CORPORATE SOCIAL RESPONSIBILITY LEGISLATION

A Summary of Selected Instruments

FEBRUARY 2023

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 four categories:

Disclosure-Only: Disclosure-only legislation requires subject companies to disclose their compliance activities relating to the subject matter of the legislation. However, it does not require companies to adopt policies or procedures, trace their supply chains, 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:

- California Transparency in Supply Chains Act
- U.K. Modern Slavery Act
- Australian Commonwealth Modern Slavery Act
- U.S. Securities and Exchange Commission climate-risk disclosure rules

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

Example:

- U.S. Conflict Minerals Rule (not part of these Summaries)

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

Examples:

- U.S. Federal Acquisition Regulation Anti-Human Trafficking Rule
- 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

Trade-Based: Trade-based legislation prohibits the importation into a jurisdiction of goods that do not meet specified human rights requirements, in particular no forced labor in the supply chain. Although not explicitly part of these statutes, 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. Tariff Act, Section 307
- U.S. Countering America's Adversaries Through Sanctions Act, Section 321
- 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.

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Compliance Thresholds

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

Common types of thresholds in CSR legislation include:

- Monetary thresholds, such as revenues or profits; these typically take into account the worldwide consolidated revenues of the particular entity, but typically (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. If flexible, existing supply chain traceability, audit, training and risk assessment protocols usually can accommodate new supply chain-related CSR regulations.

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- Leverage voluntary frameworks, guidance and best practices, in particular the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises, the OECD Due Diligence Guidance for Responsible Business Conduct, OECD sector guidance (including the OECD-FAO Guidance for Responsible Agricultural Supply Chains) and International Labour Organization conventions and recommendations, as well as non-binding government guidance and NGO commentary. Note that voluntary frameworks are outside the scope of the Summaries. 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 been many developments regarding CSR-related legislation: newly effective legislation; new proposals; and the stalemate of others. We have updated, added and/or removed summaries reflecting many of these developments.

New summaries include the following:

- ***Proposed EU Forced Labor Products Ban:*** On September 14, 2022, the European Commission proposed a Regulation that would prohibit economic operators from placing and making available on the EU market, or exporting from the EU, products made with forced labor.

- ***Proposed Australian Customs Amendment Prohibiting Forced Labor Imports***: After a previous bill lapsed at the House of Representative's dissolution in April 2022, an identical bill was introduced in November 2022. 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.

- ***Pending Mexican Administrative Regulation related to Forced Labor:*** On February 17, 2023, Mexico's Ministry of Economy published the Regulation, implementing Mexico's obligation under the United States-Mexico-Canada Agreement to prohibit imports produced with forced labor. The Regulation takes effect on May 18, 2023.

- ***U.S. Customs Trade Partnership Against Terrorism (CTPAT) – Security and Trade Compliance Program Forced Labor Compliance Requirements:*** In 2022, new forced labor requirements were added to the CTPAT Security and Trade Compliance Programs. CTPAT is a voluntary program for U.S. importers. Companies that demonstrate compliance with program requirements receive various trade facilitation benefits.

- ***Proposed U.S. Federal Supplier Climate Risks and Resilience Rule:*** On November 14, 2022, the Federal Acquisition Regulatory Council published the proposed rule, which would require large federal contractors to make annual greenhouse gas emissions and other climate

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disclosures and, in certain cases, set science-based targets for emissions reduction. The public comment period for the proposed rule closed on February 13, 2023.

- ***Proposed California Corporate Data Accountability Act:*** The Act was introduced in the California Senate on January 30, 2023 as part of a Climate Accountability Package. The Act would require U.S.-organized entities that do business in California and have total annual revenues in excess of $1 billion to publish scope 1, scope 2 and scope 3 greenhouse gas emissions data. In the prior legislative term, a similar bill narrowly did not pass in the Assembly. However, the Bill sponsors believe they have more support for passage this term.

- ***Proposed California Climate-Related Financial Risk Act:*** The Act was introduced in the California Senate on January 30, 2023 as part of the aforementioned Climate Accountability Package. The Act would require U.S.-organized entities that do business in California and have total annual revenues that exceed $500 million to annually prepare a climate-related financial risk report.

- ***Proposed New York Climate Corporate Accountability Act:*** The Act was introduced to the New York Senate on January 9, 2023. The Act would require business entities with total revenues in excess of $1 billion that do business in New York to publish scope 1, scope 2 and scope 3 greenhouse gas emissions data.

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

- ***EU Corporate Sustainability Reporting Directive:*** The adopted Directive was published in the European Union Official Journal on December 14, 2022 and entered into force on January 5, 2023. The summary has been updated to reflect the adopted Directive. EU Member States will have until June 16, 2024 to transpose the Directive into their national laws.

- ***Proposed EU Corporate Sustainability Due Diligence Directive:*** In December 2022, the Council published its negotiating position. The summary has been updated to reflect selected aspects of the Council's negotiating position. Parliament is currently debating the Directive and is expected to adopt its negotiating position in Spring 2023. Once Parliament adopts its negotiating position, tripartite negotiations on a final Directive will take place.

- ***Proposed EU Deforestation Regulation:*** On December 6, 2022, the Council and Parliament reached a provisional agreement for the Regulation. The summary has been updated to describe the provisional agreement. The European Parliament and Council have not yet formally adopted the new Regulation.

- ***U.S. Uyghur Forced Labor Prevention Act:*** Recent enforcement developments have been added. The summary was also updated to reflect additional guidance issued by U.S. Customs and Border Protection.

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

- ***Proposed Dutch Responsible and Sustainable International Business Conduct Act:*** In November 2022, an amended bill was submitted to the House of Representatives. The summary has been updated to reflect the amended Bill, which is more closely aligned with the EU Corporate Sustainability Due Diligence Directive.

- ***Proposed New Zealand Modern Slavery Act:*** Last year, the Ministry of Business, Innovation and Employment solicited public feedback on the proposed Act. The summary has been updated to reflect published feedback from the consultation.

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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Climate Legislation:

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Deforestation Legislation:

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Assessing the Applicability of Legislation

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

Modern Slavery Disclosure-based Legislation

	CA Transparency in Supply Chains Act	UK MSA	Australia Commonwealth MSA	Canadian Fighting Against Forced Labour and Child Labour in Supply Chains Act (Proposed)	New Zealand Modern Slavery Act (Proposed)
Jurisdiction	California, United States	United Kingdom	Australia (federal)	Canada	New Zealand
Compliance Threshold	Retailer or manufacturer with annual worldwide gross receipts in excess of US$100 million	Total annual turnover of at least £36 million	Annual consolidated worldwide revenue of more than A$100 million	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
Nexus	Identifies as a retail seller or manufacturer in its CA tax returns	Carries on a business (including a trade or profession) or part of a business in the U.K.	Is either an Australian entity or carries on business in Australia	Does business in Canada or has assets in Canada and either produces or imports goods in/into Canada	New Zealand entity or entity operating in New Zealand

Modern Slavery Legislation – Trade Based

	US Tariff Act	US CAATSA	US Uyghur Forced Labor Prevention Act	Canada Customs Tariff
Issue Addressed	Forced labor	North Korean forced labor	Uyghur forced labor	Forced labor
Jurisdiction	United States	United States	United States	Canada
Compliance Threshold	N/A	N/A	N/A	N/A
Nexus	Imports good into the United States	Imports goods 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

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

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Selected Other CSR Regulations

	US FAR Anti-Human Trafficking Rule	EU Non-financial Reporting Directive	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	S. 135 of the Indian Companies Act	Dutch Child Labor Due Diligence Law (Pending)
Issue(s) Addressed	Forced labor	Environment, social and employee matters, human rights, corruption and diversity	Human rights, health and safety and the environment	Conflict minerals and child labor	Human rights risks and selected environmental risks	Fundamental human rights and decent working conditions	Corporate social responsibility in India	Child labor
Jurisdiction	United States	European Union	France	Switzerland	Germany	Norway	India	Netherlands
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	Balance sheet total of more than €20 million or a net turnover of more than €40 million, and more than 500 employees on average	At least 5,000 employees in French subsidiaries 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 (under 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)	At least 3,000 employees for 2023, and 1,000 employees or more starting with 2024	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	Net worth of rupees five hundred crore or more, turnover of rupees one thousand crore or more or a net profit of rupees five crore or more	N/A
Nexus	Contract with the U.S. federal government, as a prime, subcontractor or agent	EU-listed companies, banks, insurance companies and other companies designated by national authorities as public interest entities	Registered office in France	Enterprises with their registered office, central administration or principal place of business in Switzerland	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	Indian companies and foreign companies doing business in India	Companies that provide goods or services to end-users based in the Netherlands

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

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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 (Proposed)	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 requirements 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 requirements 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	California Revenue and Taxation Code	Doing business in the United Kingdom	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.

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Overview of Selected Trade-based Modern Slavery Legislation

	US Tariff Act	US CAATSA	US Uyghur Forced Labor Prevention Act	Canada Customs Tariff
Covered Activities	Imports into the US	Imports into the US	Imports into the US	Imports into Canada
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, subject to compliance with requirements to be issued	Importing goods produced using prison or forced labor
Due Diligence	No specific requirements, but taken into account as a mitigating factor if there is a violation	No specific requirements, but taken into account as a mitigating factor if there is a violation	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
Compliance Plan	No specific requirements, but taken into account as a mitigating factor if there is a violation	No specific requirements, but taken into account as a mitigating factor if there is a violation	No specific requirements, but extensive due diligence guidance has been issued	No specific requirements
Reporting	N/A	N/A	N/A	N/A

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

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

	US FAR Anti-Human Trafficking Rule	Dutch Child Labor Due Diligence Law (Pending)	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	Selling or providing goods or services to end-users based in the Netherlands	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 investigate whether there is a reasonable suspicion of child labor in the business or supply chain	Must establish a reasonable vigilance plan to allow for risk identification and prevention of severe violations of human rights, health and safety or environmental damage	The duty of care is based on the UN Guiding Principles on Business and Human Rights and is higher for direct suppliers	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
Compliance Plan	If due diligence/ certifications are required, must also have compliance plan meeting specified requirements	If reasonable suspicion of child labor, must adopt and implement action plan	Must include procedures to identify and analyze human rights risks and regularly assess supplier risks, actions to mitigate risks and prevent violations, alert mechanisms and assessment mechanisms	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	Subject company generally must prepare a declaration indicating that it exercises due diligence in order to prevent the goods and services that its sells or supplies to Dutch end-users from being produced using child labor	Must make public 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.

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Transparency in Supply Chains Act **California**	
Overview	
Law / State	**California 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	• Slavery • Human trafficking
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.

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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

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

(Updated February 28, 2023)

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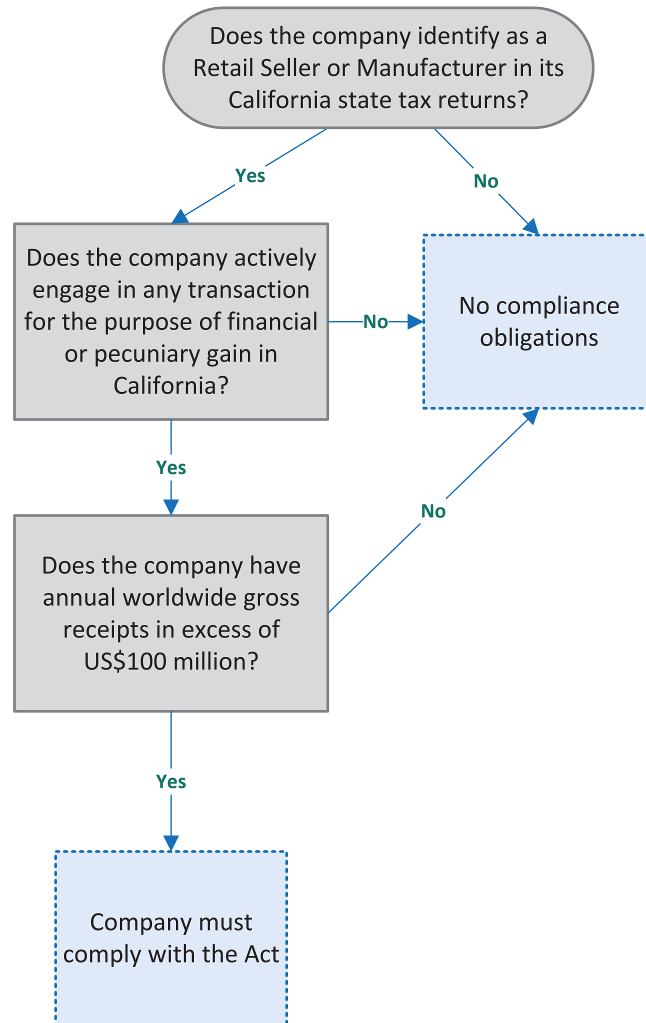
Applying the Law



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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	• Slavery • Human trafficking
Covered Entities	Commercial Organisations: The MSA covers any "commercial organisation" that supplies goods or services and has a total annual turnover of at least £36 million. A commercial organisation is a corporation or partnership that carries on a business (including a trade or profession) or part of a business in the United Kingdom, regardless of where it is was incorporated. The turnover calculation includes the turnover of the subject commercial organisation and its subsidiary undertakings, including those subsidiary undertakings carrying on business outside of the United Kingdom. Parents and sister companies: Having a subsidiary that is subject to the MSA does not subject entities that are above that subsidiary in the corporate chain, or sister companies under common control, to the MSA. However, depending on their business activities in the UK, multiple entities in the consolidated group, even those not primarily engaged in carrying on a business in the United Kingdom, may be subject to the MSA. A parent 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. Franchisees: 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.

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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.

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	• 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.
Expected 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. Mandated Disclosure Topics: 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. Statement Registry: The Government indicated it will require commercial organisations to publish their statement on the Government-run registry. Timing: 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. Other Statement Enhancements: 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. Penalties: The Government has indicated it intends to propose penalties for failure to comply with the requirements of the transparency provisions.

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	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 (1) add a new criminal offense for false information in modern slavery statements, (2) add 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) require 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) arrange for credible inspections and verify country of origin information. The Bill is now in its first reading in the House of Lords.
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/919937/Government_response_to_transparency_in_supply_chains_consultation_21_09_20.pdf
Modern Slavery (Amendment) Bill	For the text of the Bill, see: https://bills.parliament.uk/publications/41860/documents/390
Ropes and 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):

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	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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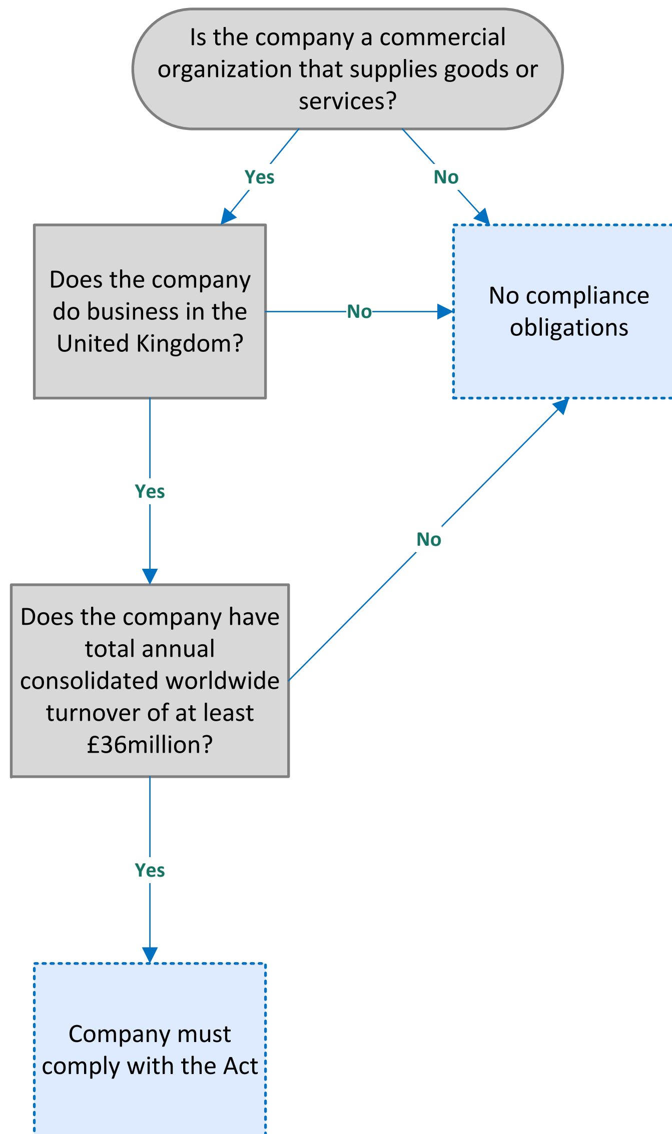

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Commonwealth Modern Slavery Act 2018 **Australia**	
Overview	
Law / Country	**Australia Commonwealth Modern Slavery Act** (No. 153, 2018) (the **"Act"**) (Australia)
Goal	To reduce modern slavery occurring in the supply chains of goods and services in the Australian market 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.

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Reporting	<u>Timing</u>: Statements are due within six months after fiscal year end. <u>Publication</u>: Reporting entities must submit statements to the ABF for publication in an online central register. <u>Approval/Signatures</u>: 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	During August 2022, the Australian Government released for public consultation an issues paper on the effectiveness of the first three years of the Act. The consultation period closed on November 22, 2022. The review will be completed by March 31, 2023, after which a final report will be published in Parliament. The Government is expected to propose changes to the Act. In the announcement of the public consultation, the Government noted that it has committed to introducing penalties for non-compliance.
Additional Information/Resources	
Law	For the text of the Act, see: https://www.legislation.gov.au/Details/C2018A00153
Government Guidance	The Department of Home Affairs published final guidance in September 2019. The guidance contains information related to modern slavery more generally and provides explanatory guidelines for complying with the Act. The guidance does not create additional substantive obligations under the Act. For the 2019 guidance, see: https://www.homeaffairs.gov.au/criminal-justice/files/modern-slavery-reporting-entities.pdf The Australian Border Force published guidance in 2020 for reporting entities to reduce the risk of modern slavery and to address the impact of COVID-19 in their modern slavery statements. For the guidance, see: www.homeaffairs.gov.au/criminal-justice/files/modern-slavery-covid-19.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/sites/default/files/document/publication/ahrc_kpmg_modernslavery_property_construction_2020.pdf

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	• 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
Ropes & Gray Resources	Client alerts related to the Act: • 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#:~:text=The%20Australian%20Commonwealth%20Modern%20Slavery,required%20review%20of%20the%20Act. • 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

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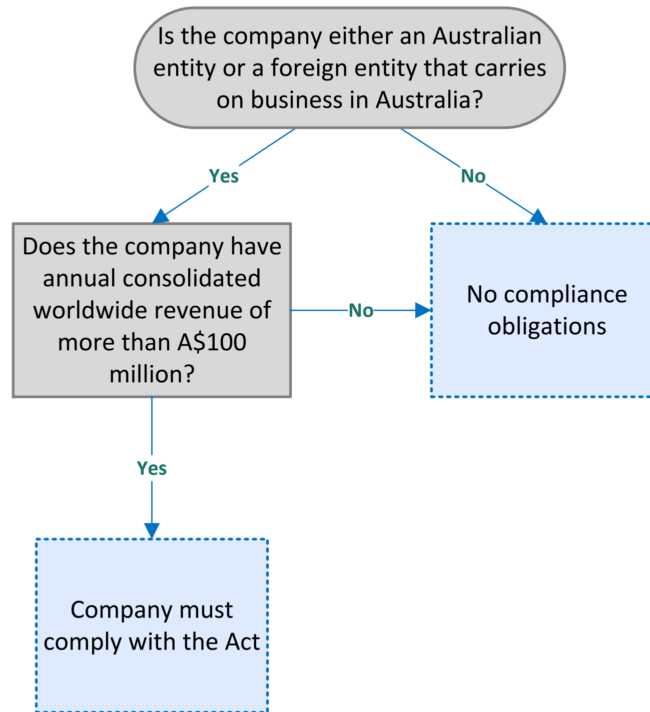

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Supply Chain (Modern Slavery) Act (Proposed) Tasmania	
Overview	
Law / State	**Supply Chain (Modern Slavery) Act** (the **"Act"**) (Tasmania, Australia)
Goal	To combat modern slavery through enhanced disclosure, among other measures.
Adoption / Status	First reading in the House of Assembly on April 30, 2020.
Issue Addressed	• Modern slavery "Modern slavery" would be defined in relevant part as (1) any conduct constituting a modern slavery offence under the Commonwealth Criminal Code and (2) any conduct involving the use of any form of slavery, servitude or forced labor to exploit children or other persons taking place in supply chains. Forced labor, servitude and slavery would in turn have the definitions in the Commonwealth Criminal Code. Note that this summary is limited to the reporting provisions of the Act. There also are provisions addressing, among other things, the appointment of an independent Supply Chain (Anti-slavery) Commissioner, the establishment of a Supply Chain (Modern Slavery) Committee of Parliament and government procurement.
Covered Entities	Any "commercial organisation", including a corporation or partnership, (1) with employees in Tasmania, (2) that supplies goods and services for profit or gain and (3) has a total turnover in a financial year of the organisation of not less than A$30 million or such other amount as may be prescribed by regulations.
How It Works	
Mandatory?	Yes. However, the transparency provisions of the Act would not apply to a commercial organisation that is subject to obligations under a law of the Commonwealth or another State or Territory that is prescribed as a corresponding law. The Commonwealth MSA and New South Wales MSA are expected to be prescribed as corresponding laws.
Statement Requirements	The Act would require subject commercial organisations to annually publish a modern slavery statement for each financial year of the organisation describing the steps taken during the year to ensure that the commercial organisation's goods and services are not a product of supply chains in which modern slavery is taking place. More detailed content requirements would be established by regulation.
Reporting	Subject commercial organisations would be required to make their modern slavery statements public. More detailed requirements would be set by regulation. The independent Supply Chain (Anti-slavery) Commissioner to be appointed pursuant to the Act would be required to keep a register in electronic form that (1) identifies any commercial organisation that has disclosed in a modern slavery statement that its goods and services are, or may be, a product of supply chains in which modern slavery may be taking place and whether the commercial organisation has taken steps to address the concern and (2) identifies any other organisation or body

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	that has voluntarily disclosed to the Commissioner that its goods and services are, or may be, a product of supply chains in which modern slavery is taking place and whether the organisation or body has taken steps to address the concern. The Commissioner would be required to make the register publicly available free of charge.
Enforcement	The Act may create an offence punishable by a penalty not exceeding 50 penalty units (currently A$173 per unit).
Additional Information/Resources	
Law	For the text of the proposed Act, see: https://www.parliament.tas.gov.au/bills/Bills2020/pdf/18_of_2020.pdf

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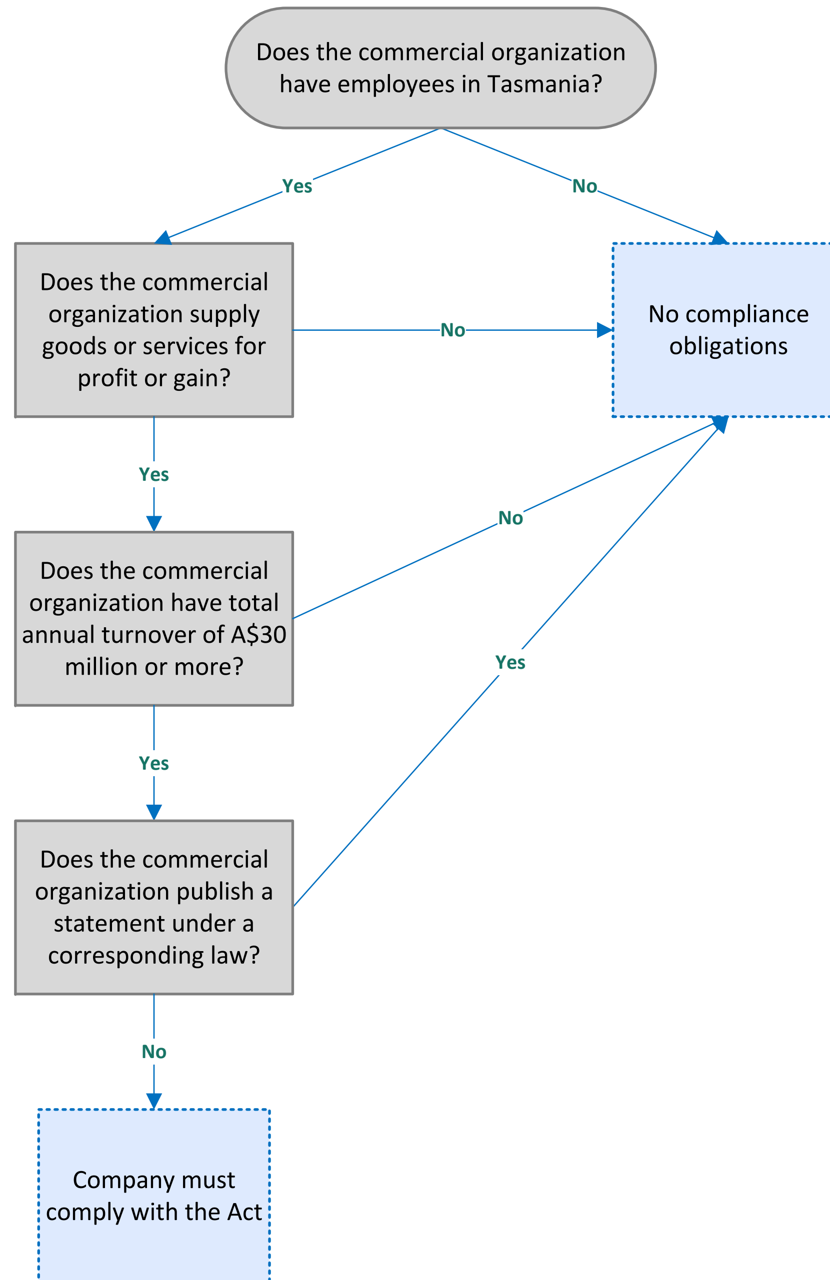

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Uyghur Forced Labor Disclosure Act (Proposed) **United States**	
Overview	
Law / Country	**Uyghur Forced Labor Disclosure Act** (H.R. 2072, originally introduced in 2020 as H.R. 6270) (the **"Bill"** or the **"Act"**) (United States)
Goal	To address 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 Bill was reintroduced in the House on March 18, 2021. The text of the 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.
Issue Addressed	• Forced labor
Covered Entities	Companies that have a class of securities registered under the Securities Exchange Act (the **"Exchange Act"**).
How It Works	
Mandatory?	Yes.
Disclosure of Activities Relating to the Xinjiang Uyghur Autonomous Region (the "XUAR")	No later than 180 days after the date of enactment, the Securities and Exchange Commission (the **"Commission"**) would be required to issue rules requiring issuers that file an annual report or proxy statement under the Exchange Act to disclose in the annual report or proxy statement whether, during the period it covers: • The issuer or any affiliate directly or indirectly engaged with an entity or the affiliate of an entity to import (1) manufactured goods, including electronics, food products, textiles, shoes and teas, that originated in the XUAR or (2) manufactured goods containing materials that originated or are sourced in the XUAR; • Whether such goods or materials described above originated in forced labor camps; and • The nature and extent of the commercial activity related to such good or material, the gross revenue and net profits attributable to the good or material, and whether the issuer or its affiliate intends to continue with such importation. As used in the Act, **"forced labor camp"** means (1) any entity engaged in the mutual pairing assistance program that subsidizes the establishment of manufacturing facilities in the XUAR, (2) any entity using convict labor, forced labor or indentured labor described under Section 307 of the Tariff Act and (3) any other entity that the Commission determines is appropriate.
Availability of Information	Information would be publicly available on the Commission's EDGAR website.

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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.
Additional Information/Resources	
Law	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 For the text of the 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

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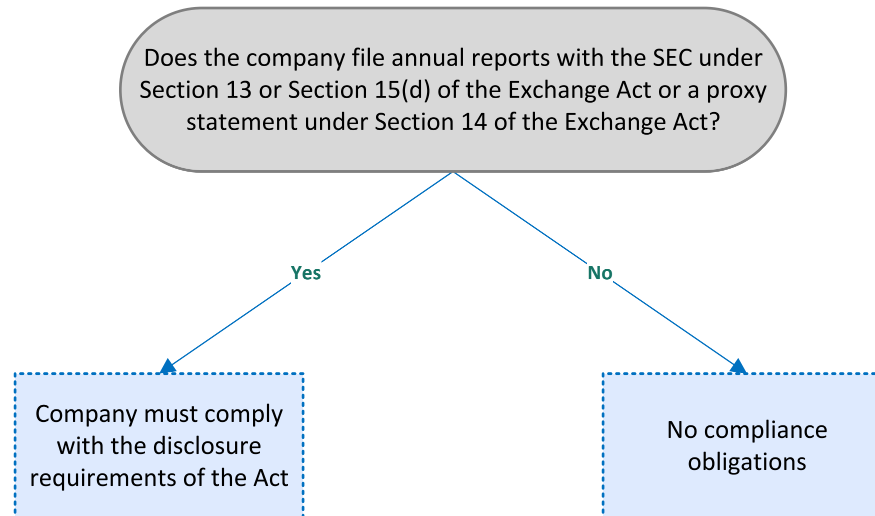

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Transaction and Sourcing Knowledge Act (Proposed) United States	
Overview	
Law / Country	**The Transaction and Sourcing Knowledge Act** (also known as the TASK Act) (S.4095) (the **"Act"**) (United States)
Goal	Disclosure of risks associated with products 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.
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.

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Additional Information/Resources	
Law	For the text of the Act, see: https://www.congress.gov/117/bills/s4095/BILLS-117s4095is.pdf
Ropes and 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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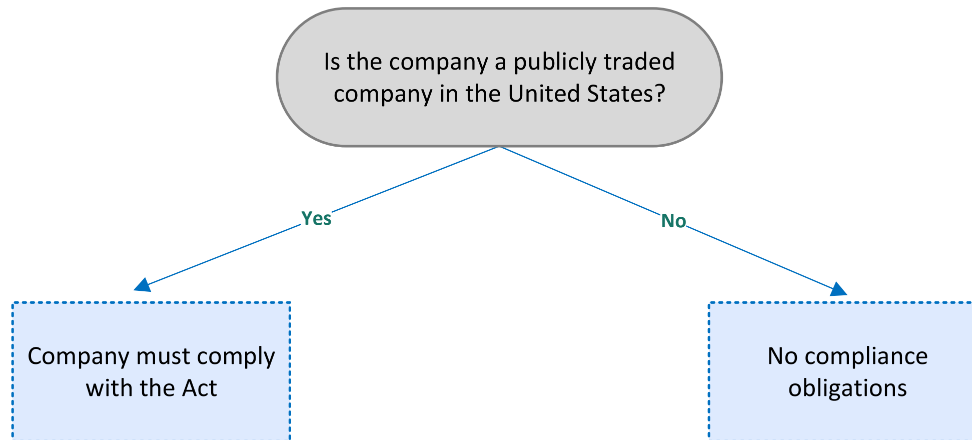

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U.S. Tariff Act, Section 307 **United States**	
Overview	
Law / Country	**Section 307 of the US Tariff Act** (19 U.S.C. § 1307) (United States)
Goal	To ensure that goods being imported into the United States are not being produced using forced labor.
Adoption / Status	The US Tariff Act (the **"Act"**) came into force in 1930. However, an exception to Section 307, known as the "consumptive demand exception," substantially curtailed the applicability of Section 307. The Trade Facilitation and Trade Enforcement Act of 2015 (**"TFTEA"**), which entered into force on March 10, 2016, eliminated the consumptive demand exception.
Issues Addressed	• Prison labor • Forced 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: • Potassium, potassium hydroxide and potassium nitrate (March 2016, Tangshan Sunfar Silicon Industries, 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) • Peeled garlic (September 2016, Hongchange Fruits & Vegetable Procucts Co., Ltd., China)

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	• Toys (March 2018, Huizhou Mink Industrial CO.LTD., China) • Turkmenistan cotton (May 2018, all Turkmenistan cotton products) • Calcium chloride and caustic soda (March 2019, Tangshan Sanyou Group and its subsidiaries, China) • Artisanal rough cut diamonds (September 2019, Marange Diamond Fields, DRC) • Bone black (September 2019, Bonechar Carvao Ativado Do Brasil Ltda, Brazil) • Garments (September 2019, Hetian Taida Apparel Co., Ltd.; August 2020, Hero Vast Group, China; July 2022, Natchi Apparel (P) Ltd., India (modified September 2022 to allow shipments into U.S. commerce)) • Gold (September 2019, artisanal small mines in the eastern DRC) • Tobacco and products containing tobacco (November 2019, Malawi) • Hair products (May 2020, Hetian Haolin Hair Accessories, China; June 2020, Lop County Meixin Hair Products Co., Ltd., China) • Seafood (March 2019, Tunago No. 61 (WRO issued in February 2019 and revoked in March 2020); 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) • Disposable gloves (October 2021, Maxter Glove Manufacturing Sdn Bhd, Maxwell Glove Manufacturing Berhad, and Supermax Glove Manufacturing; November 2021, Smart Glove; December 2021, Brightway Holdings Sdn Bhd, Laglove (M) Sdn Bhd, and Biopro (M) Sdn Bhd (collectively Brightway Group); January 2022, YTY Industry Holdings Sdn BHd (YTY Group), including YTY Industry Sdn Bhd, Green Prospect Sdn Bhd, and GP Lumut, Malaysia) • Labor (August 2020, No. 4 Vocation Skills Education Training Center (VSETC), China) • Palm oil and palm oil derivatives (September 2020, FGV Holdings Berhad and its subsidiaries and joint ventures; December 2020, Sime Darby Plantation Berhad and its subsidiaries and joint ventures, Malaysia) • Apparel (September 2020, Yili Zhuowan Garment Manufacturing Co., Ltd. and Baoding LYSZD Trade and Business 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 and affiliated entities, China; January 2021, all cotton products produced in the Xinjiang Uyghur Autonomous Region, China (the **"XUAR"**)) • Computer parts (September 2020, Hefei Bitland Information Technology Co., Ltd., China) • 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) • Silicon-based products (June 2021, Hoshine Silicon Industry Co. Ltd. and subsidiaries, China) • Raw sugar and sugar-based products (November 2022, Central Romana Corporation Limited, Dominican Republic) In addition, in January 2022, a finding was issued covering palm oil and palm oil products produced in Malaysia by Sime Darby Plantation Berhad and its subsidiaries and joint ventures. In January 2022, a finding was issued covering seafood from Da Wang fishing vessels (China). In March 2021, there was a forced labor finding involving Top Glove Corporation Berhad. In October 2020, a finding was issued covering stevia extracts and derivatives produced by Mongolia Hengzheng Group Baoanzhao Agriculture, Industry, and Trade Co.

TARIFF ACT, SECTION 307 (US)

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	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 US Department of State, along with the US Department of the Treasury, the US Department of Commerce, the US 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 US entry to those goods, which could lead to the goods being seized and forfeited, or the issuance of civil penalties against the importer and other parties.

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	The advisory is discussed herein since it is still published on the agency website. However, in some respects, the advisory is now superseded by the UFLPA (defined below) and the strategy and guidance issued in connection with the UFLPA. The CPB's guidance advises importers to review the advisory as a resource for supply chain due diligence, tracing and management. 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-

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	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.
CBP FAQs on the XUAR Cotton and Tomato WRO	In February 2021, CBP published FAQs relating to the January 2021 WRO pertaining to XUAR cotton and tomato products. Selected FAQs are summarized below. Applicable shipments subject to the existing WROs or findings that were imported prior to June 21, 2022 were adjudicated through the WRO/findings process. Shipments imported on or after June 21, 2022 that are subject to the UFLPA which previously would have been subject to a XUAR-related WRO will be processed under UFLPA procedures. • Scope of the WRO – Applies to cotton and tomatoes and their downstream products produced in whole or in part in the XUAR; includes downstream products produced outside the XUAR that incorporate these inputs. • Proof of Admissibility – Evidence submitted to establish admissibility must demonstrate the imported merchandise was not produced in whole or in part in the XUAR using forced labor. – Importers must submit the Certificate of Origin signed by the foreign seller (19 CFR 12.43(a)) and a detailed statement by the importer stating and including proof the goods were not produced in whole or in part with forced labor (19 CFR 12.43(b)). – Supporting documentation should trace the supply chain from point of origin of the cotton or tomatoes, to the production and processing of downstream products, to the merchandise imported into the United States.

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	– Detention notices will request the following (additional documentation may be required): ▪ Cotton products: Sufficient documentation to show the entire supply chain from the origin of the cotton at the bale level through the final production of the finished product and identifying the parties involved in the production process; list of suppliers, with associated production process, to include names, addresses, flow chart of the production process, and maps of the region where the production processes occurred; number each step along the production processes and number the additional supporting documents associated to each step of the process. ▪ Tomato products: Supply chain traceability documents pointing to the point of origin of the tomato seeds, tomatoes or tomato products; affidavit from the tomato processing facility that identifies both the parent company and the estate that sourced the tomato seeds and/or tomatoes; P.O., invoice and proof of payment for the tomato seeds, tomatoes or tomato products, from the processing facility and the estate that sourced the raw materials; all production records for the tomato seeds, tomatoes and/or tomato products that identify all steps, from seed to finished product, from the farm to shipping to the United States.
Uyghur Forced Labor Prevention Act (the "UFLPA")	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	https://www.dhs.gov/sites/default/files/publications/xinjiang-business-advisory-13july2021-1.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

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OFAC SDN List	https://www.treasury.gov/ofac/downloads/sdnlist.pdf
CBP FAQs on the XUAR Cotton and Tomato WRO	https://www.cbp.gov/trade/programs-administration/forced-labor/xinjiang-uyghur-autonomous-region-wro-frequently-asked-questions#
Ropes and Gray Resources	Client alerts related to the Act: • 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 • 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/newsroom/alerts/2021/january/us-canadian-and-uk-governments-put-additional-pressure-on-xinjiang-sourcing • 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/newsroom/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/newsroom/alerts/2020/07/us-government-agencies-issue-xinjiang-supply-chain-advisory

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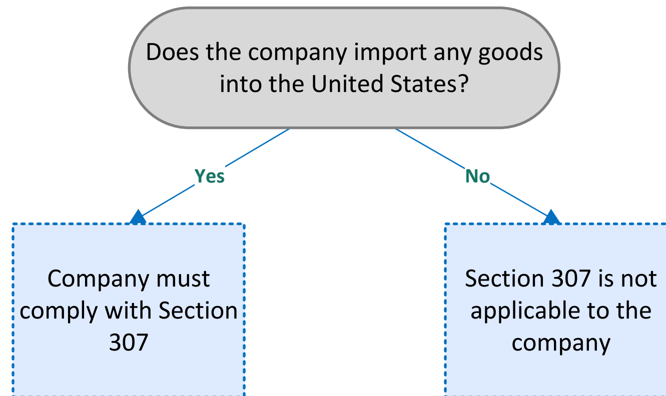

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Countering America's Adversaries Through Sanctions Act, Section 321 **United States**	
Overview	
Law / Country	**Section 321 of the Countering America's Adversaries Through Sanctions Act** (22 U.S.C. § 9241(a)) (the **"Act"**) (United States)
Goal	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,

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	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;

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	• 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://www.treasury.gov/resource-center/sanctions/Programs/Documents/hr3364_pl115-44.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://home.treasury.gov/system/files/126/dprk_supplychain_advisory_07232018.pdf
Ropes and Gray Resources	Client alerts related to the Act: • 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 • 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 • 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

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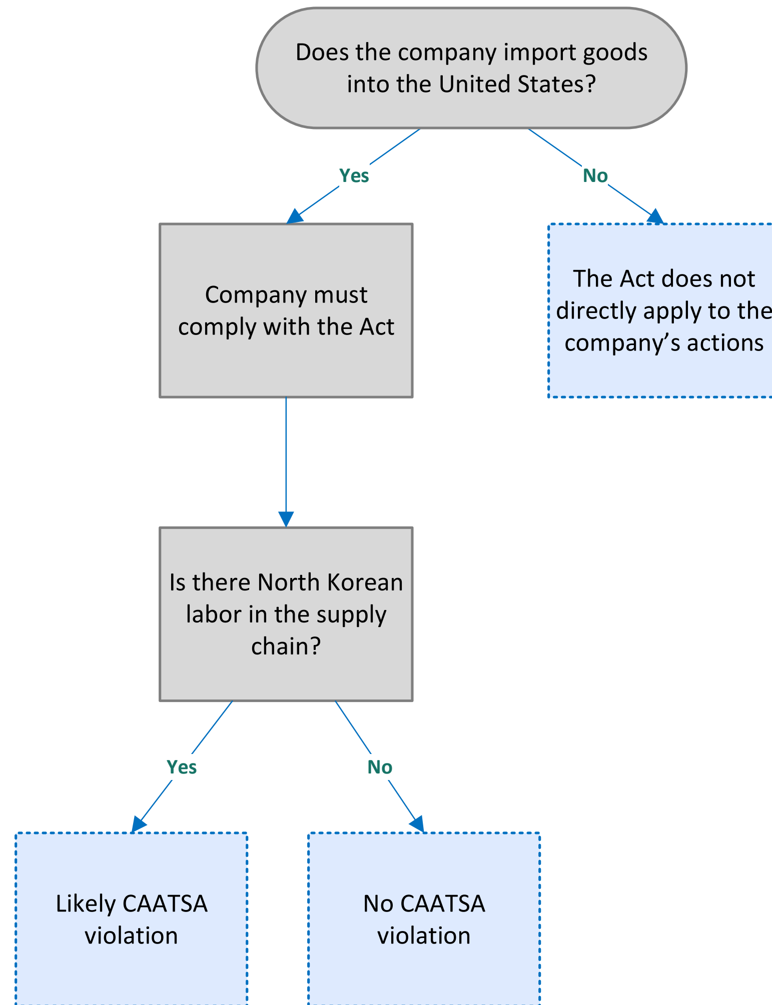

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Uyghur Forced Labor Prevention Act **United States**	
Overview	
Law / Country	**Uyghur Forced Labor Prevention Act** (Public Law 117-78) (the **"Act"**) (United States)
Goal	To address Uyghur forced labor in supply chains.
Adoption / Status	The Act 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"**). 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.
Issue Addressed	• Forced labor (Uyghur and other Chinese Muslim minorities)
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"**). 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 Act supersedes prior Withhold Release Orders relating to the XUAR for goods imported on or after June 21, 2022.

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	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);

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	• **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;

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	• 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. CBP will report enforcement statistics on CBP.gov starting around March 31, 2023. This information will include an interactive dashboard containing data on the total number and value of shipments detained pursuant to the Act.
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
Strategy	For the text of the Strategy, see: https://www.dhs.gov/sites/default/files/2022-06/22_0617_fletf_uflpa-strategy.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

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	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
Ropes and Gray Resources	Client alerts related to the Act: • 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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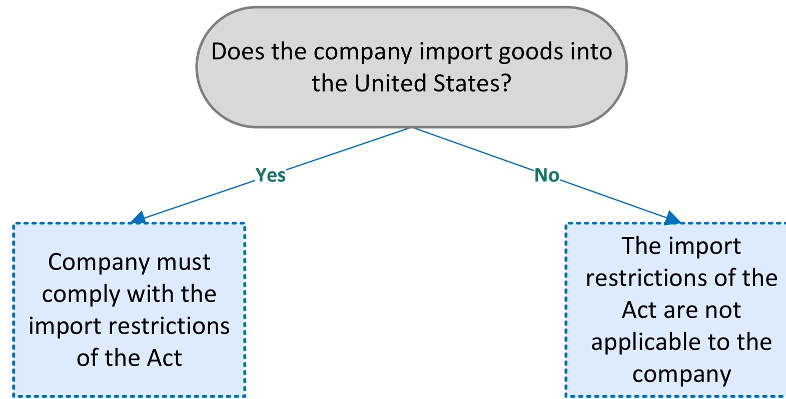

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Customs Trade Partnership Against Terrorism (CTPAT) – Security and Trade Compliance Programs United States

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	• Terrorism • Border security • Forced labor
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.

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	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: As of January 2023, 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: Beginning August 1, 2023, existing 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

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	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 new 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.

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	• **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-Feb/CTPAT%20Trade%20Compliance%20Handbook%203.0%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 and 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

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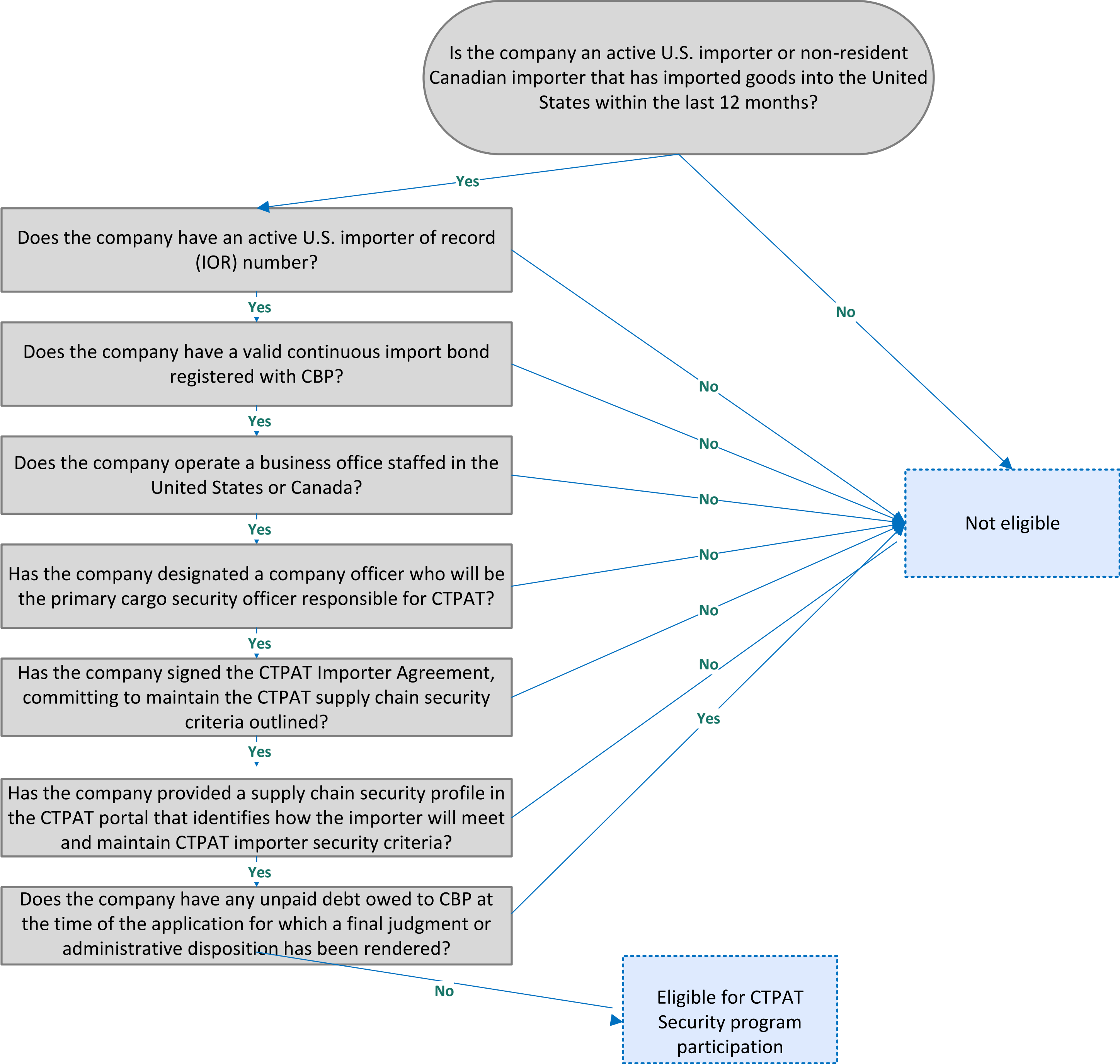
Eligibility for CTPAT Security Program



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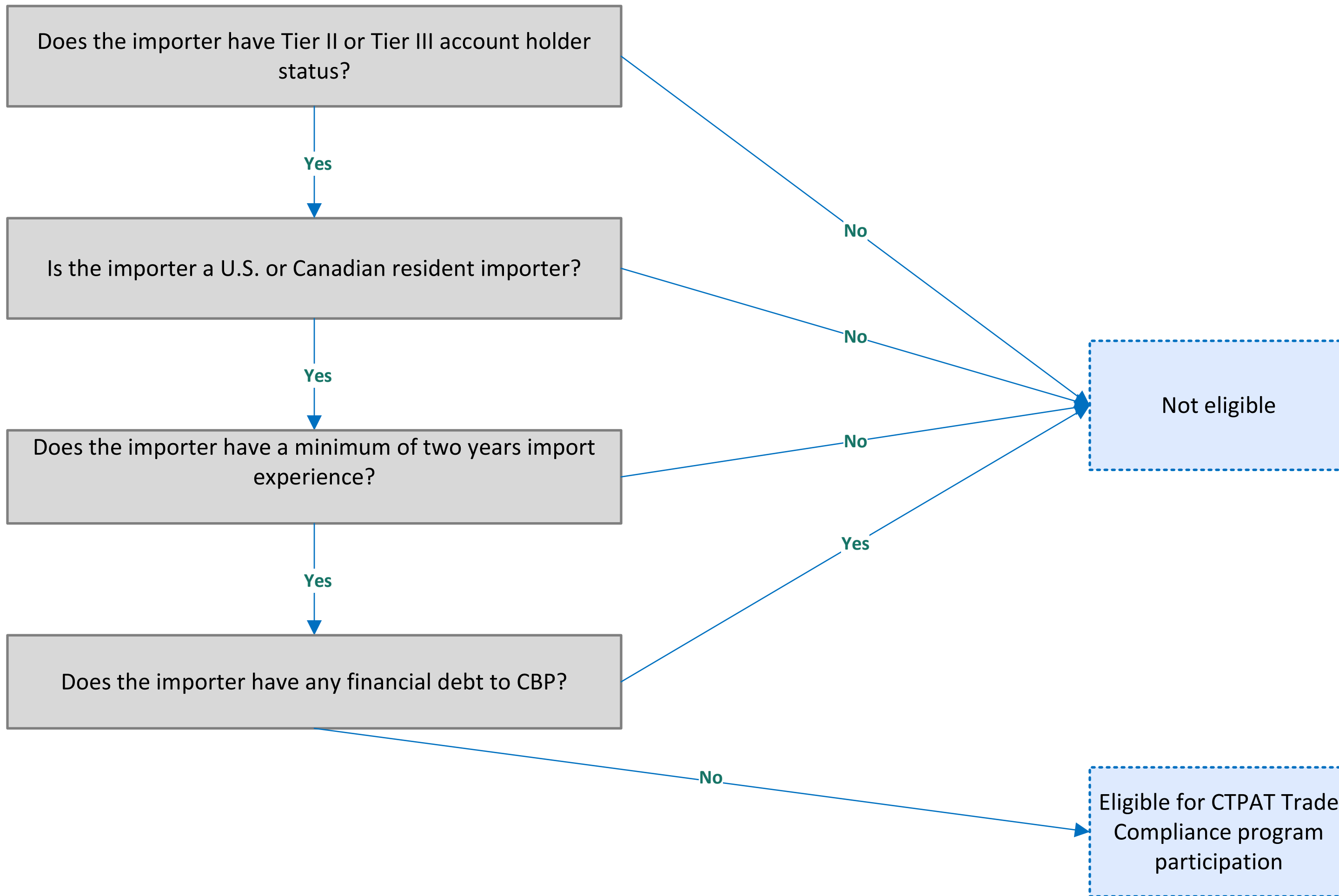
Eligibility for CTPAT Trade Compliance Program



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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 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.
Issue Addressed	• Forced labor
Covered Entities	Importers of goods into Canada.
How It Works	
Mandatory?	Yes.
Prohibited Imports	Prohibits importing into Canada goods mined, manufactured or produced wholly or in part by forced 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 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 Note that the Memorandum was further updated on January 20, 2022. Those amendments were subsequently withdrawn.

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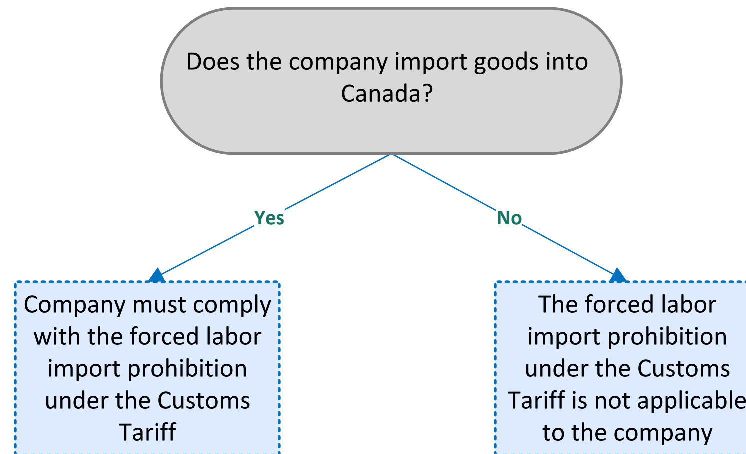

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Xinjiang Manufactured Goods Importation Prohibition Act (Proposed) Canada	
Overview	
Law / Country	**Xinjiang Manufactured Goods Importation Prohibition Act** (Bill S-204) (the **"Act"**) (Canada)
Goal	To prohibit importation of goods produced or manufactured 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

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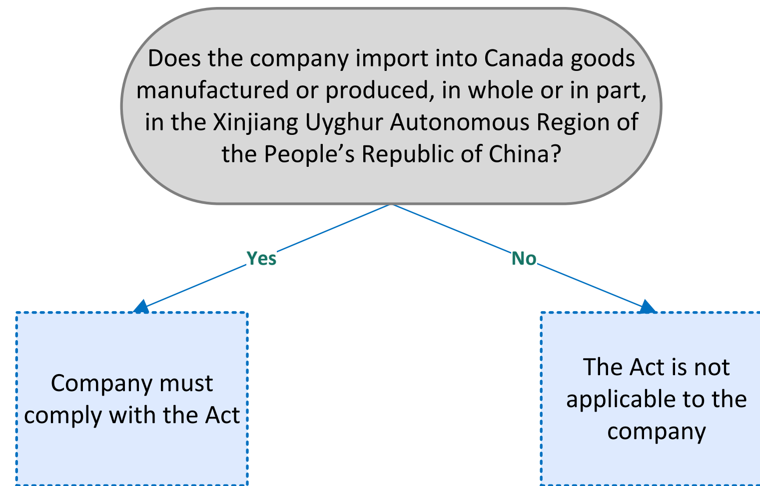

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Administrative Regulation related to Forced Labor (Pending)
Mexico

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 becomes 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 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.
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

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Ropes and 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

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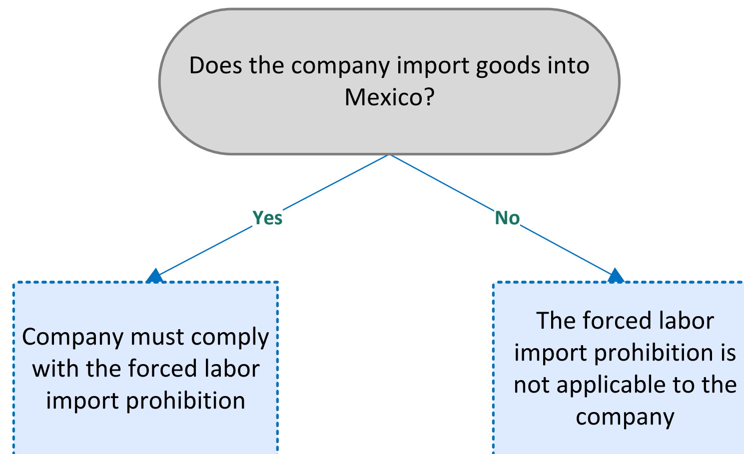

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Customs Amendment (Banning Goods Produced By Forced Labour) Bill 2022 (Proposed) **Australia**	
Overview	
Law / Country	**Customs Amendment (Banning Goods Produced By Forced Labour) Bill 2022** (the **"Bill"**) (Australia)
Goal	To prohibit importing goods produced or manufactured by forced labor.
Adoption / Status	On November 22, 2022, the Bill was introduced in the Australian Senate. If the Bill is passed by the Australian Senate, it will be introduced to the Australian House of Representatives. 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. A penalty unit is currently A$222.

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Additional Information/Resources	
Proposed Bill	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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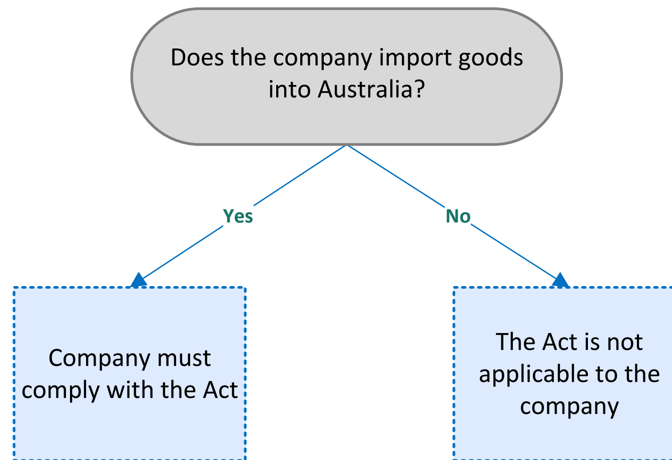

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Forced Labor Regulation (Proposed) **European Union**	
Overview	
Law / Country	**Regulation Prohibiting Products Made with Forced Labour on the Union Market** (the **"Regulation"**) (European Union)
Goal	To decrease use of forced labor worldwide by eliminating products made with forced labor from the EU market.
Adoption / Status	The Regulation was first announced by European Commission President von der Leyen in her State of the Union speech on September 15, 2021, and the general elements of the Regulation were set out on February 23, 2022 in the European Commission's "Communication of Decent Work Worldwide" and in the Commission's announcement that it would be proposing the Regulation. On September 14, 2022, the European Commission (the **"Commission"**) proposed the Regulation. As proposed, the Regulation would take effect 24 months after it enters into force.
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 EU market (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 apply to products for which forced labor has been used in whole or in part at any stage of the product's extraction, harvest, production or manufacture, including working or processing related to the product at any stage of its supply chain. The prohibition also would apply to all products of any type, including their components, irrespective of the sector or origin of the products. **"Forced labor"** means forced or compulsory labor as defined in Article 2 of the Convention on Forced Labour, 1930 (No. 29) of the International Labour Organization (the **"ILO"**), including forced child labor.
Enforcement	Member States would be required to designate competent authorities responsible for enforcing the Regulation (the **"Authorities**," each an **"Authority"**). The Authorities would be required to focus on the Economic Operators involved in the steps of the value chain as close as possible to where the risk of forced labor is likely to occur. They also would be required to take into account the size and economic resources of the Economic Operators, the quantity of products concerned and the scale of suspected forced labor. An investigation by an Authority would be carried out in two phases. The preliminary phase would involve a risk-based approach to assess the likelihood that an Economic Operator violated the forced labor prohibition. The assessment would be based on all the information available to the Authority, including the following: • Submissions made by natural or legal persons or associations. • Risk indicators and other information pursuant to guidelines to be issued by the Commission.

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- A public database to be commissioned by the Commission. The Commission would be required to call upon external expertise to publish an indicative, non-exhaustive, verifiable and regularly updated database of forced labor risks in specific geographic areas or with respect to specific products. Among other things, the database would be based on information from international organizations and third country authorities. The database would be required to be made publicly available within 24 months after the Regulation enters in force.
- Information and decisions, including any past cases of compliance or non-compliance of an Economic Operator, recorded in the information and communication system to be established for use by the Commission, Authorities and customs authorities in connection with the Regulation.
- Information requested by the Authority from other relevant authorities, where necessary, on whether the Economic Operators under assessment are subject to and/or carry out due diligence in relation to forced labor in accordance with applicable EU or Member State legislation setting out due diligence and transparency requirements with respect to forced labor (i.e., the proposed EU Corporate Sustainability Due Diligence Directive, which is described in a separate Summary).

"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 made available on the EU market or to be exported.

As part of a preliminary investigation, the Authority would be empowered to request information on actions taken by the Economic Operator to identify, prevent, mitigate or end the risks of forced labor in its operations and value chains with respect to the products under assessment. The Economic Operator would be required to respond to the information request within 15 business days. The Authority would have 30 business days after receipt of the information from the Economic Operator to conclude the preliminary stage of its investigation.

If the Authority determines there is a substantiated concern of forced labor (defined as a well-founded reason, based on objective and verifiable information, for the Authorities to suspect that products were likely made with forced labor), the investigation would proceed to the next phase. If that occurs, notice would be required to be provided to the Economic Operator. There are specified procedural requirements relating to investigations not discussed in this Summary.

If the Authority determines the forced labor prohibition has been violated, it would 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 relevant products that have already been placed or made available in the European Union; and
- An order for the Economic Operator to dispose of the relevant products in accordance with national law.

Subject companies would be able to request a review of the Authority's decision within 15 working days of receipt of the decision. Such requests would need to contain new information not provided during the investigation. The Authority would be required to review the request within 15 working 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 for the relevant product, the Authority would be required to withdraw the decision.

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	Customs authorities would, in cooperation with the Authorities, enforce the Regulation by denying 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. The Regulation would also create the Union Network Against Forced Labour Products as a platform for the Authorities and Commission to coordinate and streamline enforcement of the Regulation.
Guidelines	Within 18 months after the Regulation enters into force, the Commission would be required to issue guidelines. The guidelines would be required to include the following, among other things: • Guidance on forced labor due diligence that takes into account applicable EU legislation setting out due diligence requirements with respect to forced labor, guidelines and recommendations from international organizations and the size and economic resources of Economic Operators. • Information on risk indicators of forced labor 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. • A list of publicly available information sources of relevance for the implementation of the Regulation. • Further information to facilitate the Authorities' implementation of the Regulation.
Additional Information/Resources	
Text of the Regulation	For the text of the Regulation, see: https://single-market-economy.ec.europa.eu/system/files/2022-09/COM-2022-453_en.pdf
Additional Commission Resources	For a Q&A on the Regulation, see: https://ec.europa.eu/commission/presscorner/detail/en/qanda_22_5416 For the 2022 Factsheet, see: https://ec.europa.eu/commission/presscorner/detail/en/fs_22_5425
Ropes and 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

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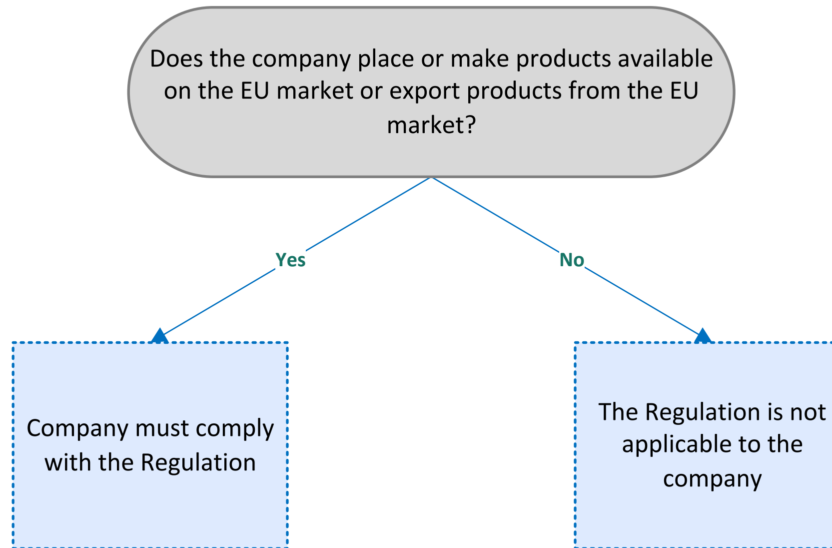

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Federal Acquisition Regulation Anti-Human Trafficking Rule **United States**	
Overview	
Law / Country	**Federal Acquisition Regulation Combatting Trafficking in Persons Rule** (42 CRF 22.17) (the **"Rule"**) (United States)
Goal	To ensure that contractors, 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	• Human trafficking • Forced labor
Covered Entities	The Rule applies to parties that contract with the U.S. federal government, their subcontractors, their respective employees and agents. The prohibited activities (discussed below) apply to all conduct, irrespective of dollar amount or location of performance. The compliance plan and certification requirements (discussed below) apply to any portion of a contract or subcontract that: • 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, 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;

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	• 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, 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

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	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.

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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 and 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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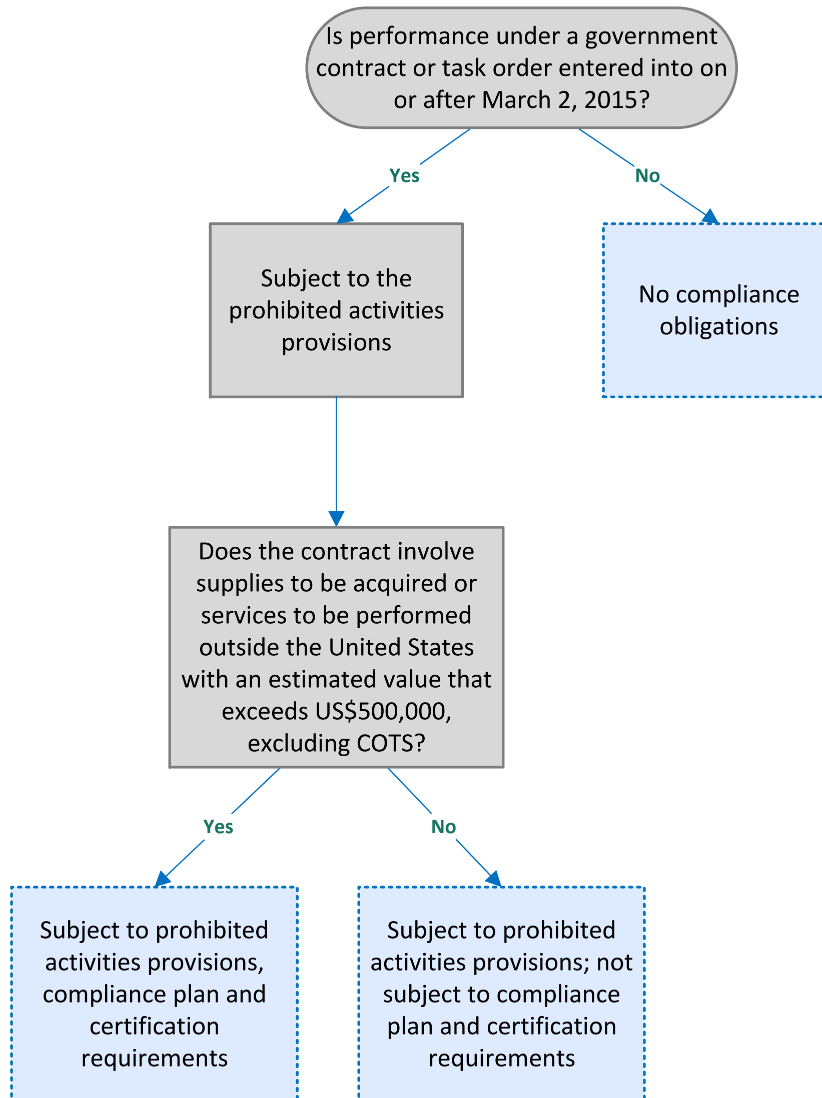

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Trafficking Victims Protection Reauthorization Act United States	
Overview	
Law / Country	**Trafficking Victims Protection Act** (2000) (the **"TVPA"**) and **Trafficking Victims Protection Reauthorization Act** (2003, as further amended) (collectively, 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 prohibition of the TVPRA.
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.

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	"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. In 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.

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	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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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 financial year 2024, when 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	• Environment • Social and employee matters • Human rights • Corruption and bribery • Diversity
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 €20 million or a net turnover of more than €40 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.

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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.

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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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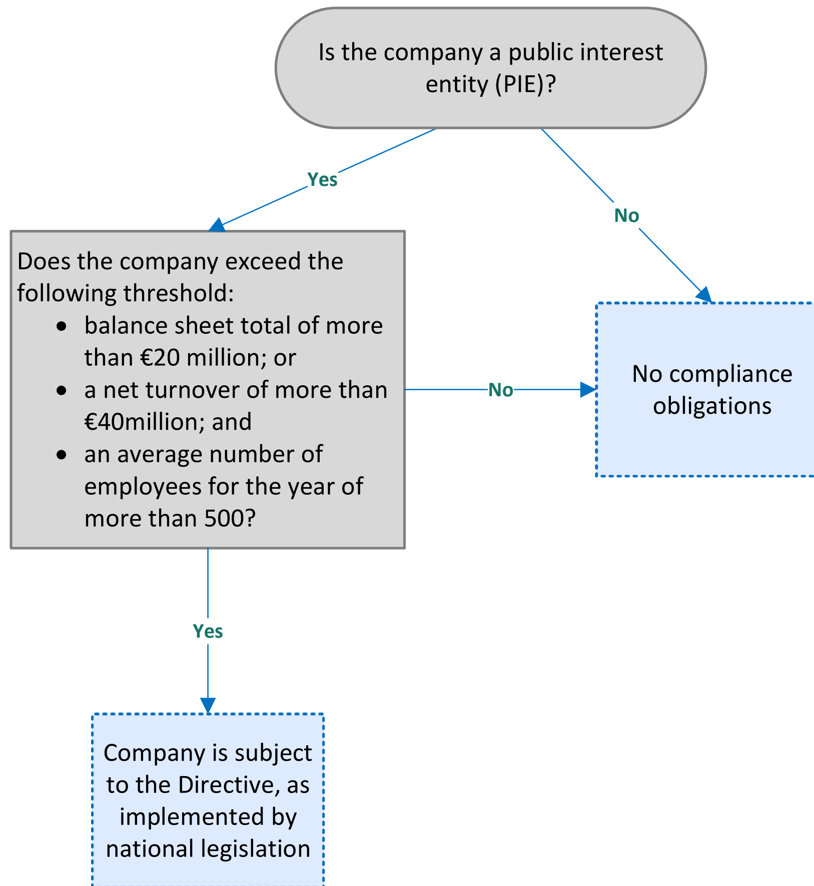

*Note that the threshold for diversity disclosure is different.

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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 was published in the European Union Official Journal on December 14, 2022 and entered into force on January 5, 2023. EU Member States will have until June 16, 2024 to transpose the Directive into their national laws. The Directive does not directly contain obligations binding on companies. The reporting standards required under the Directive are being developed by the European Financial Reporting Advisory Group (**"EFRAG"**) and the first set of standards must be adopted by the European Commission (the **"Commission"**) no later than June 30, 2023. The standards will be referred to as the European Sustainability Reporting Standards (the **"ESRS"**). EFRAG released draft ESRS for public comment in April 2022 and requested comments by August 8, 2022. In November 2022, EFRAG submitted the first set of draft ESRS to the Commission. The Commission is now consulting EU bodies and Member States on the draft standards before adopting the final standards as delegated acts in June 2023 which will be followed by a scrutiny period by the European Parliament and Council. 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"**): 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 • Social and human rights • Governance factors
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"**):

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	◦ An average of at least 250 employees annually; ◦ At least €40 million annual net turnover; and/or ◦ A balance sheet of at least €20 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. **"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 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 information necessary to understand 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 required subsidiary information in the parent company's consolidated management report. While EFRAG will develop the specific sustainability reporting standards that must be followed, the Directive 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;

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	○ 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. 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.

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	<u>SME Reporting Requirements</u>: 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 will be included in the second set of ESRS referenced below to be adopted by June 30, 2024. <u>Third-Country Company Reporting Requirements</u>: There are also 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, 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 will also be included in the second set of ESRS to be adopted by June 30, 2024. <u>Double Materiality Approach</u>: 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. <u>Forward Looking Information</u>: 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. <u>Confidential information</u>: 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.

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<td>The ESRS</td>
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General Topics and Standards:
EFRAG’s draft general standards provide for general requirements (ESRS 1) and general disclosures (ESRS 2). EFRAG also has drafted 10 topical standards:

Environment:

Climate Change (ESRS E1)
Pollution (ESRS E2)
Water and Marine Resources (ESRS E3)
Biodiversity and Ecosystems (ESRS E4)
Resource Use and Circular Economy (ESRS E5)

Social:

Own Workforce (ESRS S1)
Workers in the Value Chain (ESRS S2)
Affected Communities (ESRS S3)
Consumers and End-Users (ESRS S4)

Governance:

Business Conduct (ESRS G1)

Sector-Specific and MNE Standards:
As a second set, EFRAG is in the process of developing draft sector-specific standards. These will 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 the second set of standards, EFRAG also is developing standards for the following sectors it has characterized as high impact:

Energy Production
Road Transport
Motor Vehicle Production
Food/Beverages
Textiles

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	The second set of EFRAG standards also will include ESRS for SMEs. The intent behind standards specific to SMEs is to enable them to report in accordance with standards that are proportionate to their capacities and resources, and relevant to the scale and complexity of their activities.
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.

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	In connection with this exemption, Member States may impose a language requirement on the parent company consolidated management report. <u>Equivalence Exemption:</u> The Directive allows for substituted compliance under non-EU disclosure regimes determined to be equivalent by the Commission. <u>Transitional Period Exemption:</u> 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.
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
ESRS	For the draft ESRS that was published for public comment, see: https://www.efrag.org/lab6
Ropes and Gray Resources	Client alert related to the Directive: • 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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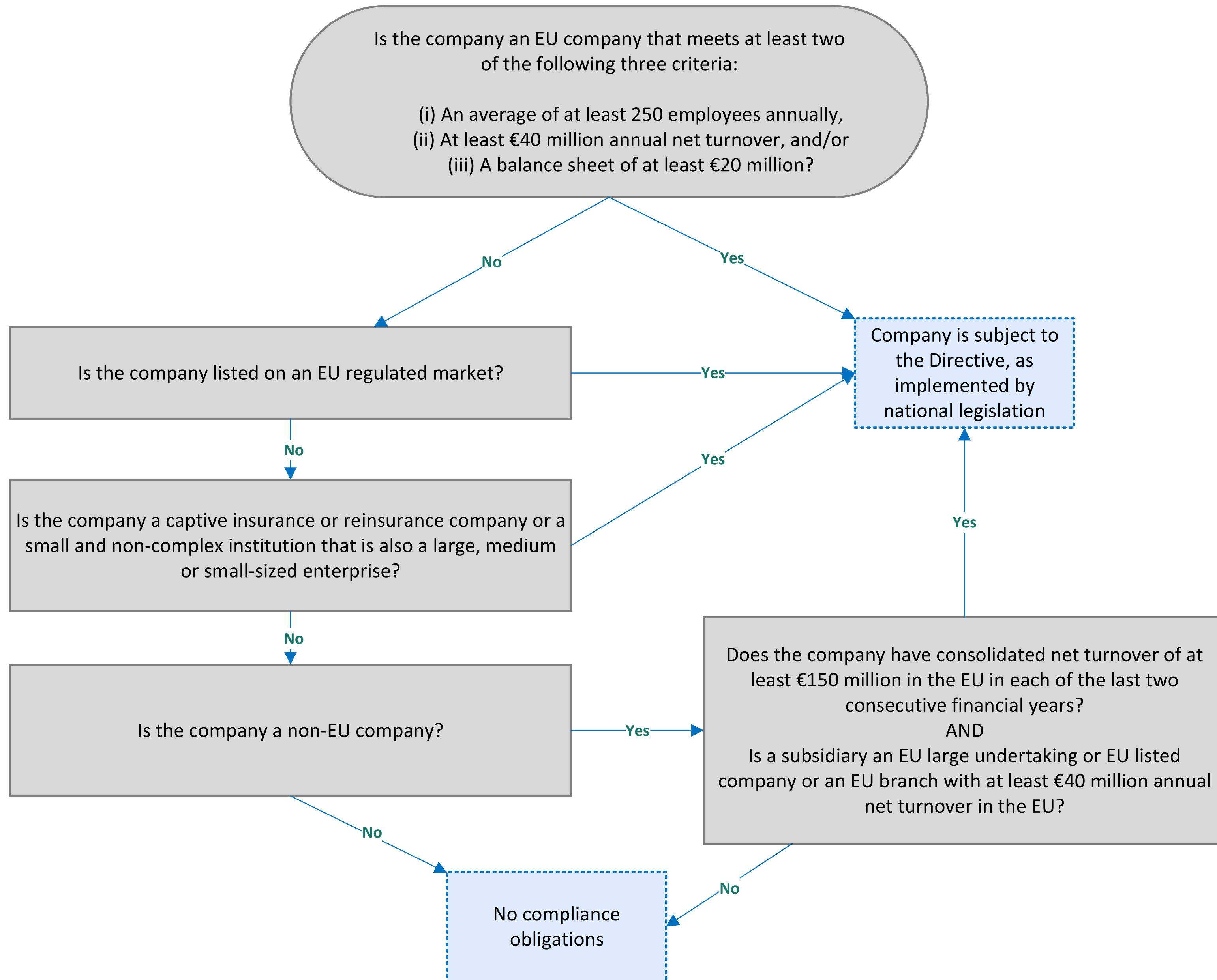

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Corporate Sustainability Due Diligence Directive (Proposed) **European Union**	
Overview	
Law / Country	**Corporate Sustainability Due Diligence Directive** (the **"Directive"**) (European Union)
Goal	To ensure that companies active in the EU internal 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 value chains (*chain of activities in the Council's negotiating position*).
Adoption / Status	On February 23, 2022, the European Commission (the **"Commission"**) released its proposed Directive. The Directive currently is under consideration by the European Parliament (**"Parliament"**) and the European Council (the **"Council"**), which will propose changes to the Commission's draft. On December 1, 2022, the Council adopted its negotiating position. Selected differences between the Council's negotiating position and the Commission's proposal are noted in *italics*. Parliament is currently debating the Directive and is expected to adopt its negotiating position in Spring 2023. Once both the Council and Parliament have adopted negotiating positions, tripartite negotiations on a final Directive will take place. Upon enactment, the Directive would be required to be transposed into EU Member State national law. The Directive would not directly contain obligations binding on companies.
Issues Addressed	• Human rights • Environmental impacts
Covered Entities	All companies above a certain size generally would be covered, informally referred to by the Commission as group 1 companies. Smaller companies – informally referred to as group 2 companies – would be covered if they meet a size threshold and are in specified high-impact sectors covered by existing sectoral OECD guidance. For EU companies: • **Group 1**: More than 500 employees on average and net worldwide turnover of more than €150 million for the last fiscal year for which annual financial statements were prepared; or • **Group 2**: If not a group 1 company, more than 250 employees on average and net worldwide turnover of more than €40 million for the last fiscal year for which annual financial statements were prepared, so long as at least 50% of the net turnover (*at least €20 million in the Council's negotiating position*) was generated in one or more of the following sectors *(additional sectors would be set forth on an annex to the Directive*): ○ The manufacture of textiles, leather and related products (including footwear), and the wholesale trade of textiles, clothing and footwear;

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	◦ Agriculture, forestry, fisheries (including aquaculture), the manufacture of food products *and beverages* and the wholesale trade of agricultural raw materials, live animals, wood, food and beverages; ◦ The extraction of mineral resources, regardless of where they are extracted (including crude petroleum, natural gas, coal, lignite, metals and metal ores, as well as all other non-metallic minerals and quarry products), the manufacture of basic metal products, other non-metallic mineral products and fabricated metal products (except machinery and equipment), and the wholesale trade of mineral resources and basic and intermediate mineral products (including metals and metal ores, construction materials, fuels, chemicals and other intermediate products). For non-EU companies: • **Group 1**: Generated net turnover of more than €150 million in the European Union in the fiscal year preceding the last fiscal year; or • **Group 2**: Generated net turnover of more than €40 million, but not more than €150 million, in the European Union in the fiscal year preceding the last fiscal year, provided at least 50% of its net worldwide turnover (*at least €20 million in the Council's negotiating position*) was generated in one or more of the high-impact sectors listed above. *In the Council's negotiating position, a company would be subject to the Directive if it meets the above requirements for two consecutive financial years.* **"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. However, because financial services are not treated as a high-impact sector, regulated financial undertakings only would be subject to the requirements of the Directive if they are group 1 companies. *In the Council's negotiating position, each Member State would decide whether or not to apply the Directive to financial undertakings and their business partners to which they provide services. Additionally, alternative investment fund managers and UCITS would be excluded.* Part-time employees would be calculated on a full-time equivalent basis. Temporary agency workers 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.

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Selected Definitions	**"Business relationship"** means a relationship with a contractor, subcontractor or any other legal entities (1) with whom the company has a commercial agreement or to whom the company provides financing, insurance or reinsurance, or (2) that performs business operations related to the products or services of the company for or on behalf of the company. • *In the Council's negotiating position,* ***"business relationship"*** *would mean a relationship of the company with its business partner.* ***"Business partner"*** *would mean both direct business partners and indirect business partners.* ***"Direct business partner"*** *would mean a legal entity with whom the company has a commercial agreement related to the operations, products or services of the company or to who the company provides services pursuant to the company's chain of activities.* ***"Indirect business partner"*** *would mean a legal entity that is not a direct business partner but which performs business operations related to the operations, products or services of the company.* **"Established business relationship"** would mean a business relationship, whether direct or indirect, which is, or which is expected to be lasting, in view of its intensity or duration and which does not represent a negligible or merely ancillary part of the value chain. The nature of business relationships should be reassessed periodically, and at least every 12 months. • *This definition is deleted in the Council's negotiating position.* **"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 that company, its subsidiaries and its business *partners, including civil society organizations, national human rights and environmental institutions and human rights and environmental defenders*. **"Value chain"** would mean activities related to the production of goods or the provision of services by a company, including the development of the product or the service and the use and disposal of the product, as well as the related activities of upstream and downstream established business relationships of the company. This construct is intended to cover upstream established direct and indirect business relationships that design, extract, manufacture, transport, store and supply raw materials, products or parts of products, or that provide services to the company that are necessary to carry out the company's activities. Covered downstream relationships are intended to include established direct and indirect business relationships that use or receive products, parts of products or services from the company up to the end of life of the product, including the distribution of the product to retailers, the transport and storage of the product, dismantling of the product and its recycling, composting or landfilling. • *In the Council's negotiating position, "value chain" would be replaced by "chain of activities." This term is narrower. It leaves out downstream use of the company's products and the provision of services.* ***"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, 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, storage and disposal of the product, including the dismantling, recycling, composting or landfilling, where the business partners carry out those activities for the company or on behalf of the company, excluding the disposal of the product by consumers and distribution, transport, storage and disposal of the product being subject to the export control under the EU's Dual-Use Export*

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	Controls or the export control relating to weapons, munition or war materials, after the export of the product is authorized. For a regulated financial undertaking, its value chain (*chain of activities in the Council's negotiating position*) with respect to the provision of a loan, credit or other financial service only would include the activities of the receiving client and of the client's other group companies whose activities are linked to the applicable contract. However, the value chain (*chain of activities in the Council's negotiating position*) of a regulated financial undertaking would not include a small or medium-sized enterprise (a **"SME"**) receiving a loan, credit, financing, insurance or reinsurance. **"Adverse human rights impact"** would mean an adverse impact on a protected person resulting from a violation of one of the rights or prohibitions included in listed international human rights instruments. *The Council's negotiating position introduces an annex listing specific rights and prohibitions, the abuse of which would constitute an adverse human rights impact*. **"Adverse environmental impact"** would mean an adverse impact on the environment resulting from the violation of a prohibition or obligation pursuant to one of twelve specified international environmental conventions. *The Council's negotiating position introduces an annex listing specific rights and prohibitions, the abuse of which would constitute an adverse environmental impact.* **"Severe adverse impact"** would mean an adverse human rights or environmental impact that is especially significant by its nature, or affects a large number of persons or a large area of the environment, or which is irreversible, or is particularly difficult to remedy as a result of the measures necessary to restore the situation prevailing prior to the impact. *The Council's negotiating position removes "or which is irreversible" and "remedy as a result of the measures necessary to."*
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, due diligence would consist of the following actions: • Integrating due diligence into policies *and risk management systems*; • Identifying actual or potential adverse impacts; • Preventing and mitigating potential adverse impacts; • Bringing actual adverse impacts to an end and minimizing their extent; • Establishing and maintaining a complaints procedure; • Monitoring the effectiveness of the due diligence policy and measures taken; and • Publicly communicating on due diligence. *Member States would have to ensure that subject EU companies put in place and oversee the due diligence obligations.* Due Diligence Policy: Companies would be required to integrate due diligence into their corporate policies and have in place a due diligence policy. The due diligence policy would be required to contain the following elements: • A description of the company's approach to due diligence, including in the long term;

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	• A code of conduct describing rules and principles to be followed by the company's employees, subsidiaries *and the company's direct or indirect business partners*; and • A description of the processes put in place to implement due diligence, including the measures taken to verify compliance with the code of conduct and to extend its application to established business relationships (*business partners in the Council's negotiating position*). The due diligence policy would be required to be updated annually. *Under the Council's negotiating position, this requirement would instead be without undue delay after a significant change occurs, but at least every two years.* <u>Identifying and Addressing Adverse Impacts</u>: Companies would be required to take appropriate measures to identify actual and potential adverse human rights impacts and adverse environmental impacts arising from their own operations or those of their subsidiaries and, where related to their value chains (*chain of activities in the Council's negotiating position)*, from their established business relationships (*business partners in the Council's negotiating position*). *To fulfill this obligation, companies may map all areas of their own operations, those of their subsidiaries and, where related to their chains of activities, those of their business partners. Based on the results of that mapping, companies may carry out an in-depth assessment of the areas where adverse impacts were identified to be most likely to be present or most significant.* To the extent relevant, companies would be required to carry out consultations with potentially affected groups, including workers and other relevant stakeholders, to gather information on actual or potential adverse impacts. Adverse impacts also may be identified through the company's complaints mechanism (summarized below). Group 2 companies only would be required to identify actual and potential severe adverse impacts relevant to their sector. Regulated financial undertakings that provide credit, loan or other financial services only would be required to take action to identify actual and potential adverse human rights impacts and adverse environmental impacts before providing the service. *<u>Prioritization of Identified and Potential Adverse Impacts</u>:* *Companies would need to prioritize the adverse impacts arising from their own operations, those of their subsidiaries or those of their business partners identified (pursuant to the above) in order to prevent and mitigate adverse impacts. The prioritization of adverse impacts would need to be based on their severity and likelihood of the adverse impact. Severity of an adverse impact would be assessed based on its gravity, the number of persons or the extent of the environment affected, and the difficulty to restore the situation prevailing prior to the impact. Once the most significant adverse impacts are addressed, the company would need to address less significant 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 human rights and environmental impacts that have been, or should have been, identified through the measures required to identify *and prioritize* these impacts.

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	More specifically, companies would be required to take the following actions, 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 action and qualitative and quantitative indicators for measuring improvement. The prevention action plan would be required to be developed in consultation with affected stakeholders. • Seek contractual assurances from the business partner with whom the company has a direct business relationship (*a direct business partner in the Council's negotiating position)* that the partner will ensure compliance with the company's code of conduct and, as necessary, prevention action plan, including by seeking corresponding contractual assurances from its partners to the extent their activities are part of the company's value chain (*chain of activities in the Council's negotiating position*) (referred to in the Directive as **"contractual cascading"**). If contractual assurances are obtained, measures to verify compliance would be required to be taken. • Make necessary investments, such as into management or production processes and infrastructures, to comply with the requirement to prevent or mitigate potential human rights and environmental impacts. • Provide targeted and proportionate support for an SME with which the company has an established business relationship (*a business partner of the* company *in the Council's negotiating position*), where compliance with the code of conduct or prevention action plan would jeopardize the viability of the SME. *The targeted and proportionate support may take the form of financing, such as direct financing, low-interest loans, guarantees of continued sourcing, or assistance in securing financing, or guidance, such as training or upgrading management systems.* • Collaborate with other entities, including where relevant to increase the company's ability to bring the adverse impact to an end, in particular, where no other action is suitable or effective. If these measures cannot prevent or adequately mitigate potential adverse impacts, the company would expressly be permitted to seek to conclude a contract with a partner with whom it has an indirect relationship, with a view to achieving compliance with the company's code of conduct or prevention action plan. Further, the company would be required to refrain from entering into new or extending existing relations with the partner in connection to or in the value chain 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: • Temporarily suspend commercial relationships with the partner in question, while pursuing prevention and minimization efforts, if there is a reasonable expectation that these efforts will succeed in the short term. • Terminate the business relationship with respect to the activities concerned if the potential adverse impact is severe. Regulated financial undertakings that provide credit, loan or other financial services would not be required to terminate the credit, loan or other financial service contract if this would reasonably be expected to cause substantial prejudice to the counterparty.

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In the Council's negotiating position, if the measures described above cannot prevent or adequately mitigate potential adverse impacts, the company would need to, as a last resort, refrain from entering into new or extending existing relationships with the business partner in connection with 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:

- *Temporarily suspend the business relationship with respect to the activities concerned, while pursuing prevention and mitigation efforts, if there is a reasonable expectation that these efforts will succeed in the short term. If there is no such reasonable expectation or the efforts did not succeed in the short term, the company would need to terminate the business relationship.*
- *Terminate the business relationship with respect to the activities concerned if the potential adverse impact is severe.*

Regulated financial undertakings that provide credit, loan or other financial services would not be required to terminate the business relationship. However, in such a case, the undertaking would need to monitor the adverse impact while pursuing efforts to address the adverse impact.

Under the Directive, Member States would be required to provide for the availability of an option to *temporarily suspend and* terminate the business relationship in contracts governed by their laws*, except for contracts where parties are obliged by law to enter into them*.

In the Council's negotiating position, however, the company would not be required to terminate the business relationship if:

- *There is a reasonable expectation that the termination would result in an adverse impact that is more severe than the potential adverse impact that could not be prevented or adequately mitigated; or*
- *No available alternative to a business relationship that provides a raw material, product or service essential to the company's production of goods or provision of services exists and the termination would cause substantial prejudice to the company.*

If a company decides not to terminate a business relationship pursuant to the above, it would need to report to the competent supervisory authority regarding the duly justified reasons of the decision. The company would also need to monitor the potential adverse impact, periodically reassess its decision not to terminate the business relationship and seek alternative business relationships.

<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 *and prioritized* pursuant to the due diligence measures required to be taken. If the adverse impact cannot 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 actions, where relevant:

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	• Neutralize the adverse impact or minimize its extent, including by the payment of damages to the affected persons and financial compensation to the affected communities. *In the Council's negotiating position, the reference to damages is removed.* This action would be required to be proportionate to the significance and scale of the adverse impact and the contribution of the company's conduct to the adverse impact. *In the Council's negotiating position, this action would be required to be proportionate to the significance and scope of the adverse impact and to 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 action and qualitative and quantitative indicators for measuring improvement. Where relevant, the corrective action plan would be required to be developed in consultation with stakeholders. • Seek contractual assurances from a partner with whom the company has an established business relationship that the partner (*a direct business partner in the Council's negotiating position*) will ensure compliance with the company's code of conduct and, as necessary, corrective action plan, including by seeking corresponding contractual assurances from its partners to the extent they are part of the value chain (*chain of activities in the Council's negotiating position*) (i.e., contractual cascading). • Make necessary (*financial or non-financial*) investments, such as into management or production processes and infrastructures to comply with the foregoing three items. • Provide targeted and proportionate support for an SME with which the company has an established business relationship (*a business partner of the company in the Council's negotiating position*), where compliance with the code of conduct or the corrective action plan would jeopardize the viability of the SME. *The targeted and proportionate support may take the form of financing, such as direct financing, low-interest loans, guarantees of continued sourcing or assistance in securing financing or guidance, such as trainings for upgrading management systems.* • 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 action would be suitable or effective. • *In the Council's negotiating position, also provide remediation to the affected persons and communities.* ***"Remediation"*** *would mean financial or non-financial compensation provided by the company to person or persons affected by the actual adverse impact, including restitution of the affected person or persons or environment to the situation they would be in, had the actual adverse impact not occurred, that would be proportionate to the significance and scope of the adverse impact and the company's implication in the adverse impact.*

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	If the actual adverse impact cannot be brought to an end or adequately mitigated by the foregoing measures, the company expressly would be permitted to seek to conclude a contract with a partner with whom it has an indirect relationship (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 in connection with 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: • Temporarily suspend commercial relations with the partner in question (*the business relationship with respect to the activities concerned*), while pursuing efforts to bring to an end or minimize the extent of the adverse impact*, if there is reasonable expectation that these efforts will succeed in the short term. If there if no such reasonable expectation or the efforts did not succeed in the short term, the company would need to terminate the business relationship.* • Terminate the business relationship with respect to the activities concerned if the adverse impact is considered severe. Under the Directive, Member States would be required to provide for the availability of an option to *temporarily suspend and* terminate the business relationship in contracts governed by their laws*, except for contracts where parties are obliged by law to enter into them*. *Under the Council's negotiating position, however, the company would not be required to terminate the business relationship if:* • *There is a reasonable expectation that the termination would result in an adverse impact that is more severe than the actual adverse impact that could not be brought to an end or minimized; or* • *No available alternative to the business relationship that provides a raw material, product or service essential to the company's production of goods or provision of services exists and the termination would cause substantial prejudice to the company.* *If a company decides not to terminate a business relationship pursuant to the above, it would need to report to the competent supervisory authority regarding the duly justified reasons of such decision. The company would also need to monitor the actual adverse impact, periodically reassess its decision not to terminate the business relationship and seek alternative business relationships.* <u>Annual Evaluation of Due Diligence Strategy</u>: Companies would be required to carry out periodic assessments to monitor the effectiveness of the identification, prevention, mitigation, cessation and minimization of human rights and environmental adverse impacts. The assessment would be required to take into account the company's own operations and measures, those of its subsidiaries and those of established business relationships related to the company's value chain (*chain of activities in the Council's negotiating position*).

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	The assessment would be required to be based, where appropriate, on qualitative and quantitative indicators. The assessment would be required to be carried out at least every 12 months and whenever there are reasonable grounds to believe that significant new risks of the occurrence of those adverse impacts may arise. *In the Council's negotiating position, the assessment would be required to be carried out without undue delay after a significant change occurs, but at least every 24 months and whenever there are reasonable grounds to believe that significant new risks of the occurrence of the adverse impacts may arise*. The due diligence policy 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 a business partner or indirect 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 suitable industry initiatives or independent third-party verification. 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 would be required to bear the cost of the independent third-party verification when verifying SME compliance. An **"industry initiative"** would be defined as a combination of voluntary value chain (*chain of activities in the Council's negotiating position*) due diligence procedures, tools and mechanisms, including independent third-party verifications, developed and overseen by governments, industry associations or groupings of interested organizations. Third-party verification could be provided by an auditor (*expert in the Council's negotiating position*) who is independent from the company, free from conflicts of interest, has experience and competence in environmental and human rights matters and is accountable for the quality and reliability of the audit (*verification in the Council's negotiating position*).
Complaints Mechanism	Companies would be required to have a complaints mechanism available for submission of legitimate concerns regarding actual or potential adverse human rights and environmental impacts in their own operations, the operations of their subsidiaries and their value chains (*and the operations of their business partners in the companies' chain of activities in the Council's negotiating position*). Companies would be required to establish a procedure for addressing complaints, including complaints the company considers to be unfounded. The company would be required to inform the relevant workers and trade unions of the complaints procedures. The company complaint mechanism would be required to enable the following to submit concerns: • Persons affected or who have reasonable grounds to believe they might be affected by an adverse impact; • Trade unions and other workers' representatives representing individuals working in the *chain of activities*; and • Civil society organizations active in the areas related to the value chain concerned where they have knowledge about a potential or actual adverse impact (*adverse impact that is the subject matter of the complaint*).

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	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. In addition, persons would be able to submit substantiated concerns to a supervisory authority if the person has reason to believe, on the basis of objective circumstances, that a company is failing to comply with national legislation adopted pursuant to the Directive.
Reporting	Most subject companies would be required to annually report on the matters covered by the Directive. The Commission would be required to adopt delegated acts regarding reporting content and criteria. These would be required to specify information on the description of due diligence, potential and actual adverse impacts and related action taken. Statements would be published on the company's website and be due by April 30 each year for the prior calendar year and in a language customary in the sphere of international business. *In the Council's negotiating position, the statements' due date would be changed to, within a reasonable period of time which shall not exceed 12 months after the balance sheet date of the financial year for which the statement is drawn up.* Companies would not have to report under the Directive if they are required to report under the EU Non-Financial Reporting Directive or the Corporate Sustainability Reporting Directive (which will supersede the NFRD).
Directors' Duties	*Each of the below provisions regarding directors' duties have been deleted in the Council's negotiating position.* When fulfilling their duty to act in the best interest of the company, directors would be required to take into account the consequences of their decisions for sustainability matters, including, where applicable, human rights, climate change and environmental consequences, including in the short-, medium- and long-term. Member States would be required to ensure that laws, regulations and administrative provisions providing for a breach of directors' duties apply to these duties. Directors also would specifically be responsible for establishing and overseeing due diligence. In particular, directors would be responsible for the due diligence policy, with due consideration for relevant input from stakeholders and civil society organizations. Directors would be required to report to the board of directors regarding the establishment and oversight of due diligence. Directors also would be required to take steps to adapt the corporate strategy to take into account actual and potential adverse human rights and environmental impacts identified and any measures taken to prevent or remedy adverse impacts or pursuant to the complaints mechanism. A **"director"** would include the following: • Any member of the administrative, management or supervisory body of a company; • If not a member of the administrative, management or supervisory body, the chief executive officer and, if the function exists, the deputy chief executive officer; and • Other persons who perform functions similar to the foregoing.

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	The foregoing duties would apply to directors of EU companies subject to the Directive. The duties would not be applicable to directors of non-EU companies.
Climate Change	Group 1 companies would be required to adopt a plan, *including implementing actions and related financial and investment plans,* to ensure 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 the objective of achieving climate neutrality by 2050 and, where relevant, the exposure of the company to coal-, oil- and gas-related activities*. *The Council's negotiating position is intended to more closely align them with the CSRD.* The climate change plan would be required to identify, on the basis of information reasonably available to the company, the extent to which climate change is a risk for, or an impact of, a company's operations. If climate change is or should have been identified as a principal risk for, or a principal impact of, a company's operations, the company would be required to include emission reduction objectives in its plan. Group 1 companies would be required to take into account the fulfillment of the climate change-related obligations discussed above when setting a director's variable compensation, if variable compensation is linked to the director's contribution to the company's business strategy, long-term interests and sustainability. *This provision has been deleted in the Council's negotiating position.*
Additional Guidance and Guidelines	The Commission*, in consultation with Member States and stakeholders,* would be required to adopt guidance pertaining to voluntary model contract clauses. These clauses could be used if the company sought required contractual assurances as part of preventing or ending adverse impacts. The Commission would be expressly empowered (*required in the Council's negotiating position*) to issue guidelines to provide support to companies or Member State authorities on how companies should fulfill their due diligence obligations *no later than after two years from the entry into force of the Directive*. Among other things, guidelines could be issued for specific sectors or specific adverse impacts. However, the Commission would not be required to issue guidelines. The Commission, in collaboration with Member States, also would be expressly empowered to issue guidance for assessing the fitness of industry schemes and multi-stakeholder initiatives.
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 request 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 pecuniary sanctions and (3) adopt interim measures to avoid the risk of severe and irreparable harm.

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	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.
Sanctions (*Penalties in the Council's negotiating position*)	The Directive does not specify particular sanctions (*penalties in the Council's negotiating position*). Instead, it provides a framework for determining sanctions (*penalties in the Council's negotiating position*). Under the Directive, Member States would be required to establish rules on sanctions (*penalties in the Council's negotiating position*) in the event of a violation of national provisions adopted pursuant to the Directive. Sanctions (*penalties in the Council's negotiating position*) would be required to be effective, proportionate and dissuasive. In deciding whether to impose sanctions (*penalties in the Council's negotiating position*) and, if so, in determining their nature and appropriate level, due consideration would be required to be given to the company's efforts to comply with any remedial action required by a supervisory authority, any investments made and any targeted support provided to address potential or actual adverse impacts, as well as collaboration with other entities to address adverse impacts in the company's value chain (*chain of activities in the Council's negotiating position*). If pecuniary sanctions (*penalties in the Council's negotiating position*) are imposed, they would be required to be based on the company's turnover (*commensurate with the company's worldwide net turnover in the Council's negotiating position*). 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 administrative sanctions (*penalties in the Council's negotiating position*) or civil liability if there are damages.
Civil Liability *and the 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 damages if: • They (*intentionally or negligently*) failed to comply with their obligations to prevent potential adverse impacts and bring actual adverse impacts to an end; and • As a result of the failure, an adverse impact that should have been identified, prevented, mitigated, brought to an end or minimized occurred and led to damage. *In the Council's negotiating position, companies could be held liable if, as a result of the failure, a damage to person's legal interest protected under national law was caused.* *Under the Council's negotiating position, a company would not be liable if the damage was caused only by its business partners in its chain of activities. If damage is caused jointly by the company and its subsidiary, or by the company and a direct or indirect business partner, they would be liable jointly and severally, without prejudice to the provisions of national law concerning the conditions of joint and several liability and the rights of recourse.*

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	Also under the Council's negotiating position, where the company is held liable, a victim would have the right to full compensation for the damage occurred in accordance with national law. The Council's negotiating position indicates that full compensation is not overcompensation, whether by means of punitive, multiple or other types of damages. If a company sought required contractual assurances as part of preventing or ending adverse impacts and the assurances were accompanied by appropriate measures to verify compliance, the company would not be liable for damages caused by an adverse impact arising as a result of the activities of an indirect partner with whom it had an established business relationship, unless it was unreasonable under the circumstances to expect the action actually taken, including as to verifying compliance, would be adequate to prevent, mitigate, bring to an end or minimize the adverse impact. *This provision has been deleted in the Council's negotiating position.*
Effective Date	Member States would be required to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive within 24 months after the Directive enters into force. Group 1 companies would be required to comply beginning two years after the Directive enters into force. Group 2 companies would have an additional two years before they would be required to comply. *Under the Council's negotiating position, **"very large companies"** would be required to comply three years after the Directive enters into force. For EU-companies, a very large company would mean having more than 1,000 employees and €300 million net worldwide turnover in the preceding financial year. For non-EU companies, a very large company would mean having €300 million net turnover generated in the European Union in the preceding financial year. Group 1 companies that do not qualify as very large companies would be required to comply beginning four years after the Directive enters into force. Group 2 companies would be required to comply beginning five years after the Directive enters into force.*
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 in effect when the Directive is adopted. By its terms, the Directive also would not modify obligations relating to human 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 Commission's proposed Directive, see: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0071 For the text of the Council's negotiating position, see: https://data.consilium.europa.eu/doc/document/ST-15024-2022-REV-1/en/pdf

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Ropes and Gray Resources	Client alert related to the Directive: • 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

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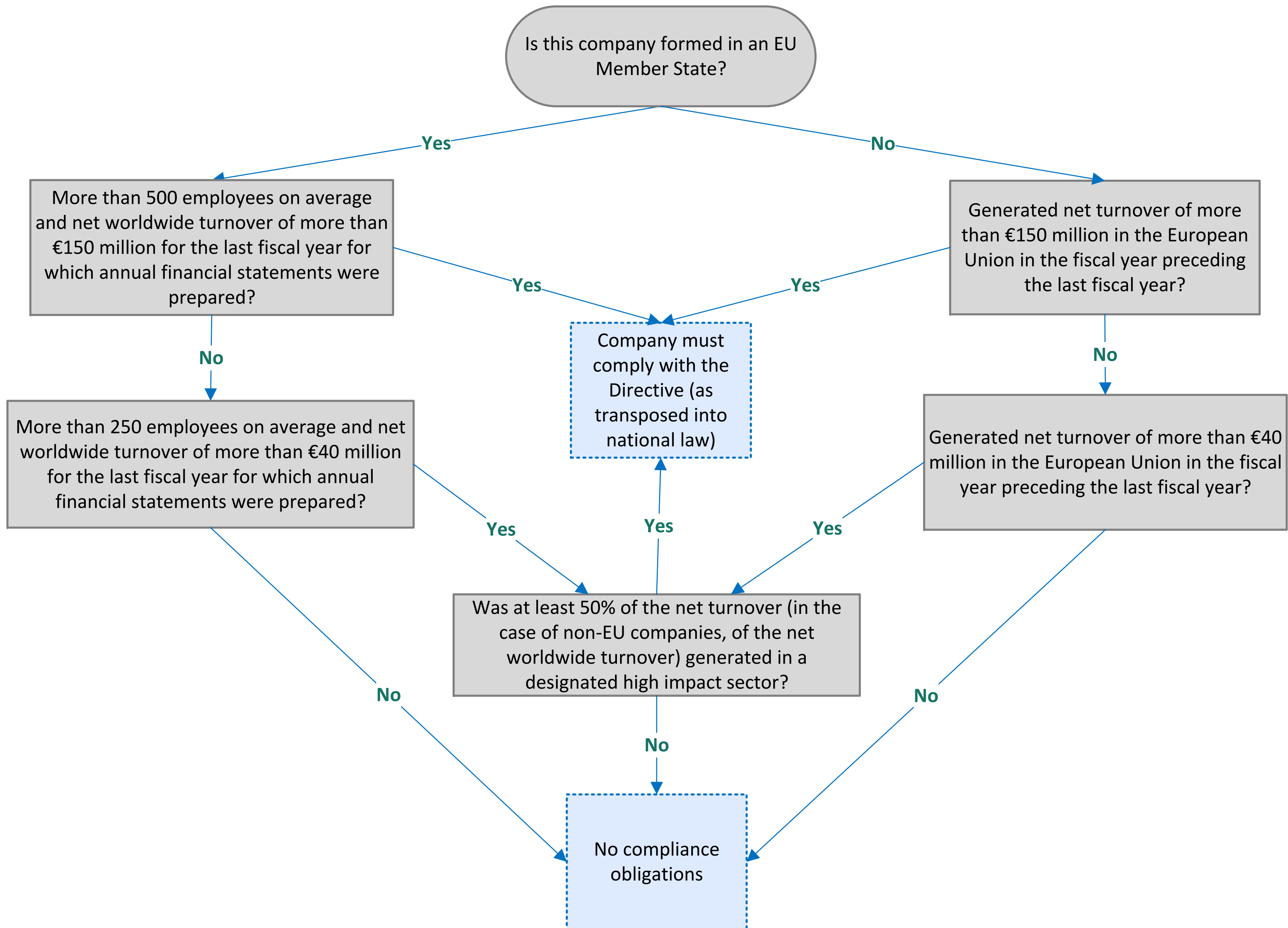

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Corporate Duty of Vigilance Law **France**	
Overview	
Law / Country	**Corporate Duty of Vigilance Law** (No. 2017-399) (the **"Law"**) (France)
Goal	To prevent severe human rights violations and violations of the health and safety of people or the 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.
Issues Addressed	• Human rights • Health and safety • Environment
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;

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	• 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. *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

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	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. *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. This ruling was part of pre-trial proceedings preceding the main trial, which is expected to move forward. *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. *Friends of the Earth et al. v. TotalEnergies*: In October 2019, French and Ugandan environmental groups sued Total Energies, 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

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	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. *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 and 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

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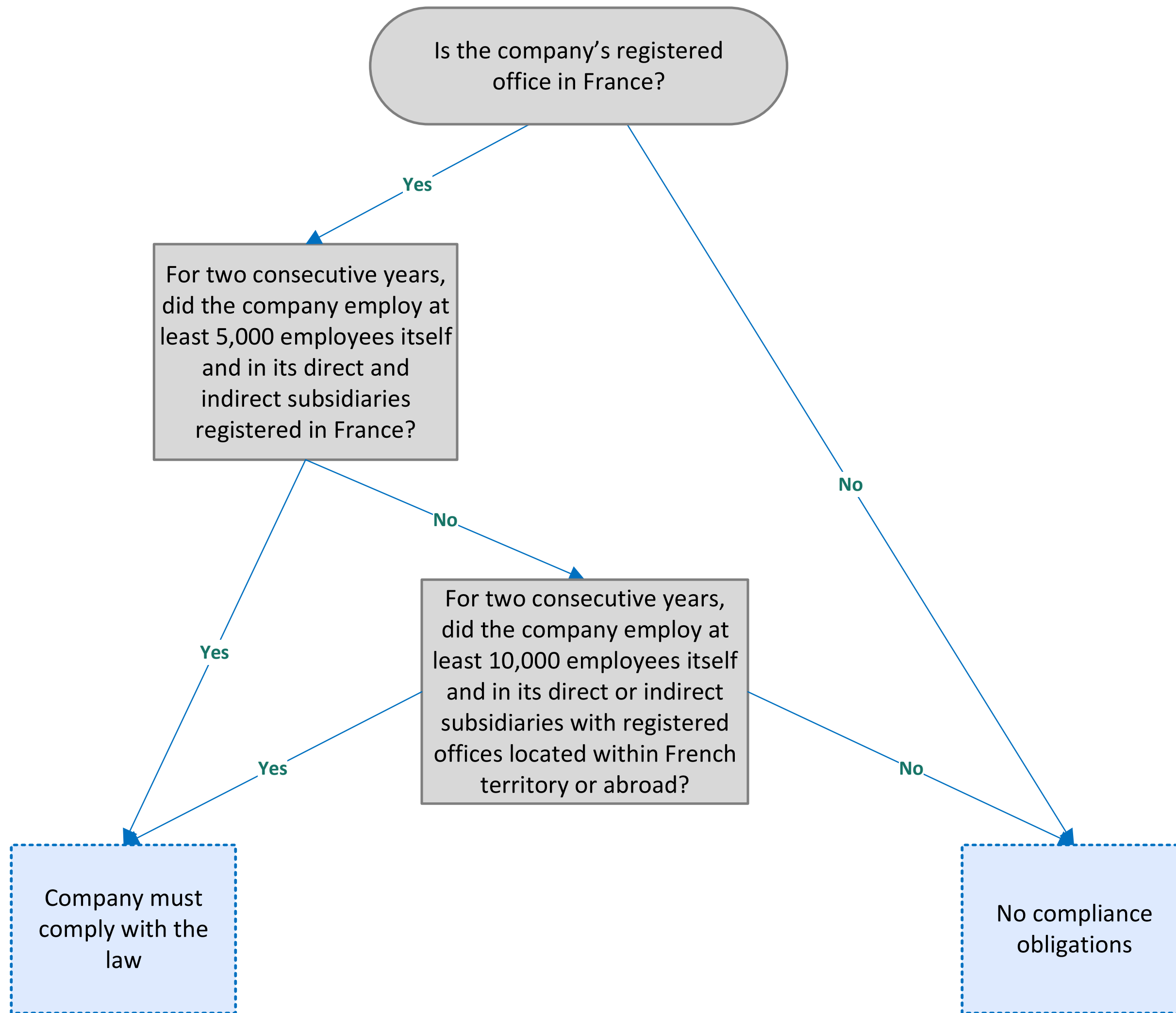

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Conflict Minerals and Child Labor Due Diligence Provisions **Switzerland**	
Overview	
Law / Country	**Swiss Code of Obligations Section 221.433: Ordinance on Due Diligence and Transparency in relation to Minerals and Metals from Conflict-Affected Areas 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.
Issues Addressed	• Conflict minerals and metals • Child labor **"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.

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	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.
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	Child Labor: 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. Conflict Minerals and Metals: *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-

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	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.
	
	Compliance with an Equivalent Regulation or Instrument:
	
	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: Supply Chain Policy: 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;

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	• 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;

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	◦ 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. Grievance Mechanism: 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. Risk Mitigation: 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. Audit Requirements Relating to 3TG: 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.

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	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 and Gray Resources	Client alerts related to the Provisions: • 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):

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	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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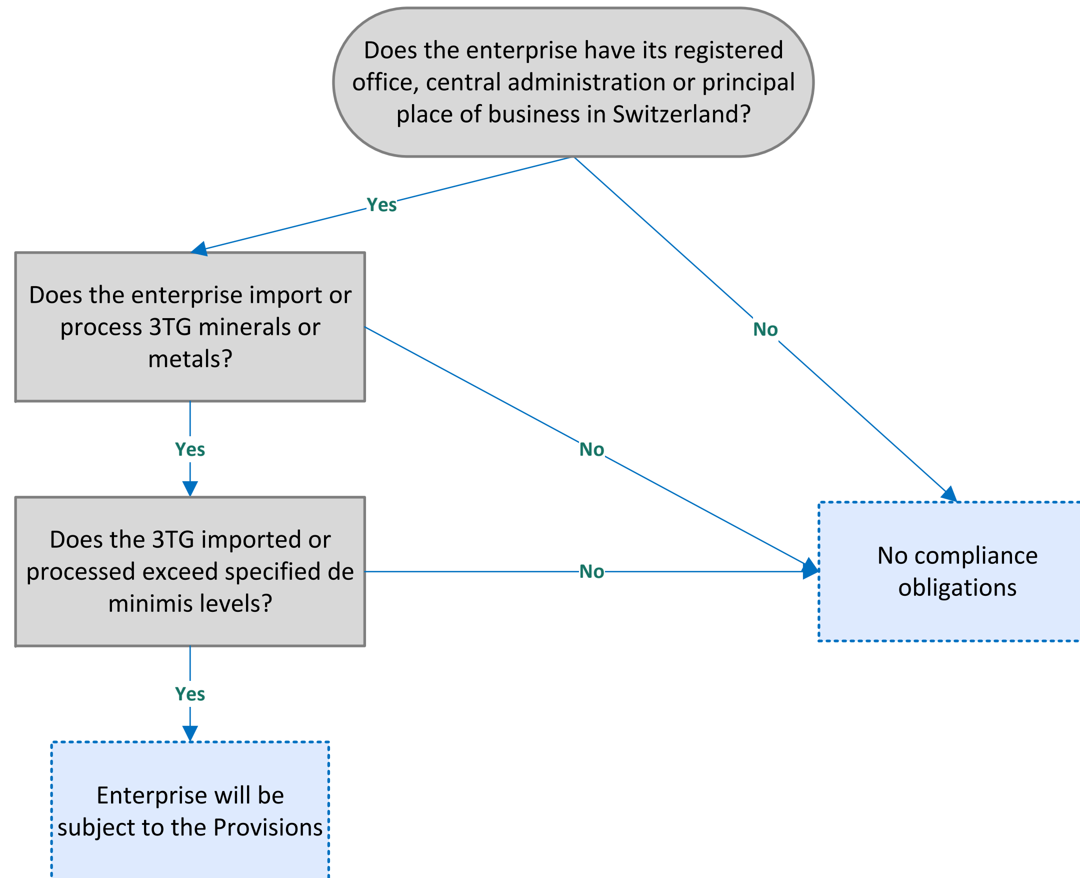

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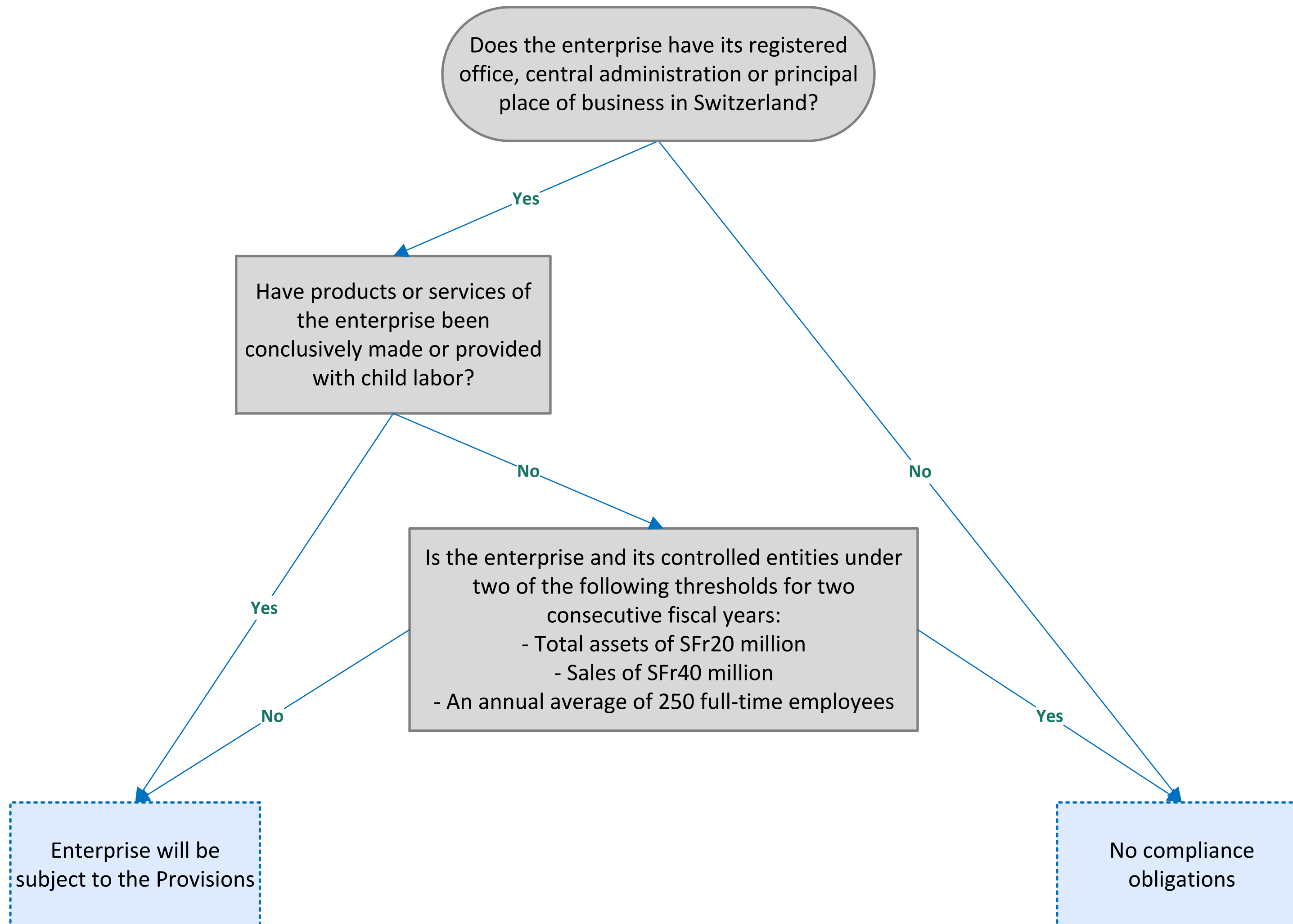

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Due Diligence in the Supply Chain Act Germany	
Overview	
Law / Country	**Due Diligence in the Supply Chain Act** (the **"Act"**) (Germany)
Goal	Mitigate human rights and specified environmental-related risks that can lead to human rights violations.
Adoption / Status	The Act was approved by the German Parliament on June 11, 2021. The Act took effect on January 1, 2023.
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 2023, the Act applies to companies with 3,000 or more employees in Germany. In 2024, this threshold will drop to 1,000 or more employees in Germany. Employees

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	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 is required to 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. <u>Risk Analysis</u>: 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

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	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. <u>Preventative Measures</u>: 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. <u>Remedial Action</u>: 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. <u>Indirect Suppliers</u>: 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

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	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 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.
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. During August 2022, BMWK, BMAS and BAFA jointly published Q&A guidance on the Act. BMAS also has published information on complying with the Act.

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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 jointly 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.
Reporting Questionnaire	For the BAFA questionnaire (currently available only in German), see: https://www.bafa.de/SharedDocs/Downloads/DE/Lieferketten/fragenkatalog_berichterstattung.html;jsessionid=69189E89970CFD3D6290FD66EAAB2089.1_cid390?nn=18157744
Ropes and Gray Resources	Client alerts related to the Act: • 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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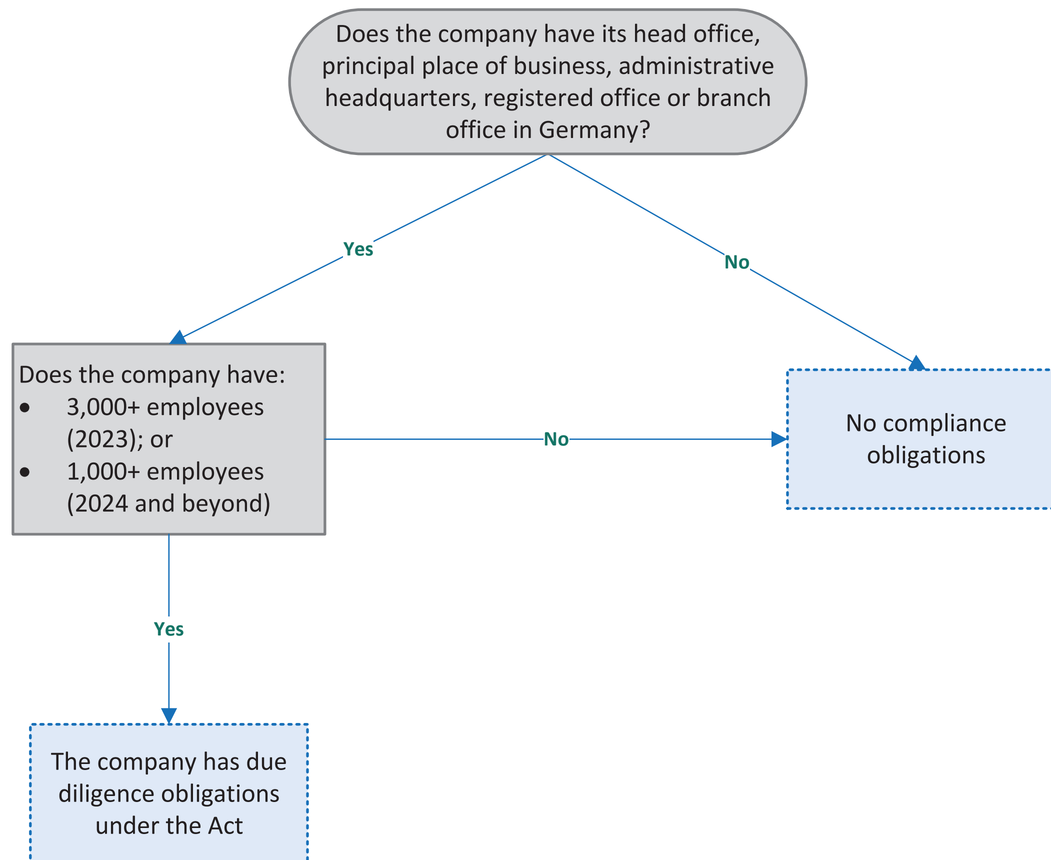

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Transparency Act **Norway**	
Overview	
Law / Country	**Transparency Act** (Innst. 603 L (2020–2021)) (the **"Act"**) (Norway)
Goal	To promote the respect of businesses for fundamental human rights and decent working conditions in connection with the 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 was approved by the Parliament on June 10, 2021. The Act took effect on July 1, 2022 and the first public report must be published by June 30, 2023.
Issue Addressed	• Fundamental human rights • Decent working conditions **"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. **"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.
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. 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

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	Subsidiaries are taken into account for determining whether a parent company is a large enterprise. The Ministry of Children and Family Affairs is 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; • 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; • Communicating with affected stakeholders regarding how adverse impacts are addressed; and • 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.
Disclosure Requirement	Content: 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. Timing: 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.

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<table>
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<u>Publication</u>:
The statement must be made available on the enterprise’s website. It also may be included in the enterprise’s corporate social responsibility report pursuant to Section 3-3(c) of the Accounting Act.
<u>Signature</u>:
The statement must be signed in accordance with Section 3-5 of the Norwegian Accounting Act.
</td></tr>
<tr><td>Third-party Information Rights</td><td>
Upon written request, third parties are entitled to information from the enterprise concerning how it addresses identified actual and potential adverse impacts. 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.

<u>Timing</u>:
The enterprise must provide the requested information 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.
</td></tr>
<tr><td>Further Regulation</td><td>
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.
</td></tr>
<tr><td>Enforcement</td><td>
The Norwegian Consumer Authority will be 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.
</td></tr>
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	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.

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Ropes and Gray Resources	Client alerts related to the Act: • 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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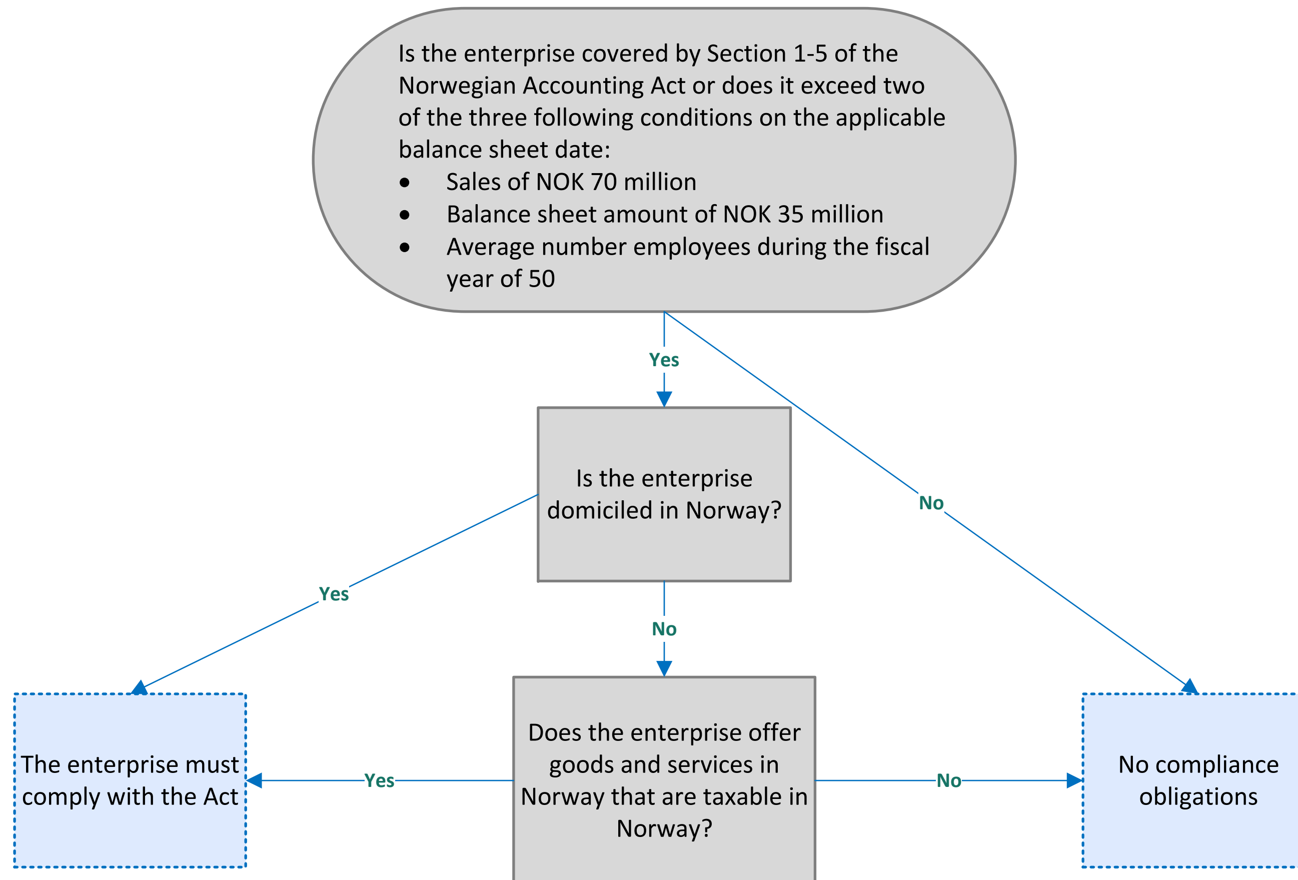

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Duty of Vigilance Law (Proposed) **Belgium**	
Overview	
Law / Country	**Duty of Vigilance Law** (Doc 55 1903/001) (the "**Act**") (Belgium)
Goal	To require companies to monitor the corporate social responsibility of their value chains, and to provide additional legal claims for adverse impacts.
Adoption / Status	The draft 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 draft Act, criticizing it for its vagueness, not imposing a duty of vigilance on small and medium-sized enterprises, and certain difficulties of enforcement. The draft Act may be reconsidered or amended to address such concerns. Under the draft Act's terms, it would enter into effect six months after its publication in the *Moniteur Belge*.
Issue Addressed	• Human rights • Labor rights • Environmental 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 draft 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.

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	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 proposed 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 proposed 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.

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	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 draft 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 proposed Act, see: https://www.lachambre.be/FLWB/PDF/55/1903/55K1903001.pdf.

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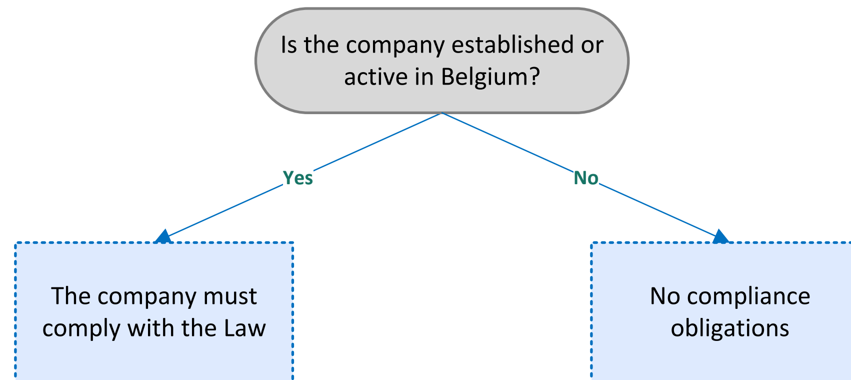

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Responsible and Sustainable International Business Conduct Act (Proposed) **Netherlands**	
Overview	
Law / Country	**Responsible and Sustainable International Business Conduct Act** (the **"Act"**) (Netherlands)
Goal	Mitigate human rights risks, including 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.
Issues Addressed	• Human rights • Forced labor • Child labor • Labor rights • Climate change • Animal welfare

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 €20 million;
	  ○ Net turnover of €40 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;

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	- 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.

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<td>Management Systems</td>
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<u>Policy Requirement</u>:
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.
<u>Business Processes</u>:
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.
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	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.

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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	Risk Action Plan: 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.

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	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

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	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.

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	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 and 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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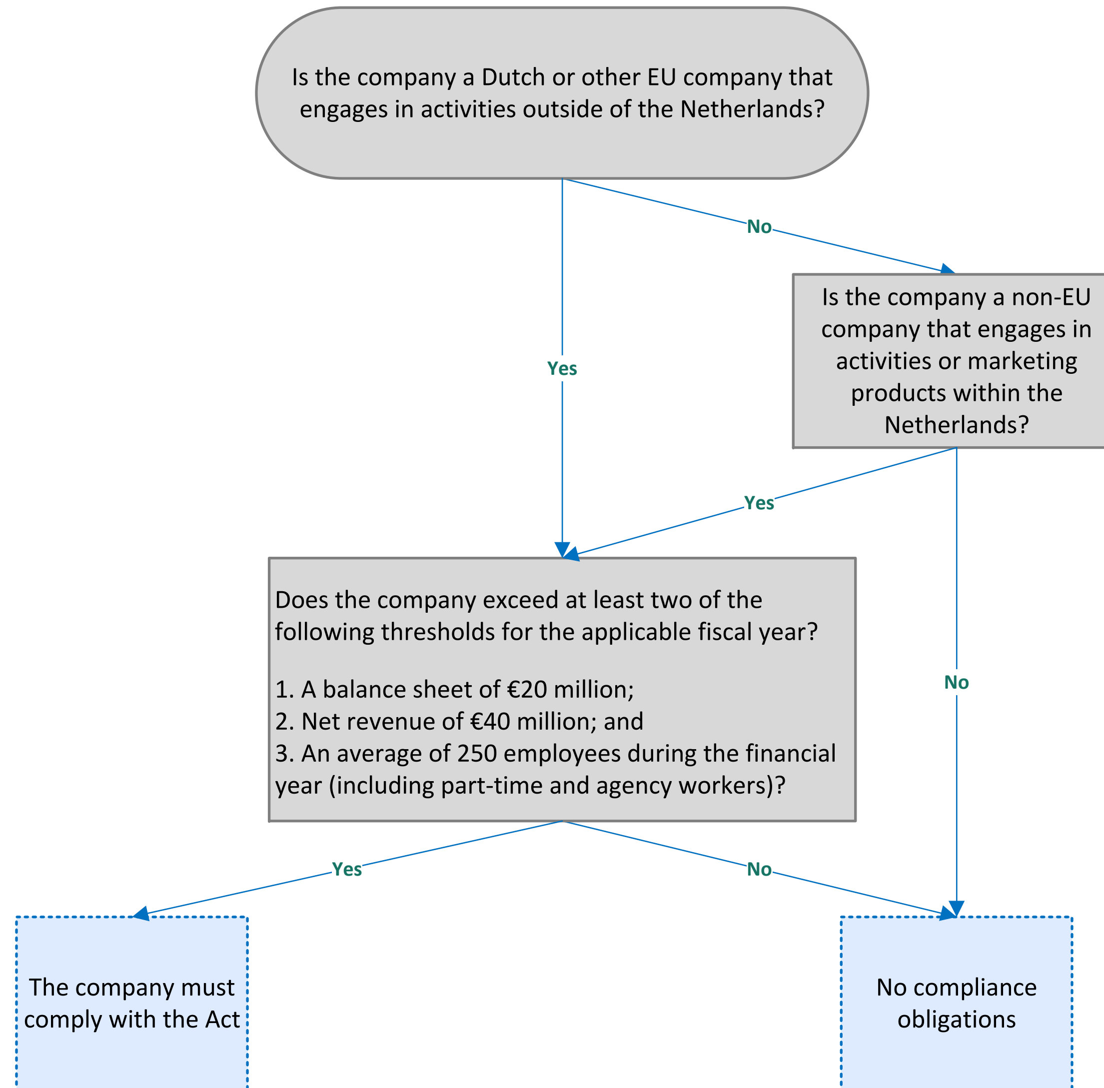

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Modern Slavery Act (Proposed) New Zealand	
Overview	
Law / Country	**NZ Modern Slavery Act** (the **"Act"**) (New Zealand)
Goal	To reduce modern slavery and worker exploitation through heightened diligence and disclosure and required mitigation actions.
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 will be analyzed and reported to the Minister for Workplace Relations and Safety for consideration as they prepare the language of the Act. The Ministry of Business, Innovation and Employment published a summary of feedback from the consultation, noting that there was strong support for the Act's objectives and a graduated approach. The content and timing of the draft bill and final legislation remain to be determined.
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: (1) Modern slavery in their domestic and international operations and supply chains, or (2) Worker exploitation in their domestic operations and supply chains.

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	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. Small and Medium Entities: 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. Large Entities: 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

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	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

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Ropes and Gray Resources	Client alert related to the Act: • 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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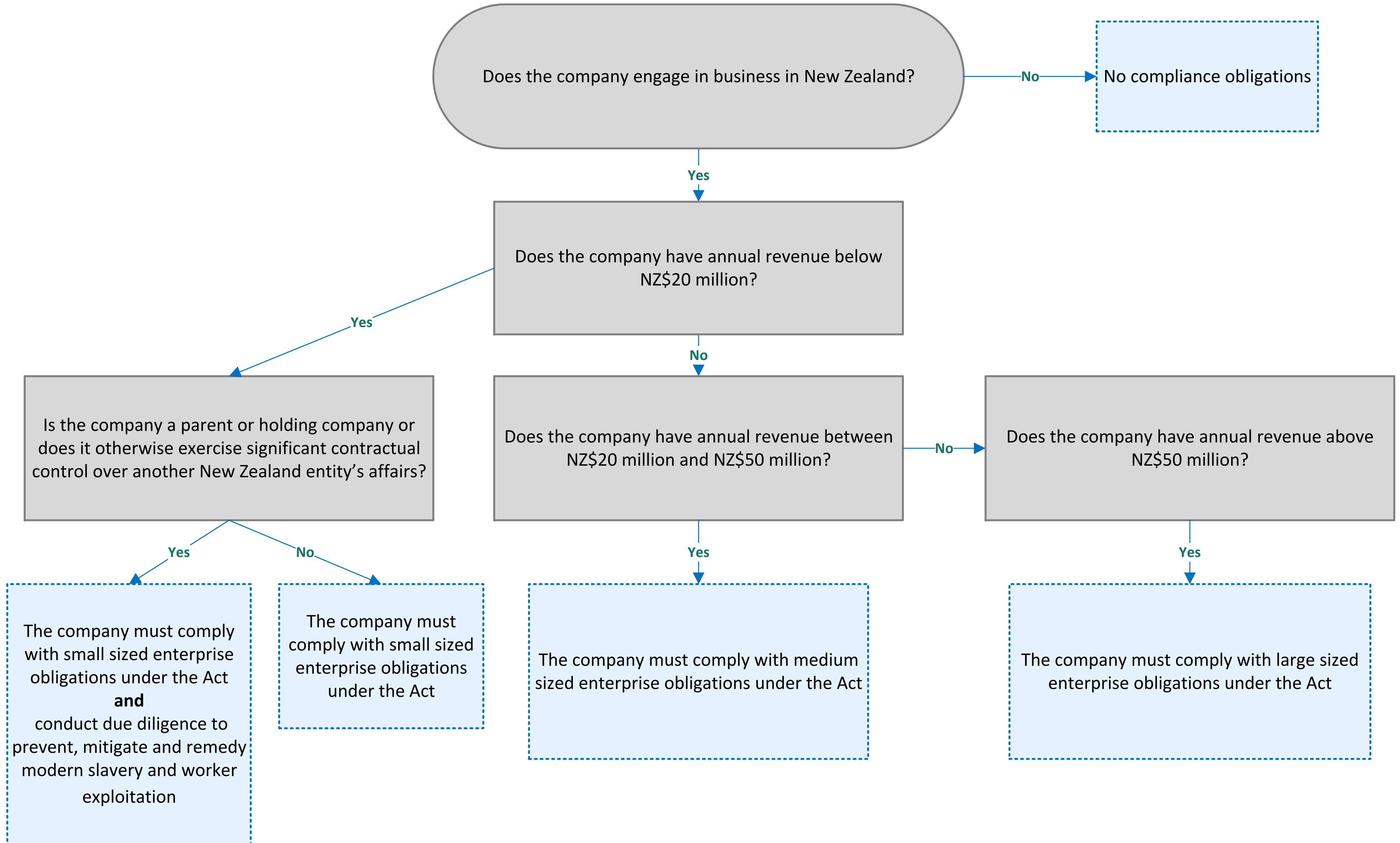

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Fighting Against Forced Labour and Child Labour in Supply Chains Act (Proposed) **Canada**	
Overview	
Law / State	**Fighting Against Forced Labour and Child Labour in Supply Chains Act** (S-211 (2021)) (the **"Act"**) (Canada)
Goal	To combat forced and child labor through the imposition of reporting obligations on entities producing good in or importing goods into Canada.
Adoption / Status	The Act was introduced in the Canadian Senate on November 24, 2021 by Senator Julie Miville-Dechêne. The bill was passed by the Senate on April 28, 2022, and had its first and second reading by the House of Commons on May 3, 2022 and June 1, 2022, respectively. The Act was adopted by the Standing Committee on Foreign Affairs and International Development of the House of Commons on November 28, 2022 and presented without amendment to the House of Commons on November 30, 2022, where it awaits its third reading. The Act is preceded by S-211 (2020) and S-216 (2020), both of which were also introduced by Senator Miville-Dechêne and had similar goals and obligations as the Act. The Act would come into force on January 1 of the year following the year in which it receives royal assent.
Issues Addressed	• Forced labor • Child labor
Covered Entities	A corporation, trust, partnership or other unincorporated organization would be subject to the reporting requirements of the Act to the extent it meets any of the following requirements: • 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 • Is prescribed by regulations. And: • Produces, sells or distributes goods in Canada or elsewhere (for purposes of the Act, the production of goods would include 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). The Act would also apply to government institutions, but such obligations are not addressed in this summary.

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Key Definitions	**"Forced labor"** would be defined as labor or service provided or offered to be provided by a person under circumstances that (1) could reasonably be expected to cause the person to believe their safety or the safety of a person known to them would be threatened if they failed to provide or offer to provide the labor or service or (2) constitute forced or compulsory labor as defined in Article 2 of the International Labour Organization's Forced Labour Convention. That Convention defines forced or compulsory labor as all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily (subject to several narrow exceptions specified in the Convention). **"Child labor"** would be 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 would be 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 would be 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

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	• How the entity assesses its effectiveness in ensuring that forced labour and child labour are not being used in its business and supply chains.
Approval and Attestation Requirement	The report would need 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 would need 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 would need 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.
Reporting	A subject entity annually would be 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 would be 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 would be required to be addressed for each subject entity. The Minister would be required to maintain an electronic registry containing the reports provided to it. The registry would be required to be made available to the public on the Department of Public Safety and Emergency Preparedness website. In addition to submitting its report to the Minister, a subject entity would be required to make the report available to the public, including by publishing it in a prominent place on its website. Any entity that is incorporated under the Canada Business Corporations Act or any other Act of Parliament would be required to provide the report or revised report to each shareholder, along with its annual financial statements.
Enforcement	The Minister would be able to designate persons or classes of persons for the purposes of the administration and enforcement of the Act. 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 would be 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 could be fined up to C$250,000. In addition, every person or entity that knowingly makes a false or misleading statement or knowingly provides false or misleading information to the Minister or a person designated by the Minister to administer and enforce the Act, could be fined up to C$250,000. An officer, director or agent of the person or entity who directed, authorized, assented to, acquiesced in or participated in the commission of an offense also could be held liable for the offense.
Import Prohibition	The Act also would amend the Customs Tariff to prohibit the importation into Canada of goods that are mined, manufactured or produced wholly or in part by child labor, or to prescribe the conditions under which those goods may be prohibited.

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	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 proposed Act, see: https://www.parl.ca/DocumentViewer/en/44-1/bill/S-211/third-reading

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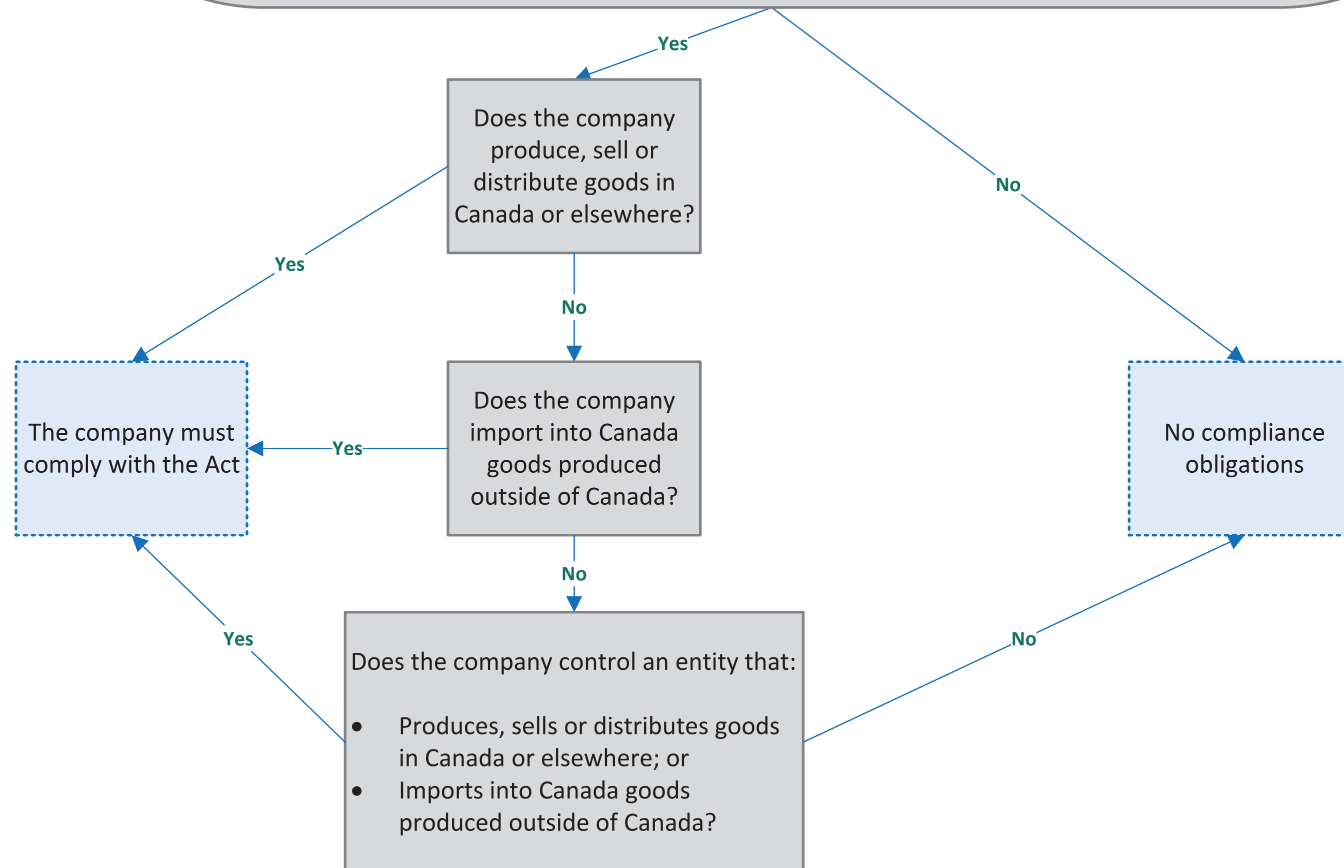
Is the company a corporation, trust, partnership or other unincorporated organization that:

- 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 statement, meets at least two of the following conditions for at least one of its two most recent financial years: (1) at least C$20 million in assets; (2) at least C$40 million in revenue; or (3) employs an average of at least 250 employees; or
- Is prescribed by regulations?



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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.

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	“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.

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	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.

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	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

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	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

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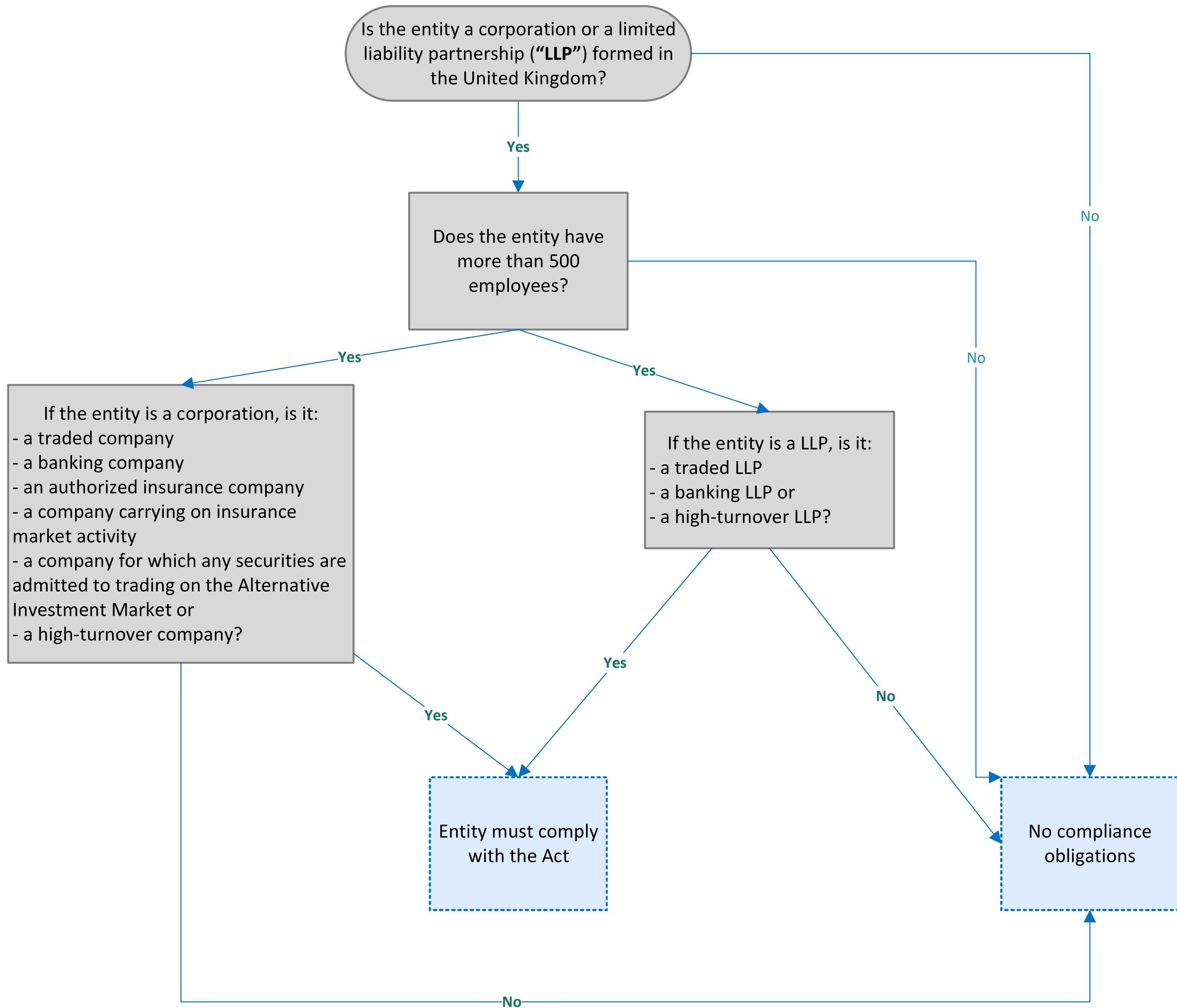

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Securities and Exchange Commission Climate-related Disclosure Rules for Issuers (Proposed) United States	
Overview	
Law / Country	**Securities and Exchange Commission Climate-related Disclosure Rules for Issuers** (the **"Proposed Rules"**) (United States)
Goal	To provide investors with consistent, comparable and decision-useful information regarding climate-related risks.
Adoption / Status	On March 21, 2022, the SEC released the Proposed Rules, soliciting comments from the public. The comment period closed on June 17, 2022. The SEC is currently analyzing the comment letters received and, according to the Fall 2022 Unified Agenda of Regulatory and Deregulatory Actions, released by the Office of Information and Regulatory Affairs on January 4, 2023, the SEC is expected to issue a final rule in or before April 2023. However, this timetable is not binding. The first compliance dates for: • Large accelerated filers would be the annual report for the first fiscal year after the effective date of the rules. • Accelerated and non-accelerated filers would be the annual report for the second fiscal year after the effective date of the rules. • Smaller reporting companies would be the annual report for the third fiscal year after the effective date of the rules. Compliance with Scope 3 greenhouse gas (**"GHG"**) emissions and associated intensity metrics disclosure requirements would not be required until the second fiscal year for which a registrant is required to comply with the rules. Smaller reporting companies would be exempted from the Scope 3 disclosure requirements. Third-party attestation of Scope 1 and Scope 2 GHG emissions would be required for large accelerated filers and accelerated filers beginning in the second fiscal year for which they are subject to the rules. Non-accelerated filers and smaller reporting companies would not be subject to the attestation requirements. A new registrant would not be subject to the attestation requirements until it has been subject to the requirements of Section 13(a) or 15(d) of the Exchange Act for at least twelve months and has filed one annual report pursuant to the Exchange Act, at the earliest.
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 Proposed Rules do not apply to registered investment companies, asset-backed issuers or Canadian issuers that are MJDS filers.
Applicable Filings	Disclosures would 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.

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How It Works	
Mandatory?	Yes.

Required Narrative Disclosures	The Proposed Rules would require a registrant to disclose information about the following, in a separate, appropriately captioned section of its applicable registration statement or annual report:
	
	Targets and Goals:
	
	• If the registrant has publicly set climate-related targets or goals (the Proposed Rule includes the following as examples of targets and goals that may be in scope for this requirement: energy usage, water usage, conservation or ecosystem restoration, or revenues from low-carbon products), information about:
	  ◦ The scope of activities and emissions included in the target, the unit of measurement (including whether the target is absolute or intensity based), the time horizon by which the target is intended to be achieved, the baseline against which progress is tracked (with a consistent base year set if there are multiple targets) and any interim targets;
	  ◦ How the registrant intends to meet its climate-related targets or goals, including information regarding carbon offsets or renewable energy credits (**"RECs"**) that are part of the registrant's plan (e.g., amount of carbon reduction represented by the offsets or the amount of generated renewable energy represented by the RECs); and
	  ◦ Relevant data to indicate whether the registrant is making progress toward meeting the target or goal and how such progress has been achieved, with updates each fiscal year including descriptions of the actions taken during the year to achieve its targets or goals.
	
	Strategy, Business Model and Outlook:
	
	• Climate-related risks reasonably likely to have a material impact on the registrant, including on the registrant's business or consolidated financial statements, which may manifest over the short-, medium- and long-terms.
	• Definitions of short-, medium- and long-terms.
	• Whether risks are physical or transition risks.
	  ◦ For physical risks, registrants would be required to indicate, among other things, the nature of the risk and the location (including zip code or similar geographic identifier) and nature of the properties, processes or operations subject to the risk.
	  ◦ For transition risks, disclosure regarding the nature of the risk and how relevant transition-related factors impact the registrant would be required.
	• Actual and potential impacts of the registrant's physical and transition risks on its strategy, business model and outlook and whether and how any such impacts are considered as part of the registrant's business strategy, financial planning and capital allocation, including both current and forward-looking disclosures that facilitate an

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	understanding of whether the implications of the identified risks have been integrated into the registrant's business model or strategy.
	• The impact of climate-related events (severe weather events and other natural conditions) and transition activities on the line items of a registrant's consolidated financial statements, as well as the financial estimates and assumptions used in the financial statements.
	• How any resources are being used to mitigate climate-related risks, the role that carbon offsets or RECs play in the strategy and financial statement impacts.
	• If the registrant maintains an internal carbon price, that price, the boundaries for measurement, the rationale for selecting the price and how the registrant uses it to evaluate and manage climate-related risks.
	• The resilience of the registrant's business strategy in light of potential future changes in climate-related risks, including scenario analysis and other analytical tools used by the registrant to assess the impact of climate-related risks, together with the scenarios considered and related parameters, assumptions and analytical choices and the projected principal financial impacts on the registrant's business strategy under each scenario.
	
	<u>Risk Management</u>:
	
	• The registrant's processes for identifying, assessing and managing climate-related risks, including how the registrant (if applicable):
	  ◦ determines the relative significance of climate-related risks compared to other risks;
	  ◦ considers existing or likely regulatory requirements or policies, such as GHG emissions limits, when identifying climate-related risks;
	  ◦ considers shifts in customer or counterparty preferences, technological changes or changes in market prices in assessing potential transition risks;
	  ◦ determines the materiality of climate-related risks;
	  ◦ decides whether to mitigate, accept or adapt to a particular risk;
	  ◦ prioritizes whether to address climate-related risks; and
	  ◦ determines how to mitigate any high priority risks.
	• Whether and how any such processes are integrated into the registrant's overall risk management system or processes.
	• Any transition plan adopted as part of the registrant's climate-related risk management strategy, including how the registrant plans to mitigate or adapt to climate risks and the relevant metrics and targets used to identify and manage physical and transition risks.
	• The disclosure would need to be updated annually to describe the actions taken during the preceding fiscal year to achieve the transition plan's targets or goals.

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	GHG Emissions Metrics:
	• The registrant's direct GHG emissions (Scope 1) and indirect GHG emissions from purchased electricity and other forms of energy (Scope 2), separately disclosed, expressed both by disaggregated constituent GHGs and in the aggregate, and in absolute terms, not including offsets, and in terms of intensity (per unit of economic value or production).
	• Indirect emissions from upstream and downstream activities in a registrant's value chain (Scope 3), if material, or if the registrant has set a GHG emissions target or goal that includes Scope 3 emissions, in absolute terms, not including offsets, and in terms of intensity.
	
	Governance:
	• If any member of the board has expertise in climate-related risks.
	• How the registrant's board of directors oversees climate-related risks, including identifying:
	  ◦ which directors or board committees are responsible for the oversight of climate-related risks;
	  ◦ the processes by which board members are informed about and the frequency of board-level discussions regarding climate-related risks;
	  ◦ whether and how the board considers climate-related risks as part of its business strategy, risk management and financial oversight; and
	  ◦ whether and how the board sets climate-related targets or goals and oversees their progress, including the establishment of any interim targets or goals, would also be required to be disclosed.
	• How the registrant's management assesses and manages climate-related risks, including identifying whether certain management positions or committees are responsible for assessing and managing climate-related risks and, if so, the identity of the positions or committees and the relevant expertise of the position holders or committee members, the processes by which the positions or committees are informed about and monitor climate-related risks and whether and how frequently such positions or committees report to the board or a board committee on climate-related risks.

Financial Statement Requirements	The Proposed Rules would amend Regulation S-X to require inclusion of a note to the audited financial statements disclosing, among other things, the financial impacts of physical conditions and transition activities. Disclosure would be required if the absolute value of the impact on any line item was 1% or more of that line item. As part of a registrant's financial statements, these metrics would be subject to audit by an independent registered public accounting firm and would come within the scope of the registrant's internal control over financial reporting.
Reporting	The Proposed Rules would require subject registrants to: • Provide the Regulation S-K mandated climate-related disclosures in a separate, appropriately captioned section of the registration statement or annual report; • Provide the Regulation S-X mandated climate-related financial statement metrics and related disclosure in a note to its consolidated financial statements; and

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	• Electronically tag both narrative and quantitative climate-related disclosures in Inline XBRL.
Attestation Requirement	Accelerated and large accelerated filers would be required to obtain an attestation report from an independent attestation service provider covering, at a minimum, Scopes 1 and 2 emissions disclosures, following the phase-in period discussed earlier in this Summary. Attestation would not be required for Scope 3 emissions disclosure. However, if an attestation on Scope 3 emissions is voluntarily obtained, it would be required to satisfy the same standards as attestation relating to Scope 1 and Scope 2 emissions.
Enforcement; Liability	Disclosures under the Proposed Rules would be treated as "filed" rather than "furnished." Accordingly, disclosure included in the Exchange Act reports would 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 would be subject to liability under Sections 11 and 12(a)(2) of the Securities Act. Scope 3 disclosures would have a safe harbor from liability that would deem those disclosures to not be fraudulent statements unless made or reaffirmed without a reasonable basis or disclosed other than in good faith. To the extent any climate-related disclosures are forward-looking (e.g., goals, reduction targets, transition plans, scenario analysis), such disclosures would be subject to the general safe-harbor protections under the Private Securities Litigation Reform Act (the **"PSLRA"**), assuming all of the requirements for the PSLRA safe-harbor are met. The PSLRA safe harbor does not apply to initial public offerings or tender offers.
Additional Information/Resources	
Proposed Rule	For text of the Proposed Rules, see: https://www.sec.gov/rules/proposed/2022/33-11042.pdf For link to the SEC's Fact Sheet, see: https://www.sec.gov/files/33-11042-fact-sheet.pdf

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Ropes and Gray Resources	Client alerts related to the Proposed Rules: • 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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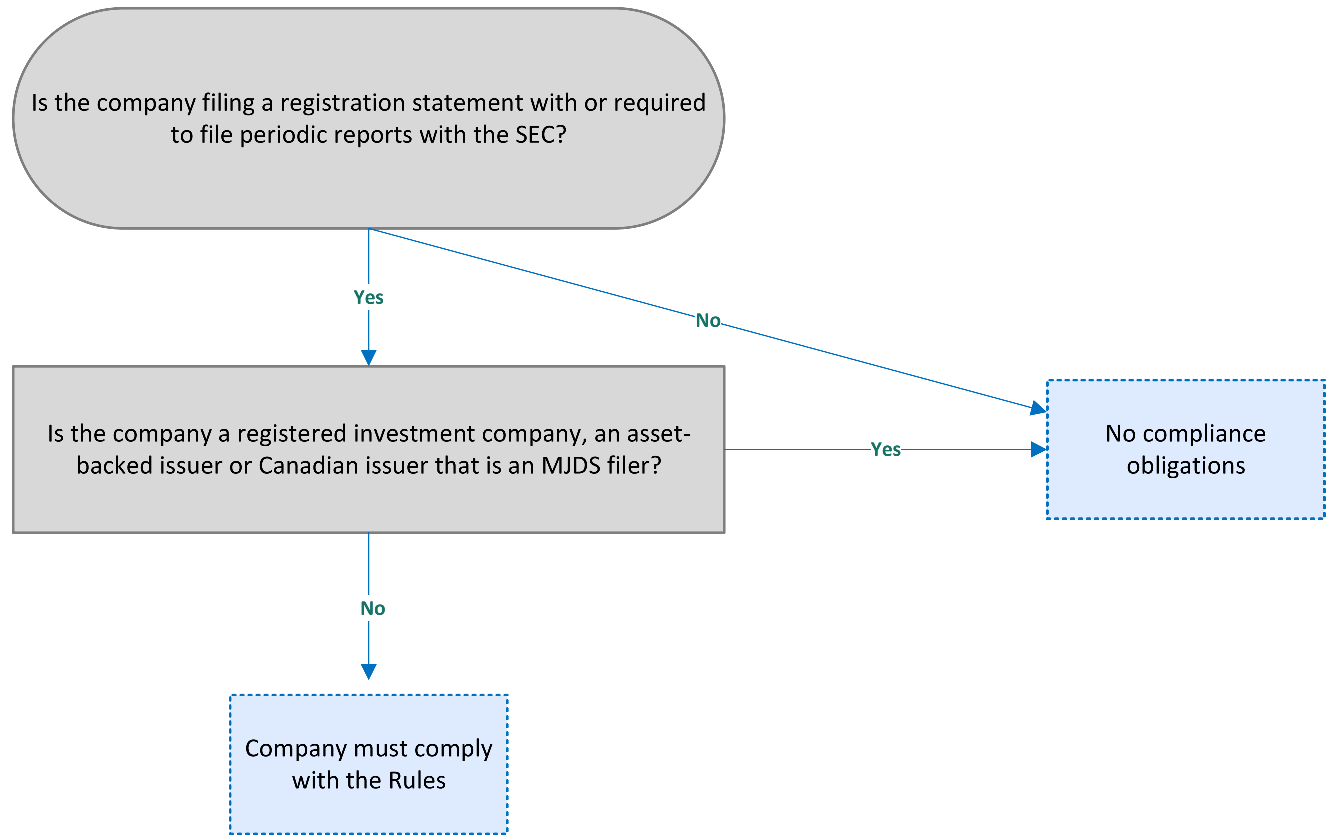

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Federal Supplier Climate Risks and Resilience Rule (Proposed) **United States**	
Overview	
Law / Country	**Federal Supplier Climate Risks and Resilience Rule** (the **"Rule"**) (United States), amending the Federal Acquisition Regulation (the **"FAR"**).
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.
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

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<table>
<tr><td></td><td>

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.</td></tr>
<tr><td colspan="2">How It Works</td></tr>
<tr><td>Mandatory?</td><td>Yes.</td></tr>
<tr><td>Compliance Requirements</td><td>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.</td></tr>
<tr><td>GHG Emissions Inventory</td><td>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.</td></tr>
<tr><td>Annual CDP Climate Change Questionnaire</td><td>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.</td></tr>
</table>

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	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.
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

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	• 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	
Proposed Rule	For text of the 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 and 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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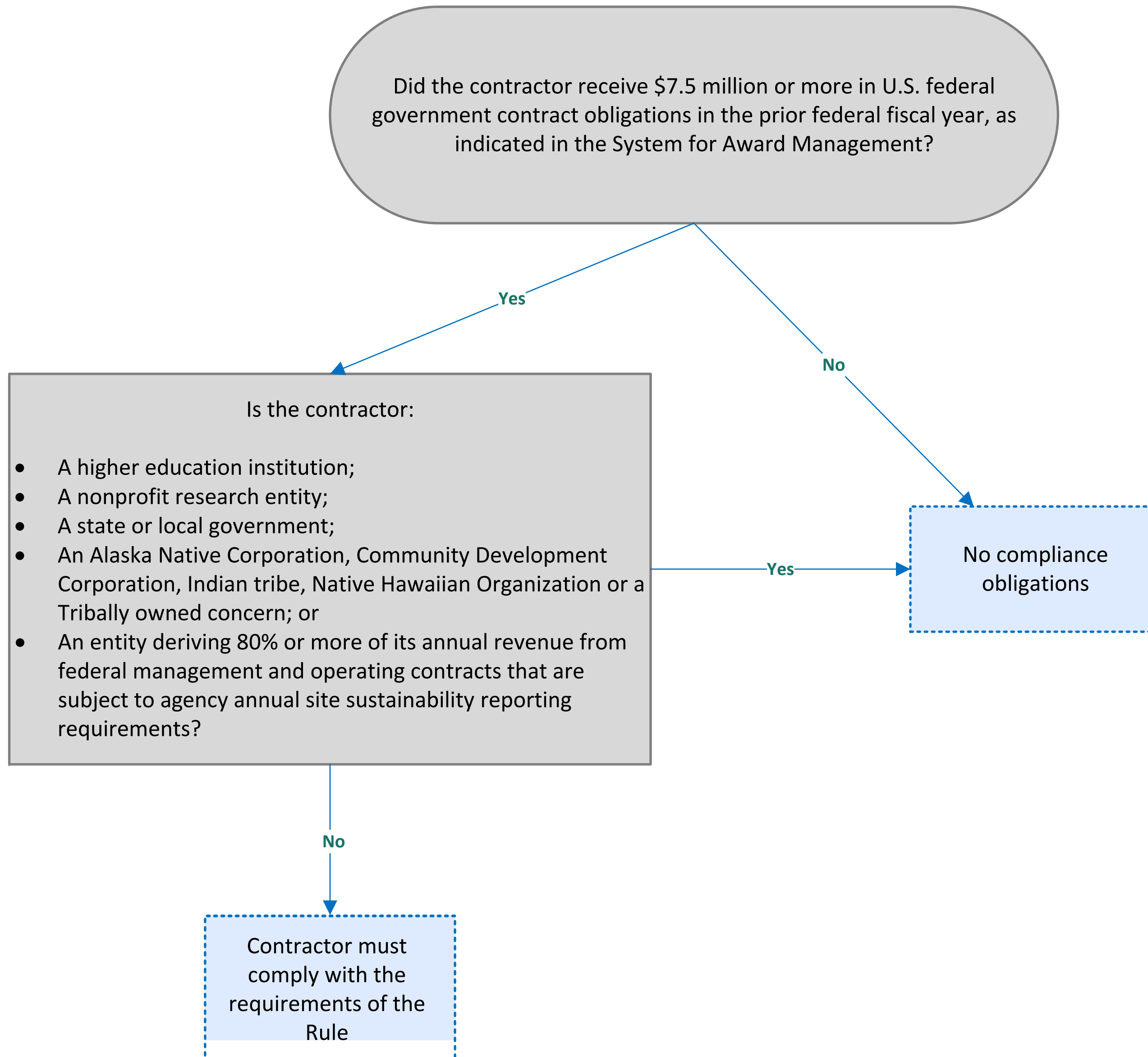

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Climate Corporate Data Accountability Act (Proposed) **California**	
Overview	
Law / State	**Climate Corporate Data Accountability Act** (SB-253) (the **"Act"**) (California, United States)
Goal	Require companies to publicly disclose their greenhouse gas (**"GHG"**) emissions.
Adoption / Status	The Act was introduced in the California Senate on January 30, 2023 as 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. The Act largely replicates the Climate Corporate Accountability Act (SB-260), which failed to pass the California Assembly in 2022.
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 would require 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 registry. Annual reporting would commence in 2026 (on or by a date to be determined by the State Board) for the prior calendar year. The regulations adopted by the State Board may provide up to an additional 180 days for Reporting Entities to make scope 3 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.

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	The disclosures 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.
Third Party Assurance	The Reporting Entity's disclosure would be required to be independently verified by the emissions registry or a third-party auditor approved by the State Board. The Act would require the State Board to establish auditor qualifications and an approval process for auditors. A copy of the complete, audited GHG emissions inventory, including the name of the third-party auditor, would need to be disclosed.
Publication; Emissions Registry	The emissions registry would be a nonprofit registry organization contracted by the State Board. The emissions registry would be required to create a publicly available digital platform to house all disclosures submitted by Reporting Entities. The registry would be required to enable users to review individual Reporting Entity disclosures. The registry also would be required to enable users to analyze underlying data elements aggregated in a variety of ways, such as multi-year data. The emissions registry would 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.
Implementing Regulations	As earlier noted, implementing regulations would be required to be developed by the State Board on or before January 1, 2025. The implementing regulations adopted by the State Board would be 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. The State Board may adopt or update any other regulations that it deems necessary and appropriate to implement the Act.
Enforcement	If the Attorney General finds that a Reporting Entity has violated or is violating the Act, or upon a complaint from the State Board, the Attorney General would be able to bring a civil action against the Reporting Entity and seek civil penalties.
Additional State Board Requirements	On or before July 1, 2027, the State Board would be 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. On or before January 1, 2030, the State Board would be required to review and update the public disclosure deadlines to evaluate trends in scope 3 emissions reporting and to 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.

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Additional Information/Resources	
Law	For the text of the Act, see: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB253
Ropes and Gray Resources	Client alert related to the Act: • 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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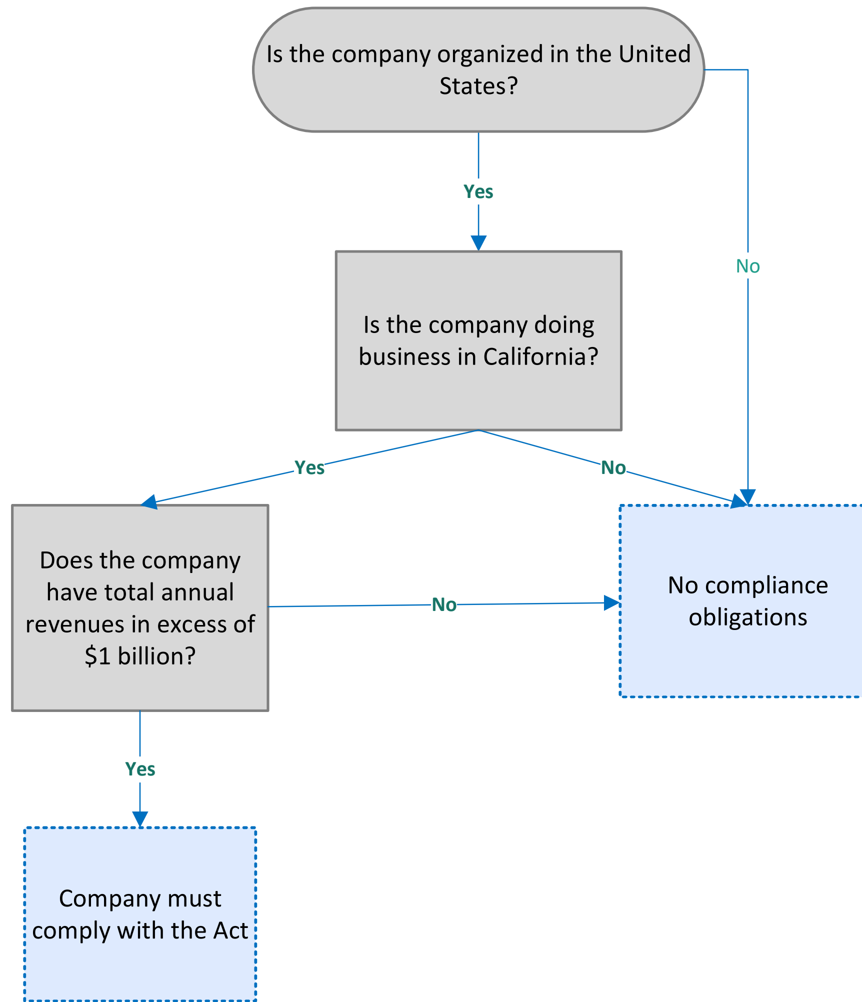

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Climate-Related Financial Risk Act (Proposed)
California

Overview	
Law / State	**Climate-Related Financial Risk Act** (SB-261) (the **“Act”**) (California, United States)
Goal	Require companies to publicly disclose climate-related financial risk.
Adoption / Status	The Act was introduced in the California Senate on January 30, 2023, as 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. The Act replicates the Climate-Related Financial Risk Act (SB-449) from 2022, which failed to pass the California Senate.
Issue Addressed	• Climate change
Covered Entities	U.S.-organized entities that do business in California and have total annual revenues that exceed $500 million (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 would be excluded.
How It Works	
Mandatory?	Yes.
Reporting Requirements	Covered Entities would be required to annually prepare a climate-related financial risk report. The first report would be required to be prepared by December 31, 2024. 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. **“Climate-related financial risk”** would mean 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. • The measures adopted to reduce and adapt to the disclosed climate-related financial risks.
Publication	Reports would be required to be submitted to the State Air Resources Board and made available on the Covered Entity’s website.

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	Covered Entities also would 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.

Climate-Related Risk Disclosure Advisory Group	The Act also would require the establishment of a Climate-Related Risk Disclosure Advisory Group. Under the Act, its duties would include:
	• Collecting and reviewing climate-related financial risk reports received in the prior calendar year;
	• Annually preparing a public report that contains:
	  ○ A review of the disclosure of climate-related financial risk contained in climate-related financial risk reports;
	  ○ 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;
	  ○ Identification of inadequate or insufficient reports; and
	  ○ Proposals for regulatory actions, policies or reforms needed to mitigate climate-related financial risks, including, but not limited to, legislative recommendations in order to implement current best practices regarding the disclosure of financial risks resulting from climate change;
	• Regularly convening representatives of sectors responsible for reporting climate-related financial risks, state agencies responsible for oversight of reporting sectors, investment managers, academic experts 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.

Additional Information/Resources	
Law	For the text of the Act, see: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB261
Ropes and Gray Resources	Client alerts related to the Act: • 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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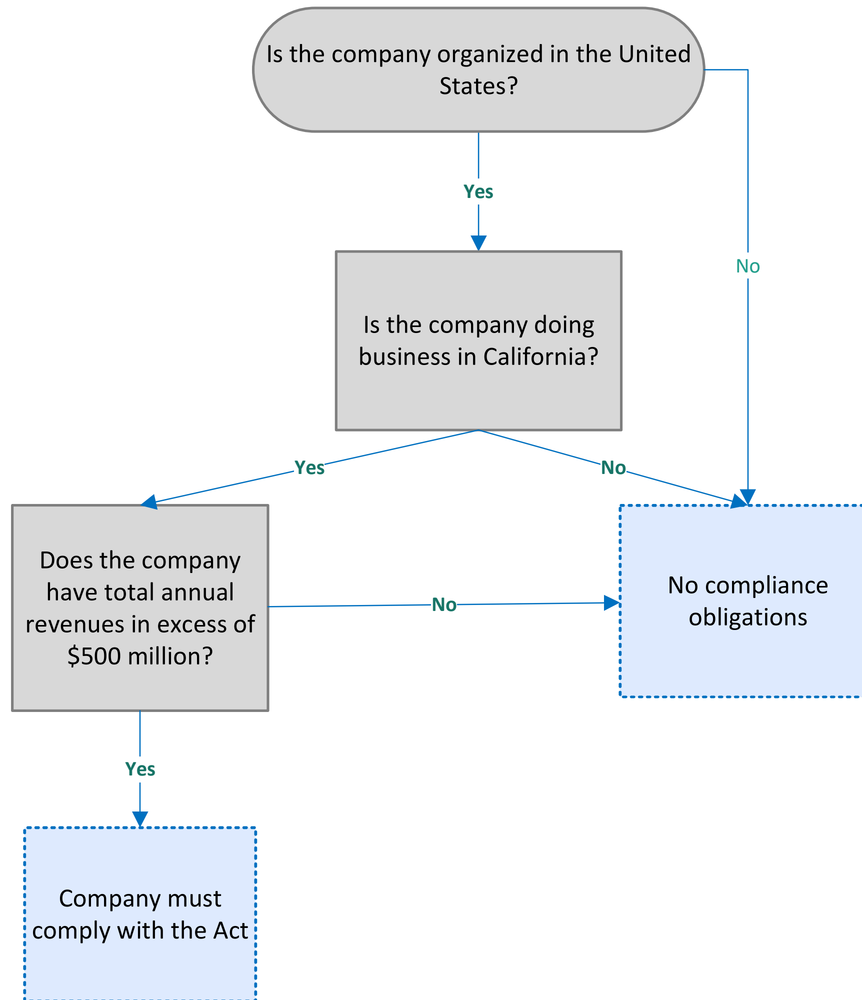

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Climate Corporate Accountability Act (Proposed) New York	
Overview	
Law / State	**Climate Corporate Accountability Act** (S897) (the **"Act"**) (New York, United States)
Goal	Require companies to publicly disclose their greenhouse gas (**"GHG"**) emissions.
Adoption / Status	Introduced by Senator Hoylman to the New York Senate on January 9, 2023. 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

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	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 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 or a third-party auditor approved by the Department, with expertise in GHG emissions accounting.
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 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 proposed Act, see: https://legislation.nysenate.gov/pdf/bills/2023/s897

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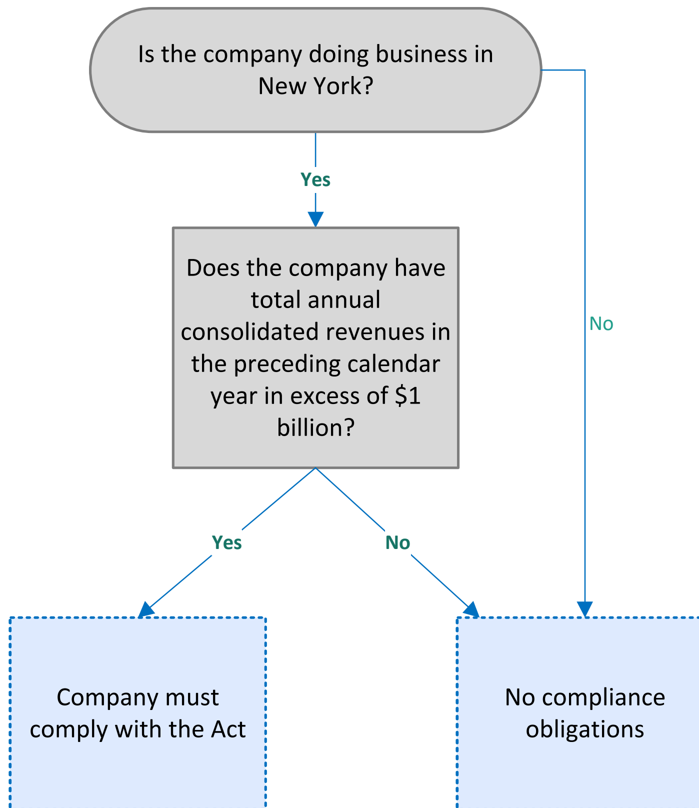

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Environment Act – Use of Forest Risk Commodities in Commercial Activity (Pending) **United Kingdom**	
Overview	
Law / Country	**Environment Act 2021 – Schedule 17, Use of Forest Risk Commodities in Commercial Activity** (the "**Act**") (United Kingdom)
Goal	To protect forests.
Adoption / Status	The Act was adopted on November 9, 2021; a Second Consultation closed on March 11, 2022; the U.K. Department for Environment, Food & Rural Affairs (**"Defra"**) issued a summary of public responses and government responses from this consultation in June 2022. This consultation will inform secondary legislation and accompanying guidance detailing due diligence and reporting obligations, as well as enforcement, civil sanctions, and criminal offences for breach.
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. During the consultation, Defra sought feedback on a proposal to consider seven commodities for initial inclusion: cattle (beef and leather), cocoa, coffee, maize, palm oil, rubber and soy. The consultation contemplated a phased approach to introducing these commodities to preserve the opportunity to extend the range of commodities captured through secondary legislation, including those commodities which may become key drivers of deforestation in the future. The consultation produced a wide range of responses as to which commodities should be included in the secondary legislation. Defra noted it would consider the wide range of responses to inform the design of the secondary legislation.
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.

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	"**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). The consultation focused on larger businesses with greater influence on forest risk commodity supply chains in order to have the greatest impact on addressing illegal deforestation while minimizing the regulatory burden on smaller businesses. To align with these goals, Defra asked for feedback on three turnover thresholds - £50, £100 and £200 million. In the consultation, Defra sought input on two metrics to regulate the U.K. operations of businesses that are based outside of the United Kingdom: (1) turnover related to U.K. activity; and (2) global turnover. Based on feedback received during the consultation, Defra has noted it will align the definition of turnover in secondary regulations 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.

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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. The consultation asked for input on four specific thresholds for each of the enumerated priority commodities – one, 10, 100 and 1,000 tons. The consultation also asked whether the U.K. government should set a single exemption threshold for each regulated forest risk commodity, combining raw commodity use with derived commodity use. In addition, it asked whether businesses should be able to use conversion factors to estimate the volumes of commodities used in the supply chain to understand whether they can be exempt from due diligence and reporting requirements. Based on feedback received during the consultation, Defra plans to set exemption thresholds in the secondary legislation that allow them to be tailored to each regulated commodity. Defra will consider views received through the consultation on how the exemption threshold should be set, methodologies that may be used to calculate volumes, factors to consider when setting the exemption threshold and the level at which the threshold should be set for each regulated forest risk commodity.
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.

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	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. 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. Defra noted in its responses to the consultation that, in drafting the secondary legislation, it would consider respondents' views on enforcement criteria and the maximum variable monetary penalty.
Additional Information/Resources	
Act	For the text of the Act, see: https://www.legislation.gov.uk/ukpga/2021/30
Defra Consultation Response	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
Ropes and Gray Resources	Client alerts related to the Act: • 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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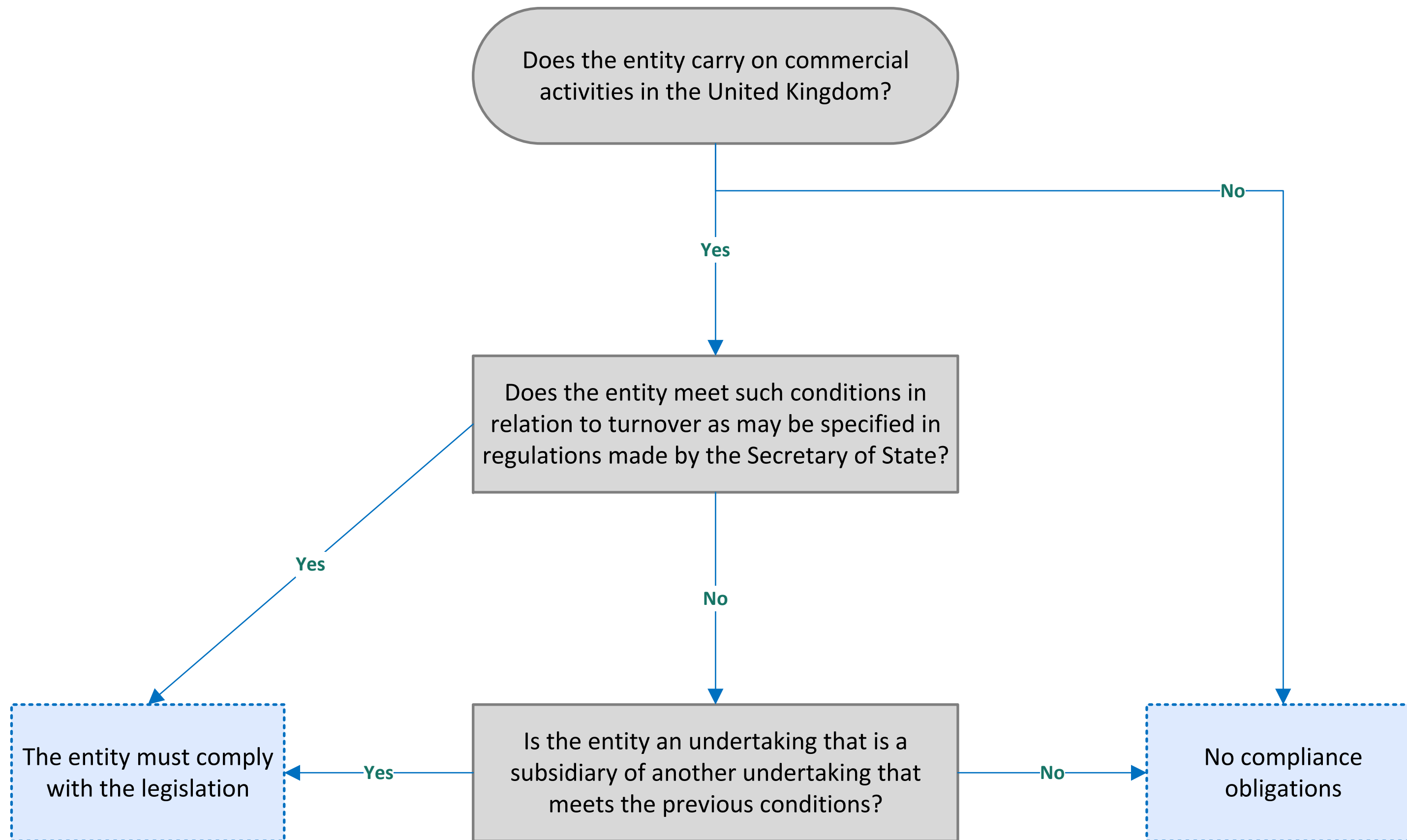

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Deforestation-Free Procurement Act **New York**	
Overview	
Law / Country	**Deforestation-Free Procurement Act** (the **"Act"**) (New York)
Goal	To protect forests.
Adoption / Status	Introduced in the New York Senate and Assembly on March 23, 2021; currently sitting with the Rules Committee in the New York State Senate.
Issue Addressed	• Deforestation • Forest degradation
Covered Entities	Contractors with the State of New York who enter into, extend, or renew a contract on or after January 1, 2024 that includes the procurement of any product comprised wholly or in part of a forest-risk commodity. A **"contractor"** would be any person or entity that has a contract with a state agency or state authority for public works or improvements to be performed for a franchise, concession or lease of property, for grant monies of goods and services or supplies to be purchased at the expense of the agency or authority or to be paid out of monies deposited in the treasury or out of trust monies under the control or collected by the agency or authority.
Covered Commodities	A **"forest-risk commodity"** would mean any commodity, excluding tropical hardwood and tropical wood products (as defined in the Act), whether in raw or processed form, that is commonly extracted from, or grown, derived, harvested, reared, or produced on land where tropical or boreal deforestation or intact forest degradation has occurred or is likely to occur. Forest-risk commodities would include palm oil, soy, beef, coffee, wood pulp, paper, logs, lumber, and any additional commodities defined by the Commissioner of the Office of General Services (the **"OGS Commissioner"**). The list of commodities would be required to be reviewed and updated at least every three years. The first review would be required to include at least cocoa, rubber, leather and other cattle-derived products. **"Deforestation"** would mean direct human-induced conversion of tropical or boreal forest to agriculture, a tree plantation, or other non-forest land use. **"Intact Forest Degradation"** would mean severe and sustained degradation of a tropical forest or a boreal forest resulting in significant intact forest loss and/or a profound change in species composition, structure, or ecological function of that forest.
How It Works	
Mandatory?	Yes.
Contractor Certification Requirements	Every contract entered into by a state agency or authority that includes the procurement of any product comprised wholly or in part of a forest-risk commodity would require that the contractor certify that the forest-risk commodity was not extracted

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	from, grown, derived, harvested, reared, or produced on land where tropical or boreal deforestation or intact forest degradation occurred on or after January 1, 2022. See the exceptions described below in this Summary. Also see below in this Summary for additional certification requirements applicable to Large Contractors (as later defined). The contractual certification requirements would not apply to a credit card purchase of goods of $2,500 or less, so long as the total amount of goods exempted does not exceed $7,500 per year for each contractor from which a state agency or authority is purchasing goods by credit card.
Due Diligence Requirements	Contractors would be required to exercise due diligence in ensuring that their subcontractors comply with the sourcing requirements of the Act and would be required to obtain a certification from each subcontractor that the subcontractor is in compliance with the sourcing requirements of the Act.
Additional Certification and Reporting Requirements for "Large Contractors"	Any contractor whose annual revenue, or that of their parent company, is greater than or equal to $100 million (a **"Large Contractor"**) generally would be required to certify that they have adopted a forest policy that complies with regulations issued by the OGS Commissioner pursuant to the Act. The forest policy and all corresponding data would be required to be made publicly available and to contain, at a minimum: • Due diligence measures to identify the point-of-origin of forest-risk commodities and ensure compliance with the policy where 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 companies, and farmers, maps, and geo-locations, for each forest-risk commodity found in products that may be furnished to the state; • Measures taken to ensure the product does not contribute to tropical or boreal deforestation or intact forest degradation, including (i) no development of tropical or boreal intact forests, and that the product does not originate from a site where commodity products have replaced intact tropical or boreal forest after January 1, 2022, (ii) no development of high carbon stock forests, (iii) no development of high conservation value areas, (iv) no burning, (v) efforts to ensure progressive reductions of GHG emissions on existing plantations, (vi) no development on peat, regardless of depth, (vii) best management practices for existing plantations on peat, and (viii) where feasible, activities oriented towards peat restoration. • Measures taken to prevent exploitation and redress grievances of workers and local communities, including (i) respect for and recognition of the rights of all workers, including contract, temporary and migrant workers, (ii) respect for and recognition of land tenure rights of communities, (iii) respect for the rights of indigenous and local communities to give or withhold their free, prior, and informed consent to operations on lands to which they hold legal, communal or customary rights, (iv) explicit policies and processes to prevent violence, intimidation and coercion of workers and local communities and (v) formal, open, transparent and consultative processes to address and redress all complaints and conflicts. • Measures taken to protect biodiversity and prevent the poaching of endangered species in all operations and adjacent areas;

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	• Measures taken to ensure compliance with the laws of countries where forest-risk commodities in a company's supply chain were produced; and • Measures to deter violence, threats, and harassment against environmental human rights defenders (**"EHRDs"**), including respecting internationally recognized human rights standards, and educating employees, contractors, and partners on the rights of EHRDs to express their views, conduct peaceful protests, and criticize practices without intimidation or retaliation.
Implementation; Deforestation-Free Code of Conduct	The OGS Commissioner would be required to issue regulations for the implementation of the Act, including (1) an easily accessible procedure to take public complaints regarding violations, and (2) on or before July 1, 2023, in consultation with the Commissioner of the Department of Environmental Conservation and a stakeholder advisory group to be established under the Act (the **"Stakeholder Advisory Group"**), issuing an informational notice or memorandum on a Deforestation-Free Code of Conduct to be used by contractors for the purposes of complying with the requirements of the Act. The Deforestation-Free Code of Conduct would be required to include, at a minimum: • A list of forest-risk commodities subject to the requirements of the Act (to be reviewed and updated every three years); • A list of products derived wholly or in part from forest-risk commodities; • A list of products furnished to the state or used by state contractors in high-volume purchases that contain or are comprised of forest-risk commodities; • A set of responsible sourcing guidelines and policies derived from best practices in supply chain transparency to the point-of-origin; • Guidance to assist contractors in identifying forest-risk commodities in their supply chain and certifying that the commodities did not contribute to tropical or boreal deforestation or intact forest degradation; • A list of favored suppliers of forest-risk commodities and products derived therefrom whose products have been determined to meet the requirements of the Act; • The process through which contractors certify to the Office of General Services that they are in compliance the Act; • A process for ensuring that details of certified contracts are made available for public inspection on the website of the Office of General Services; and • An easily accessible procedure to receive public complaints and information regarding violations of the Act.
Other Contractor Requirements	The contract would be required to further specify that the contractor is required to cooperate fully in providing reasonable access to the contractor's records, documents, agents, employees, or premises if reasonably required by authorized officials of the contracting agency or authority, the Office of General Services, the Office of the Attorney General, the Department of Environmental Conservation, or the Stakeholder Advisory Group to determine the contractor's compliance with the sourcing requirements of the Act.
Exceptions	The provisions of the Act would not apply (1) to any binding contractual obligations for the purchase of commodities entered into prior to August 25, 1991, or (2) when the inclusion or application of such provisions will violate or be inconsistent with the

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<table>
<tr><td></td><td>terms or conditions of a grant, subvention or contract with an agency of the United States or the institutions of an authorized representative of any such agency with respect to any such grant, subvention or contract.</td></tr>
<tr><td>Stakeholder Advisory Group</td><td>The OGS Commissioner would be required to convene and consult the Stakeholder Advisory Group on the creation of regulations and would be required to exercise an oversight role over the Stakeholder Advisory Group. The Office of General Services would further be required to submit the details of all certified contracts to the Stakeholder Advisory Group. The Stakeholder Advisory Group would then be required to assess the compliance of all or a representative subset of all contracts with the Act and, subject to approval by a majority of members, may:
Make recommendations to the OGS Commissioner regarding changes to the regulations; or
Make recommendations to the OGS Commissioner, the Office of the Attorney General, the Office of the State Comptroller or a contracting agency or authority regarding deficiencies in contract certifications, violations of the Act and/or enforcement actions.
Members of the Stakeholder Advisory Group would be required to consist of at least:
Representatives of current or former state contractors dealing in each of the forest-risk commodities specified in the Act, with an emphasis on small and medium-sized businesses;
Representatives from civil society with relevant expertise in supply chain traceability, tropical and boreal forest sustainability, biodiversity, climate science, human and labor rights, and indigenous rights (the number of representatives from civil society would be required to be at least equal to the number of representatives of current or former state contractors); and
A minimum of two additional representatives from indigenous communities within the geographic areas containing tropical and boreal forests.</td></tr>
<tr><td>Enforcement and Penalties</td><td>Any contractor who knew or should have known that a product was comprised wholly or in part of a forest-risk commodity furnished to the state in violation of the Act would potentially have either or both of the following sanctions imposed (subject to notice and a cure period):
The corresponding contract would be voidable at the option of the state agency or authority to which the commodity was furnished.
The contractor could be assessed a penalty amounting to the greater of (1) $1,000 or (2) 20% of the value of the product that the state agency or authority demonstrates was comprised wholly or in part of a forest-risk commodity and furnished to the state in violation of the Act.
If the contractor had no knowledge of a violation committed solely by a subcontractor and otherwise complied with the subcontractor-related obligations described in this Summary, sanctions would be imposed only against the subcontractor.</td></tr>
</table>

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Additional Information/Resources	
Bill	For the text of the Bill and status updates, see: https://www.nysenate.gov/legislation/bills/2021/S5921#:~:text=S5921A%20(ACTIVE)%20%2D%20Summary,or%20through%20their%20supply%20chains.
Ropes and Gray Resources	Client alerts related to the Act: • 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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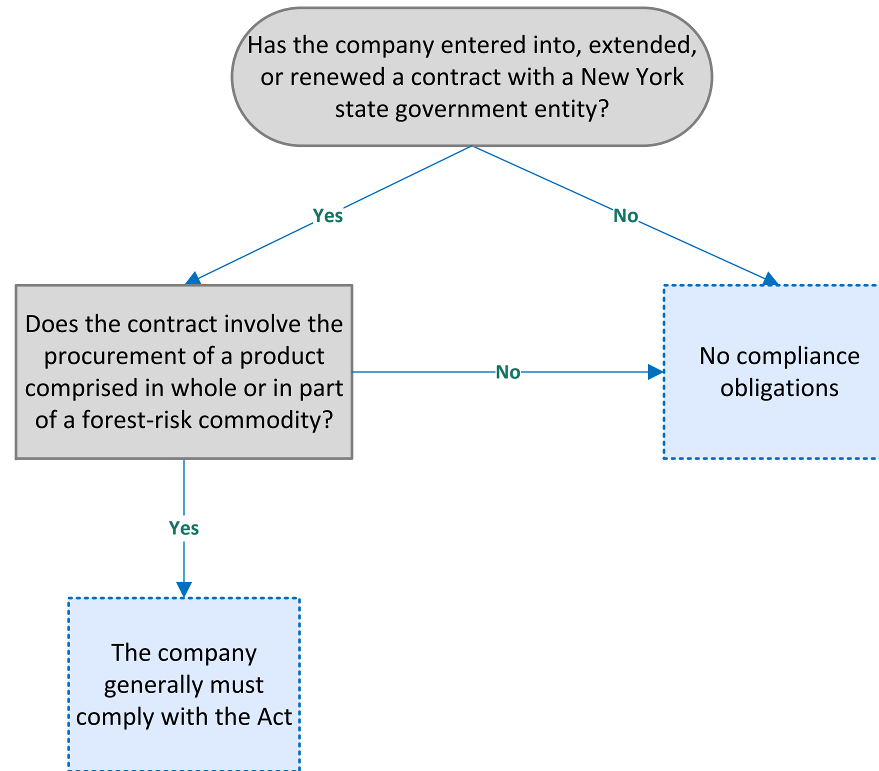

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Fostering Overseas Rule of law and Environmentally Sound Trade Act (FOREST Act) (Proposed) **United States**	
Overview	
Law / Country	**Fostering Overseas Rule of law and Environmentally Sound Trade Act** (the **"Act"**) (United States) (Proposed)
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	The Act was introduced in the United States Senate on October 6, 2021 and the United States House of Representatives on October 8, 2021.
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; • Rubber; and • Wood pulp. 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 no material amount of a commodity produced from illegally deforested land enters the United States. 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 from land that undergoes illegal deforestation on or after the date of enactment of the Act. **"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.

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	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 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 from 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, U.S. Customs and Border Protection would be required to publish guidance on what constitutes reasonable care for purposes of this portion of the Act. The Administrator of the Animal and Plant Health Inspection Service, 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 caused by 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. Within three years after the enactment of the Act, the Trade Representative would be required to finalize an action plan for each listed country, identifying the specific at-risk covered commodities. 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.

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	The ***"point of origin of a covered commodity"*** would be the geographical location, identified by the smallest administrative unit of land 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, CBP also would be required to publish guidance on what constitutes sufficient information for purposes of this portion of the Act. CBP 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).
Preferential Treatment in U.S. Government Procurement; Deforestation Policy	The Act would provide preferential treatment to contractors that have a policy to address deforestation and are taking other related steps. 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, 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 the following: • Measures to identify the point of origin of forest-risk commodities 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 each forest-risk commodity found in products that may be furnished to the U.S. federal government; • Measures taken to ensure that each applicable commodity does not contribute to deforestation; • Measures taken to ensure the process of obtaining the free, prior and informed consent of indigenous peoples and local communities directly affected by the production of the covered commodities; • Measures taken to protect biodiversity and prevent the poaching of wildlife and trade in bushmeat in all operations and areas adjacent to the production of the covered commodities; and

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	• Measures taken to ensure compliance with the laws of countries where forest-risk commodities in the supply chain of the contractor are 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.
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 S.2950 at: https://www.govinfo.gov/content/pkg/BILLS-117s2950is/pdf/BILLS-117s2950is.pdf and H.R.5508 at https://www.govinfo.gov/content/pkg/BILLS-117hr5508ih/pdf/BILLS-117hr5508ih.pdf
Rope and Gray Resources	Client alert related to the Act: • 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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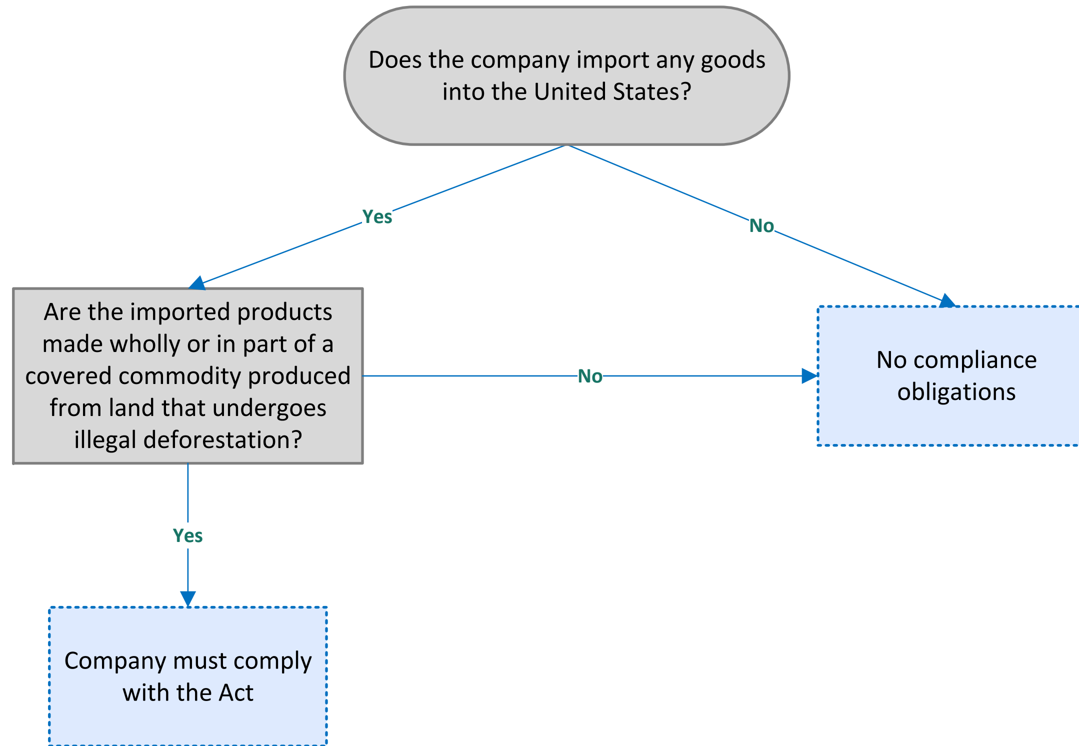

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Deforestation Regulation (Proposed) European Union	
Overview	
Law / Country	**Deforestation Regulation** (the **"Regulation"**) (European Union)
Goal	To protect forests and reduce greenhouse gas emissions and global biodiversity loss.
Adoption / Status	Proposed by the EU Commission on November 17, 2021. The Council of the European Union adopted and released its General Approach for the Regulation on June 28, 2022. On September 12, 2022, the European Parliament adopted and released its own position on the Regulation. On December 6, 2022, the European Council and Parliament reached a provisional agreement for the Regulation, the text of which has not yet been released. For purposes of this Summary, we have noted in *italics* selected provisions that may not be part of the final Regulation, based on public commentary. The European Parliament and Council must formally adopt the new Regulation before it can enter into force.
Issue Addressed	• Deforestation • Forest degradation
Covered Entities	**"Operators,"** which would be natural or legal persons who, in the course of a commercial activity, place (i.e., first make available) relevant commodities and products on the EU market or export them from the EU market. If a person established outside the European Union places relevant commodities and products on the EU market, the first person established in the European Union who buys or takes possession of the commodities and products would be considered an operator. **"Traders,"** which would be natural or legal persons who, in the course of a commercial activity, make available on the EU market relevant commodities or products. Note: Traders that are not small and medium-sized enterprises (**"SMEs"**) would be considered operators for the purposes of the Regulation. However, traders which are SMEs would only be subject to minimal record-keeping requirements and duties to inform the authorities of information regarding non-compliance, as discussed below. ***"Financial institutions,"*** *which would include all banking, investment and insurance activities of such institutions, headquartered or operating in the European Union that provide financial services to natural or legal persons whose economic activities consist of, or are linked to, the production, supply, placing on or export from the EU market of relevant commodities and products. If a financial institution had an established, ongoing business relationship with a customer prior to the Regulation's effective date, the financial institution would need to complete its relevant due diligence within the first year after the Regulation takes effect.*
Covered Commodities and Products	**"Relevant commodities"** would be defined as cattle, cocoa, coffee, palm oil, soya, wood and rubber that were produced on or after the twentieth day following the Regulation's publication in the Official Journal of the European Union.

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	"Relevant products" would be those that contain, have been fed with or have been made using relevant commodities, such as chocolate, beef, furniture, charcoal, printed paper and select palm-oil based derivatives. The full list of relevant products will be listed in Annex I of the Regulation. The Regulation contemplates a potential expansion to include additional ecosystems and commodities. As proposed, no later than two years after the Regulation enters into force, the Commission would be required to carry out a first review focused on evaluating the need and feasibility of extending 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. The Commission would also be required to review the Annex of relevant products at regular intervals to assess whether it is appropriate to amend or extend the list.
How It Works	
Mandatory?	Yes.
Due Diligence Requirements; Due Diligence Statement	Prior to placing relevant commodities on the EU market or exporting them, operators *and financial institutions* would be required to conduct due diligence to confirm that the commodities or products (1) are deforestation-free, (2) have been produced in accordance with the relevant legislation of the country of production, *including human rights legislation,* and (3) are covered by a due diligence statement. To fulfil due diligence obligations, operators would be required to trace the commodities/products they sell back to the plot of land where the commodities/products were produced. **"Deforestation-free"** would mean (1) the relevant commodities and products were produced on land that was not subject to deforestation after December 31, 2020, and (2) the wood was harvested from the forest without inducing forest degradation after December 31, 2020. **"Forest degradation"** would be 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. This due diligence process would include (1) the collection of information and documents, (2) risk assessment measures, and (3) risk mitigation measures. If, as a result of its due diligence, an operator concludes that the relevant commodities and products are compliant, the operator would be required to furnish a due diligence statement to the competent Member State authorities confirming that due diligence was carried out and no or only negligible risk was found. The due diligence statement would be submitted and accessible through an online Register to be established by the European Commission.
Information and Document Collection	Operators would be required to collect, organize, and keep information, documents and data demonstrating that the relevant commodities and products are compliant for at least five years. This would include: • A description, including the trade name and type, of relevant commodities and products, as well as, where applicable, the common name of the species and its full scientific name;

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- The quantity (expressed in net mass and volume, or number of units) of the relevant commodities and products;
- The country of production;
- The geo-localization coordinates (*i.e.*, latitude and longitude) of all plots of land where the relevant commodities and products were produced and the date or time range of production;
- The name, email and address of any business or person from whom they have been supplied with the relevant commodities or products;
- The name, email and address of any business or person to whom the relevant commodities or products have been supplied;
- Adequate and verifiable information that the relevant commodities and products are deforestation-free; and
- Adequate and verifiable information that the production has been conducted 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 which are SMEs would be required to collect and keep the following information relating to the relevant commodities and 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 commodities and products to them; 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 commodities and products. They would additionally be required to maintain this information for at least five years, provide it to the competent authorities upon request and inform the competent authorities in the Member State in which they made the relevant commodity or product available on the market.

*A financial institution would only be allowed to provide financial services to a customer if it concludes that there is no more than a negligible risk that the services potentially provide support directly or indirectly to activities leading to deforestation, forest degradation or forest conversion. "**Negligible Risk**" would mean the level of risk that applies to relevant commodities and products to be placed on, or exported from, the European Union that shows no cause for concern on grounds of a full assessment of both product-specific and general information on compliance with the Regulation's prohibitions and the application of the appropriate mitigation measures. Due diligence for financial institutions would include:*

- *The collection of information, documents and data demonstrating the provision of financial services to customers complies with the Regulation's prohibition, specifically:*
  - *A description of (1) the customer's economic activities, (2) the activities of entities controlled by the customer and (3) the economic activities of the customer's suppliers;*
  - *Use of relevant commodities and products (for the foregoing activities), including information on the relevant commodities and products effectively used and on the related exercise of due diligence;*
  - *Policies adopted and implemented by the customer and the foregoing entities and suppliers to ensure their activities do not cause deforestation, forest degradation or forest conversion;*

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Information on the relevant commodities and products placed on, made available on or exported from the EU market and on the related exercise of due diligence; and
Identification of the country of production and geo-localization coordinates, latitude and longitude of all plots of land where the relevant commodities and products are to be produced.

Risk assessment and mitigation measures.

</td></tr>
<tr><td>Risk Assessment Measures</td><td>Operators generally would be required to carry out a risk assessment to establish whether there is a risk that the relevant commodities and products intended to be placed on the EU market or exported from the EU are non-compliant with the requirements of the Regulation. Operators would not be permitted to place the relevant commodity or product on the EU market, or export it from the EU market, if they are unable to prove that the risk is negligible. The risk assessment criteria would include:

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;
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, 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, in particular difficulties in connecting commodities and/or products to the plot of land where they were produced;
The risk of mixing with products of unknown origin or produced in areas where deforestation or forest degradation has occurred or is occurring;
The conclusions of the European Commission expert group meetings published in the European Commission’s expert group register;
Substantiated concerns submitted by third parties; and
Complementary information on compliance, which may include information supplied by certification or other third-party-verified schemes.

</td></tr>
<tr><td>Risk Mitigation Measures</td><td>Operators generally would be required to adopt policies, controls, and procedures to mitigate and manage risks of non-compliance. Risk mitigation tactics would be required to include:

Model risk management practices, reporting, record-keeping, internal control and compliance management, and, for operators which 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 referred to in for all operators that are not SMEs.

</td></tr>
</table>

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Simplified Due Diligence; Low Risk Countries	An operator would not be required to fulfil the risk assessment and risk mitigation requirements described above if the relevant commodities and 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 commodities and 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 would establish a three-tier benchmarking system for assessing geographic risk. The benchmarking system would classify all countries (or parts thereof) as low, standard or high risk with regard to deforestation and forest degradation. Countries would need to be classified within 18 months of the Regulation entering into force. The risk category would determine the level of specific obligations for operators. The European Commission would be authorized to prepare and periodically update a list of countries or subnational jurisdictions that present a low or high risk of producing relevant commodities or products that are not deforestation- and forest degradation-free.
Public Reporting	Operators which are not SMEs would be required to publicly report as widely as possible on their diligence system, including the steps taken to implement their obligations under the Regulation. Reporting would be required to be conducted on an annual basis. To avoid duplicative reporting, the Regulation would consider other EU reporting regimes. Reporting under the Regulation would not be required to the extent that other EU legislative instruments already provide for requirements regarding sustainability value chain due diligence. Operators already required to report under these other instruments would be able to fulfill their public reporting obligations under the Regulation by including the required information in their other reports.
Enforcement; Customs Procedures	Member States would be responsible for designating one or more competent authorities responsible for carrying out the obligations arising from the Regulation. Such obligations include drawing up and enforcing inspection/monitoring plans using a risk-based approach, considering the risk level assigned through the country benchmarking system. Each Member State would be required to ensure that the annual checks carried out by their competent authorities cover at least 5% of the operators placing, making available on or exporting the relevant commodities and products from the EU market as well as 5% of the quantity of the relevant commodities placed or made available on or exported from their market. Checks on operators would be required to include: • Examination of the due diligence system, including risk assessment and risk mitigation procedures; • Examination of documentation and records that demonstrate the proper functioning of the due diligence system; • Examination of documentation and records that demonstrate the compliance of a specific product or commodity that the operator has placed, intends to place on or export from the EU market with the requirements of the Regulation; and • Examination of due diligence statements. In addition, where appropriate, the checks would be required to 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;

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	• Any technical and scientific means adequate to determine the exact place where the relevant commodity or product was produced, including isotope testing; • Any technical and scientific means adequate to determine whether the relevant commodity or product are deforestation-free, including Earth observation data such as from Copernicus program and tools; and • Spot checks, including field audits, including where appropriate in third countries through cooperation with the administrative authorities of those countries. Member State authorities would be required 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 would have to perform checks on 9% of the total volume of each of the relevant commodities and products placed, made available on or exported from their market. For traders that are SMEs, the checks would 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 Member State competent authority determines that an operator or trader has not complied with its obligations under the Regulation or that a relevant commodity or product is not compliant, it would be 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 commodity or product from being placed, made available on or exported from the EU market; • Withdrawing or recalling the relevant commodity or product immediately; and/or • Destroying the relevant commodity or product or donating it to charitable or public interest purposes. Member States would also be required to establish effective, proportionate and dissuasive penalties for violations or infringements. At a minimum, penalties would be required to include: • Fines proportionate to the environmental damage and the value of the relevant commodities or 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 commodities and products; • Confiscation of the operator's and/or trader's revenues from a transaction with the relevant commodities and products; and • Temporary exclusion from public procurement processes and access to public funding.
Worldwide Forest Platform	*The European Commission would establish a platform, using satellite imagery (including Copernicus Sentinel), covering the forest areas worldwide, and featuring tools to enable all parties to quickly move towards no-deforestation across supply chains. The platform would be required to include the following:*

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	• *Thematic maps, including a land cover map with time series following December 31, 2019 and a range of classes that allow for the examination of landscape composition.* • *An alert system, relying upon a monthly monitoring of forest cover change.* • *A range of analyses and user-friendly and secured outputs that depict how supply chains are linked to deforestation.* *The platform would be required to made available to Member State authorities, interested third countries' authorities, operators and traders.*
Additional Information/Resources	
Draft Regulation	For the text of the draft Regulation, see: https://ec.europa.eu/environment/publications/proposal-regulation-deforestation-free-products_en For the text of the European Parliament's amendments to the draft Regulation, see https://www.europarl.europa.eu/doceo/document/TA-9-2022-0311_EN.pdf
Ropes and Gray Resources	Client alerts related to the Regulation: • 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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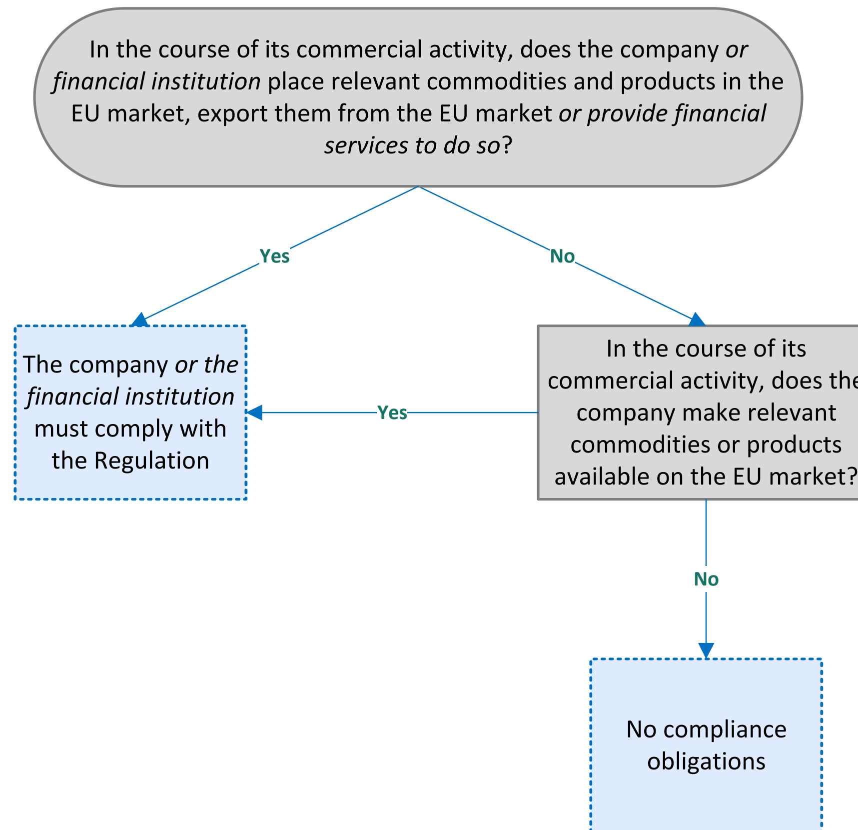

*For purposes of this Chart, we have noted in *italics* selected provisions that may not be part of the final Regulation, based on public commentary.

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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 section 135 of the Act 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;

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	• 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

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	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.

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Additional Information/Resources	
Text of Section 135	For the text of the Law, see: https://www.mca.gov.in/SearchableActs/Section135.htm 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 and 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

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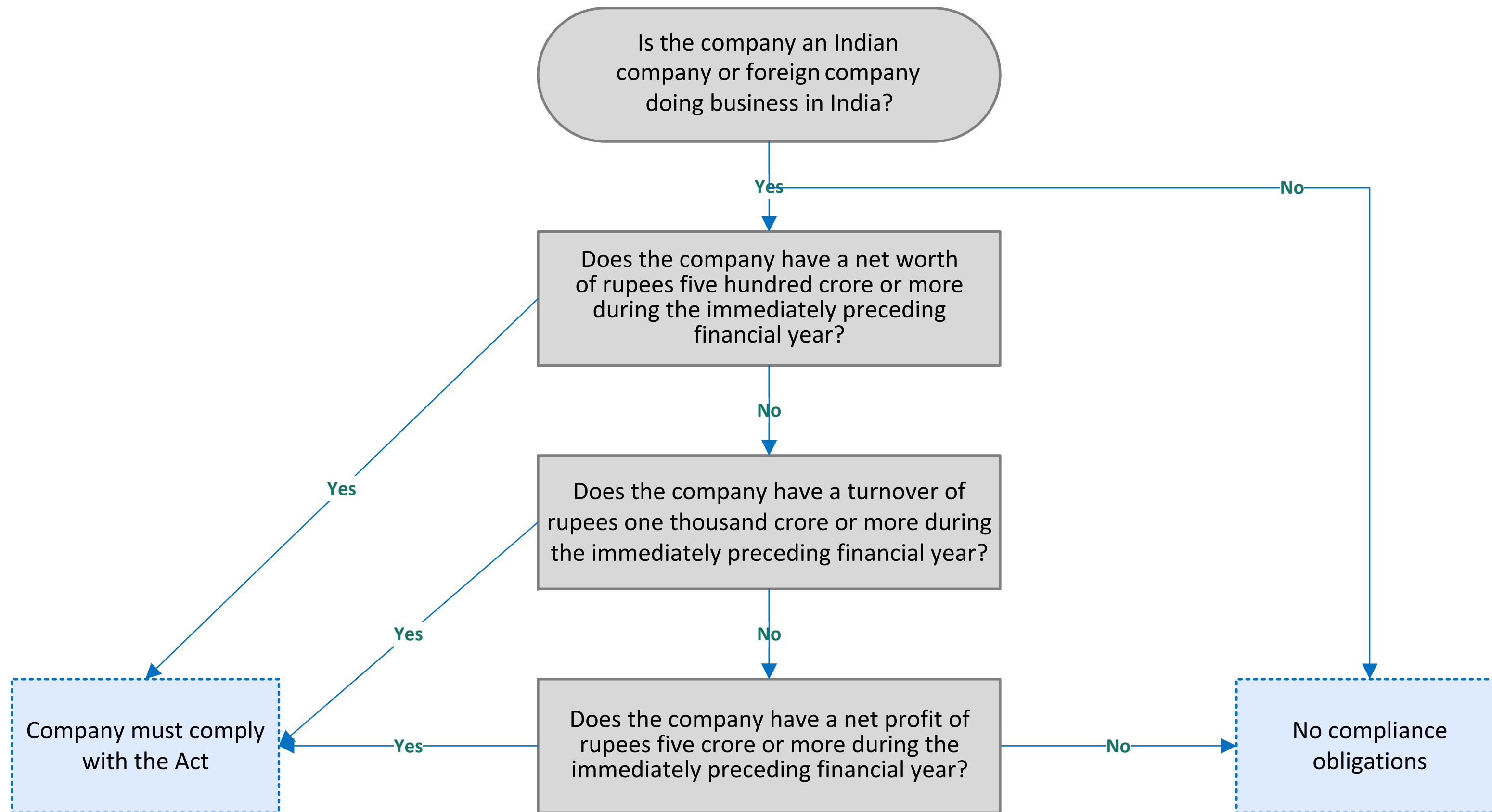

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Child Labor Due Diligence Act (Pending) **Netherlands**	
Overview	
Law / Country	**Child Labor Due Diligence Act** (No. 34 506) (the **"Act"**) (Netherlands)
Goal	To reduce child labor in the supply chain.
Adoption / Status	The Dutch Parliament adopted 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:

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	• 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

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	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	Complaints: 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. Penalties: 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.

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	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 Bill, see: https://www.eerstekamer.nl/behandeling/20170207/gewijzigd_voorstel_van_wet/document3/f=/vkbkk8pud2zt.pdf
ILO-IOE Child Labour Guidance Tool for Business	http://www.ioe-emp.org/fileadmin/ioe_documents/publications/Policy%20Areas/child_labour/EN/_2015-12-16__ILO-IOE_Child_Labour_Guidance.pdf
UN Guiding Principles	https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf
Ropes and Gray Resources	Client alerts related to the Act: • 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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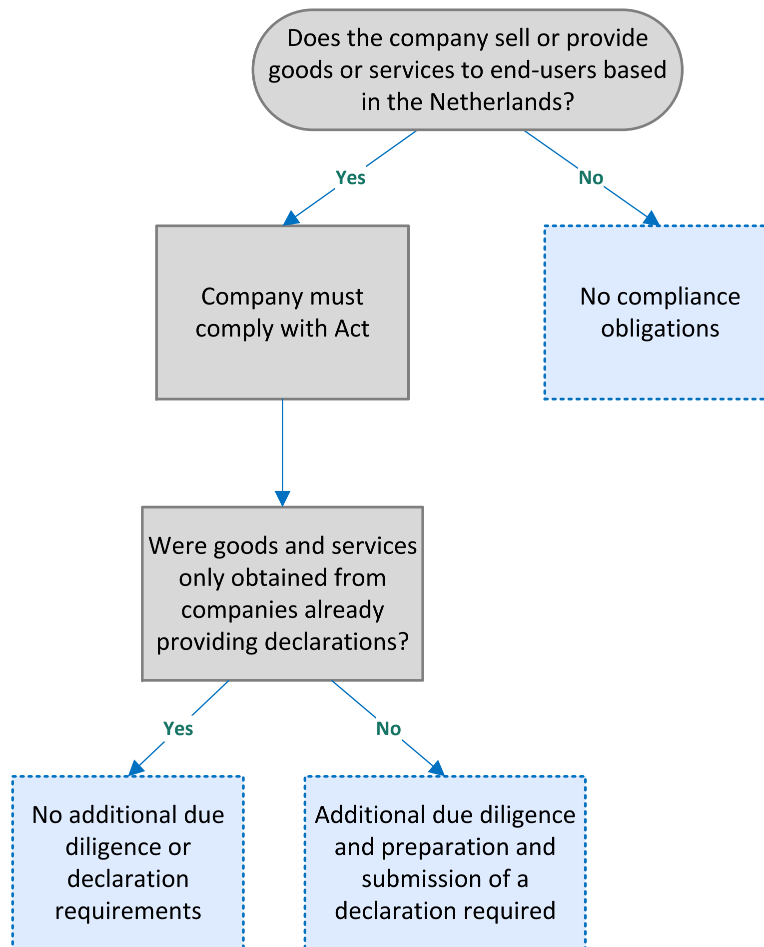

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