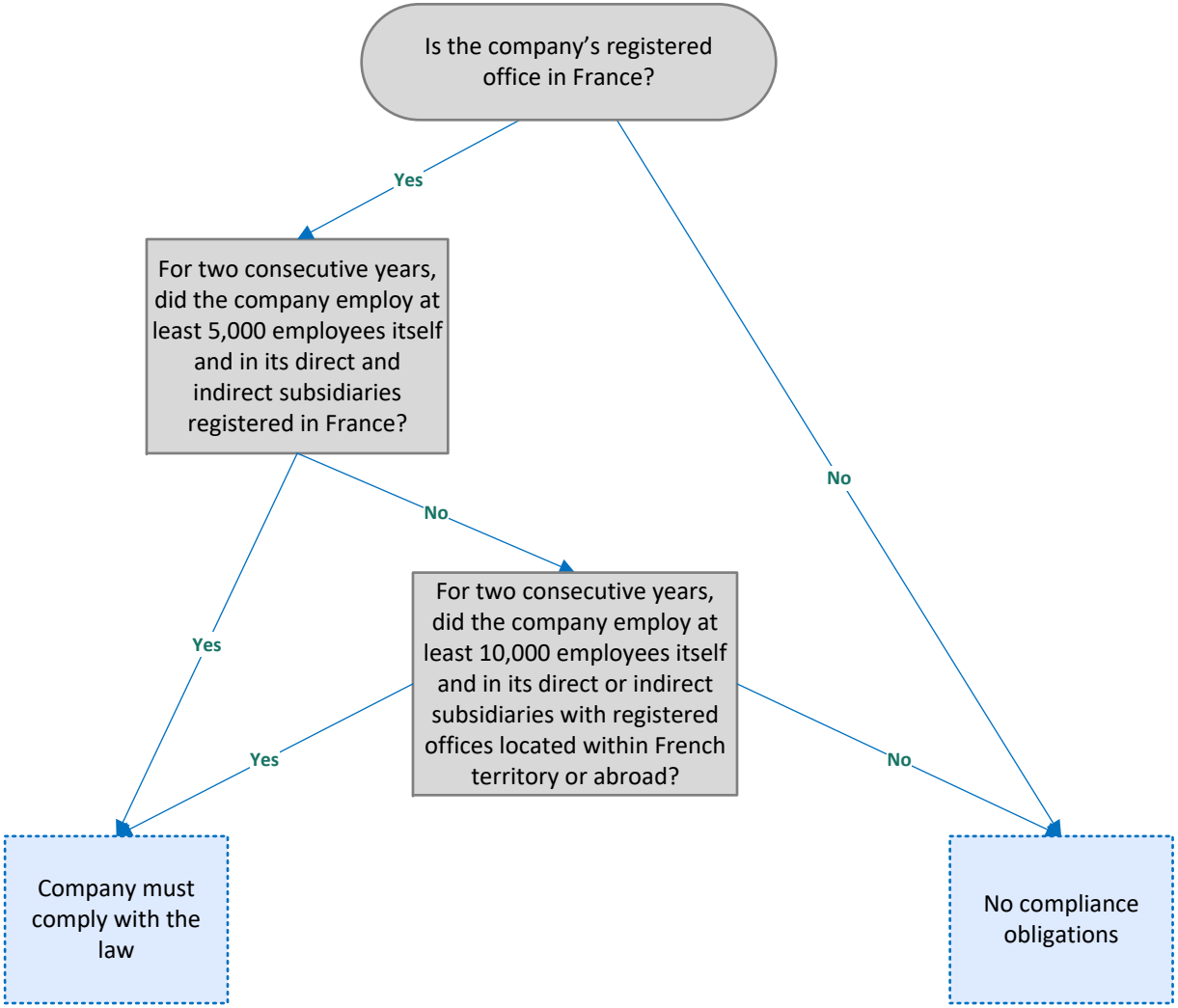
	Data Rights et al v. Idemia: In April 2021, Data Rights and its Kenyan partner organisations (the Kenya Human Rights Commission and the Nubian Rights Forum) sent Idemia a formal notice to revise its vigilance plan by identifying and addressing human rights risks related to its provision of a technology to capture the population's biometric data in Kenya. The claimants filed a lawsuit against Idemia in July 2022 for failure to address risks in its products and design appropriate mitigating measures. On July 24, 2023, the parties agreed on amendments to Idemia's vigilance plan. *Envol Vert et al v. Groupe Casino*: In March 2021, a coalition of indigenous activists in Brazil and Colombia, backed by NGOs in France and the United States, filed a lawsuit under the Law against a French supermarket company for its supply chain practices and alleged purchases from farms involved in deforestation in South America. In September 2020, a group of French, American, Brazilian and Colombian NGOs had issued a formal notice to the same French supermarket 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 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. *Union Hidalgo v. Électricité de France*: 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. In July 2021, it was reported that residents in the state of Oaxaca, Mexico sought a court-ordered injunction against the company. On November 29, 2021, the civil court in Paris dismissed a request on procedural grounds to immediately suspend the construction of the wind farm project in Oaxaca, Mexico. On March 5, 2024, the case entered into the phase of debates before the Paris Court of Appeal. *Notre Affaire a Tous and Others v. TotalEnergies*: In January 2020, 14 French local authorities and several NGOs filed a lawsuit under the Law against TotalEnergies, a French 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. In September 2022, the cities of Paris and New York joined the coalition of associations suing. There have been jurisdictional disputes regarding this case, but in February 2023, NGOs and local authorities asked the court to implement provisional measures against the oil company while the outcome of the case is pending. In July 2023, the court ruled the lawsuit inadmissible, holding that TotalEnergies was not sufficiently notified before the lawsuit was filed. *Friends of the Earth et al. v. TotalEnergies*: In October 2019, French and Ugandan environmental groups sued TotalEnergies, 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 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. On December 15, 2021, the Supreme Court of France rejected the jurisdiction of the commercial courts. On February 28, 2023, a French civil court dismissed the case as "inadmissible". The court noted that the plaintiffs did not correctly follow court procedures against Total because the accounts the plaintiff submitted to the court in December 2022 were "substantially

	different" from those that were presented in 2019 when the case was initiated. In June 2023, French and Ugandan activist groups led by Friends of the Earth filed a new lawsuit against TotalEnergies under the Law against TotalEnergies, alleging that TotalEnergies failed to protect people and the environment from its Talenga oil development and the $3.5 billion East African Crude Oil Pipeline. *XPO Logistics Europe*: 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.
Additional Information/Resources	
Law	For the text of the Law, see: http://www.assemblee-nationale.fr/14/pdf/ta/ta0924.pdf
Constitutional Council Decision	https://www.conseil-constitutionnel.fr/decision/2017/2017750DC.htm
UN Guiding Principles	For the UN Guiding Principles on Business and Human Rights in multiple languages, see: https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf
Ropes & Gray Resources	Client alerts related to the Law: • An Overview of French Corporate Social Responsibility Legislation for U.S.-Based Multinationals (January 14, 2021): https://www.ropesgray.com/en/newsroom/alerts/2021/january/an-overview-of-french-corporate-social-responsibility-legislation-for-us-based-multinationals • Corporate Social Responsibility Disclosure and Compliance: An Overview of Selected Legislation, Guidance and Voluntary Initiatives (October 31, 2019): https://www.ropesgray.com/en/newsroom/alerts/2019/10/corporate-social-responsibility-disclosure-and-compliance

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

(Updated February 29, 2024)

Applying the Law



Due Diligence in the Supply Chain Act Germany	
Overview	
Law / Country	**Due Diligence in the Supply Chain Act** (the **"Act"**) (Germany)
Goal	Mitigate human rights and specified environmental-related risks that can lead to human rights violations.
Adoption / Status	The Act was approved by the German Parliament on June 11, 2021. The Act took effect on January 1, 2023. In March 2024, the European Council and the Parliament reached political agreement on the Corporate Sustainability Due Diligence Directive (the **"CSDDD"**). If the CSDDD is adopted, the Act will need to be harmonized with the CSDDD. The CSDDD is discussed in a separate summary.
Issues Addressed	A broad range of human rights risks, including (but not limited to): • Child labor; • Forced labor; • Slavery; • Disregard of occupational health and safety; • Disregard of freedom of association; • Unequal treatment in employment; • Withholding adequate living wage; • Environmental damage or excessive consumption; • Unlawful eviction or taking of lands/water; and • Improper use of security forces. A broad range of environmental risks, including (but not limited to): • Manufacture of mercury-added products; • Use of mercury and mercury compounds in manufacturing; • Illegal treatment of mercury waste; • Illegal production and use of chemicals; • Improper storage, handling, collection and disposal of waste; and • Illegal export or import of hazardous waste.
Covered Entities	A company is subject to the Act if it meets two threshold requirements: • The company has its head office, principal place of business, administrative headquarters, registered office or branch office in Germany.

	• The company exceeds a specified employee count. Starting in 2024, the Act applies to companies with 1,000 or more employees in Germany, down from 3,000 in 2023. Employees at subsidiary companies are included. Temporary workers also are included if their assignments last more than six months.
How It Works	
Mandatory?	Yes.
Due Diligence Obligations	The manner in which the duty of care must be exercised depends on (1) the subject company's business activities, (2) its ability to influence the direct cause of the injury, (3) the typically expected severity of the injury, the ability to remedy the injury and the likelihood of its occurrence and (4) the subject company's relationship to the adverse impact. The duty of care is based on the UN Guiding Principles on Business and Human Rights. The due diligence obligations of the Act generally apply to a subject company and its direct suppliers. There is a lower duty of care for indirect suppliers, as discussed in this summary. <u>Risk Management System</u> Subject companies must establish an adequate and effective risk management system to identify, minimize, prevent and end covered adverse impacts if the subject company has caused of contributed to the risks or violation in its supply chain. A **"supply chain"** is all products and services of a subject company, and includes all steps in Germany and abroad necessary to produce the products and services, from extraction of raw materials to delivery to the end customers, including actions of an enterprise in its own business operations and the actions of direct and indirect suppliers. The risk management system must consider the subject company's employees, the employees in its supply chain and other persons directly affected by its economic activity or the economic activity of an enterprise in the supply chain. Specific requirements include: • Designating a responsible person (e.g., appointing a human rights officer); • Senior management must seek information on a regular basis (at least once per year) about the work of the person responsible for monitoring risk management; and • Incorporation of preventative measures and remedial measures. <u>Complaint Mechanism</u> Subject companies must adopt a complaint mechanism. The complaints procedure must be (1) written and publicly available, (2) impartial and confidential and (3) reviewed annually for effectiveness. The complaint mechanism must enable reporting of risks and violations that have arisen due to the economic actions of indirect suppliers.

	Risk Analysis Subject companies must conduct a risk analysis, at least annually, to identify human rights and environmental risks in the subject company's own business and at its direct suppliers. A risk analysis should also be carried out on an as-needed basis if the company expects a significant change or significant expansion of the risk situation in its supply chain. The results of the analysis must be communicated internally to relevant decision-makers (e.g., the Board or the purchasing department). A **"direct supplier"** is a partner to a contract for the supply of goods or services whose supplies are necessary for the production of the subject company's products or the provision and use of the relevant services. Preventative Measures Subject companies must engage in preventive measures to prevent potentially negative human rights and environmental impacts in the subject company's own business and at its direct suppliers. At the subject company level, these measures must include (1) issuance of a policy statement (discussed later in this summary) regarding implementation of the human rights strategy, (2) procurement strategies and practices intended to avoid or mitigate identified risks, (3) training to manage risks and (4) risk-based control measures to verify compliance. At the direct supplier level, these measures must include (a) the consideration of human rights and environmental expectations in supplier selection, (b) contractual representations from direct suppliers to comply with human rights obligations and enforce them in the supply chain, (c) training to manage risks and (d) risk-based control measures to verify compliance. The subject company must evaluate the effectiveness of the preventative measures at least annually. Remedial Action If a violation has occurred or is imminent at the business or a direct supplier, the subject company must take remedial action to prevent, end or minimize the violation. If the violation occurs at a direct supplier and the subject company cannot end the violation in the foreseeable future, it must (1) implement a plan to end/minimize the violation, including a concrete timeline, (2) consider working with the direct supplier to develop and implement the plan to end/minimize the violation, and (3) consider temporary suspension of the direct supplier. Termination of a direct supplier is only required if (a) the violation is very serious, (b) the remediation plan does not remedy the situation, and (c) the subject company has no less severe means at its disposal and increasing the ability to exert influence has no prospect of success. The subject company must evaluate the effectiveness of the remedial measures at least annually. Indirect Suppliers There is a lower duty of care for indirect suppliers. For indirect suppliers, due diligence obligations only apply if the subject company has substantiated knowledge of a possible human rights or environmental violation. If a subject company has reason to believe a violation at an indirect supplier may be possible (substantiated knowledge), it must (1) carry out a risk analysis, (2) lay down appropriate preventative measures for the indirect supplier, (3) take steps to prevent, cease or minimize the violation and (4) update its policy statement, if necessary.

	<u>Policy Statement</u> A subject company must have a policy statement on the company's human rights strategy that addresses, among other things, the subject company's risk management system, the risk analysis process (including how risks are weighed, prioritized and communicated), preventative measure at the business and its direct suppliers, remedial action, the complaint process, risks identified and expectations on employees and suppliers. <u>Documentation and Records Maintenance</u> Subject companies are required to document their due diligence. Records are required to be maintained for at least seven years.
Reporting	Subject companies are required to annually report on their diligence. The report is required to discuss: • The human rights and environmental risks identified; • The measures taken to fulfill the duties of care, including arising out of complaints received through the complaint procedure; • How the subject company assesses the impact and effectiveness of the measures taken; and • The conclusions drawn from the assessment for future measures. The report is required to be published on the subject company's public website no later than four months after each fiscal year end and kept available for seven years. The report also is required to be submitted to the Federal Office for Economic Affairs and Export Control (**"BAFA"**). BAFA has published on its website a questionnaire to satisfy annual reporting under the Act.
Enforcement	BAFA is charged with reviewing whether a subject company has complied with the Act. Among other things, it can require the subject company to address reporting deficiencies within a reasonable time period. It also is empowered to, with three months' notice, require a subject company to submit a plan to remedy substantive compliance deficiencies, as well as to provide a subject company with specific action items to fulfill its obligations. Subject companies that fail to comply with the requirements of the Act, either intentionally or negligently, also are subject to administrative fines. Depending upon the nature of the violation, the fine can be up to €8 million. However, if the subject company has an average annual turnover over the last three years of more than €400 million, the fine for failing to take remedial measures to address adverse human rights or environmental impacts in the subject company's own business and at its direct suppliers can be up to 2% of average annual sales. If a potential fine exceeds €175,000, the subject company also can be excluded from public procurement for up to three years. In addition, non-governmental organizations and trade unions are entitled to sue subject companies in German courts on behalf of persons that suffer harm. However, the Act does not create an additional basis for liability.

	Selected Litigation and Enforcement Activity On April 24, 2023, the Bangladeshi union National Garments Workers Foundation (**"NGWF"**), with support from the European Center for Constitutional and Human Rights (**"ECCHR"**) and the African Women's Development and Communication Center (**"FEMNET"**), filed a complaint with BAFA against Amazon, IKEA and Tom Tailor, arguing that factories supplying goods to these retailers do not have adequate safety measures in place to protect factory workers and therefore the companies are not in compliance with their due diligence obligations under the Act. On June 21, 2023, the ECCHR filed a complaint with BAFA against Volkswagen, BMW and Mercedes-Benz, arguing that the carmakers have not presented supporting documents to demonstrate they are adequately responding to the risk of forced labor in supplier factories in the Xinjiang Autonomous Uyghur Region and therefore the companies are not in compliance with their due diligence obligations under the Act. On November 3, 2023, international aid organization Oxfam filed a complaint with BAFA against Rewe and Edeka, two of Germany's key supermarkets, alleging human rights abuses on banana and pineapple plantations in Latin America. The complaint alleges that ample evidence was put forward to expose low wages, disastrous working conditions and suppression of trade unions and, while competitors addressed the concerns, Rewe and Edeka ignored them. On the Act's one-year anniversary, BAFA issued a release summarizing enforcement of the Act to date. BAFA conducted 486 checks on companies during 2023, focusing on the automotive, chemicals, pharmaceuticals, mechanical engineering, energy, furniture, textiles and the food and beverage industries. Through its complaints procedure, BAFA received 38 complaints, of which 20 were unrelated to the Act's due diligence obligations or were not sufficiently substantiated; BAFA contacted companies in six cases.
Further Regulation and Guidance	The Federal Ministry of Labor and Social Affairs (**"BMAS"**), in agreement with the Federal Ministry for Economic Affairs and Climate Action (**"BMWK"**), is authorized to issue ordinances that further flesh out the Act's due diligence requirements. BMWK, BMAS and BAFA jointly published, and periodically update, Q&A guidance on the Act. BMAS also has published information on complying with the Act.
Additional Information/Resources	
Act	For an unofficial English translation of the Act, see: https://www.bmas.de/SharedDocs/Downloads/DE/Internationales/act-corporate-due-diligence-obligations-supply-chains.pdf;jsessionid=F5574650379974E1FE95D5E85518871E.delivery2-master?__blob=publicationFile&v=3
Additional Guidance	For the published Q&A guidance, see: https://www.csr-in-deutschland.de/EN/Business-Human-Rights/Supply-Chain-Act/FAQ/faq.html For BMAS's overview of diligence obligations and recommendations, see: https://www.csr-in-deutschland.de/EN/Business-Human-Rights/Supply-Chain-Act/Implementation-by-enterprises/implementation-by-enterprises.html.

	For BAFA's guidance on conducting a risk analysis, see https://www.bafa.de/DE/Lieferketten/Ueberblick/ueberblick_node.html;jsessionid=565E5FE51FE65C78E65F0E9454BBA78C.intranet262 ("Identifying, weighing and prioritizing" link at bottom of page). For BAFA's guidance on the principle of "appropriateness" under the Act (in German), see https://www.bafa.de/DE/Lieferketten/Ueberblick/ueberblick_node.html;jsessionid=565E5FE51FE65C78E65F0E9454BBA78C.intranet262 ("Handout Adequacy" link at bottom of page). For BAFA's guidance on complaints procedures (in German), see https://www.bafa.de/DE/Lieferketten/Ueberblick/ueberblick_node.html;jsessionid=565E5FE51FE65C78E65F0E9454BBA78C.intranet262 ("Complaint procedure under the Supply Chain Due Diligence Act" link at bottom of page).
Reporting Questionnaire	For the BAFA questionnaire (available only in German), see: https://www.bafa.de/SharedDocs/Downloads/DE/Lieferketten/fragenkatalog_berichterstattung.html;jsessionid=69189E89970CFD3D6290FD66EAAB2089.1_cid390?nn=18157744
Ropes & Gray Resources	Client alerts related to the Act: • ESG disclosures in 2024 – key compliance dates for U.S.-based multinationals (January 22, 2024): https://www.ropesgray.com/en/insights/viewpoints/102ixoo/esg-disclosures-in-2024-key-compliance-dates-for-u-s-based-multinationals • German Parliament Approves Mandatory Human Rights and Environmental Due Diligence Legislation – Near-term Steps for U.S.-based Multinationals (June 22, 2021): https://www.ropesgray.com/en/newsroom/alerts/2021/june/german-parliament-approves-mandatory-human-rights-and-environmental-due-diligence-legislation • The Pressure in Germany Is Rising: Corporate Social Responsibility Requirements are Increasing Compliance Considerations for U.S.-based Multinationals (May 11, 2021): https://www.ropesgray.com/en/newsroom/alerts/2021/may/the-pressure-in-germany-is-rising-corporate-social-responsibility-requirements-are-increasing

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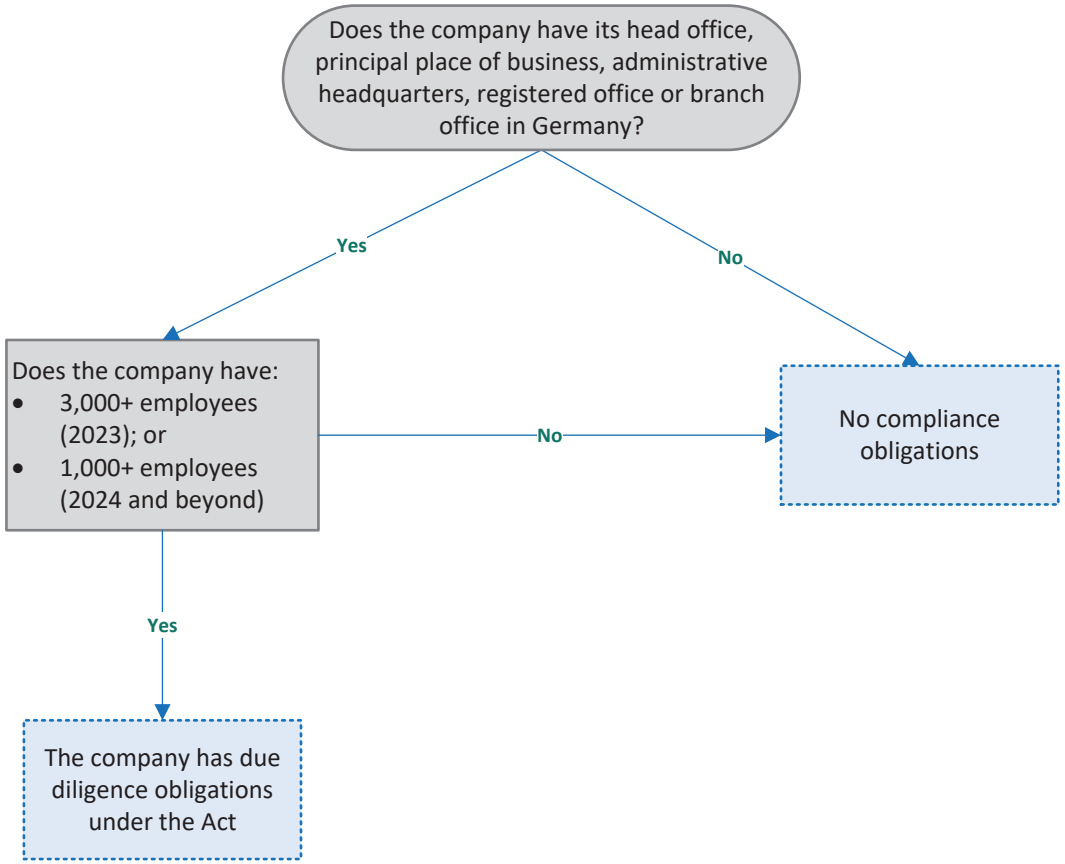
Applying the Law



Child Labor Due Diligence Act (Pending) Netherlands	
Overview	
Law / Country	**Child Labor Due Diligence Act** (No. 34 506) (the **"Act"**) (Netherlands)
Goal	To reduce child labor in the supply chain.
Adoption / Status	The Dutch Parliament adopted the Act on February 7, 2017 and the Dutch Senate approved the Act on May 14, 2019. The Act was signed October 24, 2019 and published in the Official Gazette on November 13, 2019. The Act will enter into force on a date to be determined by Royal Decree. Originally, Parliament members indicated that the Act would become effective sometime in 2022 but this did not occur. The specifics of the Act are expected to be codified in a General Administrative Order (the **"GAO"**), which has yet to be published. To the extent adopted, the Responsible and Sustainable International Business Conduct Bill initially proposed in 2021 would supersede the Act. Please see the separate summary of the Responsible and Sustainable International Business Conduct Bill for more information.
Issue Addressed	• Child labor
Covered Entities	Companies covered include: • Companies established in the Netherlands that sell or provide goods or services to end-users based in the Netherlands. • Companies established outside the Netherlands that sell or provide goods or services to end-users based in the Netherlands. For purposes of the Act, an end-user is the natural person or legal entity using or consuming the goods or purchasing the service. The Act does not specifically exempt any types of companies, but exemptions may be provided for in a subsequent GAO. 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. 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.
Definition of Child Labor	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:

	• 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; • The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; • The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; and • Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children. 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: • Any form of work performed by persons who are subject to compulsory schooling or who have not yet reached the age of 15 and • Any form of work performed by persons under 18 if the work, by virtue of its nature or the conditions under which it is performed, may endanger the health, safety or morality of young persons, except that child labor will not include light work (as defined in the Minimum Age Convention), carried out for a maximum of 14 hours a week by persons who have reached the age of 13. **"Light work"** is defined in the Minimum Age Convention as work by persons 13 to 15 years of age which is: • Not likely to be harmful to their health or development and • Not such as to prejudice their attendance at school, their participation in vocational orientation or training programs approved by a competent authority or their capacity to benefit from the instruction received.
How It Works	
Mandatory?	Yes.
Due Diligence and Action Plan	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). 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. 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.
Reporting	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 its sells or supplies to Dutch end-users from being produced using child labor. 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. 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. 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.
Enforcement	<u>Complaints</u> 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. <u>Penalties</u> 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.

	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.
Additional Information/Resources	
Law	For the text of the Act, see: https://www.eerstekamer.nl/behandeling/20170207/gewijzigd_voorstel_van_wet/document3/f=/vkbkk8pud2zt.pdf
ILO-IOE Child Labour Guidance Tool for Business	https://www.ioe-emp.org/fileadmin/ioe_documents/publications/Policy%20Areas/child_labour/EN/_2015-12-16__ILO-IOE_Child_Labour_Guidance.pdf
UN Guiding Principles	https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf
Ropes & Gray Resources	Client alerts related to the Act: • Dutch Child Labor Due Diligence Act Approved by Senate – Implications for Global Companies (June 5, 2019): https://www.ropesgray.com/en/newsroom/alerts/2019/06/dutch-child-labor-due-diligence-act-approved-by-senate-implications-for-global-companies

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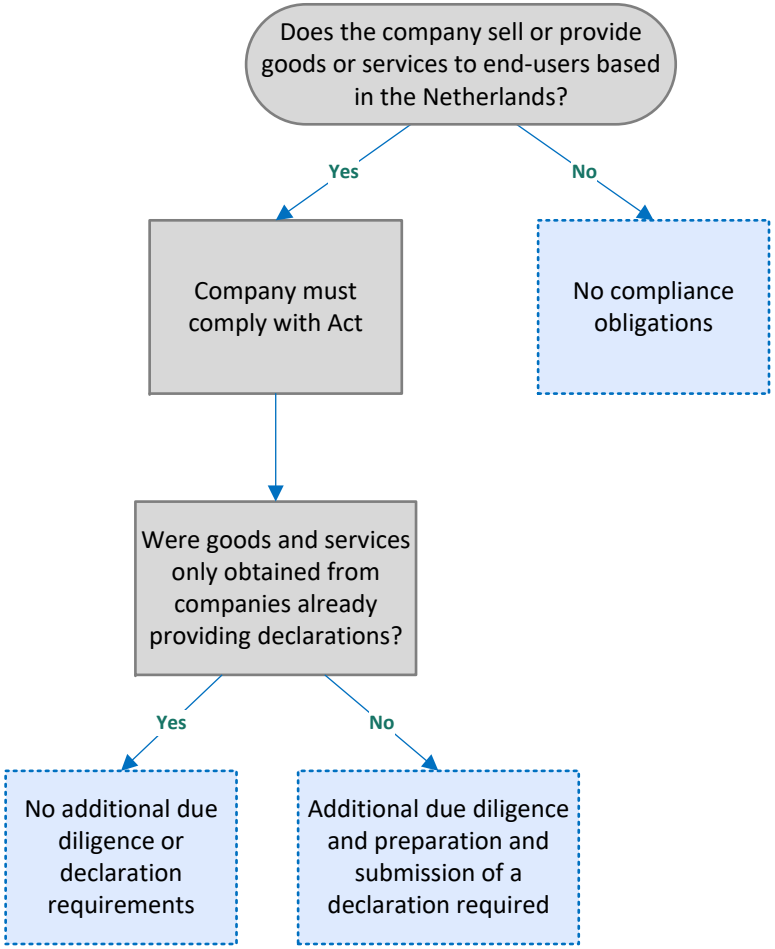
(Updated February 29, 2024)

Applying the Law



Responsible and Sustainable International Business Conduct Act (Proposed) Netherlands	
Overview	
Law / Country	**Responsible and Sustainable International Business Conduct Act** (the **"Act"**) (Netherlands)
Goal	Mitigate human rights risks, including environmental risks that can lead to human rights violations, in global supply chains.
Adoption / Status	The Act was submitted to the Dutch Parliament in March 2021. In November 2022, six Dutch political parties submitted an amended bill to the House of Representatives. If passed as amended, the Act would enter into force with effect from July 1, 2024, phasing in over a twelve-month period. If adopted, the Act would repeal the Child Labor Due Diligence Act approved by the Dutch Senate on May 14, 2019. In March 2024, the European Council and the European Parliament reached political agreement on the Corporate Sustainability Due Diligence Directive (the **"CSDDD"**). If the CSDDD is adopted, the Act will need to be harmonized with the CSDDD, assuming it is not superseded by other proposed regulations. The CSDDD is discussed in a separate summary.
Issues Addressed	• Animal welfare • Child labor • Climate change • Forced labor • Human rights • Labor rights

Covered Entities	An undertaking would be subject to the Act if it:
	• Is a Dutch or other EU undertaking that engages in activities outside the Netherlands; or
	• Is a non-EU undertaking engaging in activities or marketing products in the Netherlands;
	and it
	• Is a large undertaking under the EU Accounting Directive, i.e., it meets at least two of the following thresholds for the applicable fiscal year:
	  ◦ A balance sheet of €25 million;
	  ◦ Net turnover of €50 million; and
	  ◦ An average of 250 employees during the financial year (including part time and agency workers).

How It Works	
Mandatory?	Yes.

Duty of Care	Subject undertakings that know or should reasonably suspect that their activities, or those of their business relationships, may have adverse impacts on human rights or the environment in countries outside of the Netherlands would be required to: • Take all measures reasonably required to prevent such adverse impacts; • If the impacts cannot be prevented, mitigate or reverse them to the extent possible and, where necessary, enable remediation; and • If the impacts cannot be sufficiently limited, refrain from the relevant activity or terminate the relationship if it is reasonable to do so. **"Business relationships"** would include contractors, subcontractors or other legal entities in an undertaking's value chain that are linked to the undertaking's activities, including the financing, insurance or reinsurance of the undertaking. **"Value chain"** would be defined as the entirety of an undertaking's activities, services, products, production lines, supply chain and customers, as well as the activities of its business relationships. Human rights and/or the environment would be adversely impacted if the value chain involves: • Restriction of freedom of association and collective bargaining; • Discrimination; • Forced labor; • Child labor; • Changes in the climate that are directly or indirectly attributed to human activity, that change the composition of the atmosphere and that are observed in addition to natural climate variability during comparable periods; • Environmental damage; • Unsafe working conditions; • Violations of animal welfare regulations; • Slavery; or • Exploitation.
Due Diligence Generally	**"Due diligence"** would be defined as the continuous process whereby undertakings investigate, prevent, mitigate or terminate the potential and actual adverse impacts of their activities and those of their business relationships on human rights and the environment in countries outside the Netherlands, which those undertakings can use to account for the way they tackle those impacts as an integral part of their decision-making process and risk management system, in accordance with the principles and standards of the Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises (**"OECD MNE Guidelines"**). Undertakings would be able to fulfill their due diligence obligations jointly if it achieves at least the same result as intended under the Act. Joint implementation would be able to take place after prior notification to the Authority for Consumers and Markets that explains why the joint implementation is equivalent, while retaining the undertaking's individual responsibility to fulfill its due diligence obligations.

Management Systems	Policy Requirement Subject undertakings would be required to publish a policy in which they commit to exercise due diligence in their value chain. The policy would be required to be prepared in consultation with stakeholders, experts and business relationships and include the following elements: • A statement committing to respect human rights and the environment and to conduct due diligence in accordance with the OECD MNE Guidelines; • A code of conduct describing the obligations and principles of due diligence that the undertaking's employees must comply with; • A description of the policy the undertaking has drawn up that takes into account the detected risks of adverse impacts in its activities and those of its business relationships; • The undertaking's due diligence plan, containing a specific description of how it will comply with the requirements of the Act in its activities and those directed towards its business relationships; and • A description of the activities the undertaking will terminate. Undertakings would be required to update the policy annually based on changes in business activities, the value chain, potential and actual risks of adverse impacts and the results of monitoring. The policy would be required to be published on the undertaking's website in Dutch, English and any relevant local language. The undertaking would be required to communicate the policy internally to relevant employees and externally to other stakeholders, experts and business relationships. A **"stakeholder"** would be a person, a group of persons, one or more employees of an undertaking or one or more communities or entities whose rights or interests are or may be directly affected by a lack of due diligence on the part of an undertaking or organization whose objectives under its articles of association include promoting the interests of human rights or the environment. The obligations to adopt a policy and incorporate it into management systems and business processes would be required to be met within six months of the entry into force of the Act. Business Processes Subject undertakings would be required to integrate due diligence into management systems and business processes and to make adequate financial and human resources available to implement the policy. Responsibility for implementation would be required to sit with a director of the undertaking. Where relevant, undertakings also would be required to include covenants in agreements with business relationships relating to compliance with the code of conduct. If an undertaking's variable compensation is tied to a director's contribution to the corporate strategy and long-term interests in sustainability issues, the director's contribution to the preparation of and compliance with the climate plan described below would be required to be considered.

	Monitoring Subject undertakings would be required to annually monitor the application and effectiveness of their due diligence policy and associated measures. This process would be required to be overseen by the director designated as responsible for the implementation of due diligence. Monitoring would occur by: • Collecting information on the execution of the policy, the action plan and the climate plan; • Collecting information on changes in adverse impacts on human rights or the environment as a result of the measures taken; • Consulting relevant stakeholders, experts and business relationships; • Investigating the substance and number of complaints; and • Verifying a sample of the monitoring results. Undertakings would be able to conduct monitoring together with other undertakings or have it conducted by an independent third party. Undertakings would also be required to implement findings from monitoring into their policy and business processes, action and climate plans and public reports. The obligation to monitor would need to be met within one year of the entry into force of the Act. Complaints Mechanism Subject undertakings would be required to ensure that a process is in place to enable stakeholders to submit complaints to the undertaking. The process would be required to be designed such that: • It is easily accessible; • It describes the procedure for the submission and handling of complaints; • The director responsible for policy execution speaks with the complaining stakeholder about severe adverse impacts; • The outcome of the complaints handling and, where necessary, the remediation are consistent with the remediation requirements described in this summary; and • Experiences gained from the remediation mechanism are used to improve it. The procedure for the submission and handling of complaints would be required to be published on the undertaking's website in Dutch, English and any relevant local language, and would be required to include: • Time limits for the procedure; • Timely and adequate information about the handling and follow-up of a complaint to the stakeholder; and • Where an independent dispute resolution committee is involved, a description of the committee's powers and the degree to which its opinion is binding.

Assessing Adverse Impacts	Subject undertakings would be required to annually investigate, collect information on and analyze potential and actual risks of adverse impacts on human rights, climate change and the environment in their own activities and those of their business relationships. This would be required to include: • Investigating and analyzing the entire value chain; • Identifying the risks related to the sector, the geography and product- and undertaking-specific risk factors; and • To the extent reasonably knowable and relevant to the undertaking, collecting information from complaints or reports of stakeholders, experts, international and civil society organizations, the media, national human rights institutions, government authorities, employee representatives, trade unions or business relationships. Subject undertakings would be required to assess their involvement in the identified actual or potential risks of adverse impacts. For risks involving a business relationship, undertakings would be required to assess the extent to which the business relationship has a due diligence policy addressing the risks. After investigation, undertakings would be expected to prioritize the identified risks based on their severity and the probability of the potential and actual adverse impacts, in consultation with stakeholders, experts and business relationships. The requirement to perform a risk assessment would be required to be met within nine months of the entry into force of the Act.
Addressing Adverse Impacts	<u>Risk Action Plan</u> After the assessment process, subject undertakings would be required to adequately address identified potential and actual risks of adverse impacts on human rights and the environment. This would include creating a detailed action plan to prevent, mitigate or terminate the risks. If multiple risks are identified, the undertaking would be expected to prioritize the risks to be addressed based on their severity. An action plan would be required to include: • A description of the identified potential and actual risks of adverse impacts on the value chain as a whole; • The quantitative and qualitative targets for the measures taken to prevent, mitigate or terminate every risk, in order of priority; • A description of the influence that is or will be exerted on business relationships in the event that potential and actual risks are identified in their business; • An allocation of duties among people employed by the undertaking or external parties with a view to implementing the plan; and • The financial basis for every measure. Undertakings would be required to publish the action plan on their website in Dutch, English and any relevant local language. The requirement to prepare an action plan would be required to be met within nine months of the entry into force of the Act.

	Climate Plan If an undertaking identifies a potential or actual risk of adverse impacts relating to climate change, it would need to develop a climate plan. A climate plan would be required to include objectives to reduce net greenhouse gas emissions by at least 55% in 2030 compared to 1990 levels. This is consistent with the target set in the July 2021 European Climate Law. Consistent with the requirements relating to risk action plans, subject undertakings would be expected to prioritize their response to identified climate risks and the climate plan would be required to be published. The requirement to prepare a climate plan would be required to be met within nine months of the entry into force of the Act. Termination of Business Activities If a subject undertaking's actions to prevent or mitigate adverse impacts are ineffective, the undertaking would ultimately be required to terminate the activity if the undertaking causes or contributes to the adverse impacts. When deciding whether termination is necessary, the undertaking would need to take into account: • The degree to which the activity is essential to the undertaking; • The legal consequences of continuation or termination; • The degree to which the termination affects the adverse impacts; • Information on the possible negative, social and economic impacts that the termination will have on stakeholders or business relationships; and • The views of stakeholders, experts and business relationships regarding the termination. The undertaking would be required to designate a director to be responsible for developing and implementing the termination plan. Adverse Impacts of a Business Relationship If an adverse impact occurs due to an activity of a business relationship, the undertaking would be required to use its leverage to influence the business relationship to prevent, mitigate or terminate that impact. This would include: • Providing information on the adverse impact resulting from the business relationship's activity; • Offering appropriate assistance in the prevention, mitigation or termination of the adverse impact or the termination of the activity; • Disclosing the information on the adverse impact in an accessible manner on its website in Dutch, English and any relevant local language; or • Announcing that it will terminate the relationship either temporarily or permanently to comply with its due diligence policy. If the undertaking's actions to prevent or mitigate the adverse impacts of a business relationship are ineffective, the undertaking may need to terminate the business relationship, either temporarily or permanently. In reaching a decision to terminate a business relationship, an undertaking would be required to take into account the same considerations to be taken

	into account in connection with a termination of its own activities and to designate a director to be responsible for implementing the termination plan, as earlier described.

Remediation of Adverse Impacts	If a subject undertaking has caused or contributed to adverse impacts on human rights or the environment or is directly linked to adverse impacts through a business relationship's activities, the undertaking would be required to provide, enable or contribute to adequate remediation, as applicable.
	
	If a complaint is substantiated, the undertaking would be required to take the following steps, to the extent of its involvement:
	
	• If it caused the adverse impact, it would ultimately be required to terminate the activity causing that impact (taking into account the factors earlier noted in this summary) and remediate the adverse impact.
	• If it contributed to the adverse impact:
	  ◦ It would be required to use its leverage to prevent and mitigate the impact to the extent possible; and
	  ◦ It would be required to ultimately cease contributing to the adverse impact and contribute to its remediation.
	• If there is a direct link between the adverse impact and the activities of the subject undertaking's business relationship:
	  ◦ The undertaking would be required to use its leverage to prevent and mitigate the impact to the extent possible; or
	  ◦ The undertaking would be required to ultimately terminate the business relationship, with due regard to the factors earlier noted in this summary.
	
	Remediation would be able to be achieved by the following:
	
	• Concrete measures to prevent, mitigate or terminate the adverse impacts;
	• Internal or external communications about the adverse impacts;
	• Sanctions on the subject undertaking's employees;
	• Compensation for the loss and damage suffered by affected persons or groups of persons;
	• Financial compensation for the affected community;
	• Rehabilitation of the stakeholder; or
	• Written apologies to the stakeholder by a director or the undertaking's board.
	
	The obligation to have a remediation mechanism would need to be met within one year of the entry into force of the Act.

Reporting	The director responsible for the implementation of due diligence would be required to annually report to the subject undertaking's board on the implementation and execution of the policy.

	Subject undertakings would be required to annually publish a report on their policy and due diligence measures. The report would be required to be published on the undertaking's website in Dutch, English and any relevant local language by April 30 of the subsequent calendar year. Reports would be required to include information on: • The results of the risk assessment and prioritization effort; • The execution of the action and climate plans; • The measures taken to prevent, mitigate or terminate risks of adverse impacts and their results; • The execution of and findings from monitoring; • Complaints received; and • The remediation offered or the contribution made to it. The obligation to prepare a report would need to be met within one year of the entry into force of the Act.
Enforcement and Penalties	Enforcement of the Act would be overseen by the Authority for Consumers and Markets (the **"Authority"**). The Authority would be able to compel compliance with the Act and impose a penalty of up to 10% of an undertaking's net turnover. In addition to the Authority, foundations and associations whose objectives under its articles of association are to promote the interests of human rights or the environment would be able to bring civil actions against subject undertakings. If the party bringing the action puts forward facts that may give rise to a suspicion of a link between the adverse impact and an undertaking's acts or omissions, the burden would be on the undertaking to prove it has not acted in breach of an obligation under the Act.
Additional Information/Resources	
The Act	For an unofficial English translation of the amended Act, see: https://www.mvoplatform.nl/en/english-translation-of-the-bill-for-responsible-and-sustainable-international-business-conduct/
Ropes & Gray Resources	Client alerts related to the Act: • An Update on Proposed Dutch Mandatory Human Rights Due Diligence Legislation – The November 2022 Amended Bill (January 5, 2023): https://www.ropesgray.com/en/newsroom/alerts/2023/01/an-update-on-proposed-dutch-mandatory-human-rights-due-diligence-legislation-the-november-2022

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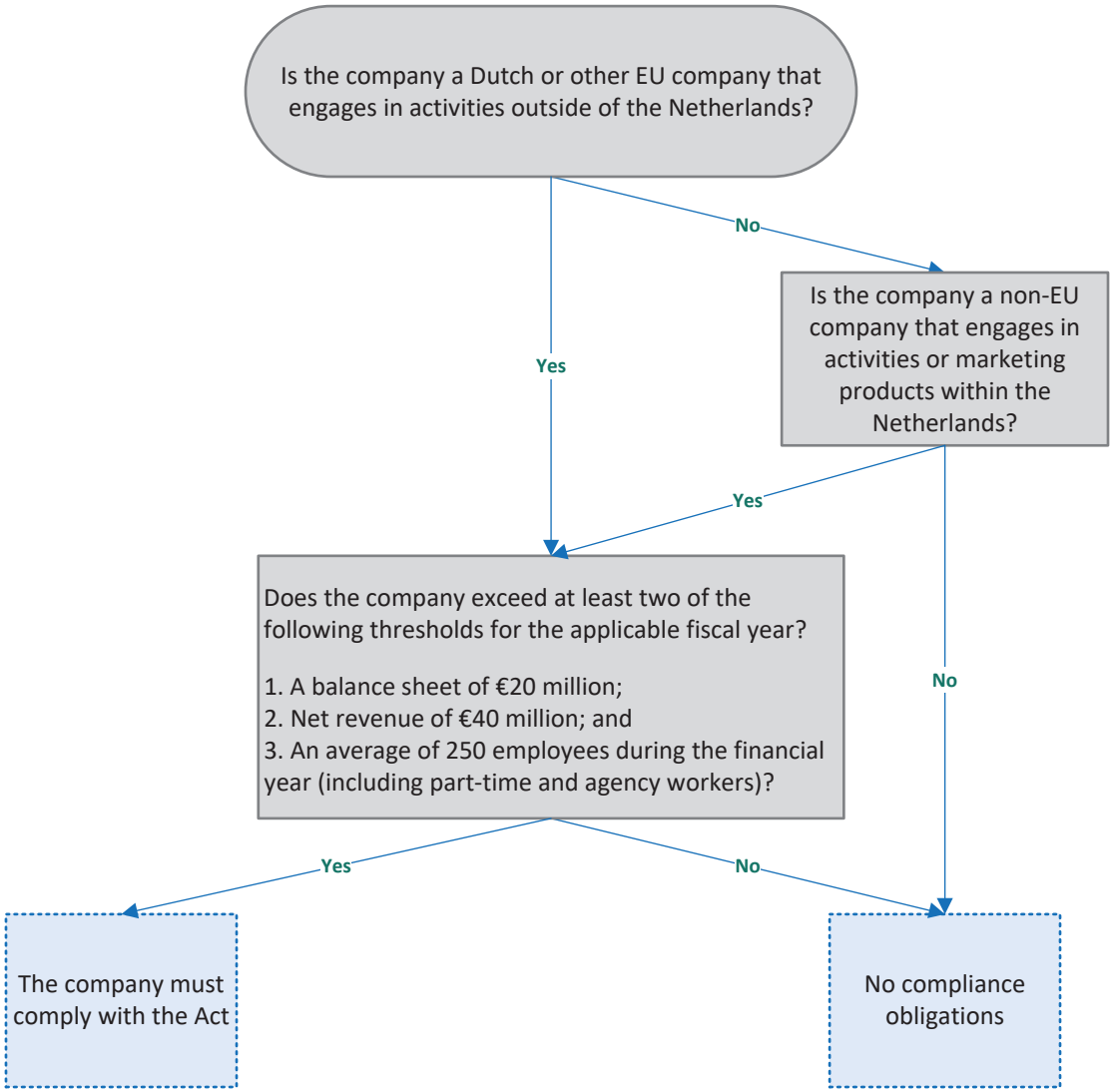
(Updated March 31, 2024)

Applying the Law



Modern Slavery Act (Proposed) New Zealand	
Overview	
Law / Country	**NZ Modern Slavery Act** (the **"Act"**) (New Zealand)
Goal	To reduce modern slavery and worker exploitation through heightened diligence and disclosure and required mitigation actions.
Adoption / Status	In March 2021, the New Zealand government committed to a five-year Plan of Action against Forced Labour, People Trafficking and Slavery, a high-level framework aimed at minimizing exploitation both in New Zealand and internationally. As part of the Plan of Action, the government committed to considering legislation to address modern slavery and worker exploitation in supply chains. On April 8, 2022, the New Zealand government released a proposal for legislation and initiated a public consultation period. The consultation period closed June 7, 2022, culminating in 5,614 submissions received. The results of the consultation were analyzed and reported to the Minister for Workplace Relations and Safety for consideration in preparation of the language of the Act. The Ministry of Business, Innovation and Employment (the **"Ministry"**) published a summary of feedback from the consultation, noting that there was strong support for the Act's objectives and a graduated approach. On July 28, 2023, New Zealand's then Labour-led government announced that it was in the process of drafting the Act based on the public consultation. However, New Zealand's new National-led government was sworn in in November 2023, causing many to question the future of the Act. The Ministry spoke to news outlets stating: "Decisions on whether to progress proposed legislation to address modern slavery will be made by the new government in due course."
Issues Addressed	• Modern slavery • Worker exploitation
Covered Entities	The proposal encompasses all types of entities, including companies, partnerships and trusts. As proposed, diligence and disclosure responsibilities under the Act would be graduated based on the size of the subject entity. An entity would be considered small, medium or large based on its consolidated annual revenue in its most recently completed fiscal year. The thresholds contemplated by the proposal are: • Small entity – Annual revenue below NZ$20 million; • Medium entity – Annual revenue above NZ$20 million and below NZ$50 million; and • Large entity – Annual revenue above NZ$50 million.
How It Works	
Mandatory?	Yes.

Mitigation Requirements	The proposal would require all subject entities to take reasonable and proportionate action if they become aware of: • Modern slavery in their domestic and international operations and supply chains, or • Worker exploitation in their domestic operations and supply chains. Such actions could include reporting the case to the appropriate authority, working with suppliers to address the harm, changing suppliers or taking steps to mitigate any risks identified. • **"Modern slavery"** would be defined as severe exploitation that a person cannot leave due to threats, violence, coercion, deception and/or abuse of power, including forced labor, debt bondage, forced marriage, slavery and slavery-like practices and human trafficking. • **"Exploitation"** would be defined as any behavior that causes, or increases the risk of, material harm to the economic, social, physical or emotional well-being of a person. **"Worker exploitation"** would include non-minor breaches of employment standards in New Zealand. • **"Operations"** would be construed broadly to include all activities undertaken by an entity in furtherance of its business objectives and strategies, including all material relationships an entity has that are linked to its activities, including, for example, investment and lending activity, material shareholdings and direct and indirect contractual relationships (such as subcontracting and franchising relationships). • **"Supply chains"** would be the network of organizations that work together to transform raw materials into finished goods and services for consumers. They would include all activities, organizations, technology, information, resources and services involved in developing, providing or commercializing a good or service into the final product for end consumers.
Due Diligence Requirements	As noted above, due diligence requirements under the proposal would vary based on the size of the entity. <u>Small and Medium Entities</u> Small and medium entities would be required to undertake due diligence to prevent, mitigate and remedy modern slavery and worker exploitation by New Zealand entities where the small or medium entity is (1) the parent or holding company or (2) otherwise has significant contractual control, direct or indirect, over the affairs of another entity operating in New Zealand. If either factor applies, the small or medium entity would be required to: • Identify and assess the risk of modern slavery and worker exploitation by entities in its operations and supply chains that it has significant control or influence over; • Consider measures it could implement to address and manage any identified risk of modern slavery and worker exploitation, and assess whether the measures are reasonable under the circumstances and proportionate to the risk; • Implement measures that are reasonable under the circumstances and proportionate to the risk; and • Implement systems to evaluate the measures taken.

	<u>Large Entities</u> Large entities would be required to undertake due diligence to prevent, mitigate and remedy (1) modern slavery in their domestic and international operations and supply chains and (2) worker exploitation in their domestic operations and supply chains. This responsibility would be aligned with the responsibility of small and medium entities to undertake due diligence to prevent, mitigate and remedy modern slavery and worker exploitation by New Zealand entities they have significant control over (as earlier discussed). However, for large entities, the scope would be significantly broader. The responsibility would apply with respect to modern slavery to the international operations and supply chains of the large entity. In addition, domestically, the responsibility would apply across the large entity's entire operations and supply chain. It would not be limited to other entities the large entity has significant control or influence over (as would be the case for small and medium entities). Specific due diligence steps required to be taken would be influenced by an entity's risk assessments and consideration of measures to address identified risks in a reasonable and proportionate manner.
Reporting Requirements	Medium and large entities would be required to disclose steps they are taking to address (1) modern slavery in their domestic and international operations and supply chains and (2) worker exploitation in their domestic operations and supply chains. The proposal would require a "prescribed disclosure" approach, meaning that entities would be required to disclose information on specific issues. The proposal has not outlined requirements for the length, format or frequency of such reporting obligations.
Enforcement	The proposal notes that penalties could apply for failing to take appropriate and/or adequate action mandated by its responsibilities. Amounts of such penalties are not currently specified, and the proposal does not specifically contemplate criminal penalties.
Additional Information/Resources	
NZ Plan of Action Against Forced Labour, People Trafficking and Slavery	For the New Zealand government's plan of action, which contemplates the proposed Act, see: https://www.mbie.govt.nz/dmsdocument/13568-combatting-modern-forms-of-slavery-plan-of-action-against-forced-labour-people-trafficking-slavery
The Consultation	For the New Zealand government's overview of the consultation process and timeline, see: https://www.mbie.govt.nz/have-your-say/modern-slavery/ For the summary of feedback on the consultation, see: https://www.mbie.govt.nz/assets/consultation-on-legislation-to-address-modern-slavery-and-worker-exploitation-summary-of-feedback.pdf

Ropes & Gray Resources	Client alerts related to the Act: • New Zealand Next on Deck for Corporate Modern Slavery Reporting (July 31, 2023): https://www.ropesgray.com/en/insights/viewpoints/102il23/new-zealand-next-on-deck-for-corporate-modern-slavery-reporting • New Zealand Moves Toward Proposal of Modern Slavery Legislation that Would Create New Compliance Obligations for U.S.-based and Other Multinationals (May 20, 2022): https://www.ropesgray.com/en/newsroom/alerts/2022/may/new-zealand-moves-toward-proposal-of-modern-slavery-legislation-that-would-create-new-compliance

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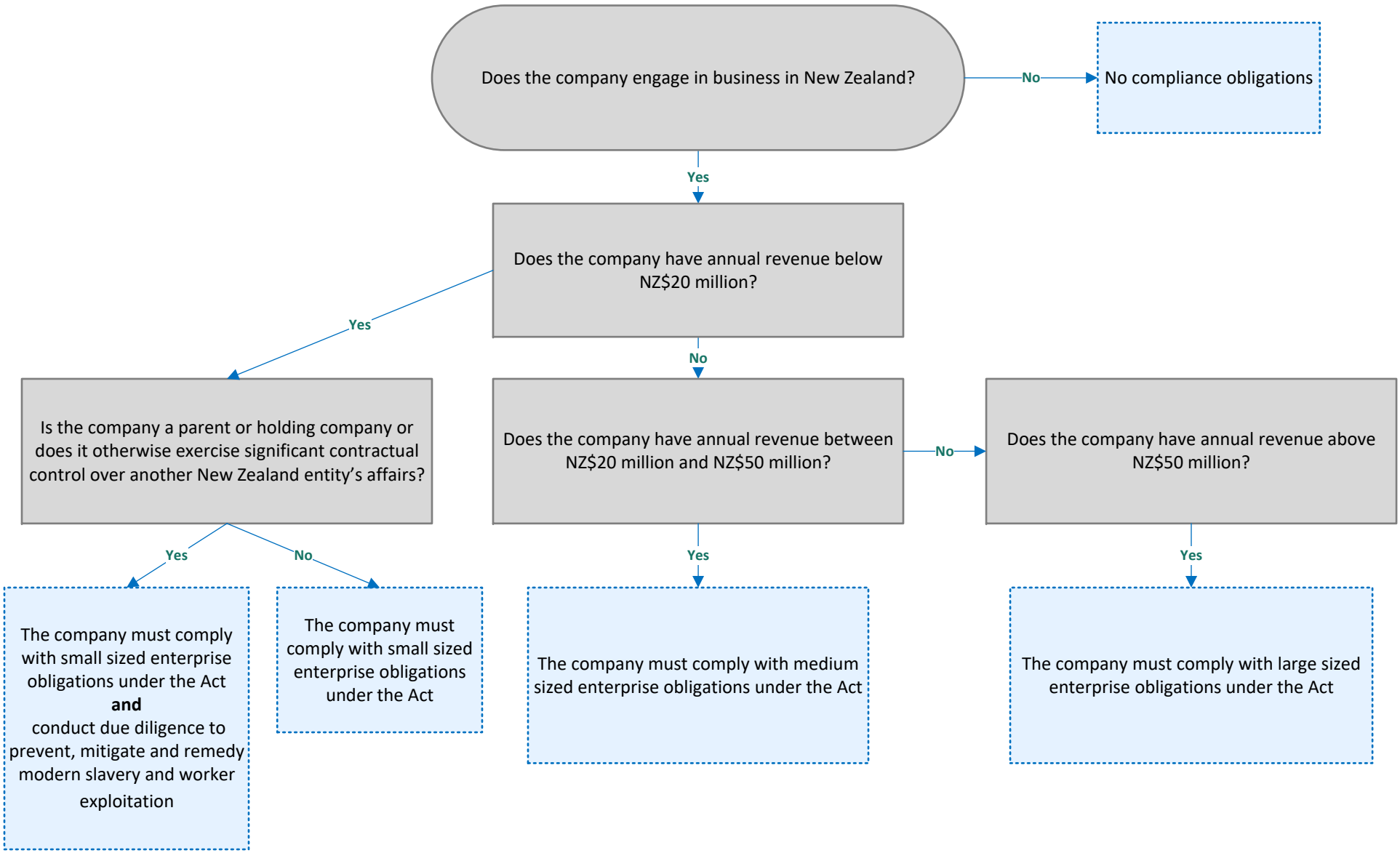

Transparency Act Norway	
Overview	
Law / Country	**Transparency Act** (Innst. 603 L (2020–2021)) (the **"Act"**) (Norway)
Goal	To promote the respect of businesses for fundamental human rights and decent working conditions in connection with the production of goods and the provision of services, and to provide public access to information about how businesses deal with adverse impacts of fundamental human rights and decent working conditions.
Adoption / Status	The Act took effect on July 1, 2022 and the first public reports were required to be published by June 30, 2023. In March 2024, the European Council and the European Parliament reached political agreement on the Corporate Sustainability Due Diligence Directive (the **"CSDDD"**). If the CSDDD is adopted, the Act will need to be harmonized with the CSDDD. The CSDDD is discussed in a separate summary.
Issue Addressed	• Decent working conditions • Fundamental human rights **"Decent working conditions"** are work that safeguards fundamental human rights in accordance with the foregoing instruments and health, safety and the environment and provides a living wage. **"Fundamental human rights"** are internationally recognized human rights pursuant to, among other things, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the ILO core conventions on fundamental principles and rights at work. The 2023 Guidance (as later defined) notes that, at a minimum, this covers the prohibition of slavery, the right to work and to fair and favorable working conditions, non-discrimination and equal treatment for equal work, the right to rest and leisure, reasonable limitation of working hours and regular holidays with pay.
Covered Entities	The following enterprises are subject to the Act: • Large enterprises domiciled in Norway, irrespective of where they provide goods and services. • Large foreign enterprises that offer goods and services in Norway that are taxable in Norway pursuant to internal Norwegian legislation. Goods and services are interpreted broadly. They are not limited to conventional commercial activities provided to third-parties. Furthermore, it is not necessary for the enterprise to receive monetary compensation or other advantages for the goods and services provided. Internal services within a group of companies come within the Act's scope according to the Guidance (as later defined). The same also is the case for intra-group loans or administrative services within the group.

	Large enterprises are enterprises covered by Section 1-5 of the Norwegian Accounting Act, or which on the applicable balance sheet date exceed two of the following thresholds: • Sales of NOK 70 million. • Balance sheet amount of NOK 35 million. • Average number of employees during the fiscal year of 50. Under Section 1-5 of the Norwegian Accounting Act, large enterprises include: • Public limited companies; • Reporting entities, the shares, units, primary capital certificates or bonds of which are listed on a securities exchange, authorized marketplace or corresponding regulated market outside Norway; or • Other reporting entities if stipulated in regulations laid down by the Ministry of Finance Subsidiaries are taken into account for determining whether a parent company domiciled in Norway is a large enterprise. This same consolidation rule does not apply to foreign parent companies. For a foreign enterprise without a subsidiary company organized in Norway through which it conducts its Norwegian activities, the assessments of the thresholds should be considered based on the enterprise's activities within Norway. The Ministry of Children and Family Affairs is also authorized to exempt large enterprises from compliance with the Act.
How It Works	
Mandatory?	Yes.
Due Diligence Requirement	Subject enterprises are required to carry out due diligence in accordance with the OECD Guidelines for Multinational Enterprises. Due diligence is intended to include the following: • Embedding accountability in the enterprise's policies; ◦ The Guidance states that enterprises must create, or update their existing, guidelines and policies so that they are in line with the Act. Specifically, the guidelines must include: (1) how to act responsibly; (2) the enterprise's expectations of supplier and business partner accountability; and (3) the enterprise's due diligence plans. The Guidance also notes that an enterprise's guidelines should be clearly communicated to employees, suppliers and business partners. • Mapping and assessing actual and potential adverse impacts on fundamental human rights and decent working conditions that the business has caused or contributed to, or that are directly related to its activities, products or services through suppliers or business partners; • Implementing appropriate measures to cease, prevent or limit adverse impacts based on the enterprise's mapping and risk assessment; • Tracking the measures implemented and their results;

	○ The Guidance states that enterprises must investigate: (1) how many of the measures were implemented on time; (2) how well the measures have worked; and (3) whether harm to individuals or groups has been averted or managed. Enterprises are also encouraged solicit stakeholder feedback as part of this investigation. • Communicating with affected stakeholders regarding how adverse impacts are addressed; and ○ The Guidance states that enterprises must provide stakeholders with information about the negative consequences that affect them and what measures the enterprise has taken. This information must be communicated in a manner that takes into account the recipient's culture, language, literacy, location, time zone and level of knowledge. • Cooperating with remediation where required. Due diligence is to be carried out regularly and in relation to the size of the enterprise, the nature of the enterprise, the context within which its business takes place and the severity and likelihood of adverse impacts on fundamental human rights and decent working conditions. The 2023 Guidance provides a non-exhaustive list of examples of human rights and ways in which enterprises could potentially have negative impacts on those rights as a reference point for risk assessments. The 2023 Guidance further states that enterprises should focus in particular on rights that are disproportionately threatened in certain industries or contexts. In the event of armed conflicts or other situations of increased risk of serious human rights abuses, enterprises should carry out stricter due diligence assessments.
Disclosure Requirement	<u>Content</u> Subject enterprises must publish a statement containing at least the following: • A general description of the business, its area of operation and guidelines and procedures for addressing actual and potential adverse impacts on fundamental human rights and decent working conditions; • Adverse impacts and significant risks of adverse impacts uncovered through due diligence; and • The measures the enterprise has implemented or plans to take to cease or limit the adverse impacts, and the results or expected results of the measures. The Guidance states that the statement must be published in Norwegian (subject to the limited exceptions noted below), but the enterprises may publish the statement in additional languages as well. <u>Timing</u> The statement must be updated and published by June 30 each year and otherwise in the event of significant changes in the enterprise's risk assessment.

	Publication The statement must be made available on the enterprise's website. If the enterprise does not have a website, the statement must be made readily available by other means. It also may be included in the enterprise's corporate social responsibility report pursuant to Section 3-3(c) of the Accounting Act. The statement generally must be published in Norwegian. If an enterprise has an exemption to present its corporate social responsibility report in a language other than Norwegian, the enterprise may publish its statement in the same language. In addition, if the enterprise provides its accounting documents pursuant to Section 8-2 of the Accounting Act in Norwegian, Danish, Swedish or English, the enterprise may publish its statement in the same language that it provides its accounting documents. The Guidance states that information regarding where the statement may be accessed must be included in the enterprise's annual report. Signature The statement must be signed by the full board of directors or equivalent body of the subject enterprise in accordance with Section 3-5 of the Accounting Act. The Guidance states that if a joint statement has been prepared, the parent company may not sign the joint statement on behalf of the subsidiaries covered by the joint statement. All subject enterprises have a duty to publish a statement and therefore each enterprise covered by a joint statement must independently sign the statement.
Third-party Information Rights	Upon written request, third parties are entitled to information from the enterprise concerning how it addresses identified actual and potential adverse impacts. The Guidance states that the answer to such request must be adequate and comprehensible. According to the Guidance, the answer must be provided in Norwegian but the enterprise may also respond to the request in the language in which the request was received. A request for information may be denied if: • The request does not contain sufficient information to identify what the request applies to; • The request is manifestly unreasonable; however, this cannot be used as a basis to exclude information concerning actual adverse impacts relating to fundamental human rights; • The request is for personal information; or • The requested information involves facilities and procedures or other operational or business matters that are competitively sensitive. Timing The enterprise must provide the requested information in writing within a reasonable time, but generally no later than three weeks after the request is received. However, if the request is burdensome, the enterprise has up to two months to provide the information. In the case of a burdensome request, the enterprise must, within the three-week period, notify the requesting party in writing of the extension, the reasons for the extension and when the information is expected to be provided.

	If the information request is denied, the enterprise must provide the basis for the denial. If a request for information is denied, within three weeks after receipt of the rejection, the requesting party may request a more detailed justification for the rejection, which must be provided in writing within three weeks after receipt of that request.
Further Regulation	The Ministry of Children and Family Affairs has the authority to adopt additional regulations concerning fundamental human rights and decent working conditions for purposes of the Act, due diligence, reporting, access to information and the processing of information requests, and fines.
Guidance	The Norwegian Consumer Authority issued guidance on the Act on its website (the **"Guidance**"). Selected information from the Guidance has been incorporated in this summary. In October 2023, the Norwegian National Human Rights Institution, in partnership with the National Contact Point for Responsible Business Conduct Norway, published guidance on certain human rights risks (the "**2023 Guidance**"). Selected information from the 2023 Guidance has been incorporated in this summary.
Enforcement	The Norwegian Consumer Authority is responsible for enforcement of the Act. If there is a violation, it may issue an order requiring compliance or enjoin the violation and impose fines if the order or injunction is not complied with. In the case of repeated violations, individuals acting on behalf of the enterprise who intentionally or negligently violate the Act may be fined. On February 14, 2023, the Ministry of Children and Family Affairs announced a new regulation setting forth the factors to consider when determining the fine for a violation of the Act. Under the regulation, the maximum fine for a violation of the Act is 4% of the enterprise's annual turnover, up to NOK 25 million. When determining the amount of a fine, consideration may be given to: • The preventative effect of the sanctions; • The nature, seriousness, extent and duration of the infringement, and whether anyone acting on behalf of the enterprise has demonstrated guilt; • Whether the enterprise could have prevented the violation by means of guidelines, instruction, training, control or other measures; • Whether the infringement has been committed in furtherance of the interests of the enterprise; • Any measures taken by the enterprise to limit or remedy the damage suffered by consumers; • Whether the enterprise has had or could have obtained financial or other benefits as a result of the infringement; • The enterprise's possible previous violations and whether there is a recurrence; • The financial ability of the enterprise; • Whether other sanctions are imposed or imposed as a result of the offence, including whether the enterprise has been sanctioned for the same offence in other EU Member States in cross-border cases; • Whether an agreement with a foreign state or international organization presupposes the use of administrative sanctions or corporate penalties; and

	• Any other aggravating or extenuating circumstances in the case. When assessing compulsory fines, emphasis will be placed on: • The type of order that has not been complied with; • The seriousness of the failure to comply with the order in relation to the considerations that the order is intended to safeguard; • How burdensome it will be for the enterprise to comply with the order; • The financial ability of the enterprise; and • Any benefits of not complying with the order.
Additional Information/Resources	
Law	For the text of the Act, see: https://stortinget.no/globalassets//pdf/lovvedtak/2020-2021/vedtak-202021-176.pdf
Regulation Relating to Fines	For the regulation relating to the assessment of fines, see: https://lovdata.no/dokument/LTI/forskrift/2023-02-14-193
OECD Guidelines	For the OECD Guidelines for Multinational Enterprises, see: https://www.oecd.org/daf/inv/mne/48004323.pdf
Guidance	For the Guidance, see: https://www.forbrukertilsynet.no/apenhetsloven For the 2023 Guidance, see: https://www.nhri.no/wp-content/uploads/2023/10/Tabell-MR-eksempler.pdf
Ropes & Gray Resources	Client alerts related to the Act: • Complying with the Norwegian Transparency Act in year 2 – an update for U.S.-based multinationals (November 27, 2023): https://www.ropesgray.com/en/insights/viewpoints/102itpn/complying-with-the-norwegian-transparency-act-in-year-2-an-update-for-u-s-base • New Norwegian Mandatory Human Rights Due Diligence Law Creates Obligations for U.S.-based Multinationals Doing Business in Norway (December 15, 2021): https://www.ropesgray.com/en/newsroom/alerts/2021/december/new-norwegian-mandatory-human-rights-due-diligence-law-creates-obligations-for-us

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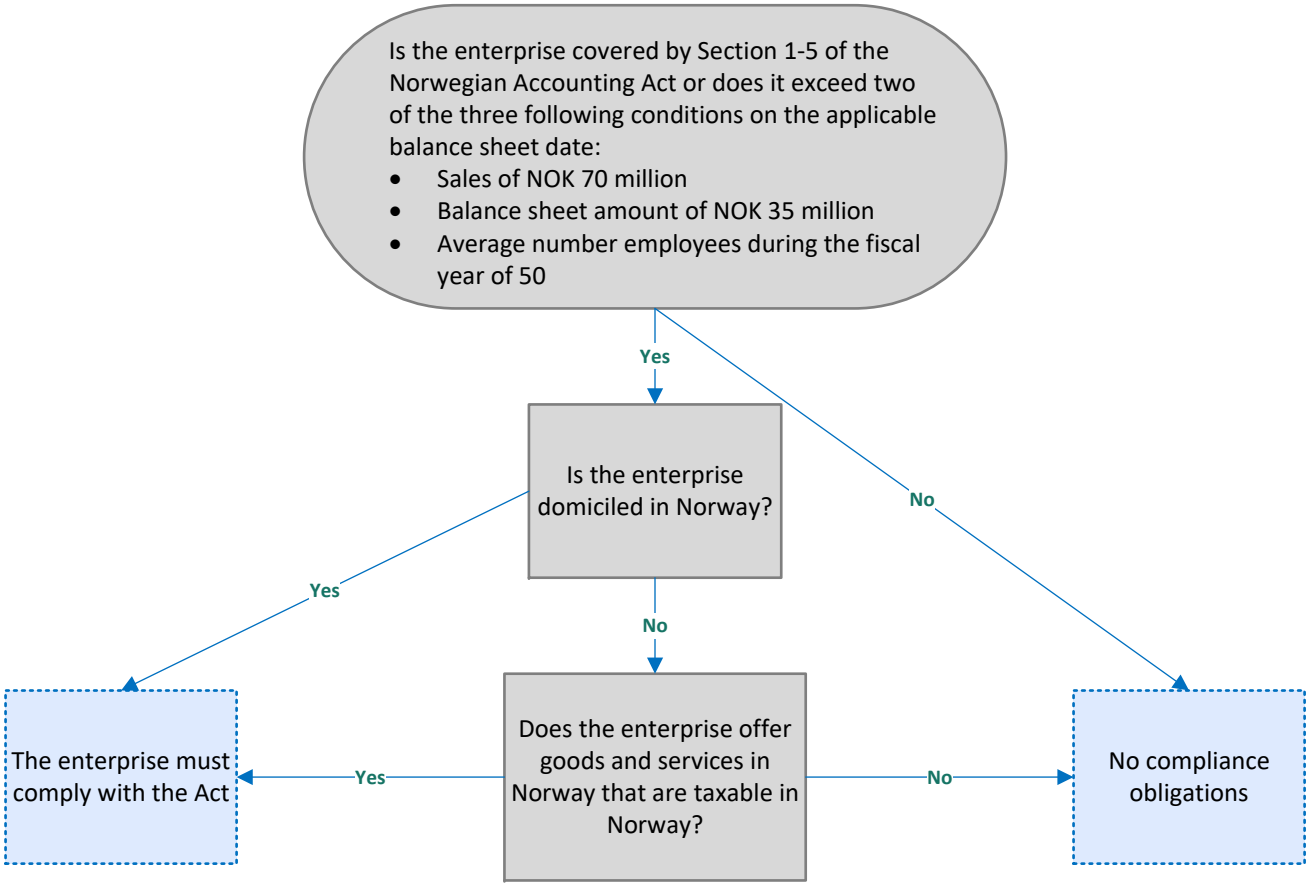

Act on Human Rights and Environmental Protection for Sustainable Management of Companies (Proposed) South Korea	
Overview	
Law / Country	**Act on Human Rights and Environmental Protection for Sustainable Business Management** (No. 2124147) (the **"Act"**) (South Korea)
Goal	To mitigate human rights and environmental risks in corporate operations and supply chains.
Adoption / Status	National Assembly members from the Democratic Party of Korea proposed the Act on September 1, 2023. The Act currently sits with the Strategy and Finance Committee. If the Act receives sufficient approval, it will be transferred to the government for signing and promulgation by the President.
Issues Addressed	• Environment • Human rights
Covered Entities	A company would be subject to the Act if it: • Has its headquarters in South Korea; or • Is a foreign company that has established a business place in South Korea pursuant to Article 614 of the Commercial Act. And has: • 500 or more employees; or • Revenue equal to or greater than KRW 200 billion in the previous financial year. The scope of subject companies could be incrementally expanded by presidential decree.
How It Works	
Mandatory?	Yes.
General Prohibition	Subject companies would be prohibited from engaging in business activities, either through domestic or foreign business activities, that violate the human rights of another person or cause environmental harm. Covered human rights and environmental risks are disclosed under "Assessing and Addressing Risks."
Management Systems and Policies	Subject companies would be required to develop and implement the below management systems and policies. <u>Board Committee</u> The board of directors of a subject company would need to establish a committee to oversee human rights- and environmental-related deliberations. The Act would also require this committee to approve plans for and review the results

	of human rights and environmental due diligence. If a committee with responsibility for human rights and environmental matters already exists within a board, that committee would fulfill this obligation under the Act. Responsible Manager Subject companies would need to designate a person as the responsible manager for ensuring compliance with the Act. The responsible manager would be responsible for overseeing due diligence and reporting obligations. Annual Plan The chief executive officer at a subject company would be required to establish an annual plan for the implementation of human rights and environmental due diligence. The annual plan would need to address matters concerning the operation of due diligence, and would also need to be approved by the board of directors. Additional requirements for the plan may be prescribed by presidential decree. Human Rights and Environmental Due Diligence Policy Subject companies would be required to have a policy that formalizes their human rights and environmental due diligence program. The items to be included in the policy, in addition to the duties and authority of the responsible manager, would be prescribed by presidential decree. Grievance Mechanism Subject companies would need to create a grievance reporting mechanism that is available to all interested parties. **"Interested parties"** would include employees, suppliers, community residents where the company operates, shareholders, investors, consumers, agencies that have been affected or are likely to be affected by actions of the company and individuals, or organizations acting on behalf of any of the foregoing. The grievance mechanism would need to allow interested parties to submit grievances anonymously. Subject companies would need to keep the identity of the reporting person confidential, unless disclosure is essential for the prevention, elimination or mitigation of the identified risks and the reporting interested party gives his/her consent. Companies would be prohibited from retaliating against a reporting person for a complaint made in good faith. If a company receives a substantiated report, the company would need to follow mitigation procedures for the risks identified in the report (as described below). Additional grievance mechanism requirements could be prescribed by presidential decree.
Assessing and Addressing Risks	Risk Identification A subject company would need to at least annually assess human rights and environmental risks arising from its business activities and the activities of its supply chain, taking into account the business sector and regions in which such activities take place.

	Covered human rights and environmental risks would include actual or potential adverse impacts on the following rights due to business activities: • Human dignity, worth, liberty and rights as guaranteed by the Constitution and laws of South Korea, or as recognized by international human rights treaties or customary law. • Labor rights guaranteed by the Constitution and laws of South Korea, or by International Labour Organization conventions ratified by South Korea. • Environmental protection and health and safety rights guaranteed by the Constitution and laws of South Korea or by international environmental conventions ratified by South Korea. Other instances where adverse impacts on human rights or the environment are serious or likely to occur, such as a climate crisis, would also fall within the scope of the Act. Risks related to the following would be required to be immediately assessed and addressed (**"severe risks"**): • Acts against humanity (e.g., war crimes and genocide). • Direct or indirect involvement in child labor. • Conducting, or intending to conduct, business activities in a conflict or high-risk area. <u>Mitigation Measures</u> Subject companies would be required to establish and implement measures to address and/or mitigate identified risks. To the extent subject companies cannot address all identified risks at once, they may prioritize those identified risks based on severity and probability and address them in order. The appropriate risk mitigation responses would depend on where in a company's value chain human rights and environmental risks are identified. • If the risk is within a company's own business activities, the company would need to (1) suspend or modify the business activities at issue; (2) prevent the recurrence of the risk; and (3) provide remedies to the victims. • If the risk is identified at or related to a direct supplier, the company would need to (1) notify the supplier of the risk and (2) request that the supplier develop measures to address it. If the supplier fails to address the risk, the company would be obligated to terminate its contract or business relationship with the supplier. • If the risk is identified at or related to an indirect supplier, the company would need to use leverage to encourage the supplier to implement measures to mitigate the risk. <u>Periodic Evaluation</u> Subject companies would be required to periodically evaluate the measures implemented to address and/or mitigate human rights and environmental risks to ensure their effectiveness.

	<u>Views of Third Parties</u> Subject companies would be required to take into account the views of interested parties throughout the due diligence process. The Act also would expressly provide that companies may request the cooperation of interested parties to ensure the effectiveness of the company's risk assessment.
Reporting Requirements	Subject companies would need to publish a report describing identified human rights and environmental risks, the resulting mitigation measures and their evaluation of those measures. The report would be required to be submitted to the Committee (as defined below) if: • An interested party raises an appeal to the Committee regarding the adequacy of the company's human rights and environmental due diligence or the factual findings in its report; or • The company is conducting business activities in a conflict or high-risk area.
Third-Party Information Rights	The Act would give interested parties the right to request information regarding: (1) identified actual or potential human rights and environmental risks; (2) risk mitigation measures taken; and (3) the evaluation of the risk mitigation measures. A company may decline to disclose information that is confidential or private. However, a company may not decline an information request if disclosure of the requested information is necessary to protect life, health or property. If a company declines to provide information requested by an interested party, the interested party would be able to make an appeal to the Committee.
Enforcement	The Act would establish a Human Rights and Environment Corporate Committee (the **"Committee"**), under the control of the Prime Minister, to monitor companies' compliance with the Act. The Committee would designate conflict and high-risk areas, support companies' human rights and environmental due diligence, investigate complaints under the Act and issue penalties for violations. If the Committee finds that a company violated its obligations under the Act, the Committee would be authorized to issue a corrective order to the company. The Committee also could seek to prohibit the company from participating in a bid for public procurement via a corrective order. In addition, the Act imposes both criminal and civil penalties for violations. For example, the Minister of the Ministry of Economy and Finance could impose administrative fines of up to KRW 10 million for the following: • Failing to submit the annual report to the Committee; • Failing to identify a human rights or environmental risk; • Failing to implement a risk mitigation measure; • Making false claims in the annual report; or • Failing to listen to interested persons' opinions. In the case of a severe violation of the Act (i.e., a failure to identify a severe risk or fulfill a corrective order), a criminal penalty – including imprisonment up to five years or a fine of up to KRW 50 million – could be imposed.

	Subject companies would also be required to compensate interested parties for damages caused by their violation of the Act, including by third parties acting on the company's behalf. If the complainant is able to prove the possibility that their damage is related to the business activities of the company or the activities of the company in the supply chain, the burden of proof would be on the company to prove that it either (1) did not violate the Act or (2) compliance with the Act would not have prevented the damage.
Additional Information/Resources	
Proposed Law	For the text of the Act, see: https://likms.assembly.go.kr/bill/billDetail.do?billId=PRC_N2L3M0K8S2T3R1R1Q1R0P1P3X9W9W4
Ropes & Gray Resources	Client alert related to the Act: • Is mandatory human rights due diligence coming to Asia? (December 4, 2023): https://www.ropesgray.com/en/insights/viewpoints/102iu8h/is-mandatory-human-rights-due-diligence-coming-to-asia

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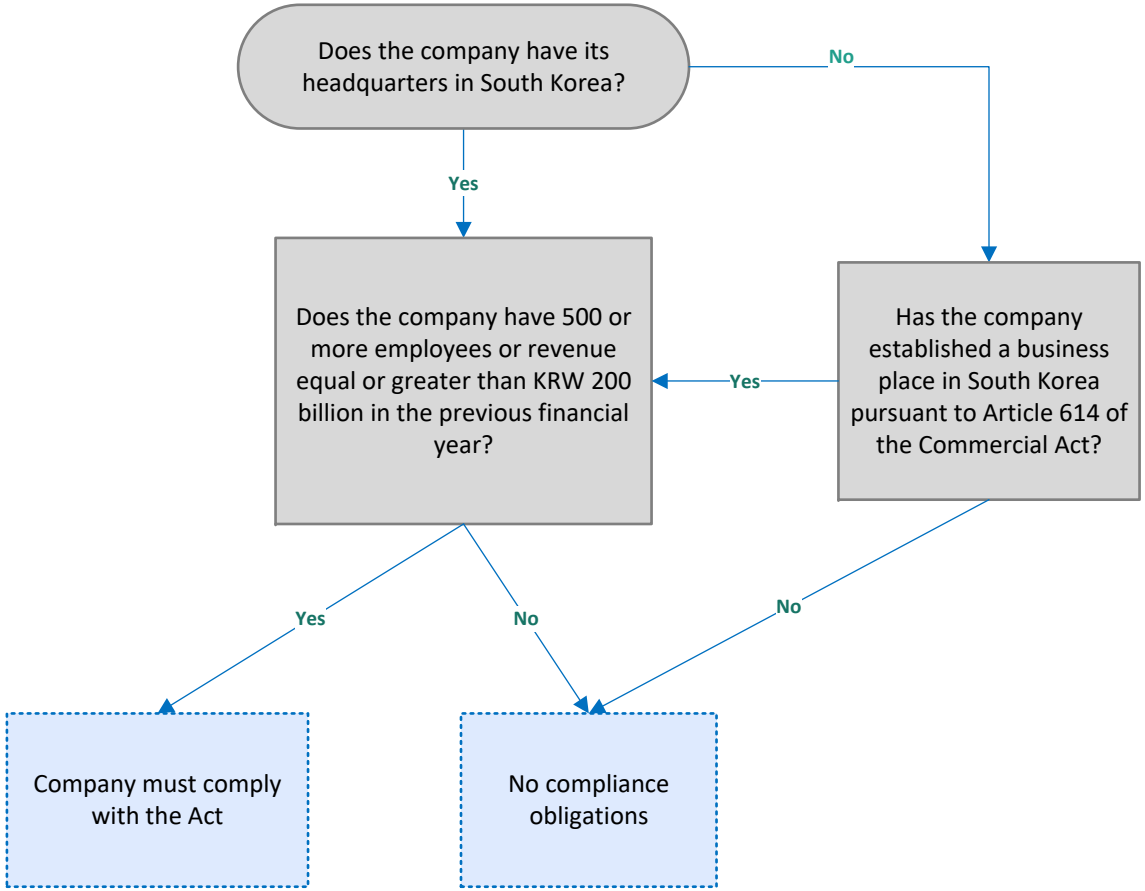

Conflict Minerals and Child Labor Due Diligence Provisions Switzerland	
Overview	
Law / Country	**Swiss Code of Obligations Section 221.433: Ordinance on Due Diligence and Transparency in relation to Minerals and Metals from Conflict-Affected Areas and Child Labor** (collectively, the **"Provisions"**) (Switzerland)
Goal	To further responsible business practices by Swiss companies by implementing mandatory human rights due diligence requirements for conflict minerals and child labor.
Adoption / Status	Swiss Code of Obligations Section 221.433 was adopted on December 3, 2021. On December 3, 2021, the Federal Council (i.e., the Swiss executive branch) published an ordinance under the Swiss Code of Obligations regarding conflict minerals and child labor due diligence. The Provisions entered into effect on January 1, 2022, and its requirements are applicable for the first time for fiscal year 2023. The Provisions also require broader-based ESG reporting by public companies and larger financial institutions supervised by the Swiss Financial Market Supervisory Authority. Those requirements are not discussed in this summary.
Issues Addressed	• Child labor • Conflict minerals and metals
Key Definitions	**"Conflict minerals and metals"** applies to tin, tantalum, tungsten and gold (**"3TG"**) from conflict-affected or high-risk areas. These minerals and metals are specified in more detail on an Annex to the Ordinance. The in-scope 3TG minerals and metals are limited to specified tariff numbers and consist of ores, concentrates, powders, rods, wires and other forms of 3TG at a similar stage of processing. **"Conflict-affected and high-risk areas"** are areas in a state of armed conflict or fragile post-conflict as well as areas witnessing weak or non-existent governance and security and in which widespread and systematic violations of international law, including human rights abuses, take place. **"Child labor"** includes the following, whether carried out within or outside of an employment relationship: • Work performed by persons under 18 that comes under the International Labour Organization's (the **"ILO"**) Worst Forms of Child Labour Convention (**"Convention No. 182"**); • If a jurisdiction has ratified the ILO's Minimum Age Convention (**"Convention No. 138"**), child labor prohibited by that jurisdiction's laws in conformity with Convention No. 138; • If a jurisdiction has not ratified Convention No. 138, work performed by persons who are subject to compulsory schooling or who are 15 or under; and

	• If a jurisdiction has not ratified Convention No. 138, work performed by persons who have not yet reached the age of 18 if that work is expected to be dangerous to life, health or morals of the worker by its nature or the conditions under which the work is performed.
Covered Entities	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.
Due Diligence and Reporting Exceptions	<u>Child Labor</u> There are three exceptions specific to the child labor due diligence and reporting requirements of the Provisions. However, these exceptions do not apply if the products or services are conclusively made or provided with child labor. **Small or medium-sized enterprise**. An enterprise generally is not subject to the child labor due diligence and reporting requirements of the Provisions if it is a small or medium-sized enterprise (an **"SME"**). An enterprise is an SME if it and its controlled entities are under two of the following thresholds for two consecutive fiscal years: • Total assets of SFr20 million; • Sales of SFr40 million; and • An annual average of 250 full-time employees. **Low risk of child labor**. An enterprise also generally is not subject to the child labor due diligence and reporting requirements of the Provisions if it presents a low risk of child labor. Under these circumstances, the enterprise is not required to assess whether there is a reasonable suspicion of child labor. An enterprise is considered to be "low risk" for child labor if the products the enterprise purchases or manufactures or the services it procures or provides are from countries designated as "Basic" in UNICEF's Children's Rights in the Workplace Index. This assessment must be conducted annually. An enterprise that is low risk for child labor must document its conclusion. The conclusion is not required to be published or filed with a regulator. **Lack of reasonable suspicion**. If an enterprise concludes that it cannot utilize the above-mentioned exemptions, it may be exempted from the child labor due diligence and reporting requirements if there is not a reasonable suspicion of child labor. There is a reasonable suspicion of child labor if there is specific information available that would lead a reasonable person to believe that a product or service involves child labor. If the enterprise concludes there is not a reasonable suspicion of child labor, it must document its finding. The finding is not required to be published or filed with a regulator. <u>Conflict Minerals and Metals</u> **De minimis 3TG usage**. An enterprise is not subject to 3TG due diligence and reporting requirements if the 3TG it imports or processes does not exceed the levels specified on an Annex to the Ordinance. For purposes of calculating whether a threshold is exceeded, the undertakings consolidated under the enterprise are included. **3TG not from a conflict-affected or high-risk area**. The Provisions do not identify specific areas by name as conflict-affected and high-risk. The Federal Council's guidance refers to the European Union's 2018 recommendations for determining

	whether areas are conflict-affected and high-risk for purposes of the EU Conflict Minerals Regulation and the list of conflict-affected and high-risk areas periodically published by Rand International. According to the Federal Council's guidance, this assessment must be done on a regular basis since conflict-affected and high-risk areas are not static. If the enterprise concludes its 3TG is not from a conflict-affected or high-risk area, it must document its finding. The finding is not required to be published or filed with a regulator.
	
	<u>Compliance with an Equivalent Regulation or Instrument</u>
	
	If none of the above exemptions are available, an enterprise will be exempt from due diligence and reporting if it complies with an internationally equivalent regulation or instrument. The regulations and instruments that currently qualify are listed on an Annex to the Ordinance (the **"Specified Instruments"**). The current Specified Instruments for child labor and conflict minerals and metals are:
	
	• Child labor
	  ◦ Convention No. 182, Convention No. 138 and the ILO-IOE Child Labour Guidance Tool for Business; and
	  ◦ The OECD Due Diligence Guidance for Responsible Business Conduct.
	• Conflict minerals and metals
	  ◦ The OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas; or
	  ◦ The EU Conflict Minerals Regulation.
	
	To utilize this exception, the enterprise must prepare a report that identifies the Specified Instrument and comply with its requirements in their entirety.

How It Works	
Mandatory?	Yes.
Due Diligence	Enterprises that are not exempt from due diligence will be required to conduct risk-based due diligence in respect of child labor and conflict minerals and metals, as applicable. This will include putting in place the following systems, subject to a partial exception if the subject enterprise only imports and processes recycled metals, as discussed in this summary: <u>Supply Chain Policy</u> Under the policy, the enterprise must, as applicable: • Ensure it complies with due diligence obligations in its supply chains, when (1) offering products or services that are reasonably suspected of having been manufactured or provided using child labor and/or (2) procuring 3TG originating from conflict-affected and high-risk areas;

	• Communicate up-to-date information on the policy to its suppliers and the public; • Integrate the supply chain policy into contracts and agreements with suppliers; • Ensure that concerns about child labor and conflict minerals in its supply chain can be reported; and • Investigate concrete indications of child labor and/or identify and assess risks of adverse impacts of 3TG originating from conflict-affected and high-risk areas in the supply chain, and in each case take appropriate measures to avoid or mitigate adverse impacts, evaluate the results of measures taken and communicate the results of the measures taken. The policy is required to specify the tools used by the enterprise to identify, assess, eliminate and/or mitigate adverse impacts in its supply chain. These include in particular the following: • On-the-spot checks; • Information from public authorities, international organizations and civil society; • Use of experts and specialist literature; • Assurances from supply chain economic operators and other business partners; and • Use of recognized standards and certification schemes. The **"supply chain"** is defined as a process covering both the enterprise's own business activities and those of all upstream economic operators that (1) have minerals or metals originating from conflict-affected or high-risk areas in their custody and that are involved in their movement, preparation and processing in the final product or (2) offer products or services for which a reasonable suspicion exists that such products or services were produced using child labor. <u>Traceability System</u> Enterprises must establish a supply chain traceability system for child labor and/or conflict minerals and metals, as applicable. The requirements differ for each of these subject areas. • **Child labor**. The traceability system must contain and document the following information where there is a reasonable suspicion of child labor: ◦ The description of the product or service and, if any, trade name; and ◦ The name and address of the supplier and the production sites or the service provider to the enterprise. • **Conflict minerals and metals**. The traceability system must contain and document the following information for 3TG originating from a conflict-affected and high-risk area: ◦ The description of the mineral or metal, including its trade name; ◦ The name and address of the supplier; ◦ The country of origin of the mineral; ◦ For metals, the name and address of the smelters and refiners in the supply chain;

	○ For minerals, to the extent available, the volume or weight and the date mined; ○ For minerals originating from conflict-affected and high-risk areas or for which the enterprise has identified other supply chain risks specified in the conflict minerals-related Specified Instruments, additional information in accordance with the supply chain recommendations in those instruments, such as mine of origin, where the mineral is combined with other minerals, traded or processed and the taxes, duties and fees paid; and ○ For metals, (1) where available, assessments of smelters and refiners carried out by third parties, (2) where these assessments are not available, the country of origin of the mineral and the location of the smelter or refiner and (3) for metals originating from conflict-affected and high-risk areas or if other supply chain risks specified in the previously listed conflict minerals-related Specified Instruments have been identified, additional information relating to downstream undertakings in accordance with the recommendations in those Specified Instruments. By-products are required to be traced back only to the point at which they were first separated from their primary mineral or metal. <u>Grievance Mechanism</u> In addition to referring to grievance reporting in the policy requirements, as an early warning mechanism for risk identification, the enterprise must provide a reporting mechanism that allows all interested persons to express reasonable concerns regarding actual or potential adverse impacts relating to child labor or 3TG. The enterprise must document any complaints received. <u>Risk Mitigation</u> The probability and severity of adverse impacts must be taken into account in connection with the identification and assessment of supply chain risks. Risks are to be identified and assessed based on the Specified Instruments. The probability and severity of adverse impacts also is to be taken into account in the elimination, prevention or mitigation of identified supply chain risks. The effectiveness of the measures taken is required to be assessed on a regular basis. <u>Audit Requirements Relating to 3TG</u> If conflict minerals and metals due diligence is conducted, an annual third-party audit is required. The scope of the audit is to provide negative assurance concerning the enterprise's compliance with its 3TG-related diligence obligations under the Provisions. The auditor must be admitted as an audit expert pursuant to the Swiss Audit Oversight Act. The audit requirement does not extend to child labor due diligence.
Partial Due Diligence Exception	An enterprise is exempt from the requirements to establish a grievance mechanism and risk management plan and obtain an audit report if it imports and processes only recycled metals.
Reporting	Subject enterprises that are required to conduct due diligence will be required to annually report on their compliance with the due diligence obligation, subject to the reporting exceptions described in this summary.

	The first report is due in 2024 in respect of the fiscal year that began in 2023. The report is required to be posted on the enterprise's website within six months after the end of the fiscal year and must be accessible for at least ten years.
Reporting Exceptions	Enterprises based in Switzerland are exempt from the reporting requirement if they are controlled by a company established abroad that publishes a similar report. The Swiss enterprise must include a note in its financial statements indicating the controlling company that includes the Swiss enterprise in its report. The enterprise also is required to publish the controlling company's report. Enterprises that offer products or services from enterprises that already have published a report are exempted from the duty to publish a report.
Enforcement	Intentional (1) violations of the reporting or traceability documentation obligations and (2) false statements in a report will carry a fine of up to SFr100,000. In the case of negligence only (i.e., no willful misconduct), the maximum fine will be SFr50,000.
Additional Information/Resources	
Law	For the Code of Obligations (in German), see: https://www.fedlex.admin.ch/eli/oc/2021/846/de For the text of the Ordinance (unofficial translation here), see: https://www.fedlex.admin.ch/eli/cc/2021/847/en
Specified Instruments	For Convention No. 138, see: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138 For Convention No. 182, see: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182 For the ILO-IOE Child Labour Guidance Tool for Business, see: https://www.ilo.org/ipec/Informationresources/WCMS_IPEC_PUB_27555/lang--en/index.htm For the Organisation for Economic Co-operation and Development Due Diligence Guidance for Responsible Business Conduct, see: http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf For Organisation for Economic Co-operation and Development Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, see: https://www.oecd.org/corporate/mne/mining.htm For the EU Conflict Minerals Regulation, see: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32017R0821
Ropes & Gray Resources	Client alerts related to the Provisions: • ESG disclosures in 2024 – key compliance dates for U.S.-based multinationals (January 22, 2024): https://www.ropesgray.com/en/insights/viewpoints/102ixoo/esg-disclosures-in-2024-key-compliance-dates-for-u-s-based-multinationals • Swiss Conflict Minerals and Child Labor Due Diligence Legislation Takes Effect – Will Require Due Diligence and Reporting by Many U.S.-Based Multinationals Doing Business in Switzerland (February 2, 2022): https://www.ropesgray.com/en/newsroom/alerts/2022/february/swiss-conflict-minerals-and-child-labor-due-diligence-legislation-takes-effect

	• Mandatory Human Rights Due Diligence Initiative Brought to a Public Vote in Switzerland – Initiative Fails, Parliament Indirect Counterproposal Moves Forward (December 1, 2020): https://www.ropesgray.com/en/newsroom/alerts/2020/12/mandatory-human-rights-due-diligence-initiative-brought-to-a-public-vote-in-switzerland • Mandatory Human Rights Due Diligence to Be Brought to a Public Vote in Switzerland (June 16, 2020): https://www.ropesgray.com/en/newsroom/alerts/2020/06/mandatory-human-rights-due-diligence-to-be-brought-to-a-public-vote-in-switzerland

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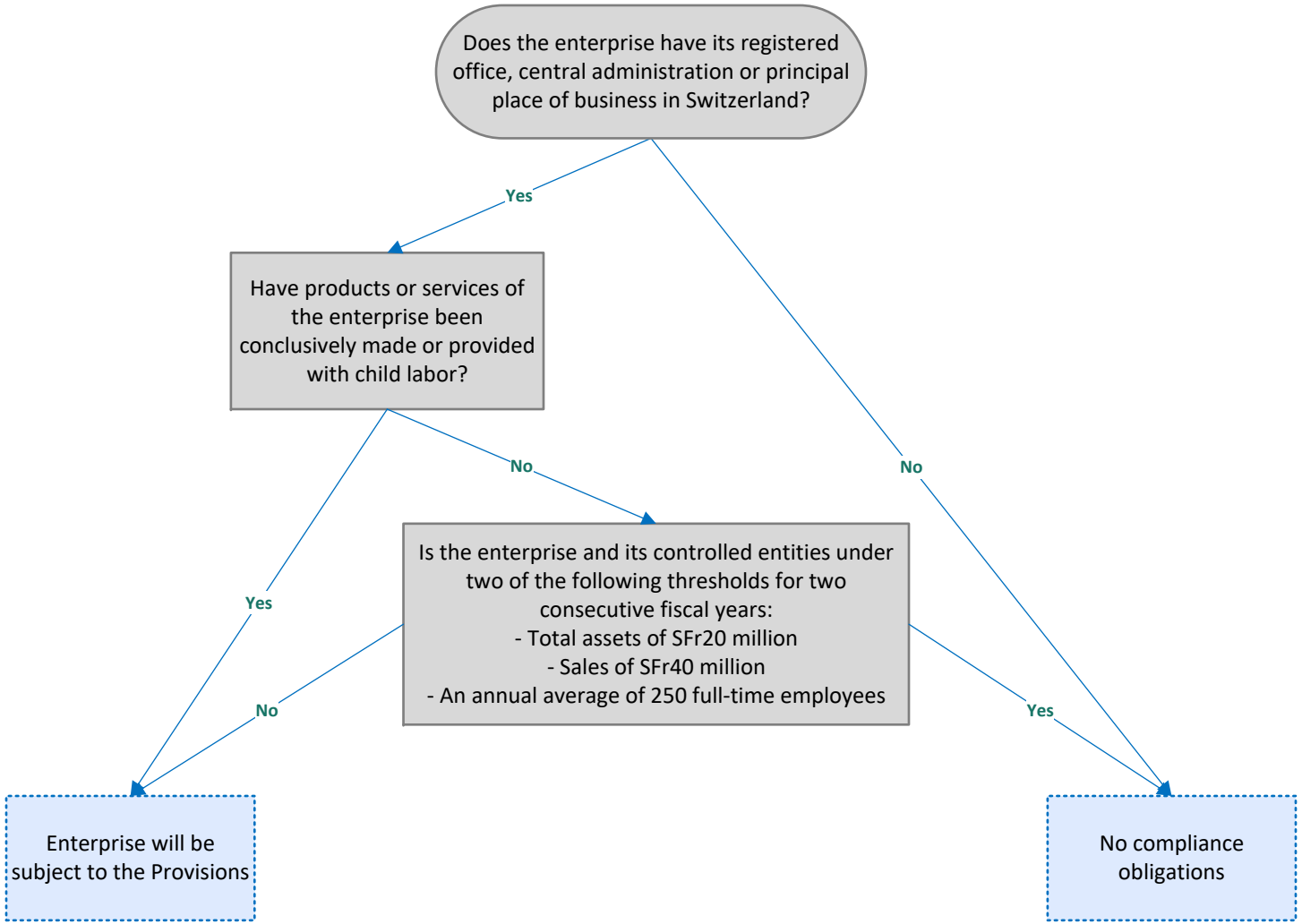
Applying the Law



Commercial Organisations and Public Authorities Duty (Human Rights and Environment) Act (Proposed) United Kingdom	
Overview	
Law / Country	**Commercial Organisations and Public Authorities Duty (Human Rights and Environment) Act** (the **"Act"**) (United Kingdom)
Goal	To improve human rights and environmental due diligence.
Adoption / Status	The Act was introduced to the UK House of Lords on November 28, 2023. The Act is currently in its second reading in the House of Lords.
Issues Addressed	• Environment • Human rights
Covered Entities	Commercial organisations and public authorities are subject to the Act. • **"Commercial organisations"** would be any corporation or partnership formed under the laws of the United Kingdom, regardless of where they carry on business, or any corporation or partnership that carries on business in the United Kingdom. • **"Public Authorities"** would be entities that are wholly or mainly funded out of public funds or subject to public authority oversight. This summary does not address the obligations of Public Authorities.
How It Works	
Mandatory?	Yes.
Due Diligence Requirements	Commercial organisations would have a duty to prevent human rights and environmental harms, so far as reasonably practicable, with respect to their own conduct, as well as the conduct of their subsidiaries and throughout the lifecycle of their goods and services upstream and downstream (the **"value chain"**). To satisfy this duty, commercial organisations would be required to conduct "reasonable due diligence." At a minimum, due diligence would be required to include: • Integrating human rights and environmental due diligence into policies and management systems; • Identifying, assessing and addressing actual or potential human rights and environmental harms, through prevention, mitigation and remediation; • Establishing or participating in and maintaining effective grievance mechanisms; • Tracking, verifying, monitoring and assessing the effectiveness of measures taken and their outcomes; and • Communicating with stakeholders and reporting publicly on findings.

	Whether due diligence is reasonable would depend on the context. Under the Act, reasonableness would be determined by, among other things: • The size, sector, operational context, ownership, structure, country or region of operation, and the nature of the human rights or environmental harms in question; • The severity of the human rights or environmental harms, as determined by the scale, scope and irremediability of the harm; • The extent to which the commercial organisation has exercised leverage over third-parties in the value chain and made attempts to increase leverage for the purposes of the Act; • The commercial organisation's prioritization of human rights and environmental risks within its due diligence process and the reasonableness of the prioritization; and • The extent to which due diligence was an ongoing process with continuous monitoring and improvement. Reasonable due diligence would expressly require informed, meaningful and safe engagement with stakeholders, particularly workers, affected rightsholders and those defending human rights and the environment, throughout the entire process. In addition, audit reports, certification schemes and membership in industry or multi-stakeholder initiatives for dialogue and learning would not on their own be sufficient to fulfill the due diligence obligation.
Responsible Disengagement	If a commercial organisation decides to suspend or terminate a business relationship as a result of its due diligence assessment, the decision would be required to: • (1) Reflect reasonable human rights and environmental due diligence, taking into account human rights or environmental harms that might arise from the suspension or termination of the business relationship; (2) consider how the harms might be prevented or mitigated; and (3) take into account the remediation of harm that commercial organisations had failed to prevent prior to the disengagement decision; • Be based upon informed, meaningful and safe engagement with stakeholders that are or may be affected by the disengagement decision; and • Be taken in a timely manner, considering (1) disengagement as a last resort after failed attempts at mitigation, in contexts where the prospect of change by using or increasing leverage is possible; and (2) rapid disengagement in contexts where the harm is severe, including where gross and systemic harm is imposed and enforced by state policy, and the commercial organisation lacks the possibility of using and increasing leverage to prevent, mitigate or remediate the harm.
Reporting	Commercial organisations that exceed an annual worldwide turnover threshold to be specified by the UK Secretary of State would be required to publish and submit to a government registry an annual report describing their due diligence procedures to be adopted in the then-current fiscal year and assessing the effectiveness of the previous year's actions. The report would need to include: • Information relating to human rights and environmental due diligence, any outcomes achieved and how measures would be continuously improved;

	• A disclosure of the value chain enabling full traceability; • Detailed reporting on scope 1, 2 and 3 greenhouse gas emissions; and • Any other information required to evaluate the adequacy of the commercial organisation's response to actual or potential human rights and environmental harms in line with the UN Guiding Principles on Business and Human Rights. Reports would be due six months after the end of each fiscal year beginning after the passage of the Act.
Third-party Information Requests	Any person would have the right to request from a reporting commercial organisation information relating to human rights and environmental due diligence, including general information and information relating to a specific product or service. Frivolous, vague or burdensome requests for information or requests for personal information could be denied, but generally commercial organisations would need to respond to requests within one month.
Public Sector Procurement Implications	The Act would prohibit public authorities from carrying out procurement from suppliers unless the suppliers are conducting, or have a plan to conduct within a reasonable timeframe, reasonable human rights and environmental due diligence in accordance with the Act. Additionally, public authorities would be required to establish human rights and environmental due diligence requirements for their suppliers at the tender stage, establish specific award criteria related to due diligence policy and practice and contract performance conditions relating to the implementation of such duties, including provisions for remediation for those affected by human rights or environmental harms. Each public authority would be required to provide a list of current suppliers and those that have been excluded, debarred or terminated from procurement to a designated regulatory authority on an annual basis.
Regulatory Oversight	Within six months after the Act comes into effect, the UK Secretary of State would be required to appoint a regulatory authority with oversight responsibility for compliance with the Act. The regulatory authority's duties would include: • Providing guidance on due diligence approaches and best practices; • Providing reporting requirements under the Act; • Hosting a publicly accessible registry website listing all organisations subject to mandatory reporting requirements and their respective reports; and • Enforcing compliance with the Act. In furtherance of these duties, the regulatory authority would have the power to: • Investigate organisations; • Issue a civil sanction following a finding of infringement of the Act; and • Refer criminal offenses under the Act to the Crown Prosecution Services.
Enforcement	<u>Civil Liability</u> The Act contemplates liability for damages if a commercial organisation fails to prevent human rights or environmental harms in its own or its subsidiaries' operations, products or services or throughout its value chains and the commercial organisation

	is unable to prove it took all reasonable steps to prevent the harm from occurring, including by conducting reasonable human rights and environmental due diligence. Remedies also could include: • Preventive relief such as injunctive orders and orders to cease and desist; • Remedial orders, such as cleaning up or restitution orders; • Supervisory orders that require parties to report back on progress and remediation after a certain period; • Interlocutory orders; and • Other orders as necessary to effectively remedy the harm in line with international law, including rehabilitation, satisfaction, guarantees of non-repetition and other appropriate remedies. Commercial organisations that fail to meet their duty to prevent human rights and environmental harms or to comply with the Act's reporting requirements could be subject to the following penalties as issued by the regulatory authority in its discretion: • A fine amounting up to 10% of the organisation's global turnover; • A compliance notice requiring steps to be taken within a stated period to ensure than an offence or breach does not continue or happen again; • A restoration notice requiring specified steps within a stated period to secure restitution of the earlier position, as far as this is possible; • Exclusion from participation in procedures for the award of supply, works or service contracts by public authorities for a period of up to five years from the date of the regulatory authority's decision of breach of the commercial organisation's obligations; or • An appropriate order of costs to cover the investigation and adjudication. Directors or the equivalent management body of a commercial organisation would be collectively responsible for the commercial organisation's compliance with the Act. Subject to specified defenses, they will have committed an offense if the commercial organisation did not conduct human rights or environmental due diligence or the individual knows (or there is recklessness) that reported human rights and environmental due diligence information is materially false or incomplete. An individual guilty of an offense could be fined, disqualified from serving as a director and imprisoned. <u>Criminal Liability</u> A commercial organisation would be subject to criminal liability if a person associated with the organisation commits one of the following offenses within or outside of the United Kingdom to obtain or retain business for the organisation or to obtain or retain an advantage in the conduct of business for the organisation: • Murder, kidnap, or false imprisonment under English common law; • An offence under section 1 of the Sexual Offences Act 2003 (rape); • An offence under sections 1 and 2 of the Modern Slavery Act 2015 (slavery, servitude and forced or compulsory labour, human trafficking); • An offence under section 1 of the Corporate Manslaughter and Corporate Homicide Act 2007;

	• An offence under section 18, 23, 24, 28 or 29 of the Offences Against the Person Act 1861 (grievous bodily harm or wounding with intent, poison, explosions); • An offence under section 1(2) of the Criminal Damage Act 1971 (endangering life by damaging property); or • Genocide, crimes against humanity and war crimes under section 50 of the International Criminal Court Act 2001. A commercial organisation could defend against criminal liability by proving that, with respect to the actions at issue, it was not reasonable in all the circumstances to expect the organisation to have any due diligence procedures in place or the organisation took all reasonable steps to prevent the offences from occurring, including but not limited to conducting human rights and environmental due diligence in all the circumstances. A person found guilty of a criminal offence under the Act could be liable to imprisonment or a fine, or both.
Additional Information/Resources	
Law	For the text of the proposed Act, see: https://bills.parliament.uk/publications/53150/documents/4066
Ropes & Gray Resources	For a client alert related to the Act, see: https://www.ropesgray.com/en/insights/viewpoints/102ivjk/mandatory-human-rights-and-environmental-due-diligence-across-the-channel-a-loo

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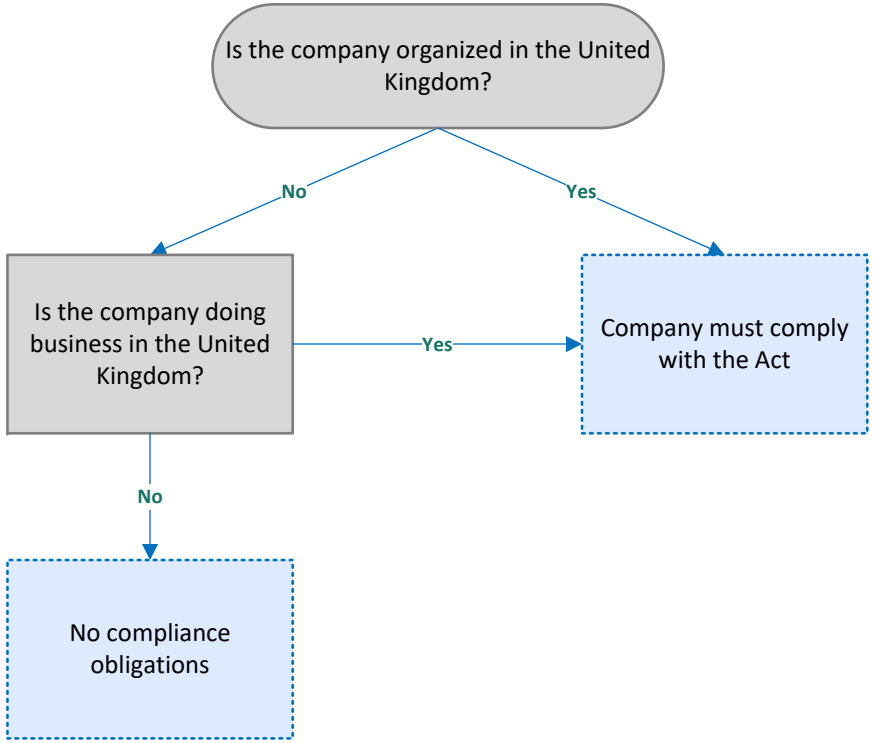

Corporate Sustainability Reporting Directive European Union	
Overview	
Law / Country	**Corporate Sustainability Reporting Directive** (amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting) (the **"Directive"**) (European Union)
Goal	Enhanced reporting on sustainability issues.
Adoption / Status	The Directive entered into force on January 5, 2023. EU Member States have until July 6, 2024 to transpose the Directive into their national laws. The Directive does not directly contain obligations binding on companies; however, for brevity, this summary refers to obligations under the Directive, rather than the EU Member State laws transposing the Directive. The reporting standards under the Directive are developed by the European Financial Reporting Advisory Group (**"EFRAG"**) at the direction of the European Commission (the "**Commission**"). The standards are referred to as European Sustainability Reporting Standards (the **"ESRS"**). The Commission has adopted twelve ESRS, consisting of two general cross-cutting ESRS and ten topical ESRS, as further described below. EFRAG may develop, and the Commission may adopt, additional sector-specific and other ESRS, as described below. On February 8, 2024, the European Parliament and the European Council reached a political agreement to delay the adoption of sector-specific ESRS and the standards specifying the reporting obligations of Third-Country Companies (as defined below) to June 30, 2026. On October 17, 2023, the Commission adopted a delegated directive that adjusted the reporting threshold for large undertakings (the **"EU Accounting Directive"**). The new thresholds apply for financial years beginning on or after January 1, 2024. However, EU Member States may allow undertakings to apply the new thresholds for the financial year beginning on or after January 1, 2023. On December 21, 2023, the EU Accounting Directive was published in the European Official Journal. Companies are required to comply with the requirements of the Directive on the following timeline: • For companies already subject to the Non-Financial Reporting Directive (the **"NFRD"**) as adopted by the EU, more specifically, large undertakings and parent undertakings of a large group that are public interest entities with an average of 500 employees during the financial year: Financial years starting on or after January 1, 2024, with the first report to be produced in 2025. • For large undertakings not subject to the NFRD: Financial years starting on or after January 1, 2025, with the first report to be produced in 2026. • For SMEs: Financial years starting on or after January 1, 2026, with the first report to be produced in 2027. However, for the first two years following 2026, SMEs will have the option to opt out from the reporting requirements, so long as they indicate in their management report why they did not disclose sustainability information. • For Third-Country Companies: Financial years starting on or after January 1, 2028, with the first report to be produced in 2029.

Issues Addressed	• Environmental rights • Governance factors • Social and human rights

Covered Entities	The reporting requirements under the Directive will apply to each of the below.
	• EU companies that meet at least two of the following three criteria (a **"large undertaking"**):
	  ◦ An average of at least 250 employees annually;
	  ◦ At least €50 million annual net turnover; and/or
	  ◦ A balance sheet of at least €25 million.
	• Non-EU companies that meet the following two criteria (a **"Third-Country Company"**):
	  ◦ Over €150 million in EU annual turnover for the trailing two financial years; and
	  ◦ At least one subsidiary that is a large undertaking (or listed entity that is not a micro undertaking) or EU branch that generated net turnover of more than €40 million in the prior financial year.
	• Companies with securities listed on an EU regulated market, including small- and medium-sized enterprises (**"SMEs"**).
	• Captive insurance and reinsurance undertakings as well as small and non-complex institutions provided that they are also large-, medium- or small-sized enterprises (the phase in for those undertakings is not discussed in this summary).
	"Net turnover" means the amounts derived from the sale of products and the provision of services after deducting sales rebates and value added tax and other taxes directly linked to turnover.

How It Works	
Mandatory?	Yes.
Reporting Requirements	Companies generally are required to include in their management report a non-financial statement containing information necessary to understand the company's impacts on sustainability matters and how sustainability matters affect the company's development, performance and positions. **"Sustainability matters"** broadly encompass environmental, social and human rights and governance factors. Such information must be clearly identifiable through a dedicated section of the management report. The Directive provides an exemption for subsidiaries, if the subsidiary's parent company includes the subsidiary in the parent company's consolidated management report. As noted above, the specific disclosures required to be made are set out in the ESRS. The Directive more generally states that sustainability matters to be addressed in the management report are required to include the following: • A brief description of the company's business model and strategy, including: ◦ The resilience of the company's business model and strategy to risks related to sustainability matters;

	◦ The opportunities for the company related to sustainability matters; ◦ The plans of the company, including implementing actions and related financial and investment plans, to ensure that its business model and strategy are compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5°C in line with the Paris Agreement and the objective of achieving climate neutrality by 2050 and, where relevant, the exposure of the company to coal, oil and gas-related activities; ◦ How the company's business model and strategy take account of the interests of the company's stakeholders and of the impacts of the company on sustainability matters; and ◦ How the company's strategy has been implemented with regard to sustainability matters; • A description of the time-bound targets related to sustainability matters set by the company, including where appropriate absolute greenhouse gas emission reduction targets at least for 2030 and 2050, a description of the progress the company has made towards achieving those targets and a statement of whether the company's targets related to environmental matters are based on conclusive scientific evidence; • A description of the role of the administrative, management and supervisory bodies with regard to sustainability matters, and of their expertise and skills to fulfil this role or access to such expertise and skills; • A description of the company's policies in relation to sustainability matters; • Information about the existence of incentive schemes offered to members of the administrative, management and supervisory bodies which are linked to sustainability matters; • A description of: ◦ The due diligence process implemented by the company with regard to sustainability matters, and where applicable in line with EU requirements on companies to conduct a due diligence process; ◦ The principal actual or potential adverse impacts connected with the company's own operations and with its value chain, including its products and services, its business relationships and its supply chain, actions taken to identify and track these impacts, and other adverse impacts which the company is required to identify according to other EU requirements on companies to conduct the due diligence process; and ◦ Any actions taken by the company, and the result of such actions, to prevent, mitigate, remediate or bring an end to actual or potential adverse impacts; • A description of the principal risks to the company related to sustainability matters, including the company's principal dependencies on such matters, and how the company manages those risks; and • Indicators relevant to the disclosures referred to above. Under the Directive, companies are required to report on the process used to identify the information included in the management report. The information listed above must include information related to short-, medium- and long-term time horizons, as applicable. Additionally, where applicable, the information referred to above must contain details about the company's operations and its value chain, including products and services, its business relationships and its supply chain. For the first three years of the application of the Directive, in the event that not all the necessary information regarding the value

	chain is available, the company can explain the efforts made to obtain the information about its value chain, the reasons why this information could not be obtained and the plans of the company to obtain such information in the future. SME Reporting Requirements There are reduced reporting requirements for SMEs. SMEs are only be expected to provide sustainability reporting that is proportionate to their size and resources. The reduced reporting standards for SMEs are to be included in the ESRS referenced below to be adopted by June 30, 2024. Third-Country Company Reporting Requirements The Directive also contemplates different reporting standards for Third-Country Companies; however, Third-Country Companies may choose to report according to the same standards that apply to EU companies or according to standards that are deemed equivalent. In particular, under the Directive, Third-Country Companies are not required to address as part of the description of the group's business model and strategy (1) the resilience of the group's business model and strategy in relation to risks related to sustainability matters, and (2) the opportunities for the group related to sustainability matters. The reporting standards for Third-Country Companies are to be included in ESRS adopted by June 30, 2026. Double Materiality Approach The Directive takes a "double materiality" approach to reporting. Subject companies are required to report both on how sustainability matters affect their business and the external impacts of their activities on people and the environment. Forward Looking Information The Directive explicitly requires companies to disclose forward-looking information. The Directive indicates that this information should: • Be based on conclusive scientific evidence where appropriate; • Be harmonized, comparable and based on uniform indicators where appropriate, while allowing for reporting that is specific to individual companies and does not endanger the commercial position of the company; and • Take into account short-, medium- and long-term time horizons and contain information about the company's whole value chain, including its own operations, products and services, business relationships and supply chain, as appropriate. Confidential Information In their adopting legislation, Member States may allow information relating to pending developments or matters in negotiation to be omitted if its disclosure would be seriously prejudicial to the commercial position of the company, so long as the omission does not prevent a fair and balanced understanding of the company's development, performance and position and the impact of its activity. In addition, the recitals note that the Directive is not intended to require companies to disclose intellectual capital, intellectual property, know-how or the results of innovation that would qualify as trade secrets under the EU trade secrets directive.

The ESRS	General Topics and Standards
	
	Cross-cutting ESRS provide for general requirements (ESRS 1) and general disclosures (ESRS 2). The Commission also has adopted the following 10 topical standards:
	
	• Environment:
	  o Climate Change (ESRS E1)
	  o Pollution (ESRS E2)
	  o Water and Marine Resources (ESRS E3)
	  o Biodiversity and Ecosystems (ESRS E4)
	  o Resource Use and Circular Economy (ESRS E5)
	• Social:
	  o Own Workforce (ESRS S1)
	  o Workers in the Value Chain (ESRS S2)
	  o Affected Communities (ESRS S3)
	  o Consumers and End-Users (ESRS S4)
	• Governance:
	  o Business Conduct (ESRS G1)
	
	EFRAG will periodically publish additional non-binding technical guidance on the application of the ESRS.
	
	Additional Standards
	
	EFRAG also was in the process of developing draft sector-specific ESRS. These were to include the following five sectors covered by GRI sector standards:
	
	• Agriculture
	• Coal Mining
	• Mining
	• Oil and Gas (upstream)
	• Oil and Gas (mid- to downstream)
	
	As part of this set of ESRS, EFRAG also was developing standards for the following sectors it has characterized as high impact:
	
	• Energy Production
	• Road Transport
	• Motor Vehicle Production
	• Food/Beverages

	• Textiles EFRAG also is developing a voluntary reporting standard for use by non-listed SMEs to enable them to respond to requests for sustainability information in an efficient manner that is proportionate to their capacities and resources and relevant to the scale and complexity of their activities. A draft of the voluntary standard is expected to be issued in the first half of 2024 and will be open to a four-month public consultation. EFRAG also is developing ESRS for Third-Country Companies. The standards specific to Third-Country Companies will specify what information is required for the sustainability reports of Third-Country Companies that choose not to report according to the same standards that apply to EU companies or standards that are deemed equivalent. EFRAG is expected to deliver its advice to the Commission on sector-specific ESRS and ESRS for Third-Country Companies by November 2025 and is expected to publish additional sector-specific ESRS and ESRS for Third-Country Companies by June 30, 2026.
Third-party Assurance	Sustainability information will require limited assurance (i.e., negative assurance that no matter has been identified by the assurance practitioner to conclude that the subject matter is materially misstated). Assurance will be required to address, among other things, (1) compliance with the applicable ESRS and (2) the processes carried out to identify the reported information. Assurance standards are to be adopted by the Commission before October 1, 2026. The European Union has indicated that its goal is to eventually adopt a "reasonable assurance" standard, potentially as early as 2028. A reasonable assurance engagement would entail more extensive procedures, including consideration of internal controls of the reporting company and substantive testing.
Publication Requirements	Member States may require companies to make the management report available to the public on their website. If a company does not have a website, Member States may require it to make a written copy of its management report available upon request. Member States should ensure companies publish management reports within twelve months of the balance sheet date. Member States will be required to require that a subsidiary or branch of a Third-Country Company established in its territory publish and make accessible a sustainability report. The applicable subsidiary or branch is required to publish a Third-Country Company's sustainability report in the Member State's central, commercial or companies register. If the report is not made accessible, free of charge, to the public on the website of the register, the report is required to be made available on the website of the subsidiary or branch. Reporting will be required to be in XHTML format. Companies also will be required to follow additional data tagging requirements specified by the Commission. This will facilitate packaging and comparability of data, especially by third-party data providers used by asset managers.
Other Obligations	The company's management will have an obligation to inform employees, at the appropriate level, and discuss with them the relevant information and the means of obtaining and verifying sustainability information. Their opinion should be communicated, where applicable, to the relevant administrative, management or supervisory bodies.

Reporting Exemptions	Subsidiary Exemption Subsidiaries (including an intermediate parent company) generally will be exempt from reporting if they are included in the consolidated reporting of a parent company that complies with the reporting requirements of the Directive. The subsidiary reporting exemption applies to both subsidiaries of EU parent companies and subsidiary companies included in the consolidated sustainability reporting of a parent company established outside of the European Union. This exemption generally will require the subsidiary to include in its management report the name and registered office of the parent company that is reporting sustainability information at the group level, the web link to the consolidated management report of the parent company and a reference in its management report indicating it is exempt from sustainability reporting. In connection with this exemption, Member States may impose a language requirement on the parent company consolidated management report. Equivalence Exemption The Directive allows for substituted compliance under non-EU disclosure regimes determined to be equivalent by the Commission. Transitional Period Exemption Until January 6, 2030, Member States will be required to allow an EU subsidiary of a Third-Country Company to prepare consolidated sustainability reporting that includes all of the Third-Country Company's EU subsidiary companies' disclosures. The EU subsidiary preparing the report must be one of the EU subsidiaries of the Third-Country Company that has generated the greatest turnover in the EU in at least one of the preceding five financial years.
Enforcement	Member States will determine the penalties, administrative measures or sanctions necessary for infringements of the national provisions adopted in accordance with the Directive.
Guidance	On December 22, 2023, EFRAG published its first three draft ESRS implementation guidance documents for public feedback: Draft EFRAG IG 1; Draft EFRAG IG 2; and Draft EFRAG IG 3. EFRAG is expected to publish final guidance in the first half of 2024. Draft EFRAG IG 1 deals with the requirements of the materiality assessment under the ESRS. Draft EFRAG IG 1 explains the ESRS approach to materiality, illustrates how the materiality assessment is to be performed, explains how undertakings can take account of other frameworks and standards and includes FAQs on impact and financial materiality, the materiality assessment process, stakeholder engagement, aggregation and disaggregation and reporting. Draft EFRAG IG 2 deals with the value chain aspects under the ESRS. Draft EFRAG IG 2 explains how to navigate the value chain requirements of the ESRS, contains FAQs for implementing value chain reporting under the ESRS and includes an upstream and downstream value chain map that explains the coverage of the upstream and downstream value chain. Draft EFRAG IG 3 contains ESRS datapoints in the form of a Microsoft Excel workbook with an accompanying explanatory note.

Additional Information/Resources	
Law	For the text of the Directive, see: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022L2464&from=EN For the text of the EU Accounting Directive, see: https://finance.ec.europa.eu/document/download/c8c5c492-1a45-4683-80d3-902f156f6812_en?filename=accounting-directive-level-2-measures-full_en.pdf
ESRS	For the final adopted ESRS, see: https://ec.europa.eu/finance/docs/level-2-measures/csrd-delegated-act-2023-5303-annex-1_en.pdf
Additional Guidance	For the EFRAG ESRS Q&A Platform, see: https://www.efrag.org/lab7 For the text of Draft EFRAG IG 1, see: https://www.efrag.org/Assets/Download?assetUrl=%2Fsites%2Fwebpublishing%2FSiteAssets%2FDraft%2520EFRAG%2520IG%25201%2520MAIG%2520231222.pdf For the text of Draft EFRAG IG 2, see: https://www.efrag.org/Assets/Download?assetUrl=%2Fsites%2Fwebpublishing%2FSiteAssets%2FDraft%2520EFRAG%2520IG%25202%2520VCIG%2520231222.pdf For the text of Draft EFRAG IG 3, see: https://www.efrag.org/Assets/Download?assetUrl=%2Fsites%2Fwebpublishing%2FSiteAssets%2FDraft%2520EFRAG%2520IG%25203%2520DPs%2520explanatory%2520note%2520231222.pdf
Member State Transposition	Links to the implementing legislation of each EU Member State that has transposed the Directive are below: • Czechia: https://www.zakonyprolidi.cz/cs/2023-349#cast29 • Finland: https://www.eduskunta.fi/FI/vaski/EduskunnanVastaus/Documents/EV_40+2023.pdf • France: https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000048519395 • Hungary: http://www.kozlonyok.hu/nkonline/index.php?menuindex=200&pageindex=kozltart&ev=2023&szam=187 • Romania: https://lege5.ro/Authentication/Login?returnAction=Index&returnController=Document&returnArea=App&returnUrl=%2FApp%2FDocument%2Fge2domzvgqztc%2Fordinul-nr-85-2024-pentru-reglementarea-aspectelor-referitoare-la-raportarea-privind-durabilitatea
Ropes & Gray Resources	Client alerts related to the Directive: • Ropes & Gray Publishes February 2024 Updates to EU-Wide CSRD Transposition Tracker – EU Countries Continue to Take Steps Towards CSRD Implementation (March 12, 2023): https://www.ropesgray.com/en/insights/alerts/2024/03/ropes-gray-publishes-february-2024-updates-to-eu-wide-csrd-transposition-tracker • Ropes & Gray Publishes January 2024 Updates to EU-Wide CSRD Transposition Tracker – EU Countries Continue to Take Steps Toward CSRD Implementation (February 15, 2024):

	https://www.ropesgray.com/en/insights/viewpoints/102j064/ropes-gray-publishes-january-2024-updates-to-eu-wide-csrd-transposition-tracker • Ropes & Gray Publishes December 2023 Updates to EU-wide CSRD Transposition Tracker – EU Member States Begin to Adopt Implementing Legislation (January 10, 2024): https://www.ropesgray.com/en/insights/alerts/2024/01/ropes-and-gray-publishes-december-2023-updates-to-eu-wide-csrd-transposition-tracker • EU Corporate Sustainability Reporting Directive Draft Value Chain Guidance Published – Key Points from the Guidance (January 3, 2024): https://www.ropesgray.com/en/insights/viewpoints/102iw71/eu-corporate-sustainability-reporting-directive-draft-value-chain-guidance-publis • EU Corporate Sustainability Reporting Directive Draft Materiality Assessment Guidance Published – Key Points from the Guidance (January 2, 2024): https://www.ropesgray.com/en/insights/viewpoints/102iw56/eu-corporate-sustainability-reporting-directive-draft-materiality-assessment-guid • Introducing the Ropes & Gray CSRD Transposition Tracker (December 7, 2023): https://www.ropesgray.com/en/insights/alerts/2023/12/introducing-the-ropes-gray-csrd-transposition-tracker • European Commission Increases CSRD Large Undertaking Thresholds (November 6, 2023): https://www.ropesgray.com/en/insights/viewpoints/102irur/european-commission-increases-csrd-large-undertaking-thresholds • Complying with the EU Corporate Sustainability Reporting Directive – Looking Ahead to Additional Guidance and Standards (October 30, 2023): https://www.ropesgray.com/en/insights/viewpoints/102irbh/complying-with-the-eu-corporate-sustainability-reporting-directive-looking-ahea • European Commission Proposes to Delay Additional CSRD Reporting Standards (October 23, 2023): https://www.ropesgray.com/en/insights/viewpoints/102iqq8/european-commission-proposes-to-delay-additional-csrd-reporting-standards • The “Summer of CSRD” series – CSRD transitional provisions (September 8, 2023): https://insights.ropesgray.com/post/102inea/the-summer-of-csrd-series-csrd-transitional-provisions • The “Summer of CSRD” series – linkages between CSRD disclosures and with other disclosures (September 6, 2023): https://insights.ropesgray.com/post/102in7e/the-summer-of-csrd-series-linkages-between-csrd-disclosures-and-with-other-di • The “Summer of CSRD” series – general presentation requirements (September 5, 2023): https://insights.ropesgray.com/post/102in2b/the-summer-of-csrd-series-general-presentation-requirements • The “Summer of CSRD” series – preparation and presentation of sustainability information (September 4, 2023): https://insights.ropesgray.com/post/102in2a/the-summer-of-csrd-series-preparation-and-presentation-of-sustainability-info • The “Summer of CSRD” series – reporting time horizons (September 4, 2023): https://insights.ropesgray.com/post/102in26/the-summer-of-csrd-series-reporting-time-horizons • The “Summer of CSRD” series – the value chain (September 1, 2023): https://insights.ropesgray.com/post/102imzn/the-summer-of-csrd-series-the-value-chain

	• The "Summer of CSRD" series – conducting due diligence (September 1, 2023): https://insights.ropesgray.com/post/102imzl/the-summer-of-csrd-series-conducting-due-diligence • The "Summer of CSRD" series – disaggregated reporting (August 31, 2023): https://insights.ropesgray.com/post/102imwx/the-summer-of-csrd-series-disaggregated-reporting • The "Summer of CSRD" series – ten key points from EFRAG's recent materiality assessment guidance (August 30, 2023): https://insights.ropesgray.com/post/102imub/the-summer-of-csrd-series-ten-key-points-from-efrags-recent-materiality-asse • The "Summer of CSRD" series – mandatory and materiality-based disclosures (August 29, 2023): https://insights.ropesgray.com/post/102imrx/the-summer-of-csrd-series-mandatory-and-materiality-based-disclosures • The "Summer of CSRD" series – the materiality assessment process (August 29, 2023): https://insights.ropesgray.com/post/102imqi/the-summer-of-csrd-series-the-materiality-assessment-process • The "Summer of CSRD" series – understanding materiality (August 25, 2023): https://insights.ropesgray.com/post/102imny/the-summer-of-csrd-series-understanding-materiality • The "Summer of CSRD" series – qualitative characteristics of reported information (August 25, 2023): https://insights.ropesgray.com/post/102imnx/the-summer-of-csrd-series-qualitative-characteristics-of-reported-information • The "Summer of CSRD" series – categories of ESRS standards, reporting areas and drafting conventions (August 23, 2023): https://insights.ropesgray.com/post/102imia/the-summer-of-csrd-series-categories-of-esrs-standards-reporting-areas-and-d • European Commission adopts European Sustainability Reporting Standards for CSRD reporting – six takeaways (August 1, 2023): https://insights.ropesgray.com/post/102il6e/european-commission-adopts-european-sustainability-reporting-standards-for-csrd-r • EU Corporate Sustainability Reporting Directive Signed into Law – Implications and Near-term Compliance Steps for U.S.-based Multinationals (December 20, 2022): https://www.ropesgray.com/en/newsroom/alerts/2022/december/eu-corporate-sustainability-reporting-directive-signed-into-law

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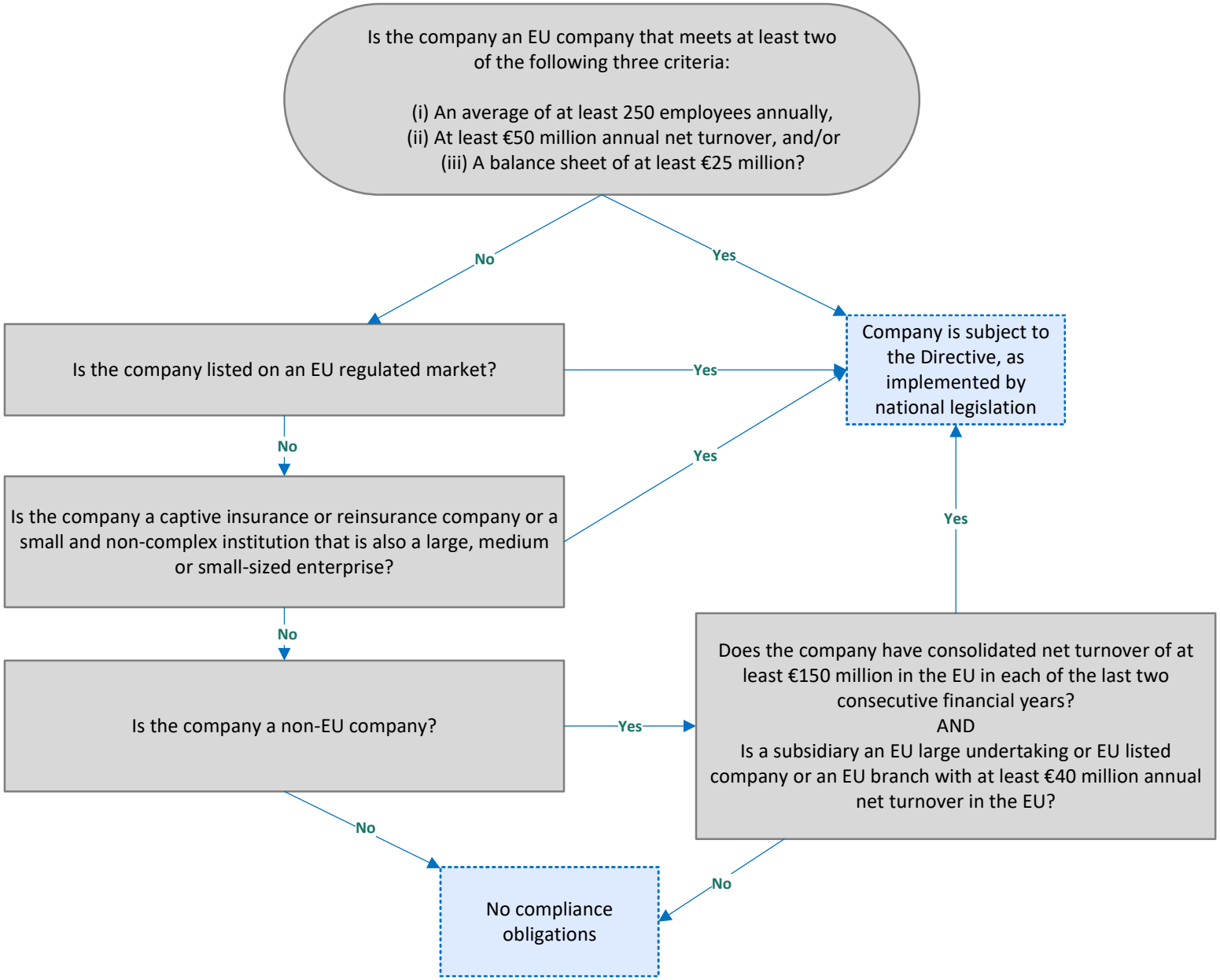
(Updated February 29, 2024)

Applying the Law



Non-financial Reporting Directive **European Union**	
Overview	
Law / Country	**EU Non-financial Reporting Directive** (2014/95/EU) (the **"Directive"**) (European Union)
Goal	To drive improvements in social, human rights and environmental matters through enhanced disclosure.
Adoption / Status	The EU Non-financial Reporting Directive was adopted on October 22, 2014. The Directive is effective for financial years beginning on or after January 1, 2017. The Directive was subsequently transposed into national legislation in the EU member states. The summary below is of the Directive. Some EU member states have adopted more expansive requirements. On January 5, 2023, the Corporate Sustainability Reporting Directive (the **"CSRD"**) entered into force, amending the Directive and expanding its scope. The Directive will continue to remain in effect until covered entities complete their reporting requirements for financial year 2023. Beginning with financial year 2024, covered entities currently subject to the Directive will be required to begin applying the transposed CSRD. The CSRD is further discussed below and in detail in a separate summary.
Issues Addressed	• Corruption and bribery • Diversity • Environment • Human rights • Social and employee matters
Covered Entities	EU-listed companies, banks, insurance companies and other companies designated by national authorities as public interest entities (**"PIEs"**) that meet the following criteria (note that the threshold for diversity disclosure is different): • Balance sheet total of more than €25 million or a net turnover of more than €50 million; and • An average number of employees for the year of more than 500. 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.
How It Works	
Mandatory?	Yes.

Reporting	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: • Environmental protection; • Social responsibility and employee matters; • Respect for human rights; • Anti-corruption; and • Bribery matters. The non-financial statement should include: • A brief description of the company's business model; • A description of the policies pursued by the company in relation to non-financial aspects, including due diligence processes implemented; • The outcome of those policies; • The principal risks related to those matters linked to the company's operations including, where relevant and proportionate, its business relationships, products or services which are likely to cause adverse impacts in those areas, and how the company manages those risks; • Non-financial key performance indicators relevant to the particular business; and • A description of the diversity policy applied in relation to administrative, management and supervisory bodies with regard to aspects such as age, gender, or educational and professional backgrounds, the objectives of that diversity policy, how it has been implemented and the results in the reporting period. 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.
Additional Guidelines	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: • Appropriate corporate governance arrangements (for instance, certain independent board members or a board committee entrusted with responsibility over sustainability and/or transparency matters); • Robust and reliable evidence, internal control and reporting systems; • Effective stakeholder engagement; and • Independent external assurance. In June 2019, the EC 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.
Enforcement	Enforced by the individual EU member states. Enforcement varies by member state.

Amendments to the Directive	As earlier noted, on January 5, 2023, the CSRD entered into force, amending the Directive and expanding its scope to a large number of additional companies. For more details on the CSRD, see the separate summary.
Additional Information/Resources	
Text of the Directive	For the text of the Directive, see: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0095
Official Guidelines	For the June 2017 guidelines, see: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52017XC0705(01) For the June 2019 guidelines, see: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52019XC0620(01)

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(Updated February 29, 2024)

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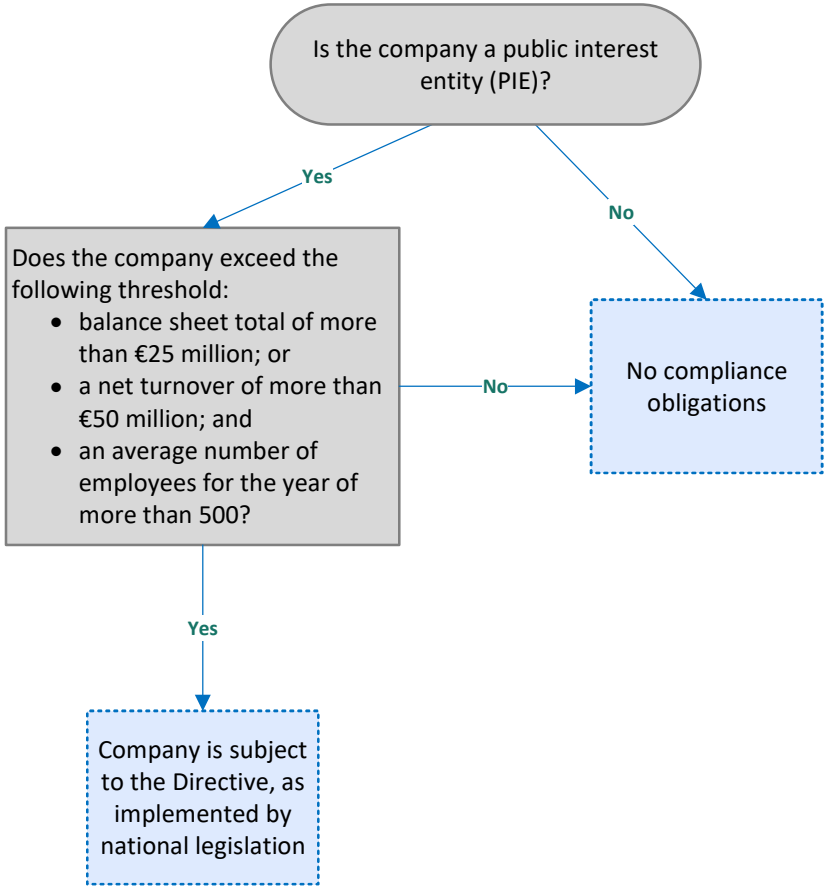

*Note that the threshold for diversity disclosure is different.

Taxonomy Regulation **European Union**	
Overview	
Law / Country	**Taxonomy Regulation** (Regulation (EU) 2020/852) (the **"Regulation"**) (European Union)
Goal	To establish a classification system that defines criteria for economic activities that are aligned with a net zero trajectory by 2050 and broader environmental goals other than climate.
Adoption / Status	The Regulation entered into force on July 12, 2020. The Regulation is supplemented by delegated acts (discussed below) that contain the technical screening criteria that must be satisfied for economic activities to be considered environmentally sustainable. On December 9, 2021, the Delegated Act on sustainable activities for climate change adaptation and mitigation objectives (the **"Climate Delegated Act"**) was published in the Official Journal of the European Union. The Climate Delegated Act establishes technical screening criteria for climate change mitigation and adaptation for a broad range of economic activities that contribute to meeting the EU's environmental objectives. This delegated act went into effect on January 1, 2022. On July 15, 2022, the Complementary Climate Delegated Act (the **"Complementary Climate Delegated Act"**) was published in the Official Journal of the European Union. The Complementary Climate Delegated Act incorporates specific nuclear and gas energy activities in the list of economic activities covered by the Regulation. This delegated act went into effect on January 1, 2023. On December 10, 2021, a Delegated Act supplementing Article 8 of the Regulation (the **"Disclosures Delegated Act"**) was published in the Official Journal. The Disclosures Delegated Act specifies the content, methodology and presentation of information to be disclosed by financial and non-financial undertakings concerning the proportion of environmentally sustainable economic activities in their business, investments or lending activities. On June 13, 2023, as part of the EU Sustainable Finance Package, the European Commission approved amendments to the Climate Delegated Act and Disclosures Delegated Act (the **"Amendments"**). The Amendments to the Climate Delegated Act will, among other things, add additional economic activities and amend some of the current technical assessment criteria. Among other things, the amendments to the Disclosures Delegated Act relate to the notification form. The Amendments were published in the Official Journal of the European Union on November 21, 2023 and apply as of January 2024. On January 15, 2024, five non-governmental organizations (**"NGOs"**) initiated a legal challenge against the European Commission challenging certain rules that would allow certain aviation and shipping activities to be classified as sustainable if they meet certain efficiency criteria, even if they operate on fossil fuels. The NGOs expect the Commission to respond by June 2024. Note that this summary focuses on Undertakings' (defined below) disclosure obligations generally under the Regulation. It does not summarize all aspects of the Regulation, including disclosure obligations of asset managers.

Issue Addressed	• Climate change • Environmental sustainability more generally
Covered Entities	The disclosure requirements set forth in the Regulation are mandatory for undertakings that are subject to the EU Non-Financial Reporting Directive or the Corporate Sustainability Reporting Directive (an **"Undertaking"**). Any other market participant may use the Regulation on a voluntary basis to classify their economic activities as environmentally sustainable.
How It Works	
Mandatory?	Yes.
Disclosure Requirements	An Undertaking must include in its non-financial statement, consolidated non-financial statement information or sustainability statement on how and to what extent the Undertaking's activities are associated with economic activities that qualify as environmentally sustainable (defined below). In particular, Undertakings must disclose: • The proportion of their turnover derived from products or services associated with economic activities that qualify as environmentally sustainable; and • The proportion of their capital expenditures and proportion of operating expenditures related to assets or processes associated with economic activities that qualify as environmentally sustainable. The Disclosures Delegated Act specifies the content and presentation of the information to be disclosed pursuant to the above. The Disclosures Delegated Act's annexes provide detailed lists of what information Undertakings need to report to comply with the Regulation.

Environmentally Sustainable Economic Activities	An economic activity qualifies as "**environmentally sustainable**" if it meets the following four conditions:
	
	• Contributes substantially to at least one environmental objective (listed below);
	• Does not significantly harm any of the environmental objectives;
	  ○ **"Significant harm"** is defined for each environmental objective in the Regulation. For example, a significant harm to the climate change mitigation objective would be where an activity leads to significant greenhouse gas emissions. When assessing harm, both the environmental impact of the activity itself and the environmental impact of the products and services provided by that activity throughout their life cycle must be taken into account, in particular by considering the production, use and end of life of those products and services.
	• Is carried out in compliance with certain minimum safeguards; and
	  ○ **"Minimum safeguards"** means procedures implemented by an Undertaking that is carrying out an economic activity to ensure alignment with the OECD Guidelines for Multinational Enterprises and the UN

	Guiding Principles on Business and Human Rights, including the principles and rights set out in the eight fundamental conventions identified in the Declaration of the International Labour Organization on Fundamental Principles and Rights at Work and the International Bill of Human Rights. • Complies with technical screening criteria established by the Commission (e.g., the Disclosures Delegated Act).
Environmental Objectives	The Regulation articulates six **"environmental objectives"**: • Climate change mitigation – Activities contributing substantially to the stabilization of greenhouse gas concentrations in the atmosphere at a level which prevents dangerous anthropogenic interference with the climate system consistent with the long-term temperature goal of the Paris Agreement through the avoidance or reduction of greenhouse gas emissions or the increase of greenhouse gas removals. The Climate Delegated Act was adopted to, among other topics, establish technical screening criteria for determining the conditions under which a specific economic activity qualifies as contributing substantially to climate change mitigation and adaption. • Climate change adaptation – Activities that either substantially reduce the risk of the adverse impact of the current climate and the expected future climate on that economic activity or substantially reduce that adverse impact, without increasing the risk of an adverse impact on people, nature or assets. • The sustainable use and protection of water and marine resources – Activities that contribute substantially to achieving the good status of bodies of water, including bodies of surface water and groundwater or to preventing the deterioration of bodies of water that already have good status, or the good environmental status of marine waters or preventing the deterioration of marine waters that are already in good environmental status. • The transition to a circular economy – Activities related to waste prevention, re-use and recycling. • Pollution prevention control – Activities that contribute to environmental protection from pollution. • The protection and restoration of biodiversity and ecosystems – Activities that protect, conserve or restore biodiversity or achieve the good condition of ecosystems or protect ecosystems that are already in good condition. For each of the environmental objectives, the Regulation provides detailed examples of applicable activities.
Additional Information/Resources	
The Regulation	For the text of the Regulation, see: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R0852
Delegated Acts	For the text of the Climate Delegated Act, see: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R2139 For the text of the Complementary Climate Delegated Act, see: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R1214 For the text of the Disclosures Delegated Act, see: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R2178

	For the text of the Amendment to the Climate Delegated Act, see: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32023R2485 For the text of the Amendments to the Disclosures Delegated Act, see: https://finance.ec.europa.eu/system/files/2023-06/taxonomy-regulation-delegated-act-2022-environmental_en.pdf
Additional Commission Resources	For Frequently Asked Questions on the Regulation, see: https://ec.europa.eu/sustainable-finance-taxonomy/faq For a Draft Commission Notice including Frequently Asked Questions on the interpretation and implementation of certain legal provisions of the Disclosures Delegated Act (December 21, 2023): https://ec.europa.eu/finance/docs/law/231221-draft-commission-notice-eu-taxonomy-reporting-financials_en.pdf

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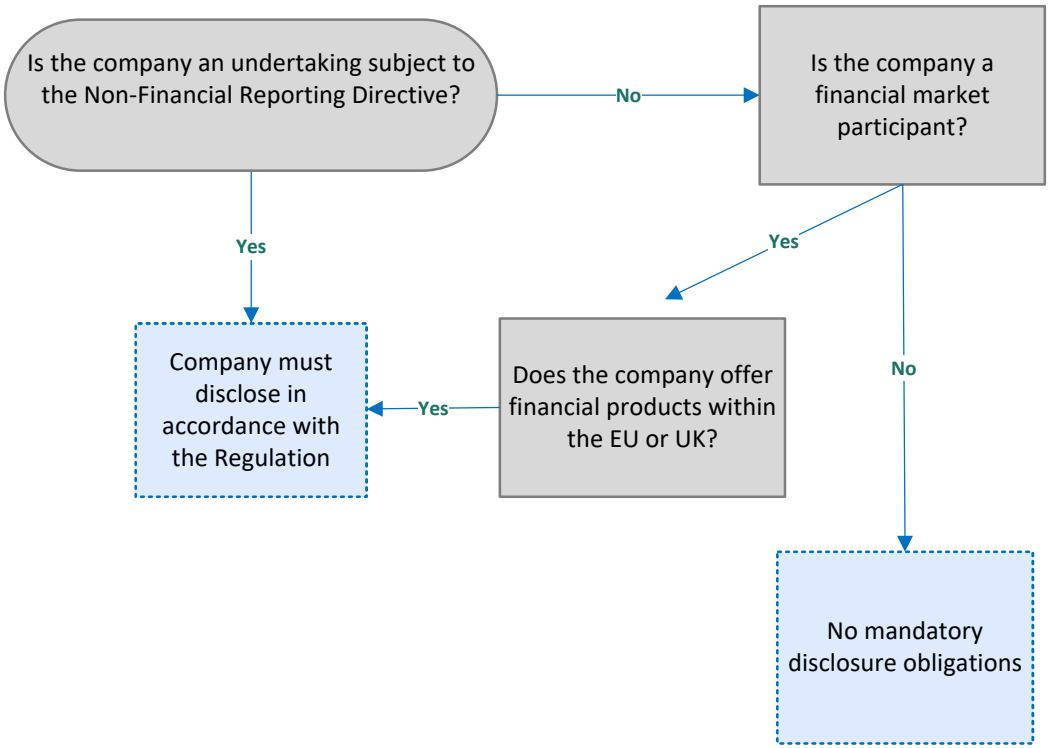

*The summary provided on the previous page does not summarize the reporting obligations of financial market participants.

Climate Corporate Data Accountability Act (Pending) California	
Overview	
Law / State	**Climate Corporate Data Accountability Act** (SB-253) (the **"Act"**) (California, United States)
Goal	Encourage greenhouse gas (**"GHG"**) emissions reduction.
Adoption / Status	The Act was signed by Governor Newsom of California on October 7, 2023. The Act is part of the Climate Accountability Package. The package also included the Climate-Related Financial Risk Act (SB-261) and the Fossil Fuel Divestment Bill (SB-252). See the separate summary on the Climate-Related Financial Risk Act. In connection with his approval of this Act, Governor Newsom published a signing message that contained caveats that may impact how the Act is implemented. In his signing message, the Governor noted that the implementation deadlines were likely infeasible, and the specified reporting protocol could result in inconsistent reporting across businesses subject to the measure. Governor Newsom directed his Administration to work with the bill's author and the legislature to address these issues in 2024. On January 30, 2024, a lawsuit was filed challenging the Act, seeking the court to declare the Act null, void and with no force or effect and enjoin California from implementing or enforcing the Act. In addition, as of the date of this summary, the budget proposed by Governor Newsom does not include funding for implementation of the Act.
Issue Addressed	• Climate change
Covered Entities	U.S.-organized entities that do business in California and have total annual revenues in excess of $1 billion (**"Reporting Entities"**).
How It Works	
Mandatory?	Yes.
Reporting Requirements	The Act requires the California State Air Resources Board (the **"State Board"**), on or before January 1, 2025, to develop and adopt regulations requiring Reporting Entities to publicly disclose their scope 1, scope 2 and scope 3 GHG emissions to an emissions reporting organization. Annual reporting for scope 1 and scope 2 emissions will commence in 2026 (on or by a date to be determined by the State Board) for the prior fiscal year. Annual reporting for scope 3 emissions for the prior fiscal year will commence in 2027. Scope 3 emissions will then need to be disclosed no later than 180 days following the disclosure of scope 1 and 2 emissions. • **"Scope 1 emissions"** means all direct GHG emissions that stem from sources that a Reporting Entity owns or directly controls, regardless of location, including, but not limited to, fuel combustion activities.

	• **"Scope 2 emissions"** means indirect GHG emissions from consumed electricity, steam, heating or cooling purchased or acquired and used by a Reporting Entity, regardless of location. • **"Scope 3 emissions"** means indirect upstream and downstream GHG emissions, other than scope 2 emissions, from sources that the Reporting Entity does not own or directly control. Scope 3 emissions may include, but are not be limited to, purchased goods and services, business travel, employee commutes and processing and use of sold products. The Act requires the State Board to ensure the following: • That all disclosures are made in accordance with the Greenhouse Gas Protocol Corporate Accounting and Reporting Standard and the Greenhouse Gas Protocol Corporate Value Chain (Scope 3) Accounting and Reporting Standard developed by the World Resources Institute and the World Business Council for Sustainable Development, including guidance for scope 3 emissions calculations that detail acceptable use of both primary and secondary data sources, including the use of industry average data, proxy data and other generic data in scope 3 emissions calculations. • That all disclosures are made in a manner that is easily understandable and accessible and include the name of the Reporting Entity and any fictitious names, trade names, assumed names and logos used by the Reporting Entity. • That a Reporting Entity's disclosure takes into account acquisitions, divestments, mergers and other structural changes that can affect greenhouse gas emissions reporting. The Act does not require additional reporting of emissions of greenhouse gases beyond the reporting of scope 1 emissions, scope 2 emissions and scope 3 emissions required pursuant to the Greenhouse Gas Protocol standards and guidance, as currently in effect, or an alternative standard, if one is adopted by the State Board after 2033.
Third Party Assurance	The Reporting Entity's disclosure will be required to be independently verified by a third-party assurance provider. A copy of the complete, audited GHG emissions inventory, including the name of the third-party assurance provider, will need to be disclosed. The assurance engagement for scope 1 emissions and scope 2 emissions will be required to be performed at a limited assurance level beginning in 2026 and at a reasonable assurance level beginning in 2030. On or before January 1, 2027, the state board may establish an assurance requirement for third-party assurance engagements of scope 3 emissions. The assurance engagement for scope 3 emissions will be required to be performed at a limited assurance level beginning in 2030. The third-party assurance provider will be required to have significant experience in measuring, analyzing, reporting or attesting to GHG emissions and competence and capabilities necessary to perform engagements in accordance with professional standards and applicable legal and regulatory requirements. The assurance provider will have to be able to issue reports that are appropriate under the circumstances and independent with respect to the reporting entity, and any of the reporting entity's affiliates for which it is providing the assurance report. The Act requires the State Board to ensure that the assurance process minimizes the need for reporting entities to engage multiple assurance providers and ensure sufficient assurance provider capacity.

	During 2029, the Act requires the State Board to review and, on or before January 1, 2030, update as necessary, the qualifications for third-party assurance providers based on an evaluation of trends in education relating to the emission of greenhouse gases and the qualifications of third-party assurance providers.
Publication; Emissions Reporting Organization	The emissions reporting organization is required to be a nonprofit reporting organization contracted by the State Board. The emissions reporting organization is required to create a publicly available digital platform to feature emissions data of Reporting Entities. The digital platform will be required to enable users to review individual Reporting Entity disclosures. The digital platform also will be required to enable users to analyze underlying data elements aggregated in a variety of ways, such as multi-year data. The emissions reporting organization will be required to make Reporting Entities' disclosures and the State Board's report (as later described) available on the digital platform within 30 days of receipt.
Filing Fee	Upon filing its disclosure, a Reporting Entity is required to pay an annual fee to the State Board for administration and implementation of the Act. The State Board is required to set such fee based on its actual and reasonable administrative costs.
Implementing Regulations	As earlier noted, implementing regulations are required to be developed by the State Board on or before January 1, 2025. The implementing regulations adopted by the State Board are required to be structured to streamline and maximize Reporting Entities' ability to use reports under the Act to meet the requirements of other leading climate disclosure programs and standards. Starting in 2033 and every five years thereafter, the Act permits the State Board to adopt a globally recognized alternative accounting and reporting standard, based on the State Board's review of available standards and consultation with external stakeholders, if it determines such standard would more effectively further the goals of the Act. If the State Board adopts an alternative accounting and reporting standard, it will be required to develop and adopt new regulations to ensure full conformance with the new standard and reporting of scope 1, scope 2 and scope 3 emissions.
Enforcement	The State Board is required to adopt regulations that authorize it to seek administrative penalties of up to $500,000 per reporting year for violations of the Act. The State Board will be able to impose and recover such penalties in administrative hearings. No penalties may be assessed on scope 3 disclosures made with a reasonable basis and disclosed in good faith. Between 2027 and 2030, no penalties will be assessed on scope 3 disclosures, other than for nonfiling.
Interplay with Other Reporting Requirements	As applicable, Reporting Entities are permitted to provide mandatory industrial emissions data required pursuant to Section 38530 of the California Code (Mandatory Greenhouse Gas Emissions Reporting) with the disclosure required by the Act.
Additional State Board Requirements	On or before July 1, 2027, the State Board is required to contract with the University of California, the California State University, a national laboratory or another equivalent academic institution to prepare a report on the public disclosures made by Reporting Entities to the Secretary of State that considers, at a minimum, GHG emissions from Reporting Entities.

	During 2029, the State Board will be required to review, and on or before January 1, 2030, the State Board will be required to update, the public disclosure deadlines to evaluate trends in scope 3 emissions reporting. The State board will be required to consider changes to the disclosure deadlines to ensure that scope 3 emissions data is disclosed to the emissions reporting organization as close in time as practicable to the deadline for reporting entities to disclose scope 1 and scope 2 emissions data.
Additional Information/Resources	
Law	For the text of the Act, see: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB253
Ropes & Gray Resources	Client alerts related to the Act: • New California Climate Disclosure Laws Challenged in Court (January 31, 2024): https://www.ropesgray.com/en/insights/viewpoints/102iyjj/new-california-climate-disclosure-laws-challenged-in-court • Will California's New Corporate Climate Disclosure Requirements be Delayed Due to Budget Shortfalls? (January 12, 2024): https://www.ropesgray.com/en/insights/viewpoints/102iww1/will-californias-new-corporate-climate-disclosure-requirements-be-delayed-due-to • California's Ground-Breaking Climate Disclosure Bills Have Been Signed. But What Will They Really Require and What Should Companies be Doing Now? (October 9, 2023): https://www.ropesgray.com/en/insights/viewpoints/102ipjp/californias-ground-breaking-climate-disclosure-bills-have-been-signed-but-what • California Governor to Sign Climate Disclosure Bills Requiring Thousands of Companies to Report (September 18, 2023): https://www.ropesgray.com/en/insights/viewpoints/102inxk/california-governor-to-sign-climate-disclosure-bills-requiring-thousands-of-compa • California Senate Takes Second Shot at Corporate Climate Disclosures as Part of Proposed Climate Accountability Package (February 22, 2023): https://www.ropesgray.com/en/insights/alerts/2023/02/california-senate-takes-second-shot-at-corporate-climate-disclosures-as-part-of-proposed

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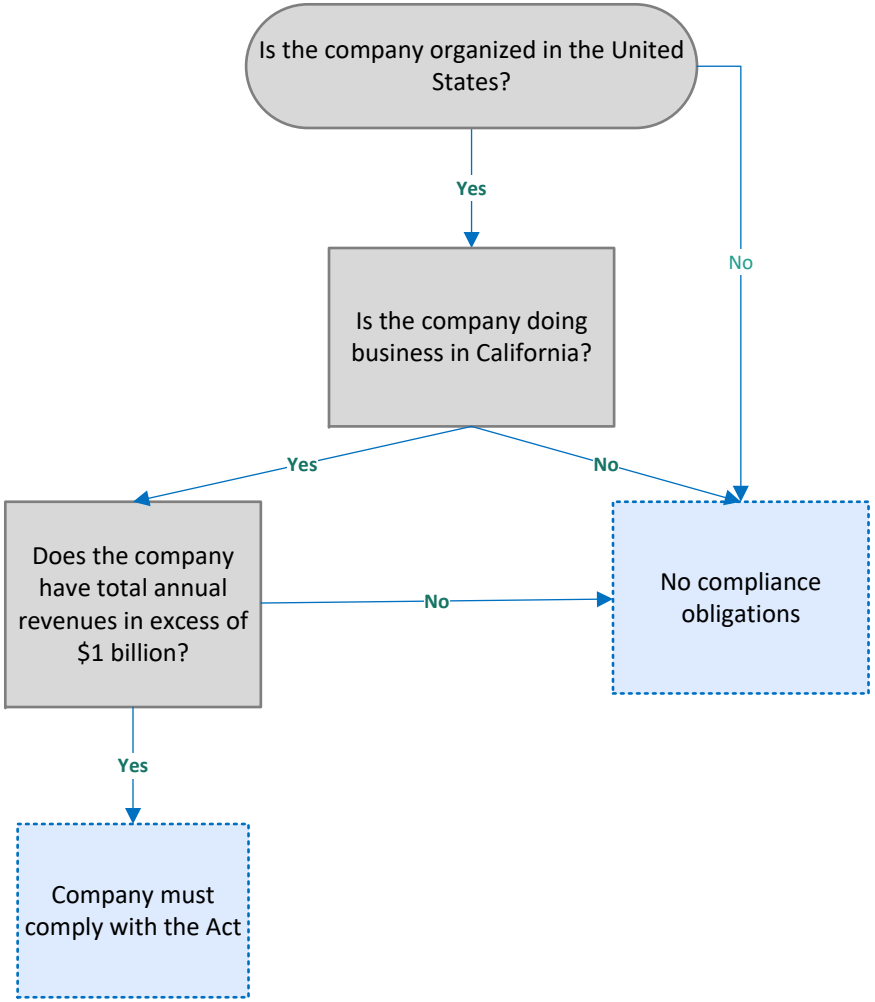

Climate-Related Financial Risk Act (Pending) California	
Overview	
Law / State	**Climate-Related Financial Risk Act** (SB-261) (the **"Act"**) (California, United States)
Goal	Encourage climate change mitigation.
Adoption / Status	The Act was signed by Governor Newsom of California on October 7, 2023. The Act is part of the Climate Accountability Package. The package also included the Climate Corporate Data Accountability Act (SB-253) and the Fossil Fuel Divestment Bill (SB-252). See the separate summary on the Climate Corporate Data Accountability Act. In connection with his approval of the Act, Governor Newsom released a signing message noting that the implementation deadlines set forth in the Act fall short in providing the California Air Resources Board with sufficient time to adequately carry out the requirements of the Act. He directed his Administration to work with the bill's author and the legislature to address this issue over the course of 2024. On January 30, 2024, a lawsuit was filed challenging the Act, seeking the court to declare the Act null, void and with no force or effect and enjoin California from implementing or enforcing the Act. In addition, as of the date of this summary, the budget proposed by Governor Newsom does not include funding for implementation of the Act.
Issue Addressed	• Climate change
Covered Entities	U.S.-organized entities that do business in California and have total annual revenues that exceed $500 million in the prior fiscal year (the **"Covered Entities"**). Companies subject to regulation by the California Department of Insurance or that are in the business of insurance in any other state are excluded.
How It Works	
Mandatory?	Yes.
Reporting Requirements	Covered Entities will be required to biennially prepare a climate-related financial risk report. The first report will be required to be prepared by January 1, 2026. The report will be required to disclose the following: • The Covered Entity's climate-related financial risk in accordance with the recommended framework and disclosures published by the Task Force on Climate-related Financial Disclosures; and • The measures adopted to reduce and adapt to the disclosed climate-related financial risks. In place of the recommended framework and disclosures published by the Task Force on Climate-related Financial Disclosures, Covered Entities will also be able to disclose their climate-related financial risk pursuant to (1) a law, regulation or listing

	requirement issued by a regulated exchange, national government or other governmental entity with disclosure requirements consistent with those required by the Act (including the International Financial Reporting Standards Sustainability Disclosure Standards, as issued by the International Sustainability Standards Board) or (2) another framework that meets the disclosure requirements of the Act. **"Climate-related financial risk"** means material risk of harm to immediate and long-term financial outcomes due to physical and transition risks, including, but not limited to, risks to corporate operations, provision of goods and services, supply chains, employee health and safety, capital and financial investments, institutional investments, financial standing of loan recipients and borrowers, shareholder value, consumer demand, and financial markets and economic health. If a Covered Entity does not complete a report consistent with all required disclosures noted in the first bullet point above, it will be required to provide the recommended disclosures to the best of its ability, provide a detailed explanation for any reporting gaps, and describe steps the Covered Entity will take to prepare complete disclosures.
Reporting Requirement Exceptions	A Covered Entity will not be required to prepare a climate-related financial risk report if its parent company published such a report. If a federal law or regulation enacted after January 1, 2023 requires a covered entity to prepare an annual report disclosing information materially similar to the information required under the Act, a report prepared pursuant to that federal requirement will satisfy the reporting requirements under the Act and the Covered Entity may attest to the California Secretary of State that it has publicly disclosed the climate-risk disclosures to satisfy the publication requirement of the Act.
Publication	Reports will be required to be made available on the Covered Entity's website. Covered Entities also will need to submit a statement to the California Secretary of State affirming that the report discloses climate-related financial risk in accordance with the requirements of the Act.
Filing Fee	Upon filing its disclosure, a Covered Entity will be required to pay a fee to the State Board for the administration and implementation of the Act. The State Board is required to set the fee based on its actual and reasonable administrative costs.

Climate Reporting Organization	The Act also requires the State Board to contract with a non-profit climate reporting organization that both (1) currently operates a climate reporting organization for organizations operating in the U.S. and (2) has experience with climate-related financial risk disclosure by entities operating in California. Under the Act, its duties include:
	
	• Biennially preparing a public report that contains:
	  ○ A review of the disclosure of climate-related financial risk contained in a subset of publicly available climate-related financial risk reports by industry;
	  ○ Analysis of the systemic and sector-wide climate-related financial risks facing California based on the contents of climate-related financial risk reports, including, but not limited to, potential impacts on economically vulnerable communities; and
	  ○ Identification of inadequate or insufficient reports.
	• Regularly convening representatives of sectors responsible for reporting climate-related financial risks, state agencies responsible for oversight of reporting sectors, investment managers, academic experts, standard-setting

	organizations, climate and corporate sustainability organizations, labor union representatives whose members work in impacted sectors and other stakeholders to offer input on current best practices regarding disclosure of financial risks resulting from climate change; and • Monitoring federal regulatory actions among agency members of the federal Financial Stability Oversight Council, as well as non-independent regulators overseen by the White House.
Enforcement	The Act requires the State Board to adopt regulations authorizing it to seek administrative penalties (not to exceed US$50,000 in a reporting year) from Covered Entities that fail to meet the reporting requirements of the Act. The administrative penalties will be imposed and recovered by the State Board in administrative hearings conducted pursuant to Article 3 and Article 4 of the California Code of Regulations. In imposing penalties, the State Board will be required to consider all relevant circumstances, including both (1) the Covered Entity's past and present compliance with the Act, and (2) whether the Covered Entity took good faith measures to comply with the Act and when such measures were taken.
Additional Information/Resources	
Law	For the text of the Act, see: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB261
Ropes & Gray Resources	Third-party thought leadership: • Michael Littenberg of Ropes & Gray on California's SB 253 and 261 (September 18, 2023): https://watershed.com/blog/ropes-and-gray-sec Client alerts related to the Act: • New California Climate Disclosure Laws Challenged in Court (January 31, 2024): https://www.ropesgray.com/en/insights/viewpoints/102iyjj/new-california-climate-disclosure-laws-challenged-in-court • Will California's New Corporate Climate Disclosure Requirements be Delayed Due to Budget Shortfalls? (January 12, 2024): https://www.ropesgray.com/en/insights/viewpoints/102iww1/will-californias-new-corporate-climate-disclosure-requirements-be-delayed-due-to • California's Ground-Breaking Climate Disclosure Bills Have Been Signed. But What Will They Really Require and What Should Companies be Doing Now? (October 9, 2023): https://www.ropesgray.com/en/insights/viewpoints/102ipjp/californias-ground-breaking-climate-disclosure-bills-have-been-signed-but-what • California Governor to sign climate disclosure bills requiring thousands of companies to report (September 18, 2023): https://insights.ropesgray.com/post/102inxk/california-governor-to-sign-climate-disclosure-bills-requiring-thousands-of-compa

	• California Senate Takes Second Shot at Corporate Climate Disclosures as Part of Proposed Climate Accountability Package (February 22, 2023): https://www.ropesgray.com/en/newsroom/alerts/2023/02/california-senate-takes-second-shot-at-corporate-climate-disclosures-as-part-of-proposed?utm_source=alert&utm_medium=email&utm_campaign=california-senate-takes-second-shot-at-corporate-climate-disclosures-as-part-of-proposed&utm_content=ESG

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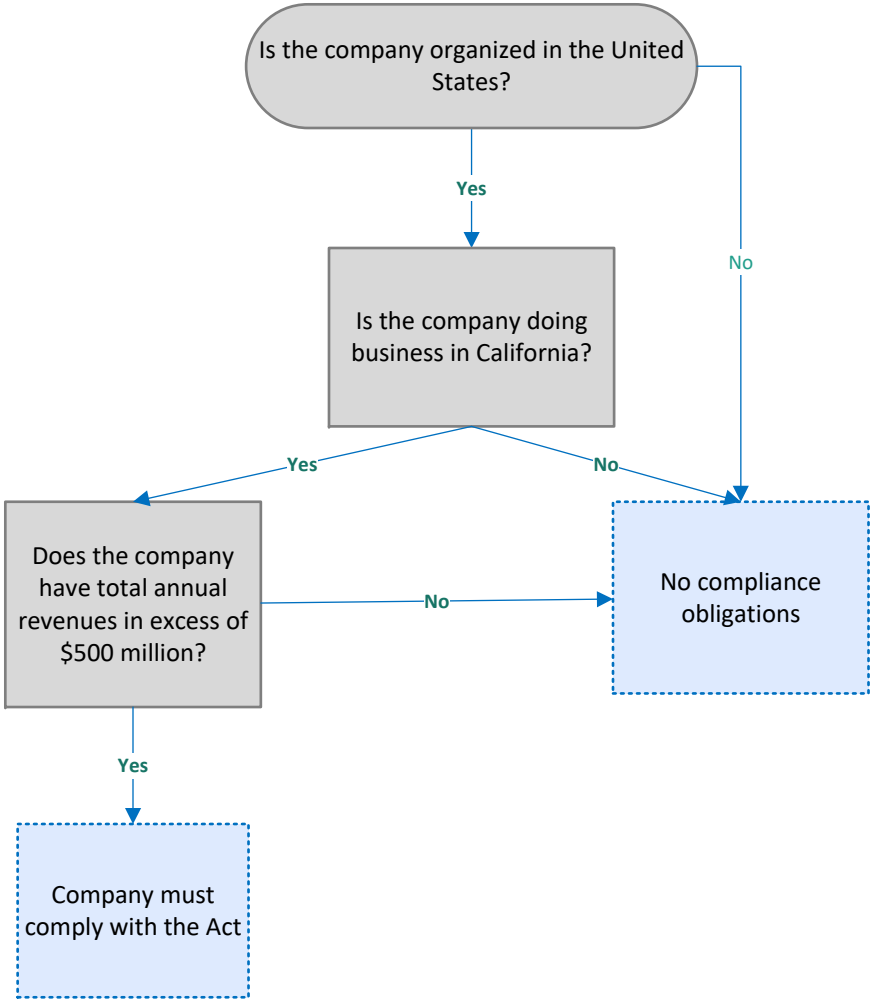

Voluntary Carbon Market Disclosures Act California	
Overview	
Law / State	**Voluntary Carbon Market Disclosures Act** (AB 1305) (the **"Act"**) (California, United States)
Goal	Disclosure regarding voluntary carbon offsets (**"VCOs"**) and emissions reduction claims.
Adoption / Status	The Act was signed by the Governor of California on October 7, 2023, and went into effect on January 1, 2024. Following the Act's adoption, Assemblymember Jesse Gabriel, the sponsor of the Act, stated in a letter to the Chief Clerk of the Assembly that the compliance date was intended to be January 1, 2025. In the letter, Assemblymember Gabriel acknowledges that the Act does not specify a compliance date by which subject entities must make the required disclosures, but that it was his intent that the first required disclosures be posted by January 1, 2025, to provide reporting entities sufficient time to align their business practices with the stated objectives of the Act. In February 2024, Assemblymember Gabriel introduced AB 2331, which would amend the Act to make clear that disclosures under it are not required until January 1, 2025. AB 2331 is currently in committee.
Issue Addressed	• Climate change
Covered Entities	The Act applies to business entities that engage in any of the following, each of which requires specific disclosures: • Markets or sells VCOs within California (a **"VCO Seller"**); • Makes claims (1) regarding the achievement of net zero emissions, (2) that the entity, a related or affiliated entity or a product is "carbon neutral" or (3) implying the entity, a related or affiliated entity or a product does not add net carbon dioxide or GHG to the climate or has made significant reductions to its carbon dioxide or GHG emissions. An entity that does not operate within California, that does not purchase or use VCOs sold within California, that does not market or sell VCOs within California and/or that does not make claims within California is not subject to the disclosure requirements of the Act. A **"VCO"** means any product sold or marketed in California that claims to be a "GHG emissions offset," a "voluntary emissions reduction," a "retail offset," or any like term, that connotes that the product represents or corresponds to a reduction in the amount of GHG present in the atmosphere or that prevents the emission of GHG into the atmosphere that would have otherwise been emitted. "VCO" does not include products that represent or correspond to legal or regulatory mandates for either (1) reduction of the amount of GHG present in the atmosphere or (2) prevention of the emissions of GHG into the atmosphere. AB 2331 would amend the definition of VCO to make express that it excludes renewable energy credits.
How It Works	
Mandatory?	Yes.

Disclosure Requirements	VCO Sellers must disclose on their website the following information: • Details regarding the applicable carbon offset project, including: o The specific protocol used to estimate emissions reductions or removal benefits; o The location of the offset project site; o The project timeline; o The date when the project started or will start; o The dates and quantities when a specified quantity of emissions reductions or removals started or will start, or was modified or reversed; o The type of project, including whether the offsets from the project are derived from a carbon removal, an avoided emission or, in the case of a project with both carbon removals and avoided emissions, the breakdown of offsets from each; o Whether the project meets any standards established by law or by a nonprofit entity; o The durability period for any project that the seller knows or should know that the durability of the project's GHG reductions or GHG removal enhancements is less than the atmospheric lifetime of carbon dioxide emissions; o Whether there is independent expert or third-party validation or verification of the project attributes; and o Emissions reduced or carbon removed on an annual basis. • Details regarding accountability measures if a project is not completed or does not meet the projected emissions reductions or removal benefits, including, but not limited to, details regarding what actions the entity, either directly or by contractual obligation, will take if carbon storage projects are reversed or if future emissions reductions do not materialize. • The pertinent data and calculation methods needed to independently reproduce and verify the number of emissions reduction or removal credits issued using the protocol. Entities that make "carbon neutral," "net zero emission" or other similar claims must disclose on their website the following information pertaining to all GHG emissions associated with their claims: • All information documenting how, if at all, a "carbon neutral," "net zero emission" or other similar claim was determined to be accurate or actually accomplished, and how interim progress toward that goal is being measured. This information may include disclosure of independent third-party verification of the entity's GHG emissions, identification of the entity's science-based targets for its emissions reduction pathway or disclosure of the relevant sector methodology and third-party verification used for the entity's science-based targets and emissions reduction pathway. • Whether there is independent third-party verification of the company data and claims listed. All such disclosures are required to be updated at least annually.

	Entities that make such claims and also purchase or use VCOs must disclose on their website the following information pertaining to each project or program: • The name of the business entity selling the offset and the offset registry or program. • The project identification number, if applicable. • The project name as listed in the registry or program, if applicable. • The offset project type, including whether the offsets purchased were derived from a carbon removal, an avoided emission, or a combination of both, and site location. • The specific protocol used to estimate emissions reductions or removal benefits. • Whether there is independent third-party verification of company data and claims listed. All such disclosures are required to be updated at least annually. **"Durability"** means the duration of time over which an offset project operator commits to maintain its GHG reductions and GHG removal enhancements, as applicable, exclusive of any aspirational outcomes that exceed or extend beyond the mandatory outcomes required of the offset project pursuant to its offset protocol. **"Protocol"** means a documented set of procedures and requirements to quantify ongoing GHG reductions or GHG removal enhancements achieved by an offset project and to calculate the project baseline, including specification of relevant data collection and monitoring procedures, emission factors and methodologies used to conservatively account for uncertainty and activity-shifting and market-shifting leakage risks associated with an offset project.
Enforcement	An entity that violates the Act part is subject to a civil penalty for each day that information is unavailable or inaccurate on the entity's website, not to exceed $2,500 per day or a total of $500,000. Pursuant to the Act, the penalties will be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by a district attorney, county counsel or city attorney in a court of competent jurisdiction.
Additional Information/Resources	
Law	For the text of the Act, see: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240AB1305. For the text of AB 2331, see: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240AB2331.
Additional Guidance	For the letter submitted by Assemblymember Jesse Gabriel, see: https://www.politico.com/f/?id=0000018c-3b62-d0ce-a98c-7f6a88a50000.
Ropes & Gray Resources	Client alerts, blog posts and podcasts related to the Act: • California Law for Asset Managers: California ESG Landscape (April 1, 2024): https://www.ropesgray.com/en/insights/podcasts/2024/04/california-law-for-asset-managers-california-esg-landscape • California's Voluntary Carbon Market Disclosures Statute (January 25, 2024): https://www.ropesgray.com/en/insights/alerts/2024/01/californias-voluntary-carbon-market-disclosures-statute

	• The California Voluntary Carbon Market Disclosures Act – first disclosures not required until 2025? (December 7, 2023): https://www.ropesgray.com/en/insights/viewpoints/102iule/the-california-voluntary-carbon-market-disclosures-act-first-disclosures-not-re • California's ground-breaking climate disclosure bills have been signed. But what will they really require and what should companies be doing now? (October 9, 2023): https://www.ropesgray.com/en/insights/viewpoints/102ipjp/californias-ground-breaking-climate-disclosure-bills-have-been-signed-but-what • The California climate disclosure bill almost no one is talking about – net zero and voluntary carbon offsets disclosures soon to be required? (October 2, 2023): https://www.ropesgray.com/en/insights/viewpoints/102ioyf/the-california-climate-disclosure-bill-almost-no-one-is-talking-about-net-zero

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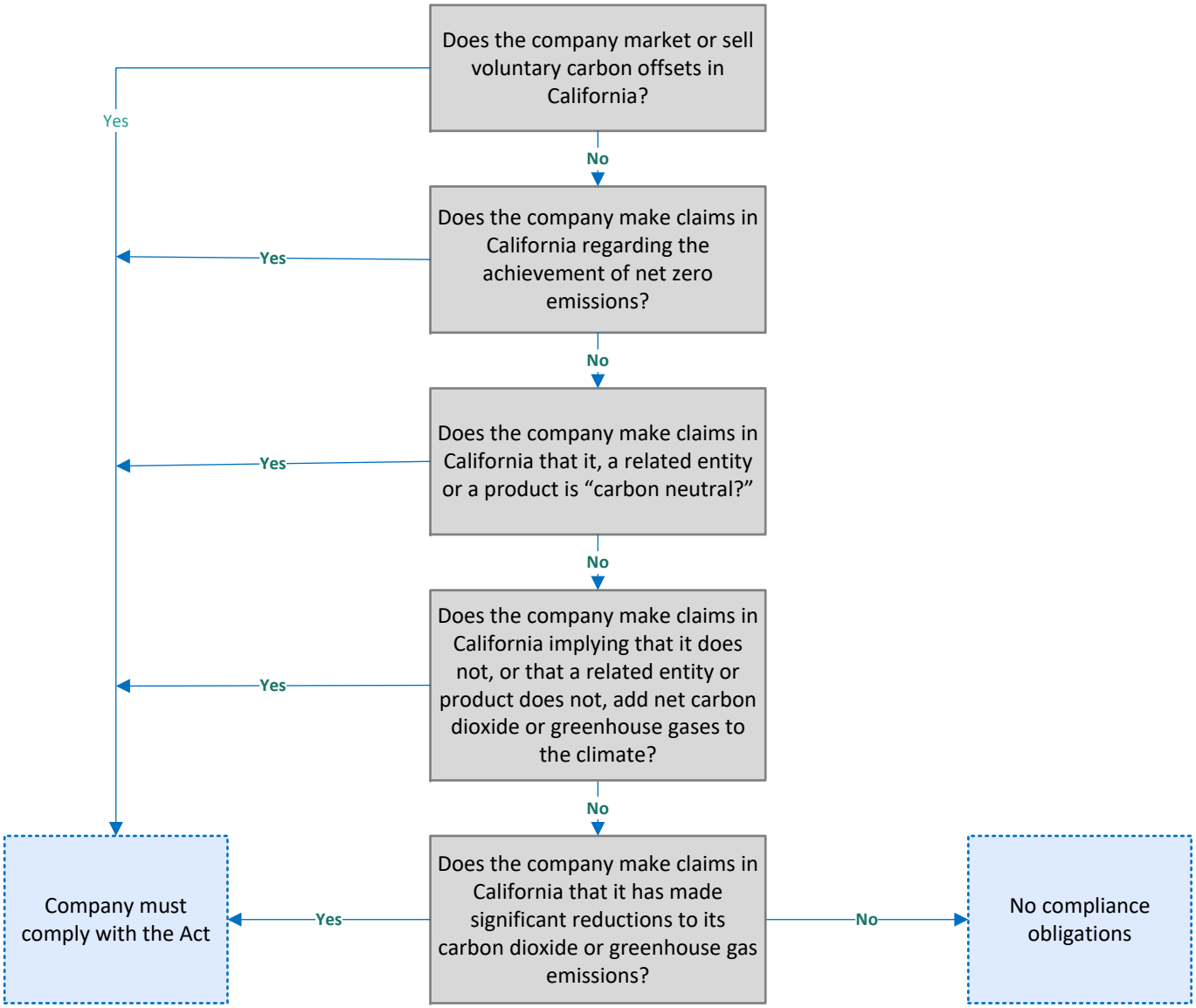

Climate Corporate Accountability Act (Proposed) Illinois	
Overview	
Law / State	**Climate Corporate Accountability Act** (HB4268) (the **"Act"**) (Illinois, United States)
Goal	Encourage greenhouse gas (**"GHG"**) emissions reduction.
Adoption / Status	The Act was introduced to the General Assembly by House Representative Kimberly Du Buclet on December 13, 2023. The Act was first read and then referred to the Rules Committee on January 16, 2024.
Issue Addressed	• Climate change
Covered Entities	U.S.-organized entities with total annual revenues in excess of $1 billion that do business in Illinois (a **"Reporting Entity"**).
How It Works	
Mandatory?	Yes.
Reporting Requirements	Starting on January 1, 2025, and annually thereafter, a Reporting Entity would be required to publicly disclose to the emissions registry all of the Reporting Entity's scope 1 and scope 2 emissions for the prior calendar year, and its scope 3 emissions for that same calendar year no later than 180 days after making its scope 1 and scope 2 emissions disclosures. • **"Scope 1 emissions"** would mean all direct GHG emissions that stem from sources that a Reporting Entity owns or directly controls, regardless of location, including, but not limited to, fuel combustion activities. • **"Scope 2 emissions"** would mean indirect GHG emissions from electricity purchased and used by a Reporting Entity, regardless of location. • **"Scope 3 emissions"** would mean indirect GHG emissions, other than scope 2 emissions, from activities of a Reporting Entity that stem from sources that the Reporting Entity does not own or directly control and may include, but would not be limited to, emissions associated with the reporting entity's supply chain, business travel, employee commutes, procurement, waste and water usage, regardless of location. Emissions calculations would be required to be made in accordance with the Greenhouse Gas Protocol Corporate Accounting and Reporting Standard and the Greenhouse Gas Protocol Corporate Value Chain (Scope 3) Accounting and Reporting Standard, including guidance for scope 3 emissions calculations that detail acceptable use of both primary and secondary data sources, including the use of industry average data, proxy data and other generic data in scope 3 emissions calculations. The disclosures would also be required to include the Reporting Entity's name, as well as any fictitious names, trade names, assumed names and logos used by the Reporting Entity.
Third Party Assurance	The Reporting Entity's disclosure would be required to be independently verified by the emissions registry (described below) or a third-party auditor with expertise in GHG emissions accounting approved by the Secretary of State. The Reporting Entity

	would be required to provide the emissions registry a copy of the complete, audited GHG emissions inventory, including the name of the approved third-party auditor. The Secretary of State would be required to establish auditor qualifications and a process for approval of auditors that ensures sufficient auditor capacity and timely reporting implementation.
Emissions Registry	The emissions registry would be a nonprofit organization contracted by the Secretary of State that (1) currently operates a voluntary greenhouse gas emissions registry for organizations operating in the United States, and (2) has experience with voluntary greenhouse gas emissions disclosure by entities operating in Illinois. On or before January 1, 2025, the emissions registry would be required to create a publicly accessible digital platform as a database for all the disclosures submitted by Reporting Entities. The emissions registry would be required to publish the disclosures within 30 days of receipt.
Implementing Regulations	On or before July 1, 2024, the Secretary of State would be required to adopt regulations requiring Reporting Entities to publicly disclose and verify their scope 1, scope 2 and scope 3 GHG emissions to an emissions registry. The regulations would have to be structured in ways that maximize and streamline reporting and ease of use in meeting the requirements of national and international disclosure programs and standards, including, but not limited to, adopted rules from the U.S. Securities and Exchange Commission and international standards such as those established by CDP Global. The Secretary of State may adopt any other rules that it deems necessary and appropriate to implement the Act.
Further Review	On or before July 1, 2029, the Secretary of State would be required to review, and update as necessary, the public disclosure deadlines to evaluate trends in scope 3 emissions reporting and consider changes to the disclosure deadlines to ensure that scope 3 emissions data is disclosed to the emissions registry as close in time as practicable to the deadline for disclosing scope 1 and scope 2 emissions data. The reporting timelines would need to take into account industry stakeholder input, the timelines by which Reporting Entities typically receive scope 1, scope 2 and scope 3 emissions data, and the capacity for independent verification to be performed by a third-party auditor.
Enforcement	For a willful failure by a Reporting Entity to comply with the requirements of the Act, the Attorney General would be able to bring a civil penalty action.
Secretary of State Report	On or before January 1, 2025, the Secretary of State would be required to contract with the University of Illinois, a national laboratory, or another equivalent academic institution to prepare a report on the public disclosures made by Reporting Entities to the emissions registry. The Secretary of State would be required to submit this report to the emissions registry, which would be made publicly available on the digital platform.

Additional Information/Resources	
Law	For the text of the Act, see: https://www.ilga.gov/legislation/fulltext.asp?DocName=&SessionId=112&GA=103&DocTypeId=HB&DocNum=4268&GAID=17&LegID=151108&SpecSess=&Session=
Ropes & Gray Resources	Client alert related to the Act: • Another proposed corporate climate disclosure requirement – the Illinois Climate Corporate Accountability Act (February 5, 2024): https://www.ropesgray.com/en/insights/viewpoints/102iyxw/another-proposed-corporate-climate-disclosure-requirement-the-illinois-climate

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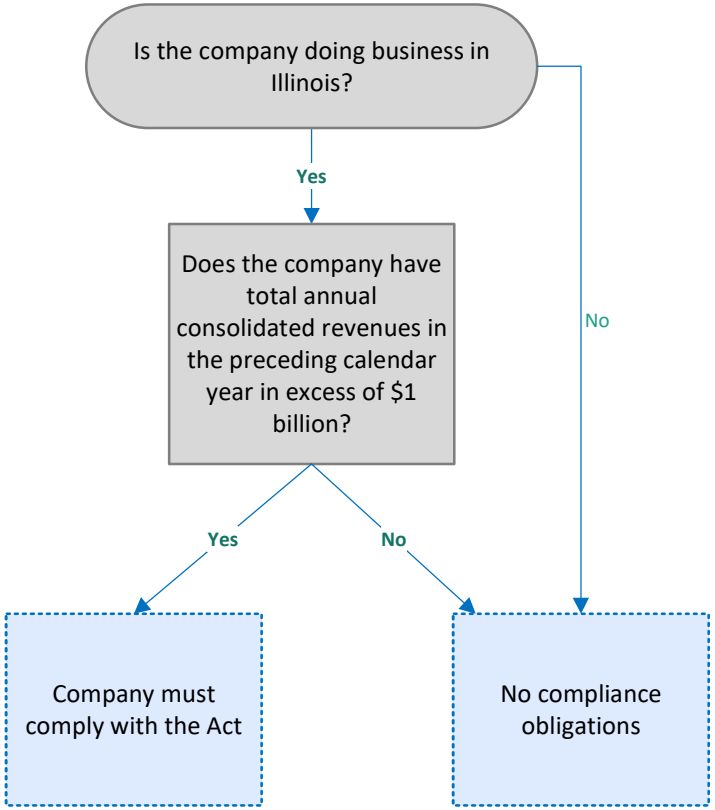

Climate Corporate Accountability Act (Proposed) New York	
Overview	
Law / State	**Climate Corporate Accountability Act** (S897) (A4123) (the **"Act"**) (New York, United States)
Goal	Encourage greenhouse gas (**"GHG"**) emissions reduction.
Adoption / Status	The Act was introduced by Senators Hoylman-Sigal, Gounardes and May to the New York Senate on January 9, 2023, and introduced to the New York Assembly on February 9, 2023 by assemblymembers Glick, Cunningham and Kelles. The Act was amended and recommitted to the Senate Finance Committee on May 23, 2023. On January 3, 2024, the Act was referred to the Senate's Environmental Conservation Committee. The Act would take effect two years after it becomes law.
Issue Addressed	• Climate change
Covered Entities	A business entity with total consolidated revenues in excess of $1 billion in the preceding calendar year that does business in New York (a **"Reporting Entity"**).
How It Works	
Mandatory?	Yes.
Reporting Requirements	The New York Department of Environmental Conservation (the **"Department"**) would be required to adopt regulations requiring Reporting Entities to publicly disclose and verify their scope 1, scope 2 and scope 3 GHG emissions to an emissions registry. On or before July 1 of each year, a Reporting Entity would need to publicly disclose to the emissions registry all of the Reporting Entity's scope 1 and scope 2 emissions for the prior calendar year, and its scope 3 emissions for that same calendar year no later than December 31. • **"Scope 1 emissions"** would mean all direct GHG emissions that stem from sources that a Reporting Entity owns or directly controls, regardless of location, including, but not limited to, fuel combustion activities. • **"Scope 2 emissions"** would mean indirect GHG emissions from electricity purchased and used by a Reporting Entity, regardless of location. • **"Scope 3 emissions"** would mean indirect GHG emissions, other than scope 2 emissions, from activities of a Reporting Entity that stem from sources that the Reporting Entity does not own or directly control and may include, but would not be limited to, emissions associated with the reporting entity's supply chain, business travel, employee commutes, procurement, waste and water usage, regardless of location. Emissions calculations would be required to be made in accordance with the Greenhouse Gas Protocol Corporate Accounting and Reporting Standard and the Greenhouse Gas Protocol Corporate Value Chain (Scope 3) Accounting and Reporting Standard developed by the World Resources Institute and the World Business Council for Sustainable Development, including

	guidance for scope 3 emissions calculations that detail acceptable use of both primary and secondary data sources, including the use of industry average data, proxy data and other generic data in scope 3 emissions calculations. The disclosures would also be required to include the Reporting Entity's name, as well as any fictitious names, trade names, assumed names, subsidiaries and logos used by the Reporting Entity. The disclosure would have to be structured in ways that minimize duplication of effort and maximize and streamline reporting and ease of use in meeting the requirements of national and international disclosure programs and standards, including, but not limited to, adopted rules from the U.S. Securities and Exchange Commission and international standards such as those established by CDP Global. The Department would be required to review, and update as necessary, the public disclosure deadlines to evaluate trends in scope 3 emissions reporting and consider changes to the disclosure deadlines to ensure that scope 3 emissions data is disclosed to the emissions registry as close in time as practicable to the deadline for Reporting Entities to disclose scope 1 and scope 2 emissions data. The reporting timelines would need to take into account the timelines by which Reporting Entities typically receive scope 1, scope 2 and scope 3 emissions data, as well as the capacity for independent verification to be performed by a third-party auditor, as approved by the Department.
Third Party Assurance	The Reporting Entity's disclosure would be required to be independently verified by the emissions registry (described below) or a third-party auditor approved by the Department, with expertise in GHG emissions accounting. The Reporting Entity would be required to provide the emissions registry a copy of the complete, audited GHG emissions inventory, including the name of the approved third-party auditor. The Department would be required to establish auditor qualifications and a process for approval of auditors that ensures sufficient auditor capacity and timely reporting implementation.
Emissions Registry	The emissions registry would be an entity within the Department or a nonprofit emissions registry organization contracted by the Department. The emissions registry would be required to develop a reporting and registry program to receive and make publicly available disclosures from Reporting Entities. The emissions registry would be required to make Reporting Entities' disclosures available on the Department's website within 30 days of receipt.
Implementing Regulations	The Department may adopt or update any other regulations that it deems necessary and appropriate to implement the Act.
Enforcement	For willful failure to comply with the requirements of the Act, the Attorney General would be able to bring a civil action against such Reporting Entity for a civil penalty of $100,000 per day.
Department Report	The Department would be required to prepare a report on the Reporting Entities' disclosures and regulations adopted by the Department and deliver such report to the Governor, the Speaker of the Assembly and the temporary President of the Senate. The Department would also be required to publish the report on its website.

Additional Information/Resources	
Law	For the text of the Act, see: https://legislation.nysenate.gov/pdf/bills/2023/s897

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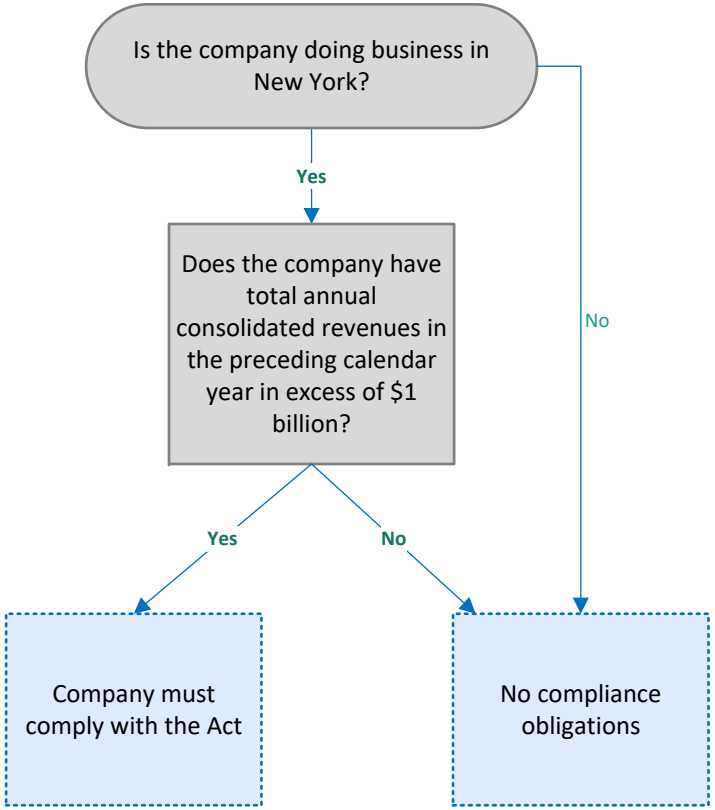

Climate-Related Financial Risk Reporting Act (Proposed) New York	
Overview	
Law / State	**Climate-Related Financial Risk Act** (S7704) (the **"Act"**) (New York, United States)
Goal	To monitor climate risk to businesses in New York.
Adoption / Status	The Act was introduced by Senator James Sanders on October 16, 2023 to amend the environmental conservation law to require reporting climate-related financial risk.
Issue Addressed	• Climate change
Covered Entities	U.S.-organized entities that do business in New York and have total annual revenues that exceed $500 million in the prior fiscal year (the **"Covered Entities"**). Companies subject to regulation by the Department of Financial Services, or that are in the business of insurance in any other state would be excluded.
How It Works	
Mandatory?	Yes.
Reporting Requirements	Covered Entities would be required to biennially prepare a climate-related financial risk report. The first report would be required to be published by January 1, 2026. The report would be required to disclose the following: • The Covered Entity's climate-related financial risk in accordance with the recommended framework and disclosures published by the Task Force on Climate-related Financial Disclosures; and • The measures adopted to reduce and adapt to the disclosed climate-related financial risks. A Covered Entity would satisfy the reporting requirements under the Act if it prepares a publicly accessible biennial report that includes climate-related financial risk disclosure information pursuant to (1) a law, regulation or listing requirement issued by a regulated exchange, national government or other governmental entity with disclosure requirements consistent with those required by the Act (including the International Financial Reporting Standards Sustainability Disclosure Standards, as issued by the International Sustainability Standards Board) or (2) another framework that meets the disclosure requirements of the Act or the International Financial Reporting Standards Sustainability Disclosure Standards. **"Climate-related financial risk"** means material risk of harm to immediate and long-term financial outcomes due to physical and transition risks, including, but not limited to, risks to corporate operations, provision of goods and services, supply chains, employee health and safety, capital and financial investments, institutional investments, financial standing of loan recipients and borrowers, shareholder value, consumer demand and financial markets and economic health.

	If a Covered Entity does not complete a report consistent with all required disclosures noted in the bullet points above, it would need to provide the recommended disclosures to the best of its ability, provide a detailed explanation for any reporting gaps and describe the steps the Covered Entity would take to prepare complete disclosures.
Reporting Exceptions	A Covered Entity would not be required to prepare a climate-related financial risk report if its parent company published a report.
Publication	Reports would need to be made available on the Covered Entity's website.
Filing Fee	Upon filing its report, and annually thereafter, a Covered Entity would need to pay a fee to the Department of Environmental Conservation (the **"Department"**) for the administration and implementation of the Act. The Department would be required to set the fee based on its actual and reasonable administrative costs.
Climate Reporting Organization	The Act would also require the Department to contract with a non-profit climate reporting organization to do the following: • Biennially prepare a public report that contains: o A review of the disclosure of climate-related financial risk contained in a subset of publicly available climate-related financial risk reports by industry; o Analysis of the systemic and sector-wide climate-related financial risks facing New York based on the contents of climate-related financial risk reports, including, but not limited to, potential impacts on economically vulnerable communities; and o Identification of inadequate or insufficient reports. • Regularly convene representatives of sectors responsible for reporting climate-related financial risks, state agencies responsible for oversight of reporting sectors, investment managers, academic experts, standard-setting organizations, climate and corporate sustainability organizations, labor union representatives whose members work in impacted sectors and other stakeholders to offer input on current best practices regarding disclosure of financial risks resulting from climate change; and • Monitor federal regulatory actions among agency members of the federal Financial Stability Oversight Council, as well as non-independent regulators overseen by the White House.
Enforcement	The Act would require the Department to adopt regulations authorizing it to seek administrative penalties (not to exceed US$50,000 in a reporting year) from Covered Entities that fail to meet the reporting requirements of the Act. The administrative penalties would be imposed and recovered by the Department in administrative hearings. In imposing penalties, the Department would be required to consider all relevant circumstances, including both (1) the Covered Entity's past and present compliance with the Act and (2) whether the Covered Entity took good faith measures to comply with the Act and when such measures were taken.

Additional Information/Resources	
Law	For the text of the Act, see: https://legislation.nysenate.gov/pdf/bills/2023/S7704

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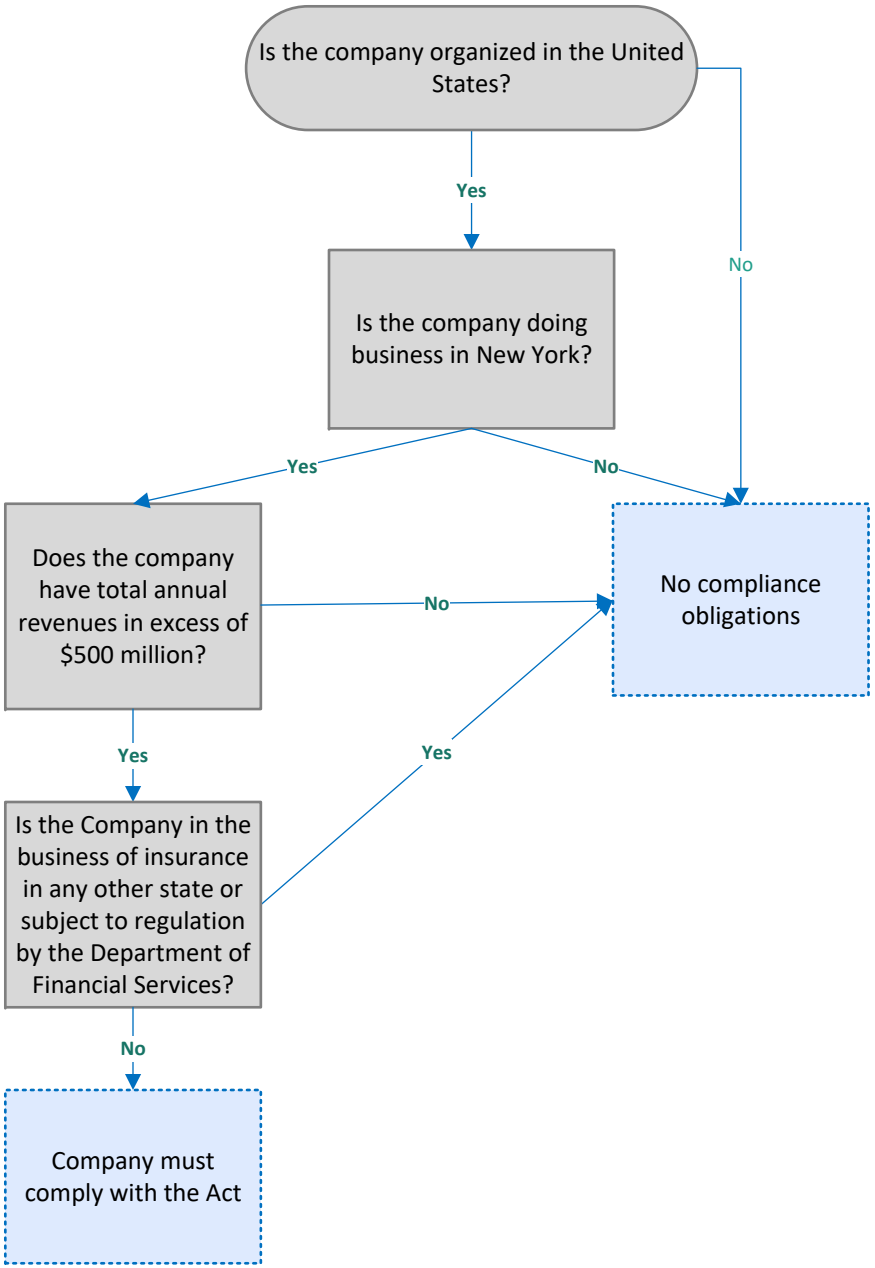

Mandatory Climate Reporting Requirements (Proposed) Singapore	
Overview	
Law / Country	**Mandatory Climate Reporting** (Singapore)
Goal	Contribute to Singapore's national agenda on sustainable development under the Singapore Green Plan 2030.
Adoption / Status	On July 6, 2023, Singapore's Accounting and Corporate Regulatory Authority (**"ACRA"**) and Singapore Exchange Regulation (**"SGX RegCo"**) jointly released a consultation paper titled "Turning Climate Ambition into Action in Singapore," which sets out the recommendations of the Sustainability Reporting Advisory Committee (**"SRAC"**) to implement mandatory climate reporting requirements in a tiered and phased manner. SRAC is an industry-led committee established in June 2022 by Singapore's business reporting, accounting and corporate services and markets regulators, ACRA and SGX RegCo to advise on the roadmap for advancing sustainability reporting by companies in Singapore. On February 28, 2024, after consideration of the feedback from the public consultation on the recommendations, ACRA and SGX RegCo published their final recommendations (the **"Recommendations"**) for mandatory climate reporting. In parallel, the Second Minister for Finance, Mr. Chee Hong Tat announced that Singapore will introduce mandatory climate-related disclosures in a phased approach, in line with the Recommendations.
Issue Addressed	• Climate change
Covered Entities	**"Listed Issuers"** would mean issuers of equity securities on the Singapore Exchange Securities Trading Limited, comprising Singapore-incorporated and foreign-incorporated companies, business trusts, investment funds (excluding exchange traded funds) and real estate investment trusts. **"Large Non-Listed Companies"** would mean entities that do not have equity securities on the Singapore Exchange Securities Trading Limited with annual revenue of at least $1 billion Singapore dollars (**"S$"**) and total assets of at least S$500 million, assessed based on the two financial years immediately preceding the current financial year, unless the company: (1) has not reached its third financial year after incorporation; or (2) is in the first or second financial year when the reporting obligations commence. If the non-listed company falls into either of the two preceding categories, revenue and assets would be assessed based on the current financial year. The Recommendations are silent about whether entities need to be incorporated or doing business in Singapore to qualify as a Large Non-Listed Company. A Large Non-Listed Company would be exempt from mandatory reporting if: • Its immediate, intermediate or ultimate parent (local or foreign) company prepares climate or sustainability reports in accordance with prescribed climate-related disclosures (**"CRDs"**) in Singapore or deemed equivalent (e.g., the European Sustainability Reporting Standards); and • Its activities are included in that parent's report, which is publicly available.

	For a transitional period of three years (financial year 2027 to financial year 2029, both years inclusive), Large Non-Listed Companies whose parents are reporting CRD using other international standards and frameworks, such as the Global Reporting Initiative Standards or the Task Force on Climate-related Financial Disclosures (**"TCFD"**), would also be exempted from mandatory reporting.
How It Works	
Mandatory?	Yes.
Existing Reporting Requirements	Under existing SGX Listing Rules, Listed Issuers in five prioritized industries (finance, agriculture, food, forest products and energy) are currently required to publish TCFD-aligned CRDs. Beginning in financial year 2024, Listed Issuers in the materials and buildings and transportation industries will also be required to publish TCFD-aligned CRDs. Listed Issuers in all other industries are required to publish sustainability reports and describe their sustainability practices on a "comply-or-explain" basis. Large Non-Listed Companies (other than those subject to the Energy Conservation Act 2012 and the Carbon Pricing Act 2018) are not required under current legislation to prepare climate reporting in Singapore.
Proposed Reporting Requirements	Listed Issuers would be required to report International Sustainability Standards Board (**"ISSB"**)-aligned CRDs, including Scope 1 and Scope 2 greenhouse (**"GHG"**) emissions, beginning in financial year 2025. Listed Issuers would also be required to report Scope 3 GHG emissions beginning in financial year 2026. Large Non-Listed Companies would be required to report ISSB-aligned CRDs, including Scope 1 and Scope 2 GHG emissions, beginning in financial year 2027. Large Non-Listed Companies would not be required to report Scope 3 GHG emissions any time earlier than fiscal year 2029. The timing for Large Non-Listed Companies to disclose Scope 3 GHG emissions would be confirmed after ACRA has reviewed the reporting experience of Listed Issuers. ACRA states that it would provide at least two years' notice for Large Non-Listed Companies to prepare for Scope 3 reporting. Around 2027, ACRA would review whether to extend the climate reporting disclosure requirements to smaller non-listed companies. Reports fulfilling the CRD reporting requirements may also contain disclosures in accordance with other standards and frameworks, such as the Global Reporting Initiative Standards, so long as: • The standards and frameworks applied are prominently disclosed; and • The additional disclosure does not contradict or obscure the information required by the prescribed CRDs.
External Assurance Requirements	Beginning in financial year 2027 for Listed Issuers and financial year 2029 for Large Non-Listed Companies, reporting entities would be required to obtain external limited assurance on Scope 1 and Scope 2 GHG emissions. The limited assurance would be required to be provided by a registered climate auditor, which can be either an ACRA-registered audit firm or a Testing, Inspection, Certification firm accredited by the Singapore Accreditation Council.

	For alignment with global best practices, assurance would be conducted based on: • A Singapore standard equivalent to ISSA 5000 (General Requirements for Sustainability Assurance Engagements); or • SS ISO 14064-3 Greenhouse gases – Part 3 (Specification with guidance for the verification and validation of greenhouse gas statements).
Reporting Mechanism and Filing Timelines	Listed Issuers and Large Non-Listed Companies subject to mandatory climate reporting would be required to file the CRD in a structured digital format to be prescribed by ACRA and SGX RegCo. Listed Issuers would be permitted to present the CRD either in a separate report or as part of the annual report. If the CRD is presented in a separate report, then both reports would be required to be circulated and made available at the same time. The reporting and filing timelines for CRDs, climate auditor's reports and director's statements would be the same as for financial statements under the Companies Act 1967, as detailed below: • Listed Issuers: o Circulating to shareholders: not less than 14 days before the annual general meeting (the **"AGM"**). o Tabling at AGM: within four months after financial year end (**"FYE"**). o Filing for public use: within five months after FYE. • Non-Listed Issuers: o If the AGM is dispensed with: ▪ Circulating to shareholders: within five months after FYE. ▪ Tabling at AGM: not applicable. ▪ Filing for public use: within seven months after FYE. o If the AGM is not dispensed: ▪ Circulating to shareholders: not less than 14 days before the AGM. ▪ Tabling at AGM: within six months after FYE. ▪ Filing for public use: within seven months after FYE. If more time is required to prepare CRDs, companies would be able to apply for an extension of time to hold their AGM or to file annual returns, as currently done for financial statements.
Enforcement and Liability	The same legal requirements would apply to climate reporting as for financial reporting, except that the requirements to develop and maintain internal controls systems would be encouraged but not mandated. The legal requirements for financial reporting by companies, their directors and/or officers that will also apply to CRD reporting, including the following: • Keeping CRD records; • Circulating the CRD, climate auditor's report and director's statement to members in a timely fashion and tabling such documents for approval at the AGM; • Filing the CRD, climate auditor's report and/or director's statement with the relevant regulator(s);

	• Revising a defective CRD and, as a safeguard, tabling the revised CRD at the next general meeting after the revision date; and • Appointing independent and competent climate auditors.
Additional Information/Resources	
Consultation Paper	For the text of the consultation paper, see: https://www.acra.gov.sg/docs/default-source/default-document-library/legislation/listing-of-consultation-papers/pubic-consultation-on-srac's-recommendations/consultation-paper-recommendations-by-srac.pdf For the Recommendations, see: https://www.acra.gov.sg/docs/default-source/default-document-library/legislation/listing-of-consultation-papers/climate-reporting-and-assurance-roadmap/response-to-public-consultation-on-climate-reporting-and-assurance-roadmap-for-singapore.pdf
Ropes & Gray Resources	Ropes & Gray Insights blog post related to the Recommendations: • Singapore launches consultation on mandatory climate disclosures – implications for U.S.-based multinationals (July 19, 2023): https://insights.ropesgray.com/post/102ijs0/singapore-launches-consultation-on-mandatory-climate-disclosures-implications-f

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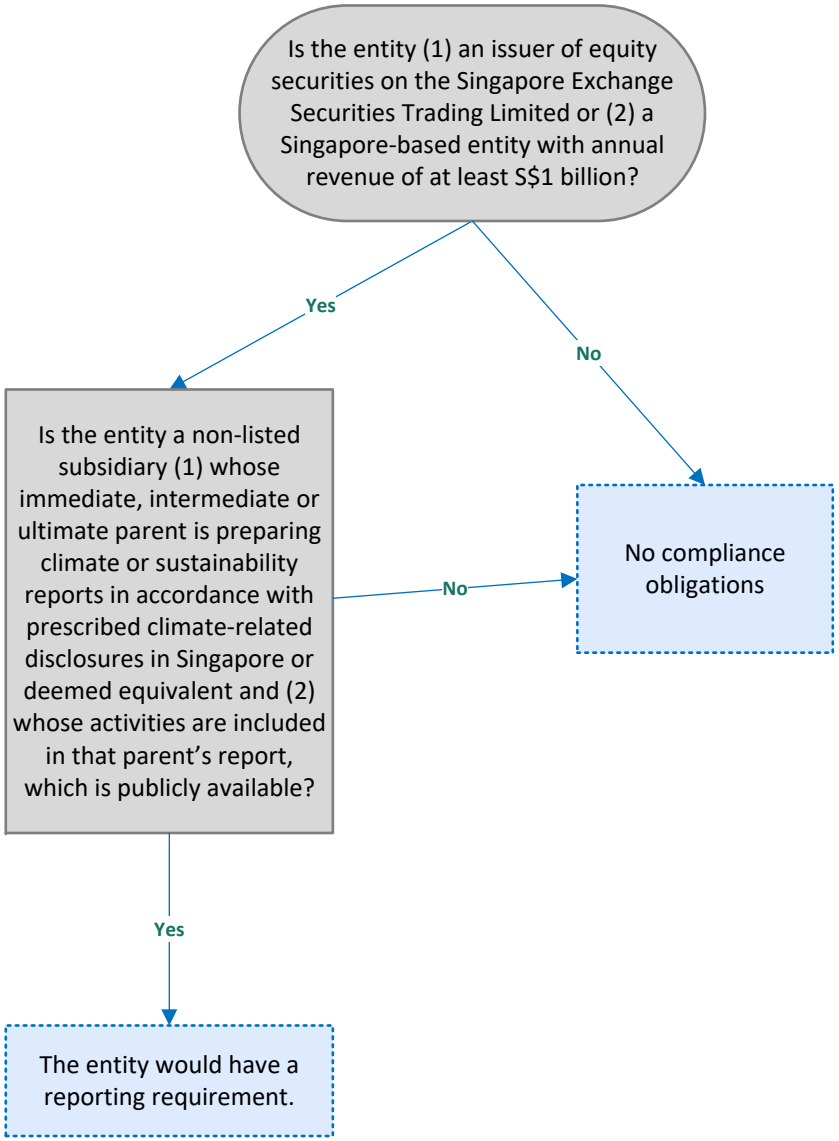

Ordinance on Climate Disclosures Switzerland	
Overview	
Law / Country	**The Ordinance on Climate Disclosures** (the **"Ordinance"**) (Switzerland)
Goal	To promote clear and consistent climate-related disclosures by large Swiss companies.
Adoption / Status	The Ordinance was adopted by the Swiss Federal Council on November 23, 2022, and entered into force January 1, 2024. The Ordinance addresses climate disclosures required pursuant to Article 964 of the Swiss Code of Obligations (the **"Swiss Code"**), which requires an annual report on non-financial matters. Note that other Swiss non-financial reporting requirements are not discussed in this summary.
Issue Addressed	• Climate change
Covered Entities	The Ordinance applies to companies with a non-financial reporting obligation under the Swiss Code. These include public companies, banks and insurance companies with a head office or principal place of business in Switzerland that: • Have more than 500 employees; and • Have at least CHF 20 million in total assets *or* more than CHF 40 million in turnover.
How It Works	
Mandatory?	Yes.
Disclosure Requirements	The Ordinance sets forth the requirements for covered entities to comply with the climate disclosure obligation under Article 964(b), paragraph 1 of the Swiss Code. The Ordinance also clarifies that "climate issues" cover both the effects of climate change on companies and the effects of companies' activities on climate change. A covered entity may comply with this disclosure obligation in three ways. Climate Disclosures Based on the TCFD Recommendations If a covered entity makes climate disclosures aligned with the Recommendations of the Task Force on Climate-related Financial Disclosures (June 2017) (the **"TCFD Recommendations"**) and the annex Implementing the Recommendations of the Task Force on Climate-related Financial Disclosures (October 2021), the entity will be deemed to have met its climate disclosure obligations. The Ordinance states that TCFD-based disclosures must address each of the TCFD's four pillars: • Governance; • Strategy;

	• Risk management; and • Key metrics and targets. The Ordinance also requires that the implementation of the TCFD Recommendations take into account: (1) the cross-sectoral guidance on the recommendations; (2) the sector-specific guidance on the recommendations; and (3) where possible and appropriate, the Guidance on Metrics, Targets, and Transition Plans (October 2021). For disclosures made under the "strategy" pillar, the Ordinance requires the entity to include: • A transition plan that is comparable with Swiss climate goals; and • Where possible and appropriate, information in quantitative form, as well as the disclosure of the main baseline assumptions for comparison purposes and the methods and standards used. For disclosures made under the "key metrics and targets" pillar, the Ordinance requires the entity to include, where possible and appropriate: • Quantitative CO2 targets and, where necessary, targets for other greenhouse gases; • The disclosure of all greenhouse gas emissions; • Quantitative information, as well as the disclosure of the main baseline assumptions for comparison purposes and the methods and standards used; and • For sector-specific guidance for financial institutions, forward-looking, scenario-based climate compatibility analyses. Subject entities can demonstrate the effectiveness of measures taken in connection with climate issues as part of a qualitative or quantitative overall assessment. <u>Alternative Method of Compliance</u> Compliance with the TCFD Recommendations acts as a "safe harbor." If a covered entity does not make disclosures on climate issues in accordance with the TCFD Recommendations, it may instead demonstrate that it complies in other ways with the climate disclosure obligation pursuant to Article 964b, paragraph 1 of the Swiss Code, as it relates to climate issues. <u>Declaration of Non-Disclosure</u> If a covered entity does not make disclosures on climate issues in accordance with either of the above options, it may instead clearly declare that it does not follow any climate concept and set forth information to justify this decision.
Publication	The above disclosures must be published in the entity's report on non-financial matters in accordance with Articles 964a – 964c of the Swiss Code. Generally, under the Swiss Code, the report on non-financial matters requires the approval and signature of the supreme management or governing body and the approval of the governing body responsible for approving the annual accounts. Additionally, the supreme management or governing body must ensure that the report is published online immediately following approval and that it remains publicly accessible for at least 10 years.

	The Ordinance specifies that for electronic publications, beginning January 1, 2025, the disclosures must be in at least one human-readable and one machine-readable electronic format in common international use.
Additional Information/Resources	
Law	For the text of the Ordinance, see: https://www.newsd.admin.ch/newsd/message/attachments/74006.pdf For the text of the Swiss Code of Obligations, see: https://www.fedlex.admin.ch/eli/cc/27/317_321_377/en
TCFD Recommendations	For the Recommendations of the Task Force on Climate-related Financial Disclosures, see: https://www.fsb-tcfd.org/recommendations

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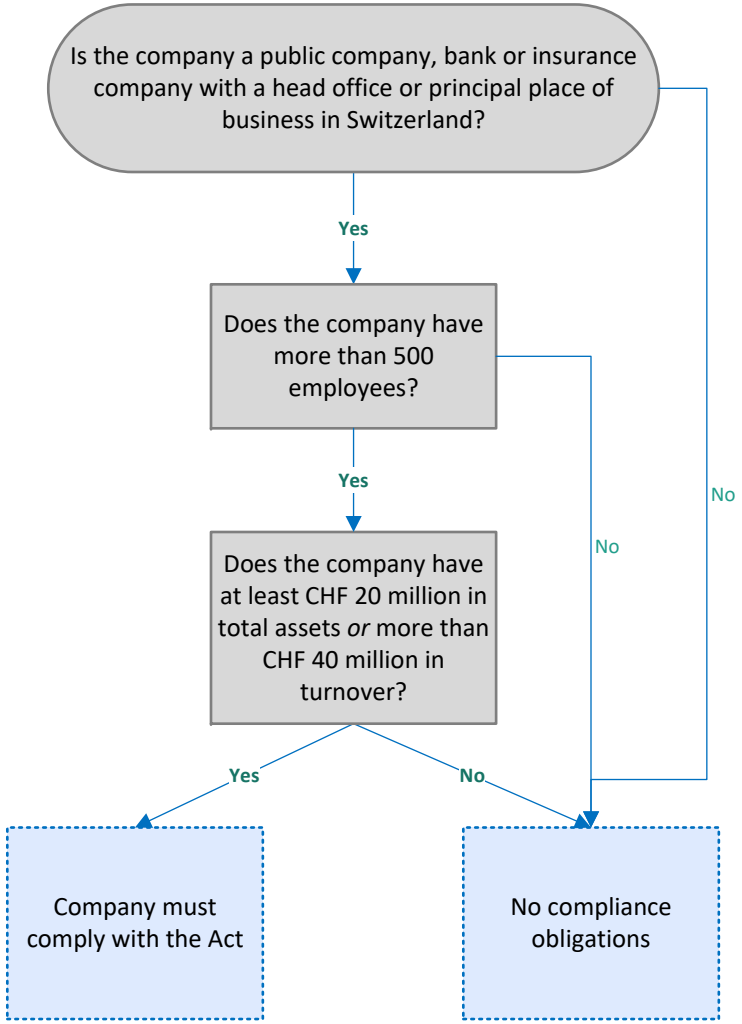


The Companies (Strategic Report) (Climate-related Financial Disclosure) Regulations 2022 and The Limited Liability Partners (Strategic Report) (Climate-related Financial Disclosure) Regulations 2022 **United Kingdom**	
Overview	
Law / Country	**The Companies (Strategic Report) (Climate-related Financial Disclosure) Regulations 2022** and **The Limited Liability Partners (Strategic Report) (Climate-related Financial Disclosure) Regulations 2022** (together, the **"Regulations"**) (United Kingdom)
Goal	To support investment decisions based on climate-related financial information.
Adoption / Status	The Companies Regulations were approved by Parliament on October 28, 2021 and the Limited Liability Partners Regulations were approved by Parliament on January 18, 2022. Both sets of Regulations came into effect on April 6, 2022.
Issue Addressed	• Climate change
Covered Entities	The Regulations apply to the following companies that are incorporated in the United Kingdom and have more than 500 employees: • Traded companies; • Banking companies; • Authorised insurance companies; • Companies carrying on insurance market activity; • Companies for which any securities are admitting to trading on the Alternative Investment Market; and • High-turnover companies. The Regulations also apply to the following limited liability partnerships (**"LLPs"**) that are formed in the United Kingdom and have more than 500 employees: • Traded LLPs; • Banking LLPs; and • High-turnover LLPs. **"Traded company"** or **"Traded LLP"** means an entity whose shares are traded on a U.K.-regulated market, including listed on the premium or standard segment of the Official List and are traded on the Main Market of the London Stock Exchange. **"Banking company"** or **"Banking LLP"** means an entity that has permission under Part 4A of the Financial Services and Markets Act 2000 (FSMA) to accept deposits, except if such permission is only for the purpose of carrying on another regulated activity in accordance with the permission granted under Part 4A of the FSMA.

	"Authorised insurance company" means a company that has permission under Part 4 of the FSMA to effect or carry out contracts of insurance and any entity (whether incorporated or not) that carries on insurance market activity or may effect or carry out contracts of insurance under which the benefits provided by that entity are exclusively or primarily benefits for use in the event of accident to or breakdown of a vehicle. **"High-turnover company"** or **"High-turnover LLP"** means an entity which, in relation to a financial year, (i) has turnover of more than £500 million (not applicable to parent companies) or (ii) if the entity is a parent entity, has an aggregate turnover of more than £500 million together with its subsidiaries.
How It Works	
Mandatory?	Yes.
Disclosure Requirements	The Regulations mandate that covered entities include climate-related financial disclosures in annual reports for periods beginning on or after April 6, 2022. The disclosures are aligned with, but not identical to, the recommendations of the Financial Stability Board's Task Force on Climate-related Financial Disclosures (**"TCFD"**). All information required by the Regulations must be included in the entity's annual report. Companies subject to the disclosure requirements should include the disclosures in the non-financial and sustainability information statement (previously called the non-financial information statement) included in company's strategic report. LLPs should include the disclosures in either the Energy and Carbon Report of the annual report or the strategic report, if the LLP prepares one. If relevant information is in a different section than the strategic report, then the strategic report should include a cross-reference to that section. The required climate-related financial disclosures are listed below, along with select, additional context from the non-binding guidance published by the U.K. government (the **"Guidance"**). a) A description of the entity's governance arrangements in relation to assessing and managing climate-related risks and opportunities. This disclosure should set forth which person or committee is responsible for identifying and considering climate-related risks and opportunities. If no person at the entity has such a responsibility, then that should be stated. Additionally, this section should include disclosure on the extent to which climate-related risks and opportunities are considered by the entity's board of directors, if applicable. b) A description of how the entity identifies, assesses and manages climate-related risks and opportunities. This disclosure should enable a reader to understand the systems and processes at the entity that identify, assess and manage risks and opportunities relating to climate change. Information on how frequently risks are identified should also be included. Readers should be able to assess how comprehensive the entity's climate-related disclosures are from this disclosure.

	c) A description of how processes for identifying, assessing and managing climate-related risks are integrated into the entity's overall risk management process. Entities should describe how climate-related risk is integrated into their overall risk management processes, or whether climate-related risk is subject to separate processes. This disclosure is intended to allow readers to assess the maturity of an entity's approach to climate-related risk and the level of resources dedicated to understanding systemic risk. d) A description of (i) the principal climate-related risks and opportunities arising in connection with the entity's operations and (ii) the time periods by reference to which those risks and opportunities are assessed. e) A description of the actual and potential impacts of the principal climate-related risks and opportunities on the entity's business model and strategy. The Guidance states that disclosures in (d) and (e) should be considered and presented together. This disclosure should discuss climate-related risks and opportunities in the short-, medium- and long-term, even if such risks are not included in the entity's ordinary course budgetary, strategy and planning considerations. The entity should explain how it determined the time periods over which risks and opportunities are assessed. Examples include budgetary cycle, asset lives and length of financing arrangements. Readers should be able to glean from this disclosure the impact of the risks and opportunities on the entity's business and any mitigating actions, enacted or planned, as applicable. If material to the business, entities should distinguish between "physical" climate change risks, such as increased frequency of severe weather events or sustained impact of rising temperatures, and "transitional" risks, such as those associated with transitioning to a net zero economy. Physical risks include acute physical risks (e.g., flooding and wildfires) and chronic physical risks (e.g., long-term changes to weather patterns), with consideration to the geographical location(s) of the business and its supply chains. Descriptions of the impacts of risks and opportunities should be specific and as granular as necessary to understand the actual or potential impact. f) An analysis of the resilience of the entity's business model and strategy, taking into consideration different climate-related scenarios. This disclosure should include an assessment of the resilience of the entity's business model and strategy considering risks arising from various climate change scenarios. Scenarios analyzed should be relevant to the entity's business and varied enough to explore a wide range of possible outcomes. Disclosures should explain why a scenario was chosen. If the entity has taken mitigating measures against certain risks, then those measures may be considered in the analysis.

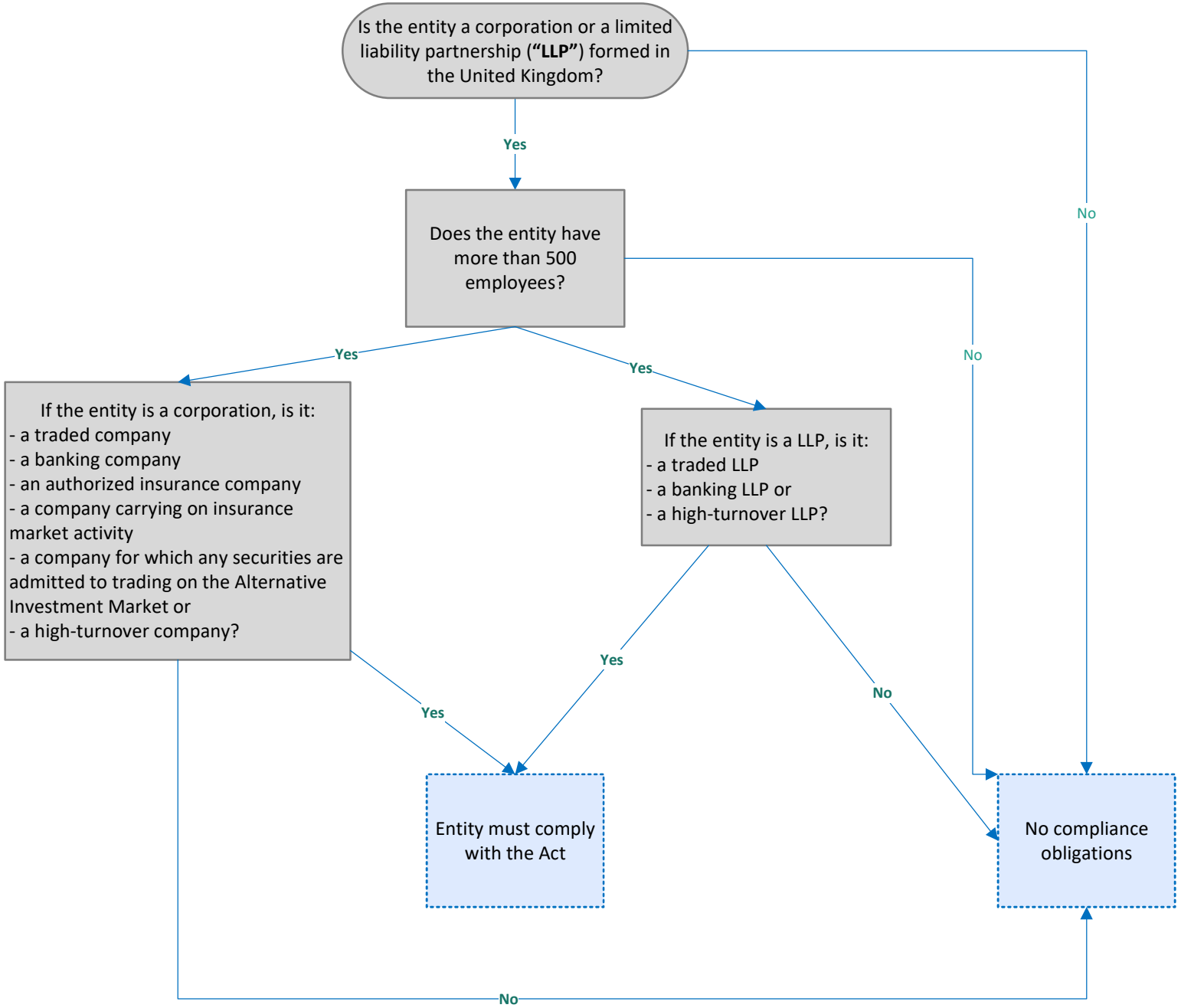
	Entities should also state any assumptions or estimates used to complete the scenario analysis. If assumptions and estimates change for a given entity from year to year, then the entity should explain the reason for the changes. For the first few years after the Regulations are in effect, the U.K. government expects divergent methodologies, assumptions and estimates among covered entities. However, it expects convergence within industries over time. If any diverging assumptions or estimates exist after industry consensus is reached, then such outlier assumptions should be explained in the disclosure. Entities may not need to undertake the climate scenario analysis every year. However, the analysis must be refreshed following significant changes to assumptions and estimates, and in no event less frequently than every three years. g) A description of the targets used by the entity to manage climate-related risks and to realize climate-related opportunities and of performance against those targets. If an entity has targets in place to manage climate-related risks and opportunities, then those targets should be explained, including relevance to future operations of the entity. The disclosure should include the framework by which the entity tracks its progress in meeting those targets. Targets should tie back to the risks identified under subsections (d), (e) and (f). h) A description of the key performance indicators used to assess progress against targets used to manage climate-related risks and realize climate-related opportunities and of the calculations on which those key performance indicators are based. **"Key performance indicators"** means factors by reference to which the development, performance or position of the entity's business, or the impact of the entity's activity, can be measured effectively. An entity should explain which climate-related key performance indicators it uses to assess progress against the targets set forth in subsection (g) or, if different from those targets, the relevance of the key performance indicators. This disclosure should include information on how the key performance indicators are calculated. Any changes in key performance indicators over time should be explained. There is no required formatting for these disclosures. If the directors of the company or members of the LLP, as applicable, reasonably believe that, due to the nature of the entity's business, the disclosures in any of the subsections (e)-(h) above are not necessary for understanding the entity's business, then these disclosures may be omitted in whole or in part. If such disclosures are omitted, then the strategic report must contain an explanation for the directors' or members', as applicable, reasoning.
Relationship to Pre-Existing Disclosure Obligations	The Financial Conduct Authority (**"FCA"**) already required companies with a premium listing or a standard listing to disclose against the TCFD recommendations in their annual reports. Companies with over 500 employees that are subject to the U.K. Listing Rules will be subject to both the Regulations and the FCA rules. The primary difference between the two sets of requirements is the FCA rules explicitly reference the TCFD recommendations, whereas the Regulations are specific climate-related disclosures that are aligned with TCFD's recommendations but not specifically tied to them. According to the

	Guidance, where an entity provides disclosure in its annual report in a manner consistent with all of the TCFD recommendations and recommended disclosures for the purposes of compliance with the FCA rule, then the entity will likely meet the requirements of the Regulations.
Exceptions	An entity that would otherwise be subject to the Regulations but is included in its parent entity's strategic report does not have to submit a separate strategic report. In order for the subsidiary to be exempt, the parent entity must be a U.K. company or LLP, the report must cover a financial year with the same beginning and ending dates as the subsidiary's financial year, and the report must cover the subsidiary. The exception does not apply to overseas parent entities that report on a consolidated basis.
Enforcement	The Financial Reporting Council monitors the contents of strategic reports and has the authority to apply to a court for a declaration that a report does not comply with applicable requirements including the Regulations. The court may then order the preparation of revised accounts (including the revision of the strategic report), as well as other sanctions at the court's discretion. If a strategic report that is approved by the board of directors or members, as applicable, of a covered entity does not comply with the Regulations, then each director or member, as applicable, who (i) knew that it did not comply, or was reckless as to whether it complied, or (ii) failed to take reasonable steps to secure compliance with the Requirements or prevent the report from being approved, commits an offense under the Regulations. Any person found guilty of an offense is liable to a fine or conviction. Entities may use third-party information to inform disclosures; however, directors or members of the entity, as applicable, remain responsible for the disclosures under the Regulations.
Additional Information/Resources	
Law	For the text of the Regulations, see: https://www.legislation.gov.uk/uksi/2022/31/regulation/3/made For text of the parallel rules applicable to LLPs, see: https://www.legislation.gov.uk/uksi/2022/46/part/2/made
Non-Binding Guidance	For text of the non-binding Guidance published by the U.K. government, see: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1056085/mandatory-climate-related-financial-disclosures-publicly-quoted-private-cos-llps.pdf

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

(Updated February 29, 2024)

Applying the Law



Federal Supplier Climate Risks and Resilience Rule (Proposed) United States	
Overview	
Law / Country	**Federal Supplier Climate Risks and Resilience Rule** (the **"Rule"**) (United States), amending the Federal Acquisition Regulation (the **"FAR"**)
Goal	To address greenhouse gas (**"GHG"**) emissions and protect the U.S. Federal Government's supply chains from climate-related financial risks.
Adoption / Status	On November 14, 2022, the Federal Acquisition Regulatory Council (the **"FARC"**), composed of the Department of Defense, the General Services Administration and the National Aeronautics and Space Administration, published the proposed Rule, soliciting comments from the public. The comment period closed on February 13, 2023. The FARC is currently analyzing the comment letters received. On December 22, 2023, President Biden signed into law the National Defense Authorization Act for Fiscal Year 2024 (H.R. 2670) (the **"Act"**). Section 318 of the Act prohibits the Department of Defense from requiring submission of GHG emissions information as a condition of being awarded a contract from defense contractors for a period of one year and from non-traditional defense contractors indefinitely unless, in either case, the Secretary of Defense determines that requiring such disclosure is necessary to verify a voluntary disclosure of such inventory.
Issue Addressed	• Climate change
Covered Entities	The Rule would apply to two categories of federal contractors: significant contractors and major contractors. A **"significant contractor"** would mean an entity that received $7.5 million or more, but not exceeding $50 million, in federal contract obligations in the prior federal fiscal year, as indicated in the System for Award Management (**"SAM"**), a federal government website that serves as a central registration point for government contractors. • If an entity received over $7.5 million in federal contract obligations in the prior federal fiscal year, as indicated in the SAM, but is considered a **"small business,"** as defined by the North American Industry Classification System (NAICS) code, it would only be required to disclose total annual Scope 1 and Scope 2 emissions (i.e., small businesses are exempt from any of the additional requirements that apply to major contractors). A **"major contractor"** would mean an entity that received more than $50 million in federal contract obligations in the prior federal fiscal year, as indicated in the SAM. Entities that received less than $7.5 million in federal contract obligations in the prior federal fiscal year and the following types of entities would not be subject to the Rule: • Higher education institutions (as defined in the OMB Uniform Guidance at 2 CFR part 200, subpart A, and 20 U.S.C. 1001);

	• Nonprofit research entities; • State or local governments; • Alaska Native Corporations, Community Development Corporations, Indian tribes, Native Hawaiian Organizations or a Tribally owned concern (as those terms are defined in 13 CFR 124.3); and • Entities deriving 80% or more of their annual revenue from federal management and operating contracts that are subject to agency annual site sustainability reporting requirements. The Rule also would allow for exemptions and waivers in other limited circumstances.
How It Works	
Mandatory?	Yes.
Compliance Requirements	The Rule would contain three principal compliance requirements, as described in further detail below: • Completion and disclosure of a GHG emissions inventory; • Annual climate disclosures in alignment with the Task Force on Climate-related Financial Disclosures framework (the **"TCFD framework"**); and • Setting science-based targets for GHG emissions reduction. The requirements of the Rule generally would be required to be met as a condition to a federal contract award.
GHG Emissions Inventory	A significant contractor or major contractor (itself or through its immediate owner or highest-level owner, as defined in the FAR) would be required to complete an annual inventory of Scope 1 and Scope 2 emissions within its current or previous fiscal year. The inventory would be required to cover a continuous period of 12 months, ending not more than 12 months before the inventory is completed. In conducting the GHG emissions inventory, the contractor (or its immediate or highest-level owner) would be required to follow the GHG Protocol Corporate Accounting and Reporting Standard (the **"GHG Protocol"**) to develop a quantified list of Scope 1 and Scope 2 emissions. Contractors would be permitted to calculate emissions using the calculation tool of their choice, as long as it is aligned with the GHG Protocol. As defined in the Rule and consistent with the GHG Protocol: • **"Greenhouse Gas"** would include carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, nitrogen trifluoride and sulfur hexafluoride. • **"Scope 1 emissions"** would include direct GHG emissions from sources that are owned or controlled by the reporting entity. • **"Scope 2 emissions"** would include indirect GHG emissions associated with the generation of electricity, heating and cooling, or steam, when these are purchased or acquired for the reporting entity's own consumption but occur at sources owned or controlled by another entity.

	The GHG emissions data would be required to be reported through the SAM.
Annual CDP Climate Change Questionnaire	A major contractor (itself or through its immediate owner or highest-level owner) that is not a small business would be required to complete an annual climate disclosure within its current or previous fiscal year. The annual climate disclosure would be required to align with the recommendations of the TCFD framework. Among other things, the disclosures would be required to include (1) a GHG inventory of Scope 1, Scope 2 and relevant Scope 3 emissions and (2) a description of the entity's climate risk assessment process and any risks identified. **"Scope 3 emissions"** would include GHG emissions, other than Scope 2 emissions, that are a consequence of the operations of the reporting entity but occur at sources other than those owned or controlled by the entity. To comply with the annual climate disclosure requirement, major contractors would be required to complete those portions of the CDP Climate Change Questionnaire (the **"CDP Questionnaire"**) that align with the TCFD framework, as identified by CDP, within its current or previous fiscal year (CDP's Online Response System is open each year from early spring (in approximately April) through early summer (in approximately July)). Major contractors would not be required to complete other portions of the CDP Questionnaire for the purposes of the Rule. The annual climate disclosure would be required to be made available on a publicly accessible website, including either the major contractor's own website or the CDP website.
Science-based Target Setting	A major contractor (itself or through its immediate owner or highest-level owner) that is not a small business would also be required to develop science-based targets and have those targets validated by the Science Based Targets initiative (the **"SBTi"**), a partnership between CDP, the United Nations Global Compact, World Resources Institute and the World Wide Fund for Nature. A **"science-based target"** would be defined as a target for reducing emissions that is in line with reductions that the latest climate science deems necessary to meet the goals of the Paris Agreement to limit global warming to well below 2° C above pre-industrial levels and pursue efforts to limit warming to 1.5° C. Targets would be required to be validated by SBTi within the previous five calendar years and would be required to be made available on a publicly accessible website. Validated targets published by SBTi on the SBTi website would satisfy this requirement.
Initial Compliance Dates	The first compliance dates for significant contractors and major contractors to complete a GHG emissions inventory and disclose total annual Scope 1 and Scope 2 emissions from its most recent inventory would be one year after publication of a final rule. The first compliance dates for major contractors to complete a GHG emissions inventory that covers relevant Scope 3 emissions, conduct a climate risk assessment and identify risks, complete the relevant portions of the CDP Climate Change Questionnaire and commit to, develop and obtain validation of a science-based target from the SBTi would be two years after publication of a final rule.

FEDERAL SUPPLIER CLIMATE RISKS AND RESILIENCE RULE (US) (PROPOSED)

Enforcement	A significant contractor or major contractor that is not in compliance with the Rule would be presumed as "nonresponsible" unless the contracting officer determines the following: • Non-compliance resulted from circumstances properly beyond the prospective contractor's control; • The prospective contractor has provided sufficient documentation that demonstrates substantial efforts to comply; and • The prospective contractor has made a public commitment to comply as soon as possible on a publicly accessible website (within one year). In making this determination, the contracting officer would be required to request information from the prospective contractor to determine what efforts it has made to comply with each requirement and the basis for failure to comply.
Additional Information/Resources	
Rule	For text of the proposed Rule, see: https://www.federalregister.gov/documents/2022/11/14/2022-24569/federal-acquisition-regulation-disclosure-of-greenhouse-gas-emissions-and-climate-related-financial For link to the White House's Fact Sheet, see: https://www.whitehouse.gov/briefing-room/statements-releases/2022/11/10/fact-sheet-biden-harris-administration-proposes-plan-to-protect-federal-supply-chain-from-climate-related-risks/#:~:text=Federal%20Supplier%20Climate%20Risks%20and%20Resilience%20Rule,-The%20proposed%20Federal&text=All%20Federal%20contractors%20with%20less,emissions%20under%20the%20proposed%20rule.
TCFD Framework	For the TCFD framework, see: https://assets.bbhub.io/company/sites/60/2021/10/FINAL-2017-TCFD-Report.pdf
Ropes & Gray Resources	Client alert related to the Rule: • Climate-related Disclosures and Targets Proposed for U.S. Federal Government Contractors – An Overview (November 30, 2022): https://www.ropesgray.com/en/newsroom/alerts/2022/november/climate-related-disclosures-and-targets-proposed-for-us-federal-government-contractors-an-overview

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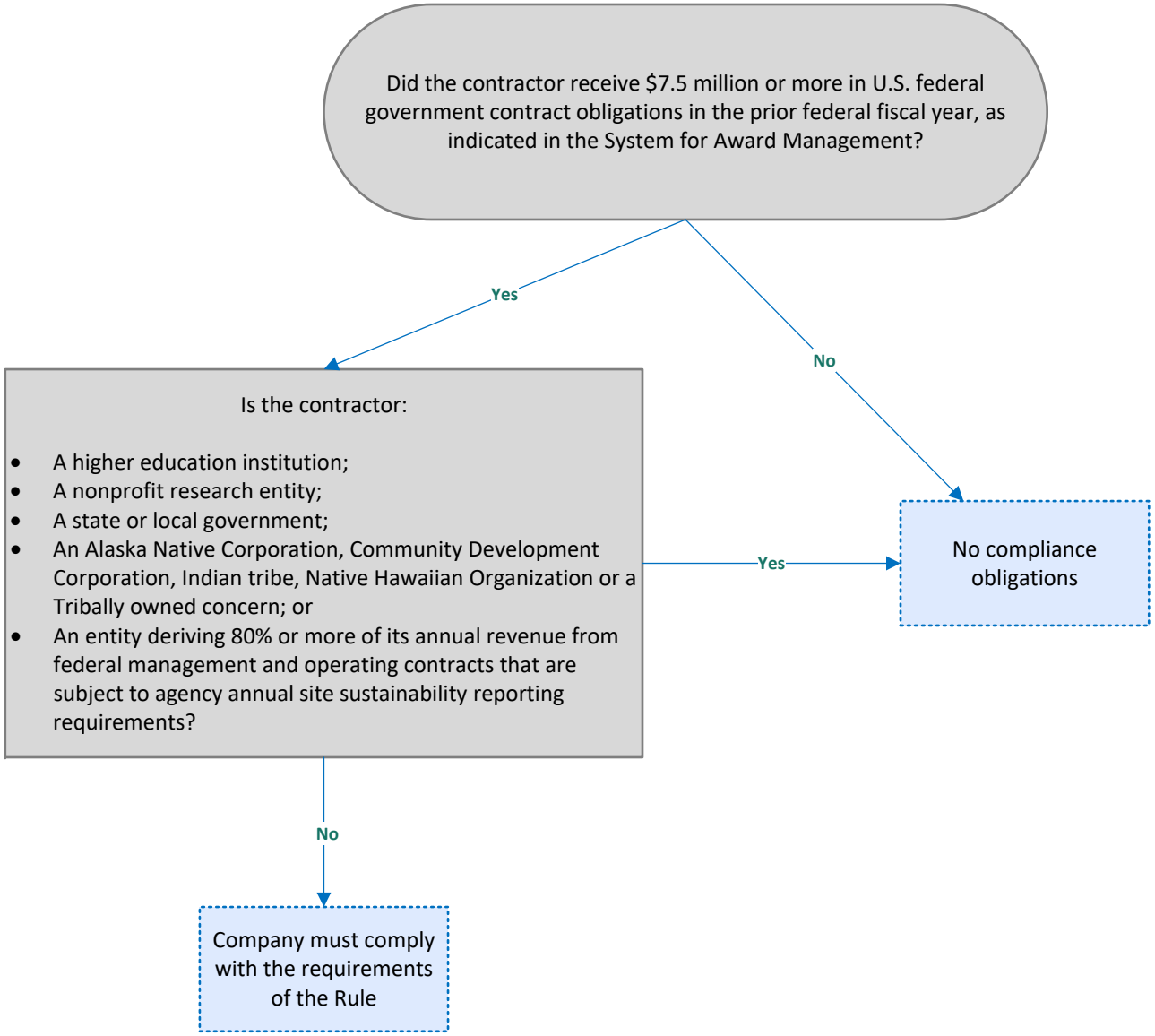
Applying the Law



Securities and Exchange Commission Climate-related Disclosure Rules for Issuers United States	
Overview	
Law / Country	**Securities and Exchange Commission Climate-related Disclosure Rules for Issuers** (the **"Rules"**) (United States)
Goal	To require SEC registrants to publish disclosures regarding climate-related risks that have materiality impacted, or are reasonably likely to have a material impact on, business strategy, results of operations or financial condition, and financial statement disclosure related to severe weather events and other natural conditions.
Adoption / Status	On March 21, 2022, the SEC released the proposed Rules, soliciting comments from the public. On March 6, 2024, the SEC adopted the Rules. The Rules are currently being challenged in the U.S. Court of Appeals for the Eighth Circuit. On April 4, 2024, the SEC voluntarily stayed the rules pending completion of judicial review by the Eighth Circuit. The Rules include phased-in compliance periods. The first compliance requirements for: • Large accelerated filers would be in the annual report for fiscal years that begin in 2025. Greenhouse gas ("GHG") and certain other disclosures phase-in for later years. • Accelerated filers (other than smaller reporting companies and emerging growth companies) would be in the annual report for fiscal years that begin in 2026. GHG and certain other disclosures phase-in for later years. • Non-accelerated filers, smaller reporting companies and emerging growth companies would be in the annual report for fiscal years that begin in 2027. GHG and certain other disclosures phase-in for later years.
Issue Addressed	• Climate change
Covered Entities	Companies with reporting obligations under the Securities Exchange Act of 1934 pursuant to Section 13(a) or Section 15(d), and companies filing a registration statement under the Securities Act or Exchange Act. The Rules do not apply to registered investment companies, asset-backed issuers or Canadian issuers that are MJDS filers.
Applicable Filings	Disclosures will apply broadly to periodic reports as well as registration statements, including Forms S-1, S-3, S-4, S-11, 10, 10-Q and 10-K and Forms F-1, F-3, F-4, 6-K and 20-F.
How It Works	
Mandatory?	Yes.
Emissions Disclosures	Large accelerated filers and accelerated filers must disclose their Scope 1 and/or Scope 2 emissions, if such emissions are material, for its most recently completed fiscal year and, to the extent previously disclosed in a SEC filing, for the historical fiscal year(s) included in the consolidated financial statements in the filing. As noted above, the phased-in compliance requirements do not require GHG disclosures until later periods.

	The registrant must describe the reporting boundaries, methodology, significant inputs and significant assumptions used to calculate the registrant's disclosed GHG emissions. A registrant may use reasonable estimates when disclosing its GHG emissions as long as it also describes the underlying assumptions and its reasons for using, the estimates. Scope 1 and Scope 2 emissions disclosures are subject to materiality, and only required for accelerated filers and large accelerated filers. Scope 3 emissions are not expressly required by the Rule. Materiality is not determined merely by the amount of Scope 1 and/or Scope 2 emissions. Rather, as with other materiality determinations under the Federal securities laws, the guiding principle is whether a reasonable investor would consider the disclosure important when making an investment or voting decision or such a reasonable investor would view omission of the disclosure as having significantly altered the total mix of information made available.
Narrative Disclosures	The Rules require a registrant to disclose information about the following: <u>Targets and Goals</u> • Any climate-related target or goal if such target or goal has materially affected or is reasonably likely to materially affect the registrant's business, results of operations or financial condition, including any additional information or explanation necessary to an understanding of the material impact or reasonably likely material impact of the target or goal. • Any progress made toward meeting the target or goal and how any such progress has been achieved. A registrant must update this disclosure annually. • Certain information regarding carbon offsets or renewable energy credits or certificates (**"RECs"**) if they been used as a material component of a registrant's plan to achieve disclosed climate-related targets or goals. Material impacts on financial estimates and assumptions, as a direct result of the target or goal or the actions taken to make progress toward meeting the target or goal. <u>Strategy</u> • Climate-related risks that have materially impacted or are reasonably likely to have a material impact on the registrant, including on the registrant's strategy, results of operations, or financial condition. • Whether such risks are reasonably likely to manifest in the short-term (i.e., the next 12 months) and separately in the long-term (i.e., beyond the next 12 months). • Whether risks are physical or transition risks, providing information necessary to an understanding of the nature of the risk presented and the extent of the registrant's exposure to the risk. • Actual and potential material impacts of the aforementioned risks on the registrant's strategy, business model and outlook. • Whether and how any such material impacts are considered as part of the registrant's strategy, financial planning and capital allocation. • How any climate-related risks have materially impacted or are reasonably likely to materially impact the registrant's business, results of operations or financial condition.

	• Material expenditures incurred and material impacts on financial estimates and assumptions that, in management's assessment, directly result from disclosed activities to mitigate or adapt to climate-related risks.
	• Transition plans adopted to manage a material transition risk and annual updates of progress under such plans.
	• Material expenditures incurred and material impacts on financial estimates and assumptions as a direct result of the disclosed transition plan.
	• Certain information regarding scenario analysis if it is conducted by the registrant and identifies a material climate-related risk.
	• If material to how a registrant evaluates and manages a climate-related risk, certain information about internal carbon prices.
	
	<u>Risk Management</u>
	
	• The registrant's processes for identifying, assessing and managing material climate-related risks.
	• If managing a material climate-related risk, the registrant must disclose whether and how any such processes have been integrated into the registrant's overall risk management system or processes.
	
	<u>Governance</u>
	
	• How the registrant's board of directors oversees climate-related risks, including identifying:
	  ◦ Any board committee or subcommittee responsible for the oversight of climate-related risks, if applicable;
	  ◦ The processes by which the board or such committee or subcommittee is informed about climate-related risks; and
	  ◦ whether and how the board oversees progress against disclosed climate-related targets or goals or transition plans.
	
	• How the registrant's management assesses and manages material climate-related risks, including identifying, as applicable:
	  ◦ Whether and which management positions or committees are responsible for assessing and managing climate-related risks, and the relevant expertise of such position holders or committee members in such detail as necessary to fully describe the nature of the expertise;
	  ◦ The processes by which such positions or committees assess and manage climate-related risks; and
	  ◦ Whether such positions or committees report information about such risks to the board of directors or a committee or subcommittee of the board of directors.

Financial Statement Requirements	The Rules amend Regulation S-X to require inclusion of a note to the audited financial statements disclosing, among other things, capitalized costs, expenditures expensed, charges, and losses incurred as a result of severe weather events and other natural conditions, subject to certain thresholds and, if a material part of a registrant's plans to achieve its climate-related targets or goals, certain information regarding carbon offsets and renewable energy certificates. Disclosure must be provided

	for the registrant's most recently completed fiscal year and, to the extent previously disclosed or required to be disclosed, for the historical fiscal year(s), for which audited consolidated financial statements are included in the filings.
Reporting	The Rules require subject registrants to provide disclosures in annual reports and registration statements. GHG emissions disclosure may be provided with second quarter 10-Qs, or 225 days after fiscal year end for companies that do not file 10-Qs.
Attestation Requirement	Third-party limited assurance over Scope 1 and Scope 2 GHG emissions would be required for large accelerated filers starting fiscal year 2029 and for accelerated filers starting with fiscal year 2031. Non-accelerated filers and smaller reporting companies would not be subject to the attestation requirements. Large accelerated filers will be required to obtain third-party reasonable assurance attestations starting fiscal year 2033. Accelerated filers, non-accelerated filers and small reporting companies would not be required to obtain reasonable assurance attestations. Third parties providing assurance must meet certain expertise and independence requirements. Certain disclosure requirements also apply in circumstances where a registrant is not required to obtain third party assurance but chooses to do so.
Enforcement; Liability	Disclosures under the Rules will be treated as "filed" rather than "furnished." Accordingly, disclosure included in the Exchange Act reports will be subject to potential liability under Section 18 of the Exchange Act in addition to general anti-fraud liability under Section 10(b) of and Rule 10b-5 under the Exchange Act. Disclosures included in registration statements under the Securities Act will be subject to liability under Sections 11 and 12(a)(2) of the Securities Act. The SEC expressly expanded the forward-looking statements safe harbor under the Private Securities Litigation Reform Act of 1995 (the "PSLRA") with respect to some climate information by (1) making clear that all information other than historical facts provided in response to the transition plan, scenario analysis, internal carbon price and target and goals disclosure requirements can benefit from the safe harbor and (2) allowing issuers in IPOs and certain other transactions excluded from the PSLRA to benefit from the safe harbor with respect to that information.
Additional Information/Resources	
Proposed Rule	For text of the Rules, see: https://www.sec.gov/files/rules/final/2024/33-11275.pdf For link to the SEC's Fact Sheet, see: https://www.sec.gov/files/33-11275-fact-sheet.pdf
Ropes & Gray Resources	Client alerts related to the Rules: • Court stays SEC climate rules – does this change anything for SEC filers? (March 18, 2024): https://www.ropesgray.com/en/insights/viewpoints/102j2wb/court-stays-sec-climate-rules-does-this-change-anything-for-sec-filers • Initial Observations on the SEC's New Climate Disclosure Rules (March 7, 2024): https://www.ropesgray.com/en/insights/viewpoints/102j24g/initial-observations-on-the-secs-new-climate-disclosure-rules-the-first-24-hou

	• The SEC's Proposed Climate Disclosure Rules – Comment Letter Stats (August 2, 2022): https://www.ropesgray.com/en/newsroom/alerts/2022/august/the-secs-proposed-climate-disclosure-rules-comment-letter-stats • Ten Thoughts on the SEC's Proposed Climate Disclosure Rules (April 12, 2022): https://www.ropesgray.com/en/newsroom/alerts/2022/april/ten-thoughts-on-the-secs-proposed-climate-disclosure-rules • SEC Publishes Sample Comment Letter Highlighting the Need to Consider Climate Change Disclosures in SEC Filings (October 4, 2021): https://www.ropesgray.com/en/newsroom/alerts/2021/october/sec-publishes-sample-comment-letter-highlighting-climate-change-disclosures-sec-filings

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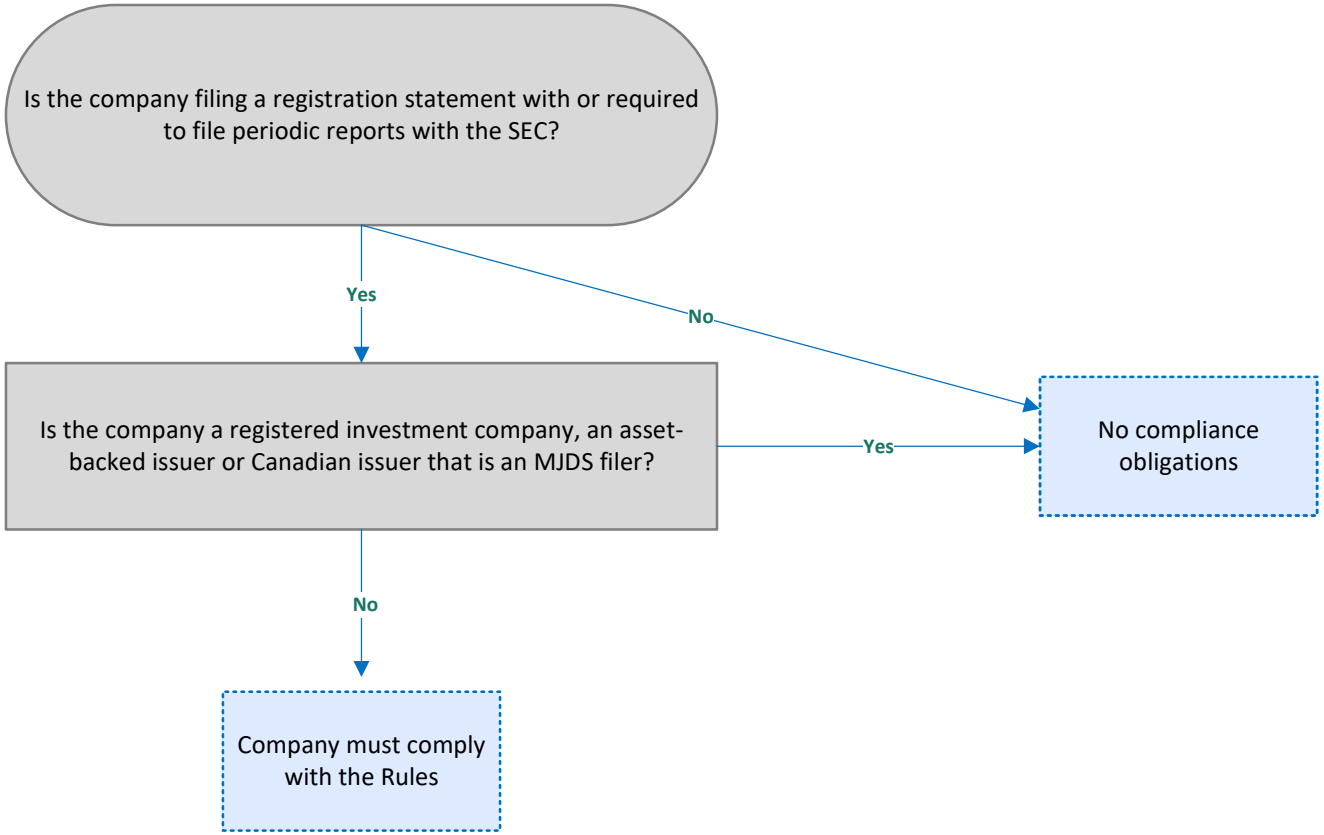
(Updated March 31, 2024)

Applying the Proposed Rules



Deforestation Regulation (Pending) European Union	
Overview	
Law / Country	**Deforestation Regulation** (the **"Regulation"**) (European Union)
Goal	To protect forests and reduce greenhouse gas emissions and global biodiversity loss.
Adoption / Status	The Regulation was published in the Official Journal of the European Union on June 9, 2023 and entered into force on June 29, 2023. The applicability of the Regulation will start on December 30, 2024 for operators and traders that are not small and medium-sized enterprises ("**SMEs**"), and on June 30, 2025 for SMEs. According to the European Commission's responses to frequently asked questions published on December 22, 2023 (the "**FAQs**"), for commodities and products placed on the EU market before the Regulation comes into effect, operators and traders bear the burden of proof to show that the relevant commodity or product was produced before entry into force and the Regulation does not apply, including by gathering adequately conclusive and verifiable evidence.
Issue Addressed	• Deforestation • Forest degradation
Covered Entities	**"Operators"** are defined as natural or legal persons who, in the course of a commercial activity, place (i.e., first make available) relevant products on the EU market or export them from the EU market. If a person established outside the European Union places relevant products on the EU market, the first person established in the European Union who buys or takes possession of the relevant products would be considered an operator. **"Traders"** are defined as natural or legal persons in the supply chain other than the operator who, in the course of a commercial activity, make available on the EU market relevant products.
Covered Commodities and Products	**"Relevant commodities"** are defined as cattle, cocoa, coffee, palm oil, soya, wood and rubber. **"Relevant products"** are products listed in Annex I of the Regulation that contain, have been fed with or have been made using relevant commodities. There is no threshold volume or value of a relevant commodity or relevant product, including within processed products, below which the Regulation will not apply. Products that are not included in Annex I are not subject to the requirements of the Regulation even if they contain commodities within the scope of the Regulation. The Regulation also does not apply to goods if they are produced entirely from material that has completed its lifecycle and would otherwise have been discarded as waste as defined in the Regulation. If the product contains a percentage of non-recycled material, then it is subject to the requirements of the Regulation and the non-recycled materials will need to be traced back to the plot of origin via geolocation.
How It Works	
Mandatory?	Yes.

Due Diligence Requirements; Due Diligence Statement	Relevant commodities and relevant products are prohibited on the EU market or from export unless the commodities or products: (1) are deforestation-free; (2) have been produced in accordance with the relevant legislation of the country of production; and (3) are covered by a due diligence statement. **"Deforestation-free"** means (1) the relevant products contain, have been fed with or have been made using relevant commodities and products that were produced on land that was not subject to deforestation after December 31, 2020, and (2) in the case of relevant products that contain or have been made using wood, that the wood was harvested from the forest without inducing forest degradation after December 31, 2020. **"Forest degradation"** is defined as structural changes to forest cover, taking the form of the conversion of naturally regenerating forests and primary forests into plantation forests or other wooded land and the conversion of primary forests into planted forests. The Regulation requires operators to set up and maintain a due diligence system, consisting of (1) collection of information and documents, (2) risk assessment measures and (3) risk mitigation measures, including tracing the commodities/products sold back to the plot of land where the commodities/products were produced. If, as a result of its due diligence, an operator concludes that the relevant commodities and products are compliant, the operator is required to furnish a due diligence statement to the competent Member State authorities confirming that due diligence was carried out, and that no or only negligible risk was found. The due diligence statement is required to be submitted through an information system to be established by the European Commission by December 30, 2024. The EU Single Window Environment for Customs framework will interconnect the information system with national customs IT systems and enable sharing and processing of data submitted to customs and non-customs authorities by operators and traders and their authorized representatives.
Information and Document Collection	Operators and traders that are non-SMEs are required to collect, organize, and keep for five years from the date of the placing on the market or of the export of the relevant products, information, documents and data demonstrating that the relevant products are compliant. This includes: • A description, including the trade name and type, of relevant products, as well as, where applicable, the common name of the species and its full scientific name. The product description must include the list of the relevant commodities or relevant products contained in them or used to make those products; • The quantity (expressed in net mass and volume, or number of units) of the relevant products; • The country of production; • The geo-localization coordinates (*i.e.*, latitude and longitude) of all plots of land where the relevant commodities that the relevant product contains, or has been made using, were produced and the date or time range of production; • The name, email and postal address of any business or person from whom they have been supplied with the relevant products; • The name, email and postal address of any business or person to whom the relevant products have been supplied; • Adequately conclusive and verifiable information that the relevant products are deforestation-free; and

	• Adequately conclusive and verifiable information that the relevant commodities have been produced in accordance with relevant legislation of the country of production, including any arrangement conferring the right to use the respective area for the purposes of the production of the relevant commodity. Traders that are SMEs are required to collect and keep the following information relating to the relevant products they intend to make available on the EU market: (1) the name, registered trade name or registered trade mark, the postal address, the email and, if available, a web address of the operators or the traders who have supplied the relevant products to them, as well as the reference numbers of the due diligence statements associated to those products; and (2) the name, registered trade name or registered trade mark, the postal address, the email and, if available, a web address of the traders to whom they have supplied the relevant products. They are also required to maintain this information for at least five years from the date that the product is made available on the market and share the information with the competent authorities upon request. SME traders that obtain information indicating that a relevant product they have made available on the market is at risk of noncompliance must immediately inform the competent authorities of the Member State markets in which they made the relevant product available and the traders to whom they supplied the relevant product. According to the FAQs, if the operator (or traders which are not SMEs) cannot collect the required information, it must refrain from placing (or making available in case of non-SME traders) on the market or exporting the relevant product concerned.
Risk Assessment Measures	Operators generally are required to carry out a risk assessment to establish whether there is a risk that the relevant products intended to be placed on the EU market or exported from the EU are non-compliant with the requirements of the Regulation. Operators are not permitted to place the relevant product on the EU market, or export it from the EU market, if they are unable to prove that the risk is nonexistent or negligible. The risk assessment criteria includes: • The assignment of risk to the relevant country in accordance with a country benchmarking system; • The presence of forests in the country and area of production of the relevant commodity or product; • The presence of indigenous peoples in the country, region and area of production of the relevant commodity or product; • The consultation and cooperation in good faith with indigenous peoples in the country of production of the relevant commodity or product; • The existence of duly reasoned claims by indigenous peoples based on objective and verifiable information regarding the use or ownership of the area used for the purpose of producing the relevant commodity; • Prevalence of deforestation or forest degradation in the country, region and area of production of the relevant commodity or product; • The source, reliability, validity and links to other available documentation of the information required to be collected, as noted earlier in this summary; • Concerns in relation to the country of production and origin, such as level of corruption, prevalence of document and data falsification, lack of law enforcement, violations of international human rights, armed conflict or presence of sanctions imposed by the United Nations Security Council or the Council of the European Union; • The complexity of the relevant supply chain and the stage of processing of the relevant products, in particular difficulties in connecting relevant products to the plot of land where the relevant commodities were produced;

	• The risk of circumvention of the Regulation or of mixing with relevant products of unknown origin or production in areas where deforestation or forest degradation has occurred or is occurring; • The conclusions of European Commission expert group meetings published in the European Commission's expert group register; • Substantiated concerns submitted by third parties and information on the history of operator and trader non-compliance with the Regulation along the relevant supply chain; • Any information that would point to a risk that the relevant products are non-compliant; and • Complementary information on compliance, which may include information supplied by certification or other third-party-verified schemes.
Risk Mitigation Measures	Operators generally are required to adopt adequate and proportionate policies, controls and procedures to mitigate and manage risks of non-compliance. Risk mitigation tactics include: • Model risk management practices, reporting, record-keeping, internal control and compliance management and, for operators that are not SMEs, the appointment of a compliance officer at the manager level; and • An independent audit function to check the internal policies, controls and procedures, for operators that are not SMEs. The decisions on risk mitigation procedures and measures are required to be documented, reviewed at least on an annual basis and made available by the operator to the competent authorities upon request.
Simplified Due Diligence; Low Risk Countries	An operator is not required to fulfil the risk assessment and risk mitigation requirements described above if the relevant products were produced in countries or parts thereof identified as low risk. However, if the operator obtains or is made aware of information that would indicate the relevant products are not compliant, it would be required to fulfill the due diligence requirements of the Regulation, including the risk assessment and risk mitigation requirements. The Regulation established a three-tier benchmarking system for assessing geographic risk. The benchmarking system will classify all countries (or parts thereof) as low, standard or high risk with regard to deforestation and forest degradation. On June 29, 2023, all countries were assigned a standard level of risk. The Regulation required the European Commission to classify and publish the countries that present a low or high risk no later than December 30, 2024, however after several governments' complaints, the European Commission indicated low and high risk classifications will be delayed to allow countries additional time to adapt. In the interim, all countries will continue to be assigned standard risk.
Public Reporting	Operators that are not SMEs are required to, on an annual basis, publicly report as widely as possible on their diligence system, including the steps taken to implement their obligations under the Regulation.
Enforcement; Customs Procedures	Member States are required to designate competent authorities responsible for carrying out the obligations arising from the Regulation. Member State authorities are expected to carry out checks on at least a specified percentage of operators and traders depending on a country's risk category: 9% for high-risk countries; 3% for standard-risk countries; and 1% for low-risk countries. In addition, for high-risk countries, Member State authorities are required to perform checks on 9% of the total

	volume of each of the relevant products that contain or have been made using relevant commodities produced in a country. Checks on operators and traders that are not SME will include: • Examination of the due diligence system, including risk assessment and risk mitigation procedures, and of documentation and records that demonstrate the proper functioning of the due diligence system; and • Examination of documentation and records that demonstrate compliance with the requirements of the Regulation of a specific product that the operator has placed, intends to place on or export from the EU market, including, when applicable, through risk mitigation measures, as well as examination of due diligence statements. In addition, where appropriate, the checks on operators and traders that are not SMEs may also include: • On-the-ground examination of relevant commodities and products with a view to ascertaining their conformity to the documentation used for exercising due diligence; • Examination of corrective measures; • Any technical and scientific means adequate to determine the species or the exact place where the relevant commodity or product was produced, including anatomical, chemical or DNA analysis; • Any technical and scientific means adequate to determine whether the relevant commodity or relevant product are deforestation-free, including Earth observation data such as from Copernicus program and tools or from other publicly or privately available relevant sources; and • Spot checks, including field audits, including where appropriate in third countries through cooperation with the administrative authorities of those countries. For traders that are SMEs, the checks are required to include an examination of documentation and records that demonstrate the trader's compliance with its record collection and record keeping requirements described previously and, where appropriate, spot checks, including field audits.
Remedial Action and Penalties	If a competent authority of a Member State determines that an operator or trader has not complied with its obligations under the Regulation or that a relevant product is not compliant, it is required to ensure that the operator or trader takes appropriate and proportionate corrective action, including one or more of the following: • Rectifying the non-compliance; • Preventing the relevant product from being placed, made available on or exported from the EU market; • Withdrawing or recalling the relevant product immediately; and/or • Disposing of the relevant product in accordance with EU laws on waste management or donating it to charitable or public interest purposes. Member States are also required to establish effective, proportionate and dissuasive penalties for violations or infringements. At a minimum, penalties are to include: • Fines proportionate to the environmental damage and the value of the relevant commodities or relevant products concerned, with a maximum fine amount of 4% of the operator's or trader's annual turnover in the relevant EU Member States;

	• Confiscation of the relevant products from the operator or trader; • Confiscation of the operator's and/or trader's revenues from a transaction with the relevant products; • Temporary exclusion from public procurement processes and access to public funding; • Temporary prohibition from placing or making available on the market or exporting relevant commodities and relevant products in the event of a serious infringement or of repeated infringements; and • Prohibition from exercising simplified due diligence in the event of a serious infringement or of repeated infringements.
Expansion and Further Review	The Regulation contemplates a potential expansion to include additional ecosystems and commodities. No later than June 30, 2025, the European Commission is required to present an impact assessment and, if appropriate, a legislative proposal to extend the scope of the Regulation to other ecosystems, including land with high carbon stocks and land with a high biodiversity value chain such as grasslands, peatlands and wetlands, and an assessment of whether it is appropriate to amend or extend the list of relevant products in Annex I. The first review of the commodity scope is to take place within two years of the entry into force of the Regulation. The impact assessment is also to evaluate the role of financial institutions in preventing financial flows that contribute directly or indirectly to deforestation and forest degradation, and assess the need to provide for any specific obligations for financial institutions in EU legal acts in that regard, taking into account any relevant existing horizontal and sectoral legislation. By June 30, 2028 and at least every five years thereafter, the European Commission is required to carry out a general review of the Regulation and present a report, by a legislative proposal if appropriate, to the European Parliament and accompanying Council.
Additional Information/Resources	
Regulation	For the text of the Regulation, see: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32023R1115&qid=1687867231461
Guidance and Resources	For Frequently Asked Questions, see: https://green-business.ec.europa.eu/deforestation-regulation-implementation_en
Ropes & Gray Resources	Client alerts related to the Regulation: • The EU Deforestation Regulation Is Coming Soon – Will Your Products Be Deforestation-free? (June 6, 2023): https://www.ropesgray.com/en/newsroom/alerts/2023/06/the-eu-deforestation-regulation-is-coming-soon-will-your-products-be-deforestation-free • An Update on the EU Deforestation Regulation – The Parliament's Proposal (November 15, 2022): https://www.ropesgray.com/en/newsroom/alerts/2022/november/an-update-on-the-eu-deforestation-regulation-the-parliaments-proposal

	• Pending and Proposed Deforestation Legislation Will Add New Supply Chain Due Diligence and Reporting Requirements – An Overview of U.K., EU and U.S. Federal and State Initiatives (March 8, 2022): https://www.ropesgray.com/en/newsroom/alerts/2022/march/pending-and-proposed-deforestation-legislation-will-add-new-supply-chain-due-diligence

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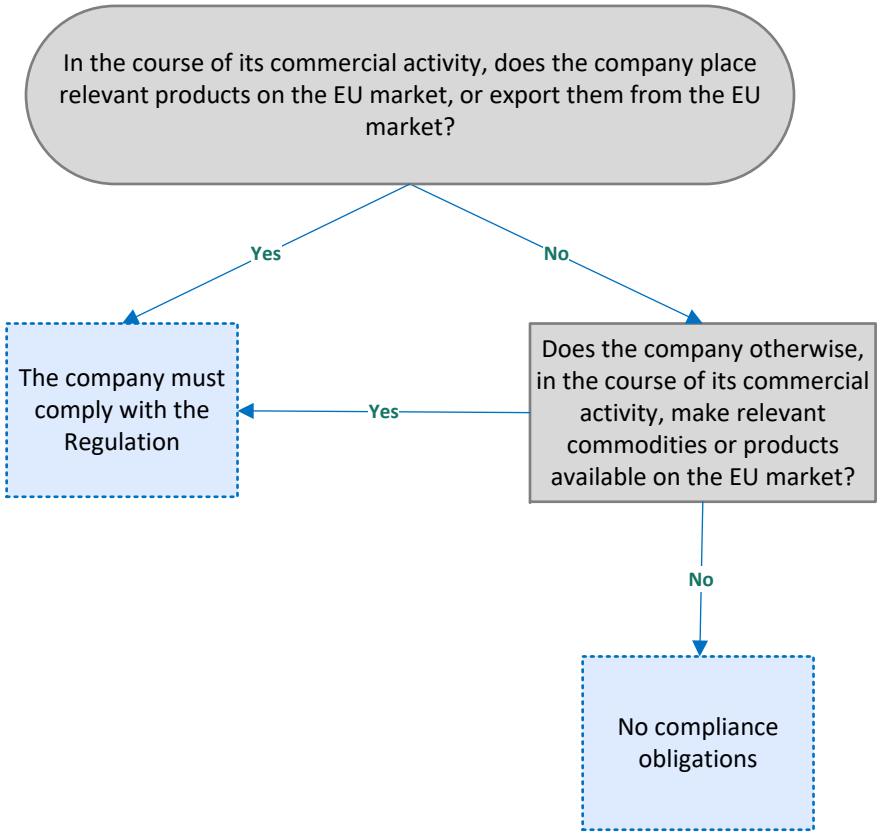

Environment Act – Use of Forest Risk Commodities in Commercial Activity (Pending) United Kingdom	
Overview	
Law / Country	**Environment Act 2021 – Schedule 17, Use of Forest Risk Commodities in Commercial Activity** (the "**Act**") (United Kingdom)
Goal	To protect forests.
Adoption / Status	The Act was adopted on November 9, 2021. After a two year consultation process to prepare secondary legislation and accompanying guidance for the Act, on December 9, 2023, the U.K. Department for Environment, Food & Rural Affairs (**"Defra"**) issued a press release (the **"Defra Press Release"**) announcing the upcoming secondary legislation, which will provide details on covered entities, the initial list of forest risk commodities and civil sanctions. The Defra Press Release indicated that organizations will have a grace period to prepare for the regulation between the enactment of secondary legislation and the beginning of the first reporting period.
Issue Addressed	• Deforestation • Forest degradation
Definition of "Forest Risk Commodity"	A "**forest risk commodity**" is a commodity to be specified in regulations made by the Secretary of State. The regulations may specify only a commodity produced from a plant, animal or other living organism. In addition, the regulations may specify a commodity only if the Secretary of State considers that forest is being or may be converted to agricultural use for the purposes of producing the commodity. The regulations may not specify timber or timber products within the meaning of the EU Timber Regulation. According to the Defra Press Release, the initial list of forest risk commodities will include palm oil, cocoa, beef, leather and soy, and any products deriving from those commodities. Notably, this initial list would not include coffee, maize or rubber, each of which Defra sought feedback on as potential commodities during the consultation process.
Definition of "Forest"	A "**forest**" is an area of lands of more than 0.5 hectares with tree canopy cover of at least 10%, excluding trees planted for the purpose of producing timber or other commodities. Land that is wholly or partially submerged in water, whether temporarily or permanently, is included in the measurement.
Covered Entities	Any "**regulated person**," which is a person (other than an individual) who: • Carries on commercial activities in the United Kingdom; and • Meets an annual turnover threshold to be determined by the Secretary of State; or • Is a subsidiary of another enterprise that meets such conditions. "**Commercial activities**" include (1) producing, manufacturing and processing, (2) distributing, selling or supplying or (3) purchasing for a purpose within either of the foregoing (other than purchasing as a consumer).

	According to the Defra Press Release, a regulated person will be an organization that uses forest risk commodities in its UK supply chains and has global annual turnover of over £50 million. Based on feedback received during the consultation, Defra has noted it will align the definition of turnover in secondary legislation with the definition in the U.K. Companies Act and set thresholds based on turnover in the previous financial year.
How It Works	
Mandatory?	Yes.
Use of Forest Risk Commodities	A regulated person may only use a forest risk commodity, or a product derived from that commodity, in their U.K. commercial activities if the regulated person complies with relevant local laws in relation to that commodity. "**Relevant local law**" means a local law which (1) relates to the ownership of the land on which the source organism was grown, raised or cultivated, (2) relates to the use of that land, or (3) otherwise relates to that land and is specified in regulations made by the Secretary of State. The Act does not apply to the use of a forest risk commodity, or a product derived from that commodity, where (1) the commodity is waste within the meaning of the Renewable Transport Fuel Obligations Order 2007, and (2) the use of the commodity is for the purpose of making renewable transport fuel (a) that qualifies for the issue of an RTF certificate under article 17 of that Order, and (b) in respect for which an additional RTF certificate may be issued under article 17A(4) of that Order.
Due Diligence Requirements	A regulated person who uses a forest risk commodity or a derived product in their U.K. commercial activities must establish and implement a due diligence system in relation to that commodity. A "**due diligence system**" means a system for (1) identifying and obtaining information about the forest risk commodity, (2) assessing the risk that relevant local laws were not complied with and (3) mitigating that risk. The Secretary of State may by regulations make further provisions regarding the due diligence system, including (1) the information that should be obtained, (2) the criteria to be used in assessing risk and (3) the ways in which risk may be mitigated. The Defra consultation sought input on the Act's due diligence provisions. Defra's responses to the consultation note that, in developing the secondary legislation, it will consider the degree to which businesses will be required to mitigate risk. Alongside legislation, Defra will provide guidance to help businesses understand how to comply with those provisions, including on how they may use certifications and standards to help evidence legality.
Reporting	A regulated person who uses a forest risk commodity or derived product in their U.K. commercial activities must, for each reporting period, provide the Secretary of State or another designated U.K. authority with an annual report on the actions taken to establish and implement a due diligence system. The reporting period will generally be the 12-month period from April 1 to March 31. The report must be provided no later than 6 months after the end of the applicable reporting period.

	The Secretary of State may by regulations make provision about (1) the content and form of reports to be provided and (2) the manner in which reports are to be provided. The relevant authority must make the reports public in the way and to the extent specified in regulations made by the Secretary of State. Respondents to the consultation provided a wide variety of suggestions related to the content of these annual reports and Defra noted in its responses to the consultation that it would use this range of views to inform the secondary legislation and accompanying guidance.
Exemptions from Due Diligence and Reporting	A regulated person is exempt from providing an annual due diligence report if two conditions are met: • Before the start of the period, the person gives a notice to the relevant enforcement authority containing a declaration that the person is satisfied on reasonable grounds that the amount of a forest-risk commodity used in their U.K. commercial activities during the period will not exceed the threshold prescribed in secondary regulations (by reference to weight or volume); and • The amount of the commodity used in the person's U.K. commercial activities during the period does not exceed the prescribed threshold. According to the Defra Press Release, organizations whose use of the covered commodities does not exceed an annual volume threshold of 500 tons will be permitted to submit an exemption.
Enforcement	The Secretary of State may make provisions about the monitoring and enforcement of requirements imposed on regulated persons through secondary regulations. The consultation noted that enforcement authorities should have three main functions: (1) monitoring compliance; (2) investigating compliance; and (3) imposing sanctions when a breach has been identified. Among other things, a monitoring and enforcement regime may include (1) provisions conferring on an enforcement authority powers of entry, inspection, examination, search and seizure subject to the authority of a warrant, (2) civil sanctions for failing to comply with the Act or obstructing or failing to assist an enforcement authority, and (3) criminal offenses punishable with a fine for failure to comply with any civil sanctions or obstructing or failing to assist an enforcement authority. The Act provides that the enforcement provisions must provide that a regulated person who fails to comply with a prohibition on using forest risk commodities may not be subject to a civil sanction for a failure to comply if an enforcement authority is satisfied that the regulated person took all reasonable steps to implement a due diligence system in relation to the commodity used by the person. According to the Defra Press Release, the secondary legislation will include unlimited variable monetary penalties for failure to comply with the Act. In the consultation, Defra sought feedback on a proposed maximum penalty of £250,000. However, respondents to the consultation largely disagreed with establishing any fixed maximum monetary penalty, instead proposing penalties be fixed as a percentage of annual global turnover.
Additional Information/Resources	
Law	For the text of the Act, see: https://www.legislation.gov.uk/ukpga/2021/30

Defra Communications	For Defra's responses to the consultation, see: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1080235/due-diligence-uk-supply-chains-summary-of-responses.pdf For the Defra Press Release, see: https://www.gov.uk/government/news/supermarket-essentials-will-no-longer-be-linked-to-illegal-deforestation
Ropes & Gray Resources	Client alerts related to the Act: • Recent Developments in Deforestation Legislation – the UK, U.S. and EU (January 29, 2024): https://www.ropesgray.com/en/insights/viewpoints/102iyca/recent-developments-in-deforestation-legislation-the-uk-u-s-and-eu • Pending and Proposed Deforestation Legislation Will Add New Supply Chain Due Diligence and Reporting Requirements – An Overview of U.K., EU and U.S. Federal and State Initiatives (March 8, 2022): https://www.ropesgray.com/en/newsroom/alerts/2022/march/pending-and-proposed-deforestation-legislation-will-add-new-supply-chain-due-diligence

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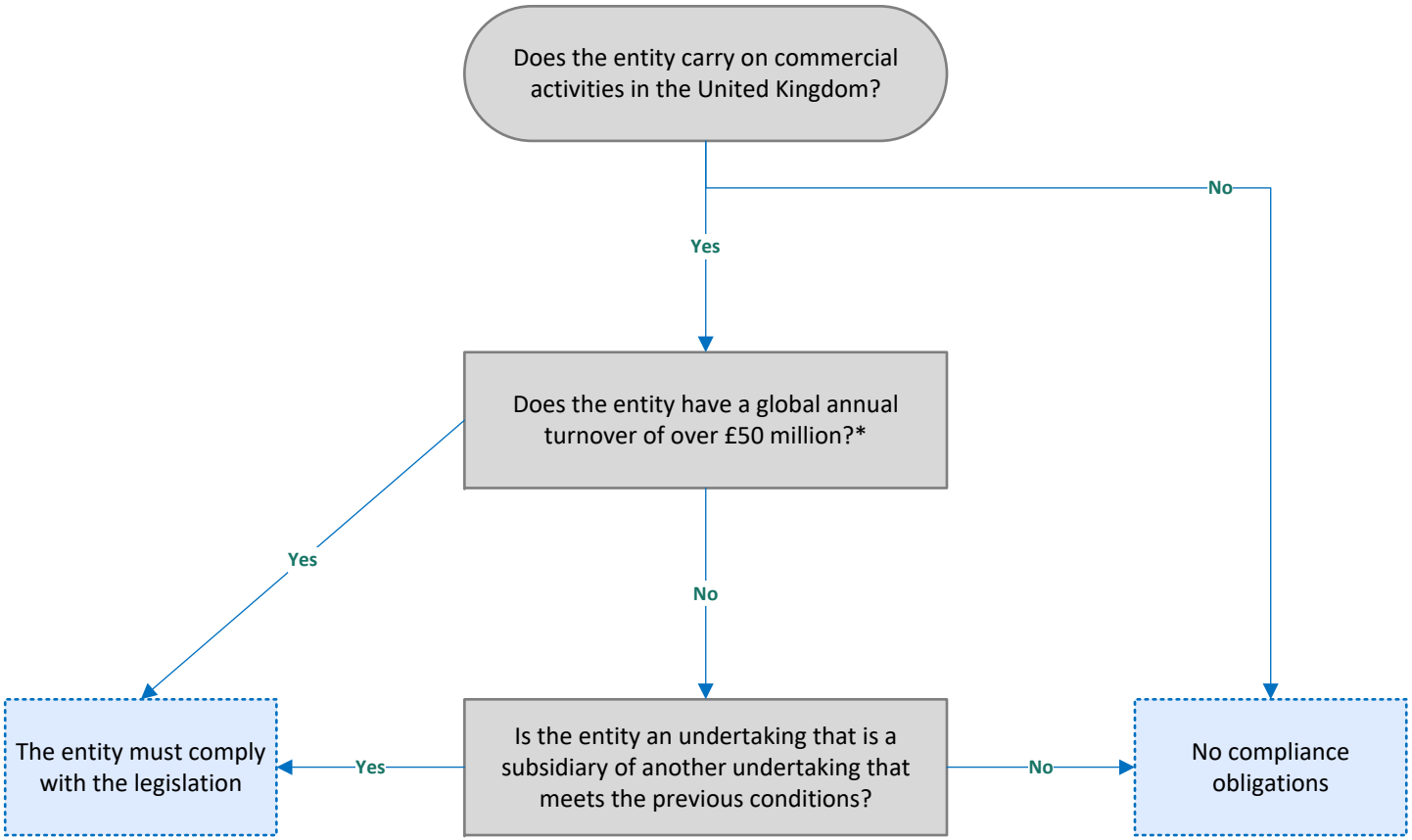

*According to the Defra Press Release, the £50 million global annual turnover threshold will be included in the upcoming secondary legislation.

Fostering Overseas Rule of law and Environmentally Sound Trade Act (FOREST Act) (Proposed) United States	
Overview	
Law / Country	**Fostering Overseas Rule of law and Environmentally Sound Trade Act of 2023** (the **"Act"**) (United States) (Proposed)
Goal	To prohibit the importation into the United States of products made wholly or in part of a covered commodity produced from land that undergoes illegal deforestation.
Adoption / Status	A prior version of the Act was introduced in the United States Senate on October 6, 2021 and the United States House of Representatives on October 8, 2021. A modified version of the Act (described in this summary) was re-introduced in the United States Senate on November 30, 2023 and referred to the Committee on Finance.
Issue Addressed	• Deforestation
Covered Entities	Importers of goods into the United States.
How It Works	
Mandatory?	Yes.
Covered Commodities and Covered Products	The following commodities would initially come within the scope of the Act: • Palm oil; • Soybeans; • Cocoa; • Cattle; and • Rubber. Specified products derived from these commodities, according to Harmonized Tariff Schedule headings and subheadings, also would be in scope. At least annually, the U.S. Trade Representative would be required to: • Review the covered commodities and covered products to assess whether commodities or products should be added or removed to ensure that the covered commodities and products are sufficient to deter illegal deforestation and that neither commodities produced in the United States nor imported commodities that were not produced on illegally deforested land are displaced by imported commodities produced on illegally deforested land; • Consult and solicit relevant information from an interagency working group and an advisory committee, both to be established pursuant to the Act, regarding the list of covered commodities and covered products; and • Publish an updated list of covered commodities and covered products.

	Declarations in respect of additional covered products would be required following the first anniversary of their inclusion.
Prohibited Imports	Products made wholly or in part of a covered commodity produced on land that undergoes illegal deforestation on or after the date of enactment of the Act are prohibited from being imported into the United States. **"Deforestation"** would be defined as a loss of natural forest resulting from the whole or partial conversion of natural forest to (1) agricultural use or another non-forest land use or (2) a tree plantation. A **"natural forest"** would be a natural arboreal ecosystem that (1) has a species composition a significant percentage of which is native species and (2) includes a native tree canopy cover of more than 10% over an area of not less 0.5 hectares or other wooded land with a combined cover of shrubs, bushes and trees of more than 10% over an area of not less than 0.5 hectares. The term **"illegal deforestation"** would mean deforestation conducted in violation of the law (or any action that has the force and effect of law) of the country in which the deforestation is occurring, including anti-corruption laws, laws relating to land tenure rights and laws relating to the free, prior and informed consent of indigenous peoples and local communities. The Act contemplates the adoption of additional regulations that define the term "wholly or in part" in a manner designed to limit the administrative burden on the importer of record while deterring illegal deforestation.
Import Declaration Requirements Generally	Beginning on the first anniversary of the enactment of the Act, in connection with importing a covered product, the importer generally would be required to electronically file a declaration stating that it has exercised reasonable care to assess and mitigate the risks that a covered commodity used to make the covered product was produced on land subject to illegal deforestation on or after the date of the Act's enactment. The term **"produce"** would include growing, harvesting, rearing, collecting, extracting or otherwise producing a commodity, other than refining or manufacturing. Within 90 days after the enactment of the Act, the Secretary of Homeland Security would be required to publish guidance on what constitutes reasonable care for purposes of this portion of the Act. U.S. Customs and Border Protection, in collaboration with the heads of other Federal agencies, would be required to conduct random audits of importers filing declarations to ensure the importers are retaining supporting documentation demonstrating that reasonable care was exercised.
Countries Covered by an Action Plan; Related Due Diligence	Within 180 days of the enactment of the Act, the Trade Representative would be required to identify foreign countries without adequate and effective protection against illegal deforestation for the production of commodities likely to enter the United States. Considerations for identifying these countries are laid out in the Act. The Trade Representative would be required to reassess the list of countries at least every two years. The declaration, and related diligence, for covered products that contain a covered commodity produced in a listed country covered by an action plan would be more extensive. Beginning on the first anniversary of the finalization of the action plan, importation of these products would only be permitted if the importer files a declaration that includes sufficient information to show the following:

	• The supply chain and the point of origin of the covered commodity and the steps taken to assess and mitigate the risks that the point of origin was subject to illegal deforestation on or after the enactment of the Act; or The ***"supply chain of a covered commodity"*** would consist of the end-to-end process for getting commodities or products to the United States, beginning at the point of origin and including all points until entry into the United States, including refiners, manufacturers, suppliers, distributors or vendors. The ***"point of origin of a covered commodity"*** would be the geographical location, identified by the smallest administrative unit of land reasonably possible (such as a concession, farm, ranch, property or other type of public or private land allocation), where the covered commodity was produced. For livestock, the point of origin would include all geographic locations where that animal existed from birth to slaughter. • If mixing or points of aggregation exist within the supply chain, all possible points of origin that could have contributed to the supply chain of the covered commodity and steps taken to assess and mitigate the risks that any possible points of origin were subject to illegal deforestation on or after the enactment of the Act. Within 90 days after the enactment of the Act, the Secretary of Homeland Security also would be required to publish guidance on what constitutes sufficient information for purposes of this portion of the Act. The Secretary of Homeland Security also may issue guidance about the potential role of third-party certifications assisting importers with meeting the requirements of the Act. No later than the first anniversary of the enactment of the Act, CBP would be required to develop a process to make information filed with a declaration, as required by this portion of the Act, publicly available (excluding information considered to be confidential business information).
Trusted Trader Program	No later than the first anniversary of the enactment of the Act, CBP, in consultation with the interagency working group, the advisory committee and the public, would be required to establish a program to streamline the import declaration requirements under the Act. Importers that have demonstrated the following would be eligible to participate in the program: • A transparent and credible due diligence system (including publicly available, up-to-date information on implementation of due diligence systems and supply chains); and • A track record of compliance, supply chain traceability and transparency, and sourcing of products not made wholly or in part of a covered commodity produced on land that undergoes illegal deforestation. CBP would be required to carry out, and publish the results of, random audits of participants in the program to assess compliance. CBP would be authorized to terminate participation in the program of participants found to be in violation of the requirements.
Preferential Treatment in U.S. Government	The Act would provide preferential treatment to contractors that have a policy to address deforestation and are taking other related steps.

Procurement; Deforestation Policy	In comparing proposals for the purpose of awarding a contract involving any product made wholly or in part of a covered commodity, the relevant agency would be required to reduce the bid price by 10% if the contractor demonstrates to the satisfaction of the head of the agency that (1) it has a policy in place to address deforestation that meets certain requirements, as described below, and (2) the policy and data on monitoring and enforcement of the policy are publicly available and updated at least annually. At a minimum, the policy would be required to include, for each covered commodity included in a product made wholly or in part of a covered commodity, the following: • Measures to identify the point of origin of the commodity and ensure compliance with the policy when supply chain risks are present; • Data detailing the complete list of direct and indirect suppliers and supply chain traceability information, including refineries, processing plants, farms and plantations, and their respective owners, parent entities and farmers, maps and geolocations, for the commodity; • Measures taken to ensure that the commodity does not contribute to deforestation; and • Measures taken to ensure compliance with the laws of any country in which the commodity is produced.
Third-party Reporting Mechanism	Within 180 days of the enactment of the Act, CBP would be required to establish a process for receiving information from other persons that a covered commodity is potentially being imported in violation of the Act.
Enforcement	CBP would be required to notify importers of suspected violations of the Act and provide such importers with an opportunity to demonstrate compliance before taking any enforcement action.
Additional Regulations	Additional regulations under the Act are contemplated. The Act would require CBP and the Trade Representative to publish final regulations no later than the first anniversary of the enactment of the Act.
Additional Information/Resources	
Law	For the text of the Act, see: https://www.congress.gov/118/bills/s3371/BILLS-118s3371is.pdf

Ropes & Gray Resources	Client alerts related to the Act: • Recent Developments in Deforestation Legislation – the UK, U.S. and EU (January 29, 2024): https://www.ropesgray.com/en/insights/viewpoints/102iyca/recent-developments-in-deforestation-legislation-the-uk-u-s-and-eu • Pending and Proposed Deforestation Legislation Will Add New Supply Chain Due Diligence and Reporting Requirements – An Overview of U.K., EU and U.S. Federal and State Initiatives (March 8, 2022): https://www.ropesgray.com/en/newsroom/alerts/2022/march/pending-and-proposed-deforestation-legislation-will-add-new-supply-chain-due-diligence

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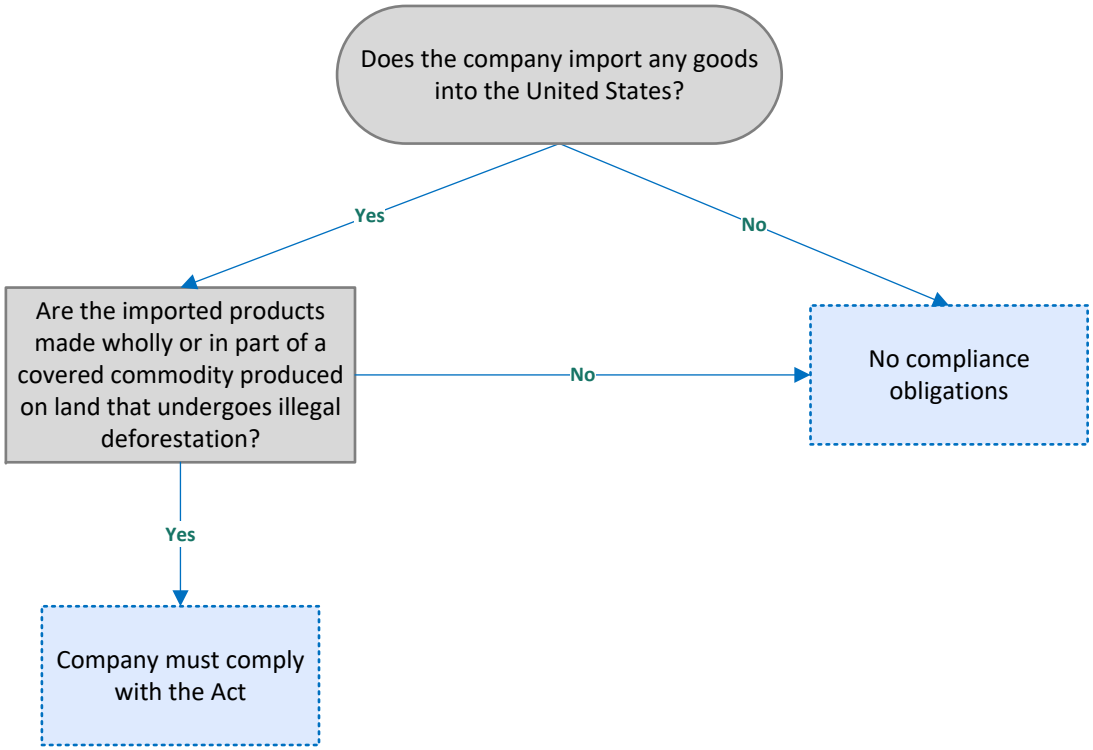
(Updated February 29, 2024)

Applying the Law



Companies Act, section 135 India	
Overview	
Law / Country	**section 135 of the Companies Act** (The Companies Act, 2013, amended 2015, 2017, 2019, 2021, 2022) (the "**Law**") (India)
Goal	To further corporate social responsibility in India by requiring investment in CSR initiatives.
Adoption / Status	On August 29, 2013, the Law was adopted. Since that time, Rules have been adopted under the Law and there have been several amendments to the Law, as further described below.
Issues Addressed	• Corporate social responsibility
Covered Entities	The Law applies to Indian companies and foreign companies doing business in India that, during the immediately preceding financial year: • Have a net worth of rupees five hundred crore or more; • Turnover of rupees one thousand crore or more; or • A net profit of rupees five crore or more.
How It Works	
Mandatory?	Yes.
CSR Activities	CSR is defined as the activities undertaken by a company pursuant to its statutory obligation under the Law and the rules thereunder. Schedule VII of the Companies Act outlines recognized CSR activities. These relate to, among other things: • Eradicating extreme hunger and poverty; • Promotion of education, gender equality and empowering women; • Reducing child mortality and improving maternal health; • Protection of national heritage and culture; • Measures for the benefit of military veterans; • Training to promote sports; • Ensuring environmental sustainability; • Employment enhancing vocational skills and social business projects; • Rural development and slum area development; and • Disaster management, including relief, rehabilitation and reconstruction. A capital asset is a qualifying CSR expenditure if the asset created is owned either by the organization supported, the persons served by the project or a public authority. The following do not qualify as permissible CSR activities: • Normal course of business activities generally; • Activities outside of India generally; • Contributions to political parties;

	• Activities that significantly benefit employees; • Sponsorships for deriving marketing benefits for products or services; and • Activities carried out to fulfill other Indian statutory obligations. However, for companies engaged in research and development of new vaccines, drugs and medical devices in their normal course of business, those activities are permissible CSR activities for fiscal years 2020-21 to 2022-23 to the extent related to COVID-19.
CSR Committee	Covered entities 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 formulate and recommend to the board of directors (the **"Board"**) an annual action plan pursuant to the CSR Policy (the **"CSR Policy"**).
CSR Policy	The CSR Policy is defined as a statement containing the approach and direction given by the Board, considering the recommendations of its CSR Committee, and includes guiding principles for selection, implementation and monitoring of activities as well as formulation of the annual action plan. The CSR Policy must include the following: • The list of CSR projects and programs approved to be undertaken; • The manner of execution of the projects or programs; • The manner of utilization of funds and implementation schedules for projects or programs; • Monitoring and reporting mechanisms for projects or programs; and • Details of need and impact assessment, if any, for the projects and programs undertaken.
Implementation of the CSR Policy	A covered entity must spend at least 2% of its average net profits made during the three immediately preceding fiscal years (the **"Minimum CSR Amount"**) on CSR initiatives in accordance with the its CSR Policy. If the company spends an amount in excess of the Minimum CSR Amount, the company may set-off the excess against the spending requirement for up to the next three fiscal years. Administrative overhead may not exceed 5% of total CSR expenditures for the fiscal year. Only the following classes of companies/entities can undertake CSR activities on behalf of a company: • A company established under Section 8 of the Companies Act (a **"Not-For-Profit Company"**), a registered public trust or a registered society established by the company, either singly or along with another company; • A Not-For-Profit Company, a registered trust or a registered society established by the Central Government or a State Government; • An entity established under an act of Parliament or a State legislature; or • A Not-For-Profit Company, a registered public trust or a registered society with an established track record of at least three years in undertaking similar activities. A covered entity may engage an International Organisation for designing, monitoring and evaluation of CSR projects or programs as well as for CSR capacity building of its personnel. An **"International Organisation"** is an organization notified by the Central Government as an international organisation under Section 3 of the United Nations (Privileges and Immunities) Act, 1947. The Board is required to monitor the implementation of ongoing projects and make modifications, if any, for the smooth implementation of the project within the permissible time period. The Board is responsible for ensuring funds are being utilized for approved purposes. The chief financial officer or the person responsible for financial management of the covered

	entity is required to certify that funds are being used for approved purposes. If a covered entity has an average CSR obligation of 10 crore rupees or more in the three immediately preceding fiscal years, it must undertake an impact assessment of its CSR projects with outlays of one crore rupees or more that have been completed at least one year before undertaking the impact study. The impact study must be conducted by an independent third party.
Unspent Funds	Any unspent Minimum CSR Amount relating to an "Ongoing Project" must be transferred within 30 days after the end of the fiscal year to a special account (**"Unspent CSR Account"**) maintained by the company. An **"Ongoing Project"** is a multi-year project undertaken by a company in fulfilment of its CSR obligation having a timeline not exceeding three years (excluding the fiscal year in which it was commenced) and includes a project that initially was not approved as a multi-year project but whose duration has been extended beyond one year by the Board based on reasonable justification. The money in the Unspent CSR Account is required to be spent by the company in furtherance of its CSR Policy within three fiscal years from the date of transfer to the account. If the company fails to spend the money in the Unspent CSR Account within the prescribed three-year period, the unspent amount is required to be transferred to a CSR fund set up by the Government of India (**"Government CSR Fund"**), within 30 days after the end of the third fiscal year. If the unspent amount in a fiscal year does not relate to an Ongoing Project, the company is required to transfer the unspent amount to the Government CSR Fund within six months after the end of its fiscal year. Any surplus arising out of CSR activities must be (1) used in the same project, (2) transferred to the Unspent CSR Account and spent pursuant to the CSR Policy and annual action plan of the company or (3) transferred to the Government CSR Fund within six months after the end of the fiscal year.
Reporting	Covered entities must furnish a report on CSR on E-Form CSR-2, as an addendum to Form AOC-4 (the form for filing financial statements). Companies must provide the following information, among other things, on the CSR-2 form: • CSR spending and information on ongoing projects. • Information on the CSR Committee. • Net profit and related information. • If any capital assets have been created or acquired through CSR spending, information regarding the capital assets, including the address, location, pin code of the property, amount spent and registered owner. Covered entities also must disclose on their website their CSR Policy, the composition of the CSR committee and CSR projects approved by the Board.
Enforcement	Non-compliance with the CSR provisions can result in a fine of up to twice the amount required to be transferred by the covered entity to the Government CSR Fund or the Unspent CSR Account, or one crore rupees, whichever is less. In addition, every officer of the company who is in default can be fined up to 10% of the amount required to be transferred by the covered entity to the foregoing, or rupees two lakh, whichever is less. Under Section 206 of the Companies Act, the Government has powers to call for information and inspect the books of a company.
Additional Information/Resources	
Law	For the text of Section 135, see: https://www.mca.gov.in/content/mca/global/en/acts-

	rules/ebooks/acts.html?act=NTk2MQ==#Corporate_Social_Responsibility For the 2017 Amendments, see: http://www.mca.gov.in/Ministry/pdf/CAAct2017_05012018.pdf For the 2019 Amendments, see: http://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf For the 2021 Amendments, see: https://www.mca.gov.in/Ministry/pdf/CSRAmendmentRules_23012021.pdf For the 2022 Amendment, see: https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTE3OTE2OTE=&docCategory=Notifications&type=open
Indian Companies Act	For the full text of the 2013 Companies Act, see: http://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf
Ropes & Gray Resources	Client alerts related to the Law: • Corporate Social Responsibility in India: New Requirements for U.S.-Based Multinationals on the Horizon (July 29, 2020): https://www.ropesgray.com/en/newsroom/alerts/2020/07/corporate-social-responsibility-in-india-new-requirements-for-us-based-multinationals-on-the-horizon

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

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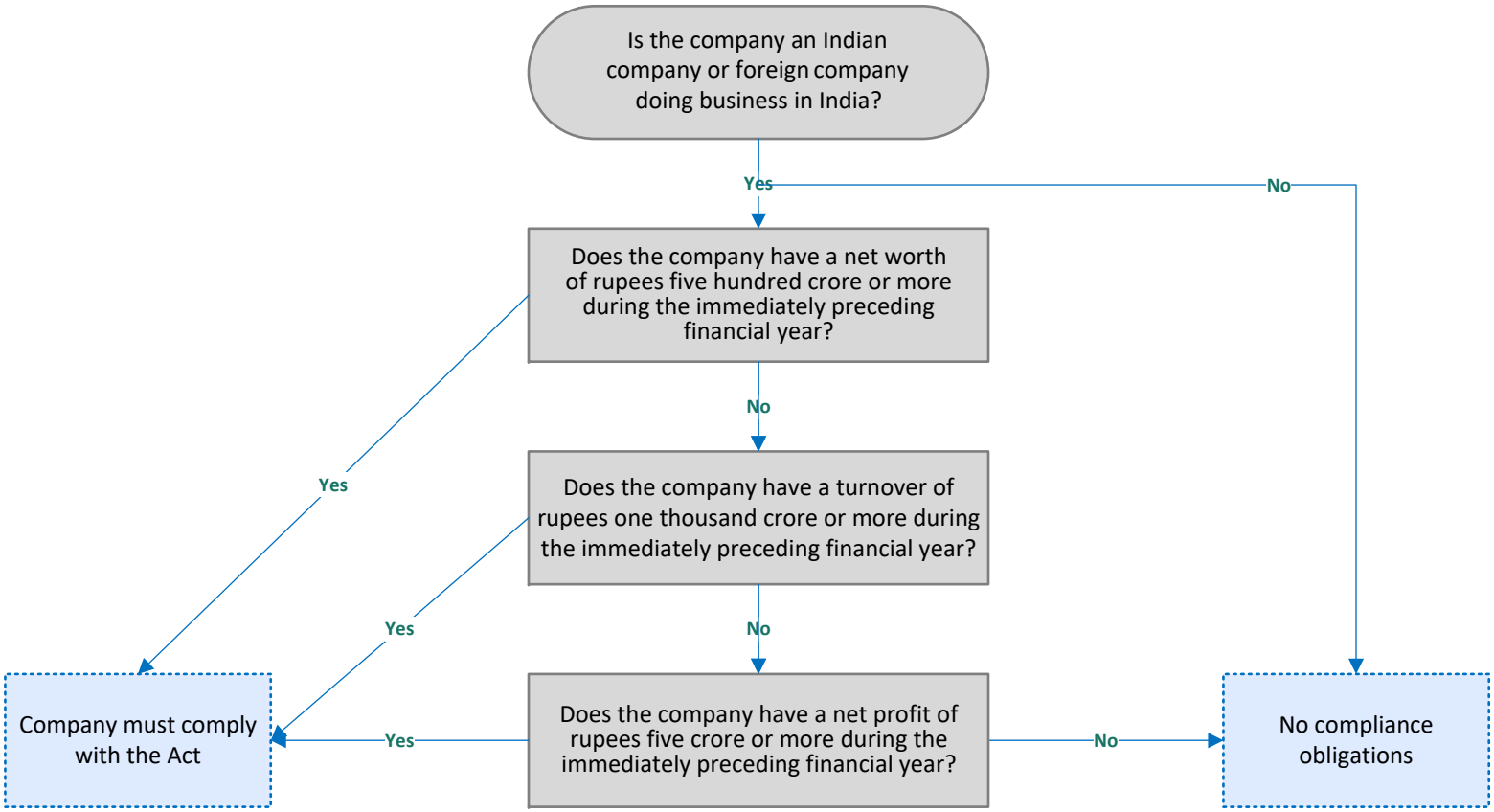

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