

# Corporate Social Responsibility Legislation

A Summary of Selected Instruments

Prepared for AIM-PROGRESS  
February 2022

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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, Ropes & Gray LLP was commissioned by AIM-PROGRESS to 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 subsection.

### 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
- EU Non-financial Reporting Directive
- Proposed California Climate Corporate Accountability Act

**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, since it is 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.

## **Compliance Thresholds**

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

Common types of thresholds in CSR legislation include:

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

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

## **ADDRESSING COMPLIANCE**

With the continuing proliferation of new CSR regulations, it 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.

- 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.
- 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: new proposals; passed legislation; and the stalemate/end of others. We have added new Summaries reflecting some of these developments, as well as other recently adopted legislation. New Summaries include the following:

- ***Proposed EU Corporate Sustainability Due Diligence Directive:*** On February 23, 2022, the European Commission released this long-awaited proposed Directive, which requires due diligence to address adverse human rights and environmental impacts.
- ***Canadian Customs Tariff Amendment:*** This amendment prohibits importing goods produced or manufactured by forced labor into Canada. This amendment to the Customs Tariff took effect on July 1, 2020.
- ***Proposed Australian Customs Amendment (Banning Goods Produced by Forced Labour):*** The Bill would prohibit importing goods produced or manufactured by forced labor into Australia, in alignment with legislation in the United States and more recently Canada as noted above. The Bill passed the Australian Senate and was introduced to the House in August 2021.
- ***Proposed Canadian Xinjiang Manufactured Goods Importation Prohibition Act:*** The Act would prohibit all imports from the Xinjiang Uyghur Autonomous Region of China into Canada. The Act was introduced to the Senate on November 24, 2021.

- **Proposed Dutch Responsible and Sustainable International Business Conduct Bill:** The Act aims to mitigate human rights risks, including environmental risks that can lead to human rights violations, in global supply chains. The Act was submitted to the Dutch Parliament in March 2021. If adopted, the Act would repeal the Child Labor Due Diligence Act approved by the Dutch Senate on May 14, 2019.
- **Proposed Illinois Business Supply Chain Transparency for Slavery, Trafficking, and Child Labor Act:** The Act would require retail sellers and manufacturers with gross receipts exceeding \$100,000,000 and doing business in Illinois to disclose their efforts to eradicate slavery, human trafficking, and child labor from their direct supply chain. The Act was introduced on April 6, 2021.
- **Proposed EU Deforestation Regulation:** The Regulation aims to minimize the EU's contribution to deforestation and forest degradation worldwide and reduce the EU's contribution to greenhouse gas emissions and global biodiversity loss. The Regulation was proposed by the EU Commission on November 17, 2021.
- **Proposed New York Deforestation-Free Procurement Act:** The Act aims to ensure that companies contracting with New York State, the 10<sup>th</sup> largest economy in the world, are not contributing to tropical or boreal intact forest degradation or deforestation, directly or through their supply chains. The Bill passed out of Senate Committee on April 19, 2021 and was referred from the Rules Committee back to the Procurement and Contracts Committee on January 5, 2022, where it is currently sitting.
- **Proposed U.S. Fostering Overseas Rule of law and Environmentally Sound Trade Act:** The Act would amend the U.S. Tariff Act by adding a new section which makes it unlawful to import a product made from a commodity produced from land that undergoes illegal deforestation. The Act was introduced in the Senate and House in October 2021.

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

- **U.S. Uyghur Forced Labor Prevention Act:** The Act was signed into law by President Biden on December 23, 2022, following passage by the House and Senate with near-unanimous support. The Act establishes a rebuttable presumption that goods produced, wholly or in part, in the Xinjiang Uyghur Autonomous Region of China, 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 Tariff Act. The forced labor presumption takes effect on June 21, 2022.
- **Swiss Conflict Minerals and Child Labor Due Diligence Provisions:** On December 3, 2021, the Federal Council published the Provisions implementing the indirect counterproposal to the failed Responsible Business Initiative constitutional amendment. The Provisions entered into effect on January 1, 2022, and their requirements will apply for the first time for fiscal year 2023. The Provisions set forth due diligence and reporting obligations relating to conflict minerals and child labor.

- ***German Due Diligence in the Supply Chain Act:*** The Act was approved by the German Parliament on June 11, 2021. The Act will take effect on January 1, 2023. The Act will require subject companies to manage and address human rights risks in their supply chains.
- ***Norwegian Transparency Act:*** The Act will require subject companies to carry out due diligence in relation to fundamental human rights and decent working conditions. The Act will take effect on July 1, 2022.
- ***Proposed Canadian Fighting Against Forced Labour and Child Labour in Supply Chains Act:*** With prior Bills S-211 (2020) and S-216 (2020) stalling in the Senate, the same sponsor introduced the Act in November 2021 to accomplish similar goals.
- ***Proposed California Climate Corporate Accountability Act:*** The Act would require subject companies to report on their greenhouse gas emissions. The Bill was amended by the sponsors on January 3, 2022.
- ***Pending U.K. Environment Act:*** The Act was adopted on November 9, 2021. A consultation on the deforestation provisions of the Act closed on March 11, 2022.
- ***U.S. Tariff Act, Section 307:*** U.S. Customs and Border Protection updated its Xinjiang cotton FAQs. Additional withhold release orders also were added.
- ***U.S. Trafficking Victims Protection Reauthorization Act:*** Recent litigation and enforcement developments have been added.
- ***French Corporate Duty of Vigilance Law:*** Recent litigation and enforcement developments have been added.
- ***New South Wales Modern Slavery Act:*** The annual modern slavery statement requirement contemplated by the Act will not be implemented. In light of this development, we have removed the Act from these materials.
- ***California Climate Change Disclosure Bill:*** The Bill's chart has been removed from the Summaries as the Bill died on January 31, 2022 and is now listed as Inactive.

## LOOKING FURTHER OUT

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

- The big story in CSR legislation in 2022 is expected to be climate-risk disclosure. Next week, the U.S. Securities and Exchange Commission will be introducing its long-awaited proposed rule-making in this area. These rules are widely expected to have a significant impact on not only disclosure practices, but also substantive management of greenhouse gas emissions. Climate-risk disclosure requirements are being adopted in several other jurisdictions as well.
- The focus on deforestation will continue to increase. As noted above, in 2021 new legislation addressing deforestation was adopted in the United Kingdom and proposed in the United States and at the European Union level. In addition, investor expectations in this area have been increasing. Some of the more significant investor-related developments – such as the development of the Taskforce on Nature-related Financial Disclosures framework and the launch of the Nature Action 100 Initiative – will over time impact public companies and their supply chains.
- Over the last year, there have been developments in several jurisdictions to address forced labor concerns in the Xinjiang Uyghur Autonomous Region of China. For example, in addition to the passage of the U.S. Uyghur Forced Labor Prevention Act and the other legislation discussed above, the Foreign Affairs and Business, Energy and Industrial Strategy Committees of the U.K. Parliament held an inquiry focused on Uyghur forced labor in U.K. supply chains. In addition, over the last several months, a series of criminal complaints were brought in Europe by NGOs against Western brands regarding the brands' alleged involvement in XUAR forced labor. In April, a suit was filed in France against four global clothing brands, alleging that the brands profited from Uyghur forced labor in the XUAR by continuing to subcontract production or market goods containing XUAR cotton. The French public prosecutor's office subsequently announced it has opened a preliminary investigation against the companies. In September, a criminal complaint was filed in Germany against several high-profile textile brands and retailers alleging they are directly or indirectly abetting and profiting from forced labor of Uyghurs in the XUAR and might therefore be involved in crimes against humanity. And in early December, a similar criminal complaint was filed against several Dutch and U.S. textile and fashion brands that have their European headquarters in the Netherlands. The NGO has asked the Dutch Public Prosecutor to investigate the companies' alleged complicity in human rights violations. We expect to see more of these types of allegations, and more external pressure generally on companies to address potential Uyghur forced labor in supply chains.
- The wildcard at press time is Russia. In the near-term, many companies are exiting Russia or curtailing their business activities either in response to sanctions or to express displeasure with the invasion of Ukraine. Beyond sanctions, there already are calls in many jurisdictions to ban Russian imports and/or exports to Russia, analogous to some of the legislative measures taken or proposed to

address Uyghur forced labor issues. In any event, developments involving Russia are likely to result in enhanced scrutiny of Russia-related business activities through a human rights lens.

## **ABOUT ROPES & GRAY**

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

## TABLE OF CONTENTS

<u>Description</u>	<u>Page</u>
<b>Summary Charts:</b>	
Assessing the Applicability of Legislation .....	1
Modern Slavery Act Comparison .....	3
Overview of Trade-based Modern Slavery Legislation .....	4
Overview of Due Diligence-based Modern Slavery and MHRDD Legislation .....	5
<b>Modern Slavery Legislation – Disclosure-based:</b>	
California Transparency in Supply Chains Act .....	7
U.K. Modern Slavery Act .....	10
Australia Commonwealth Modern Slavery Act .....	15
Tasmania Supply Chain (Modern Slavery) Act .....	19
Canadian Fighting Against Forced Labour and Child Labour in Supply Chains Act .....	22
Washington Transparency in Agricultural Supply Chains Act.....	27
U.S. Uyghur Forced Labor Disclosure Act .....	30
Illinois Business Supply Chain Transparency for Slavery, Trafficking, and Child Labor Act .....	33
<b>Modern Slavery Legislation – Trade-based:</b>	
U.S. Tariff Act, Section 307 .....	36
U.S. Countering America’s Adversaries Through Sanctions Act, Section 321 .....	42
U.S. Uyghur Forced Labor Prevention Act .....	46
Canadian Customs Tariff .....	49

Australian Customs Amendment (Banning Goods Produced by Forced Labour) .....	51
Canadian Xinjiang Manufactured Goods Importation Prohibition Act .....	53
 <b><i>Modern Slavery Legislation – Other:</i></b>	
U.S. Federal Acquisition Regulation Anti-Human Trafficking Rule .....	55
U.S. Trafficking Victims Protection Reauthorization Act .....	59
 <b><i>Broader-based CSR/Human Rights Legislation:</i></b>	
EU Non-financial Reporting Directive .....	62
EU Corporate Sustainability Due Diligence Directive .....	66
French Corporate Duty of Vigilance Law .....	77
Swiss Conflict Minerals and Child Labor Due Diligence Provisions .....	81
German Due Diligence in the Supply Chain Act .....	90
Norwegian Transparency Act .....	96
Belgian Duty of Vigilance Law .....	101
Dutch Responsible and Sustainable International Business Conduct Act .....	105
 <b><i>Other Legislation:</i></b>	
Indian Companies Act, Section 135 .....	111
Dutch Child Labor Due Diligence Act .....	116
California Climate Corporate Accountability Act .....	121
U.K. Environment Act – Forest Risk Commodities .....	124
New York Deforestation-Free Procurement Act .....	128

U.S. Fostering Overseas Rule of law and Environmentally Sound Trade Act.....	132
EU Deforestation Regulation .....	137

## Assessing the Applicability of Legislation

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

### Modern Slavery Disclosure-based Legislation

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

### Modern Slavery Legislation – Trade Based

	<u>S. 307 of the Tariff Act</u>	<u>S. 321 of the CAATSA</u>	<u>US Uyghur Forced Labor Prevention Act</u>	<u>Canada Customs Tariff</u>
<b>Issue Addressed</b>	Forced labor	North Korean forced labor	Uyghur forced labor	Forced labor
<b>Jurisdiction</b>	United States	United States	United States	Canada
<b>Compliance Threshold</b>	N/A	N/A	N/A	N/A
<b>Nexus</b>	Imports good into the United States	Imports goods into the United States produced using North Korean national or citizen labor	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.

## Assessing the Applicability of Legislation

### Selected Other CSR Regulations

	<u>FAR Anti-Human Trafficking Rule</u>	<u>EU Non-financial Reporting Directive</u>	<u>French Corporate Duty of Vigilance Law</u>	<u>Swiss Child Labor/Conflict Minerals Due Diligence Legislation</u>	<u>German Due Diligence in the Supply Chain Act</u>	<u>Norwegian Transparency Act</u>	<u>S. 135 of the Indian Companies Act</u>	<u>Dutch Child Labor Due Diligence Law</u>
<b>Issue(s) Addressed</b>	Forced labor	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
<b>Jurisdiction</b>	United States	European Union	France	Switzerland	Germany	Norway	India	Netherlands
<b>Compliance Threshold</b>	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
<b>Nexus</b>	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.

## Modern Slavery Act Comparison

	<u>CA Transparency in Supply Chains Act</u>	<u>UK MSA</u>	<u>Australia Commonwealth MSA</u>
<b>Subject Companies</b>	Manufacturer or retailer	Commercial organisation that supplies goods or services	Any entity that meets the turnover and jurisdictional nexus requirements below
<b>Annual Turnover Threshold</b>	US\$100 million	£36 million	A\$100 million
<b>Jurisdictional Nexus</b>	California Revenue and Taxation Code	Doing business in the United Kingdom	Australia-based entity or carries on business in Australia
<b>Covered Business Activities</b>	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
<b>Statement Content (Similar, but not identical, across all jurisdictions)</b>	Required topics	Suggested topics	Required topics
<b>Publication</b>	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
<b>Signature/Board Approval</b>	None	Required	Required
<b>Frequency</b>	Not specified; on an as-needed basis	Annual	Annual
<b>Due Date</b>	Not specified	No mandatory due date; expected within six months after fiscal year end	Within six months after fiscal year end
<b>Specified Penalties</b>	None	None	None

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

## Overview of Trade-based Modern Slavery Legislation

	<u>US Tariff Act</u>	<u>US CAATSA</u>	<u>US Uyghur Forced Labor Prevention Act</u>	<u>Canada Customs Act</u>
<b>Covered Activities</b>	Imports into the US	Imports into the US	Imports into the US	Imports into Canada
<b>Prohibited Activities</b>	Importing goods produced using prison or forced labor	Importing goods produced using North Korean labor, whether in North Korea or abroad	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
<b>Due Diligence</b>	No specific requirements, but taken into account as a mitigating factor if there is a violation	No specific requirements, but taken into account as a mitigating factor if there is a violation	No specific requirements	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
<b>Compliance Plan</b>	No specific requirements, but taken into account as a mitigating factor if there is a violation	No specific requirements, but taken into account as a mitigating factor if there is a violation	No specific requirements	No specific requirements
<b>Reporting</b>	N/A	N/A	N/A	N/A

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

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

	<u>US FAR</u>	<u>Dutch Child Labor Law</u>	<u>French Corporate Duty of Vigilance Law</u>	<u>German Due Diligence in the Supply Chain Act</u>	<u>Swiss Mandatory Human Rights Due Diligence Legislation</u>	<u>Norwegian Transparency Act</u>
<b>Covered Activities</b>	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
<b>Prohibited Activities</b>	No forced labor, withholding employee documentation or charging recruitment fees; also affirmative obligations relating to return transport, housing and employment contracts in certain circumstances	N/A	N/A	N/A	N/A	N/A
<b>Due Diligence</b>	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
<b>Compliance Plan</b>	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

	<u>US FAR</u>	<u>Dutch Child Labor Law</u>	<u>French Corporate Duty of Vigilance Law</u>	<u>German Due Diligence in the Supply Chain Act</u>	<u>Swiss Mandatory Human Rights Due Diligence Legislation</u>	<u>Norwegian Transparency Act</u>
<b>Reporting</b>	Compliance certifications at time of contract award and annually	Subject company generally must prepare a declaration indicating that it exercises due diligence in order to prevent the goods and services that it sells or supplies to Dutch end-users from being produced using child labor	Must make public 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.

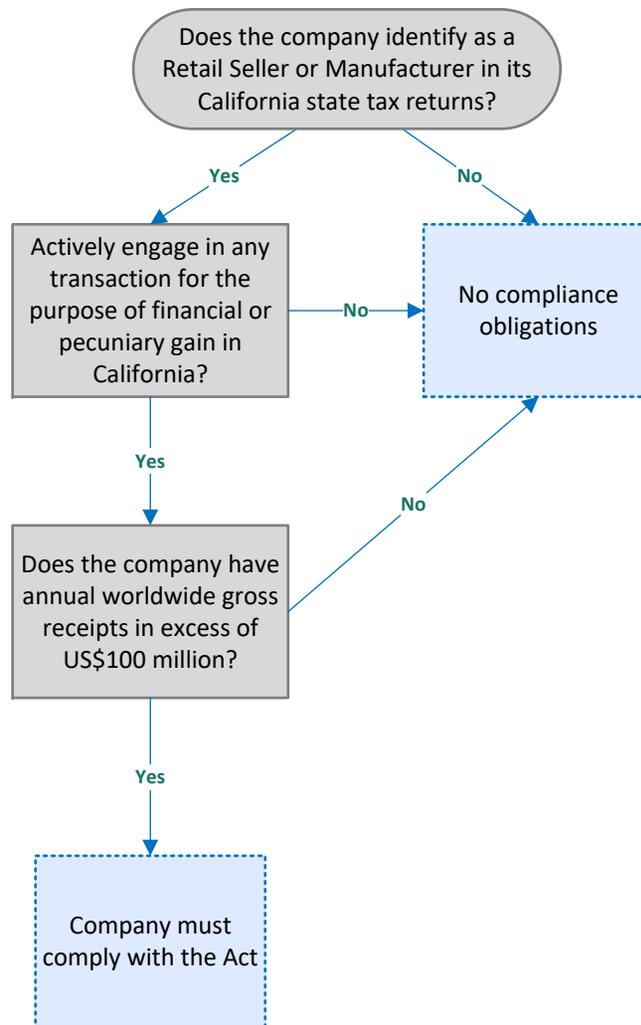
<b>Transparency in Supply Chains Act California</b>	
<b>Overview</b>	
<b>Law / State</b>	<b>California Transparency in Supply Chains Act</b> (California Civil Code S. 1714.43) (the <b>“Act”</b> ) (California, United States)
<b>Goal</b>	To reduce modern slavery through enhanced disclosure.
<b>Adoption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

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

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

(Updated February 28, 2022)

### Applying the Law



<b>Modern Slavery Act United Kingdom</b>	
<b>Overview</b>	
<b>Law / Country</b>	<b>UK Modern Slavery Act (S. 54) (the “MSA”) (United Kingdom)</b>
<b>Goal</b>	To reduce modern slavery through enhanced disclosure.
<b>Adoption / Status</b>	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.
<b>Issues Addressed</b>	Slavery and human trafficking
<b>Covered Entities</b>	<p>Commercial organisations:</p> <p>The MSA covers any “commercial organisation” that supplies goods or services and has a total annual turnover of at least £36 million. A commercial organisation is a corporation or partnership that carries on a business (including a trade or profession) or part of a business in the United Kingdom, regardless of where it is was incorporated. The turnover calculation includes the turnover of the subject commercial organisation and its subsidiary undertakings, including those subsidiary undertakings carrying on business outside of the United Kingdom.</p> <p>Parents and sister companies:</p> <p>Having a subsidiary that is subject to the MSA does not subject entities that are above that subsidiary in the corporate chain, or sister companies under common control, to the MSA. However, depending on their business activities in the UK, multiple entities in the consolidated group, even those not primarily engaged in carrying on a business in the United Kingdom, may be subject to the MSA. A parent organization that is subject to the MSA must include in its statement the activities of its subsidiaries, even if a subsidiary does not independently meet all of the MSA’s jurisdictional requirements, if the activities of the subsidiary are part of the parent’s supply chain or business.</p> <p>Franchisees:</p> <p>In determining the total turnover of a business operating a franchise model, only the turnover of the franchiser and not that of any franchisees must be included.</p>
<b>How It Works</b>	
<b>Mandatory?</b>	Yes.
<b>Statement Requirements</b>	A commercial organisation must prepare a statement indicating the steps it has taken during the applicable financial year to ensure that slavery and human trafficking are not taking place in any of its supply chains or in any part of its own business.

	<p>While the MSA does not provide for mandatory disclosures, there are six encouraged disclosure topics:</p> <ul style="list-style-type: none"> <li>• The structure of the commercial organisation, its business model and its supply chain relationships.</li> <li>• Policies relating to slavery and human trafficking.</li> <li>• Due diligence and auditing processes in relation to slavery and human trafficking in its business and supply chains.</li> <li>• The parts of its business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps it has taken to assess and manage that risk.</li> <li>• Its effectiveness in ensuring that slavery and human trafficking are not taking place in its business or supply chains, measured against such key performance indicators as it considers appropriate.</li> <li>• Slavery and human trafficking training available to its staff.</li> </ul>
<p><b>Reporting</b></p>	<p>Timing:</p> <p>Commercial organisations are expected to publish a statement within six months after fiscal year end. Although there is no mandatory due date by which statements must be published, over time, the Home Office has taken steps to increase pressure on companies to timely report.</p> <p>Publication:</p> <p>The statement must be published in a prominent location on the commercial organisation’s website homepage and must clearly identify the contents of the link. If the commercial organisation does not have a website, it must provide a copy of the statement upon written request within 30 days after the request is received. For commercial organisations with more than one website, the statement should be placed on the most appropriate website relating to the commercial organisation’s business in the United Kingdom. If there is more than one relevant website, the commercial organisation should place a copy of the statement or a link to the statement on each relevant website.</p> <p>Approval/Signatures:</p> <p>For corporate entities, the statement must be approved by the board of directors (or equivalent) and signed by a director or the equivalent. If the entity is a limited liability partnership, the statement must be approved by the members and signed by a designated member. If the entity is a limited partnership registered under the UK Limited Partnerships Act, it must be signed by a general partner. For any other kind of partnership, the statement must be signed by a partner.</p> <p>Additional Content Guidance:</p> <p>Home Office guidance pertaining to statement content indicates that:</p> <ul style="list-style-type: none"> <li>• Group statements published by parent entities should clearly name the entities covered by the statement.</li> <li>• Statements should indicate the date of the fiscal year end and the period covered.</li> <li>• Statements should clearly indicate the board approval date.</li> <li>• Statements should include the name (physical signature not required) and job title of the signatory and the signature date.</li> </ul>

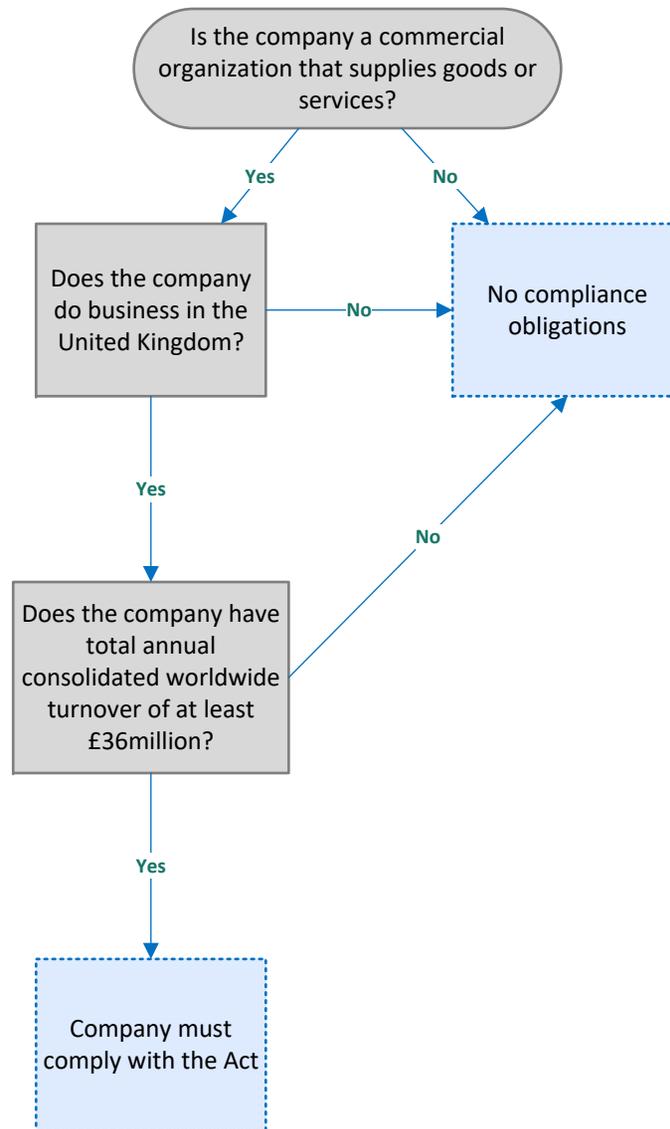
<b>Enforcement</b>	At present, there is no financial or legal penalty for non-compliance.
<b>Expected Amendments – September 2020 Government Response to Public Consultation</b>	<p>On September 22, 2020, the UK Government published its response to the 2019 public consultation on the MSA. The consultation solicited views on possible changes to several aspects of the transparency provisions, including (1) the topics covered by statements; (2) potential features of a new Government-run reporting service for modern slavery statements; (3) establishing a single deadline for the publication of statements; and (4) the addition of civil penalties for non-compliance.</p> <p>Many of the Government’s commitments described below will require changes to the MSA. The Government indicated that these changes will be made when parliamentary time allows.</p> <p><b>Mandated Disclosure Topics:</b></p> <p>The Government indicated it will mandate the areas to be addressed in modern slavery statements. The mandatory topic areas will include the existing voluntary suggested areas, although in the shift to mandatory reporting they may be presented differently through the combination of some topic areas. If a commercial organisation does not take steps within a particular required topic area, it will be required to clearly state that. Commercial organisations also will be encouraged to provide the reason for not taking steps within a particular area.</p> <p><b>Statement Registry:</b></p> <p>The Government indicated it will require commercial organisations to publish their statement on the Government-run registry.</p> <p><b>Timing:</b></p> <p>The Government will introduce a single reporting deadline. Rather than requiring commercial organisations to report on activity undertaken during their most recently completed fiscal year, statements will cover a reporting period running from April 1 through March 31. Modern slavery statements will be due on September 30, giving commercial organisations six months to prepare their statements.</p> <p><b>Other Statement Enhancements:</b></p> <p>The Government will amend the MSA to require modern slavery statements to state the date of board (or equivalent) approval and director (or equivalent) sign-off. The Government will also amend the MSA to require group statements to name the entities covered.</p> <p><b>Penalties:</b></p> <p>The Government has indicated it intends to propose penalties for failure to comply with the requirements of the transparency provisions.</p>
<b>Statement Registry</b>	In March 2021, the Government established an online registry to house MSA statements. At present, submitting statements to the Registry is voluntary.

<b>Private Member’s Bill to Amend the Act</b>	On June 15, 2021, a Modern Slavery (Amendment) Bill (the “ <b>Bill</b> ”) 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 overseas government and (4) arrange for credible inspections and verify country of origin information. The Bill is now in its second reading in the House of Lords.
<b>Additional Information/Resources</b>	
<b>U.K. Modern Slavery Act</b>	For the text of the MSA, see: <a href="http://www.legislation.gov.uk/ukpga/2015/30/pdfs/ukpga_20150030_en.pdf">http://www.legislation.gov.uk/ukpga/2015/30/pdfs/ukpga_20150030_en.pdf</a>
<b>September 2020 Response to the Public Consultation</b>	For the UK Government’s response to the 2019 public consultation on the MSA, see: <a href="https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919937/Government_response_to_transparency_in_supply_chains_consultation_21_09_20.pdf">https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919937/Government_response_to_transparency_in_supply_chains_consultation_21_09_20.pdf</a>
<b>Modern Slavery (Amendment) Bill</b>	For the text of the Bill, see: <a href="https://bills.parliament.uk/publications/41860/documents/390">https://bills.parliament.uk/publications/41860/documents/390</a>

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(Updated February 28, 2022)

## Applying the Law



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

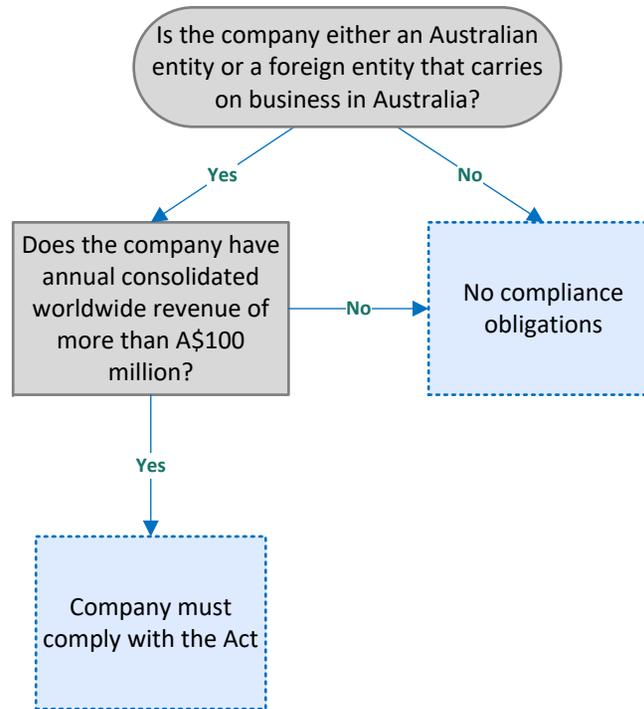
<b>Reporting</b>	<p>Timing:</p> <p>Reporting starts with the first fiscal year after the Act took effect. Statements are due within six months after fiscal year end. However, as noted below, the Australian Border Force (the “ABF”) has extended the deadline under certain circumstances due to the COVID-19 pandemic.</p> <p>Publication:</p> <p>Reporting entities must submit statements to the ABF for publication in an online central register.</p> <p>Approval/Signatures:</p> <p>A statement must be approved by the principal governing body of the subject entity and signed by a responsible member for the entity.</p>
<b>Department of Home Affairs Guidance</b>	<p>The Department of Home Affairs published final guidance in September 2019. The guidance contains information related to modern slavery more generally and provides explanatory guidelines for complying with the Act. The guidance does not create additional substantive obligations under the Act.</p>
<b>Australian Human Rights Commission Guidance</b>	<p>In August 2020, the Australian Human Rights Commission, an independent third-party established by an Act of Parliament that investigates complaints about discrimination and human rights breaches, launched 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.</p>
<b>Enforcement</b>	<p>If the Minister believes an entity failed to comply with the Act, the Minister may ask the entity to provide an explanation for its failure to comply. The Minister also may request the entity undertake remedial action. If the entity fails to comply with the Minister’s request, the Minister may publish information about its failure to comply.</p>
<b>Additional Information/Resources</b>	
<b>Law</b>	<p>For the text of the Act, see: <a href="https://www.legislation.gov.au/Details/C2018A00153">https://www.legislation.gov.au/Details/C2018A00153</a></p>
<b>Guidance</b>	<p>For the September 2019 guidance, see: <a href="https://www.homeaffairs.gov.au/criminal-justice/files/modern-slavery-reporting-entities.pdf">https://www.homeaffairs.gov.au/criminal-justice/files/modern-slavery-reporting-entities.pdf</a></p> <p>For the Australian Human Rights Commission property and construction guidance, see: <a href="https://humanrights.gov.au/sites/default/files/document/publication/ahrc_kpmg_modernslavery_property_construction_2020.pdf">https://humanrights.gov.au/sites/default/files/document/publication/ahrc_kpmg_modernslavery_property_construction_2020.pdf</a></p> <p>For the Australian Human Rights Commission financial services sector guidance, see: <a href="https://humanrights.gov.au/our-work/business-and-human-rights/publications/financial-services-and-modern-slavery-practical">https://humanrights.gov.au/our-work/business-and-human-rights/publications/financial-services-and-modern-slavery-practical</a></p> <p>For the Australian Human Rights Commission resources and energy sector guidance, see: <a href="https://humanrights.gov.au/our-work/business-and-human-rights/publications/resources-energy-and-modern-slavery-practical">https://humanrights.gov.au/our-work/business-and-human-rights/publications/resources-energy-and-modern-slavery-practical</a></p>

	For the Australian Human Rights Commission health services sector guidance, see: <a href="https://humanrights.gov.au/our-work/business-and-human-rights/publications/modern-slavery-health-services-sector">https://humanrights.gov.au/our-work/business-and-human-rights/publications/modern-slavery-health-services-sector</a>
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(Updated February 28, 2022)

### Applying the Law



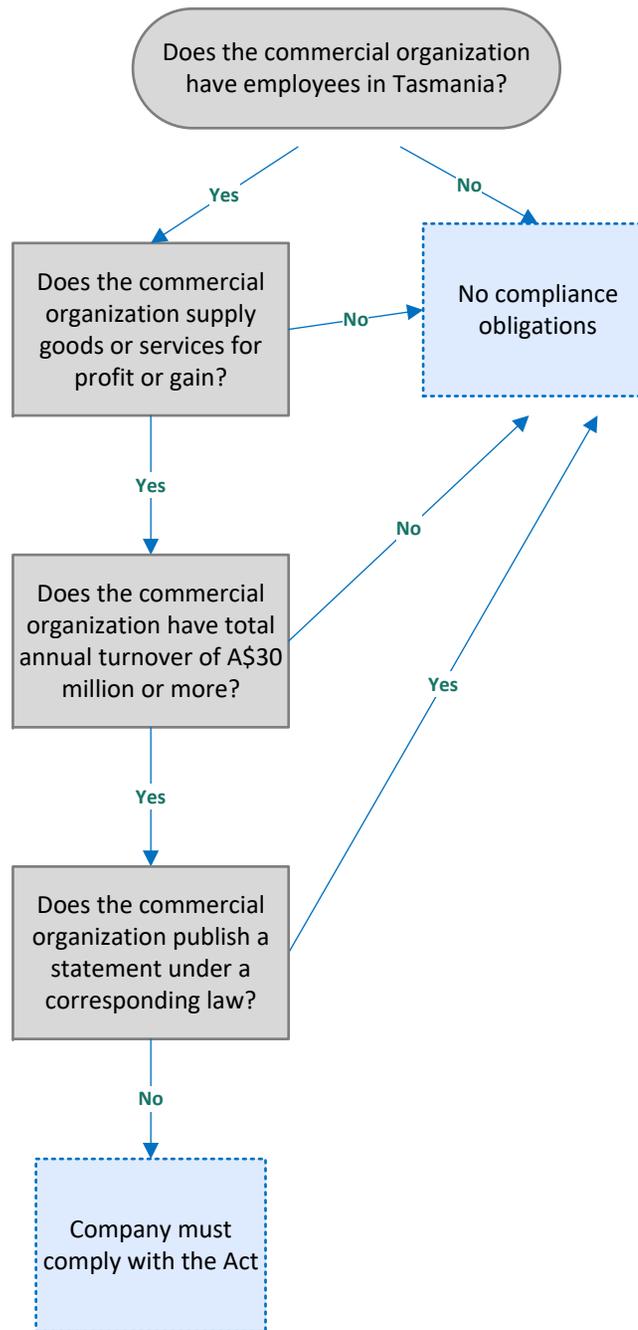
<b>Supply Chain (Modern Slavery) Act (Proposed) Tasmania</b>	
<b>Overview</b>	
<b>Law / State</b>	<b>Supply Chain (Modern Slavery) Act</b> (the “Act”) (Tasmania, Australia)
<b>Goal</b>	To combat modern slavery through enhanced disclosure, among other measures.
<b>Adoption / Status</b>	First reading in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

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

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(Updated February 28, 2022)

### Applying the Law



<b>Fighting Against Forced Labour and Child Labour in Supply Chains Act (Proposed) Canada</b>	
<b>Overview</b>	
<b>Law / State</b>	<b>Fighting Against Forced Labour and Child Labour in Supply Chains Act (S-211 (2021) (the “Act”)) (Canada)</b>
<b>Goal</b>	To combat forced and child labor through the imposition of reporting obligations on entities producing good in or importing goods into Canada.
<b>Adoption / Status</b>	<p>The Act was introduced in the Canadian Senate on November 24, 2021 by Senator Julie Miville-Dechêne. The bill had its second reading on December 14, 2021 and has been referred to the Standing Senate Committee on Human Rights, where it is currently under consideration.</p> <p>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.</p> <p>The Act would come into force on January 1 of the year following the year in which it receives royal assent.</p>
<b>Issues Addressed</b>	<ul style="list-style-type: none"> <li>• Forced labor</li> <li>• Child labor</li> </ul>
<b>Covered Entities</b>	<p>A corporation, trust, partnership or other unincorporated organization would be subject to the reporting requirements of the Act to the extent it meets any of the following requirements:</p> <ul style="list-style-type: none"> <li>• Is listed on a stock exchange in Canada;</li> <li>• Has a place of business in Canada, does business in Canada or has assets in Canada and, based on its consolidated financial statements, meets at least two of the following conditions for at least one of its two most recent financial years: (1) has at least C\$20 million in assets, (2) has generated at least C\$40 million in revenue or (3) employs an average of at least 250 employees; or</li> <li>• Is prescribed by regulations.</li> </ul> <p>And:</p> <ul style="list-style-type: none"> <li>• Produces, 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);</li> <li>• Imports into Canada goods produced outside Canada; or</li> <li>• Controls an entity engaged in any activity described in the two foregoing bullets (control can be direct or indirect).</li> </ul> <p>The Act would also apply to government institutions, but such obligations are not addressed in this summary.</p>
<b>Key Definitions</b>	<p><b>“Forced labor”</b> 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</p>

	<p>defined in Article 2 of the International Labour Organization’s Forced Labour Convention. That Convention defines forced or compulsory labor as all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily (subject to several narrow exceptions specified in the Convention).</p> <p><b>“Child labor”</b> 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.</p>
<b>How It Works</b>	
<b>Mandatory?</b>	Yes.
<b>Report Requirements</b>	<p>The report would be required to include the steps the entity has taken during the preceding 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.</p> <p>In the report, the entity also would be required to include information pertaining to:</p> <ul style="list-style-type: none"> <li>• Its structure, activities and supply chain;</li> <li>• Its policies and its due diligence processes in relation to forced labor and child labor;</li> <li>• 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;</li> <li>• Any measures taken to remediate any forced labor or child labor;</li> <li>• The training provided to employees on forced labor and child labor; and</li> <li>• How the entity assesses its effectiveness in ensuring that forced labour and child labour are not being used in its business and supply chains.</li> </ul>
<b>Approval and Attestation Requirement</b>	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.

	<p>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.</p>
<b>Reporting</b>	<p>A subject entity annually would be required to submit its report to the Minister of Public Safety and Emergency Preparedness (the “<b>Minister</b>”) on or before May 31 of each year.</p> <p>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.</p> <p>The Minister would be required to maintain an electronic registry containing the reports provided to it. The registry would be required to be made available to the public on the Department of Public Safety and Emergency Preparedness website.</p> <p>In addition to submitting its report to the Minister, a subject entity would be required to make the report available to the public, including by publishing it in a prominent place on its website.</p> <p>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.</p>
<b>Enforcement</b>	<p>The Minister would be able to designate persons or classes of persons for the purposes of the administration and enforcement of the Act.</p> <p>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.</p> <p>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.</p>
<b>Import Prohibition</b>	<p>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.</p> <p>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.</p>

#### Additional Information/Resources

##### Law

For the text of the proposed Act, see: <https://www.parl.ca/DocumentViewer/en/44-1/bill/S-211/first-reading>

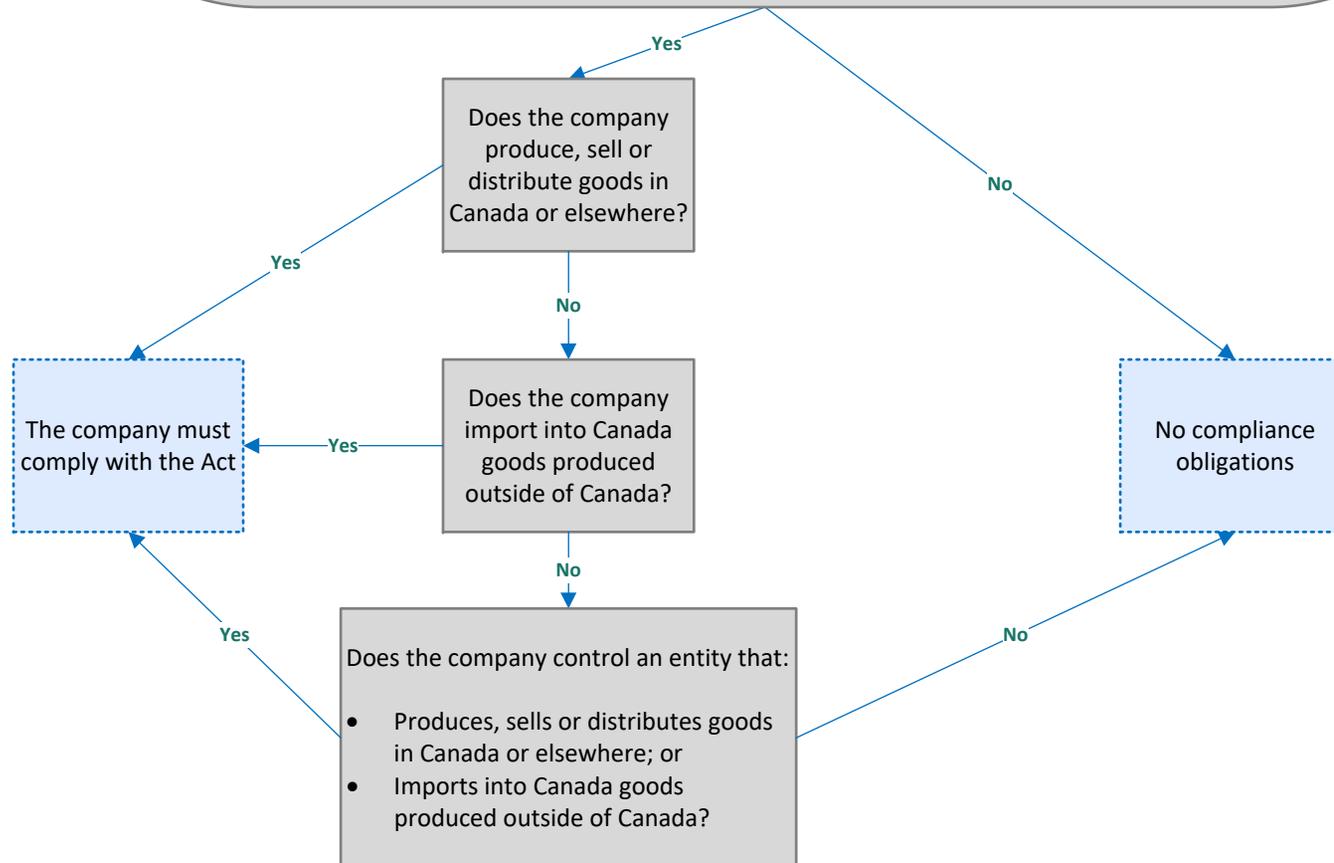
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## Applying the Law

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?



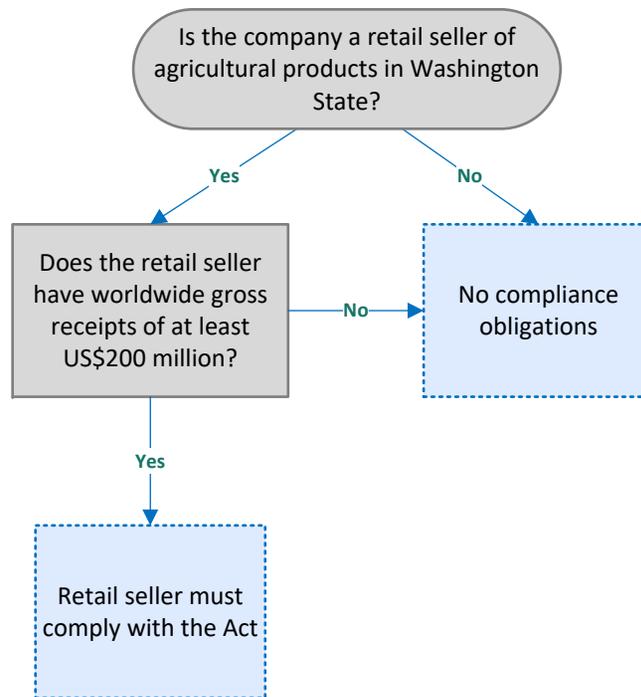
<b>Transparency in Agricultural Supply Chains Act (Proposed) Washington</b>	
<b>Overview</b>	
<b>Law / State</b>	<b>Transparency in Agricultural Supply Chains Act (SB 5693) (the “Act”) (Washington, United States)</b>
<b>Goal</b>	To protect the rights of workers in agricultural supply chains through enhanced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

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

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(Updated February 28, 2022)

### Applying the Law



<b>Uyghur Forced Labor Disclosure Act (Proposed) United States</b>	
<b>Overview</b>	
<b>Law / Country</b>	<b>Uyghur Forced Labor Disclosure Act</b> (H.R. 2072, originally introduced in 2020 as H.R. 6270) (the <b>“Bill”</b> or the <b>“Act”</b> ) (United States)
<b>Goal</b>	To address Uyghur forced labor in supply chains.
<b>Adoption / Status</b>	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.
<b>Issue Addressed</b>	Forced labor in the Xinjiang Uyghur Autonomous Region (the <b>“XUAR”</b> ).
<b>Covered Entities</b>	Companies that have a class of securities registered under the Securities Exchange Act (the <b>“Exchange Act”</b> ).
<b>How It Works</b>	
<b>Mandatory?</b>	Yes.
<b>Disclosure of Activities Relating to the XUAR</b>	<p>No later than 180 days after the date of enactment, the Securities and Exchange Commission (the <b>“Commission”</b>) 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:</p> <ul style="list-style-type: none"> <li>• 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;</li> <li>• Whether such goods or materials described above originated in forced labor camps; and</li> <li>• 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.</li> </ul> <p>As used in the Act, <b>“forced labor camp”</b> 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.</p>
<b>Availability of Information</b>	Information would be publicly available on the Commission’s EDGAR website.

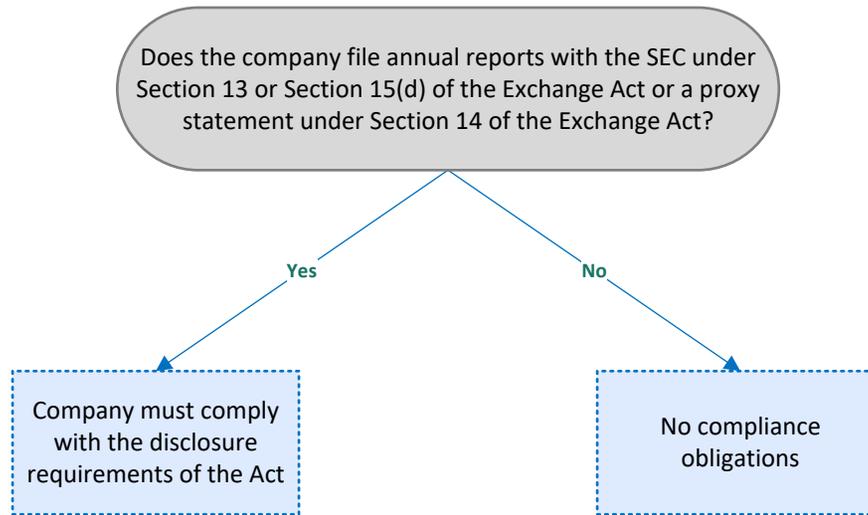
**UYGHUR FORCED LABOR DISCLOSURE ACT (US) (PROPOSED)**

<b>Government Reporting</b>	<p>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.</p> <p>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.</p>
<b>Additional Information/Resources</b>	
<b>Law</b>	<p>For the text of the Corporate Governance Improvement and Investor Protection Act, see:  <a href="https://www.congress.gov/bill/117th-congress/house-bill/2072?q=%7B%22search%22%3A%5B%22hr2072%22%2C%22hr2072%22%5D%7D&amp;r=1&amp;s=1">https://www.congress.gov/bill/117th-congress/house-bill/2072?q=%7B%22search%22%3A%5B%22hr2072%22%2C%22hr2072%22%5D%7D&amp;r=1&amp;s=1</a></p> <p>For the text of the Bill, see: <a href="https://www.congress.gov/bill/117th-congress/house-bill/2072?q=%7B%22search%22%3A%5B%22hr2072%22%2C%22hr2072%22%5D%7D&amp;s=1&amp;r=1">https://www.congress.gov/bill/117th-congress/house-bill/2072?q=%7B%22search%22%3A%5B%22hr2072%22%2C%22hr2072%22%5D%7D&amp;s=1&amp;r=1</a></p> <p>For the text of the original Bill, see: <a href="https://www.congress.gov/bill/116th-congress/house-bill/6270">https://www.congress.gov/bill/116th-congress/house-bill/6270</a></p>

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(Updated February 28, 2022)

**Applying the Law**



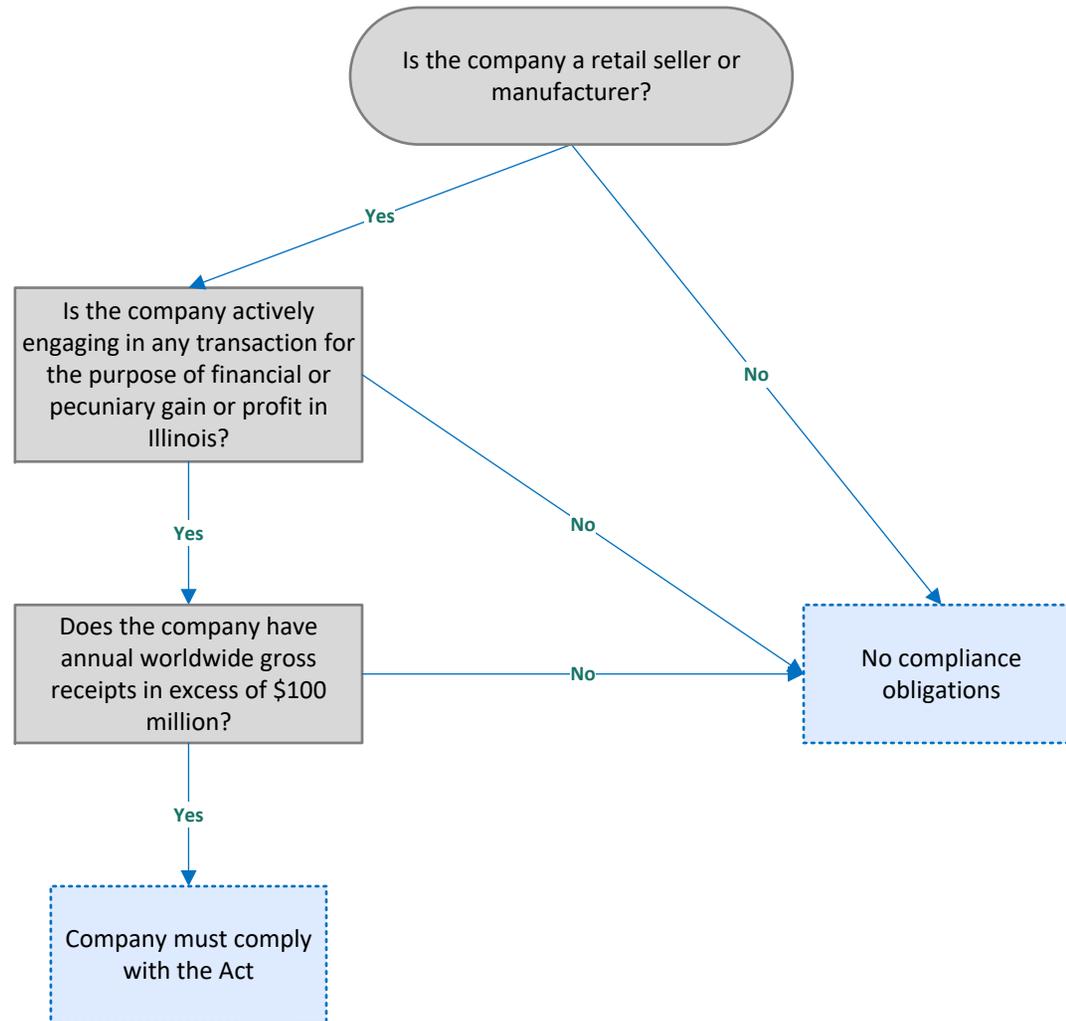
<b>Business Supply Chain Transparency for Slavery, Trafficking, and Child Labor Act (Proposed) Illinois</b>	
<b>Overview</b>	
<b>Law / State</b>	<b>Business Supply Chain Transparency for Slavery, Trafficking and Child Labor Act (HB4061) (the “Act”)</b> (Illinois, United States)
<b>Goal</b>	To provide consumers with information regarding the efforts of large retailers and manufacturers to eradicate slavery, human trafficking, and child labor from their direct supply chains.
<b>Adoption / Status</b>	The Act was introduced in the Illinois House of Representatives on April 6, 2021. The Act was also referred to the House Rules Committee on April 6, 2021.
<b>Issues Addressed</b>	<ul style="list-style-type: none"> <li>• Slavery</li> <li>• Human Trafficking</li> <li>• Child Labor</li> </ul>
<b>Covered Entities</b>	<p>Retail sellers and manufacturers doing business in Illinois that have annual worldwide gross receipts that exceed \$100,000,000.</p> <p>Categorization of a business would be based on its principal business activity.</p> <p>The Department of Revenue would be required to deliver to the Attorney General a list of retail sellers and manufacturers required to disclose under the Act. The list would be based on tax returns filed.</p>
<b>How It Works</b>	
<b>Mandatory?</b>	Yes.
<b>Statement Requirements</b>	<p>A covered entity would be required to disclose its efforts to eradicate slavery, human trafficking, and child labor from its direct supply chain for tangible goods offered for sale.</p> <p>Disclosure would, at a minimum, be required to disclose to what extent, if any, the retail seller or manufacturer:</p> <ul style="list-style-type: none"> <li>• Engages in the verification of product supply chains to evaluate and address risks of slavery, human trafficking and child labor. Disclosure would be required to specify if verification was not conducted by a third party.</li> <li>• Conducts audits of suppliers to evaluate supplier compliance with company standards for the elimination of slavery, trafficking, and child labor in supply chains. Disclosure would be required to specify if the audit was not an independent, unannounced audit.</li> <li>• Requires direct suppliers to certify that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business.</li> <li>• Maintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding the elimination of slavery, human trafficking, and child labor.</li> </ul>

	<ul style="list-style-type: none"> <li>Provides company employees and management who have direct responsibility for supply chain management training on slavery, human trafficking, and child labor, particularly with respect to mitigating risks within the supply chains of products.</li> </ul>
<b>Reporting</b>	<p>Disclosure would be required to be posted:</p> <ul style="list-style-type: none"> <li>On the retail seller’s or manufacturer’s website, with a conspicuous and easily understood link to the required information placed on the homepage of the business; or</li> <li>If the retail seller or manufacturer does not have a website, the retail seller or manufacturer would be required to provide written disclosure within 30 days of receiving a written request for the disclosure from a customer.</li> </ul>
<b>Enforcement</b>	The exclusive remedy for a violation of the Act would be an action brought by the Attorney General for injunctive relief.
<b>Additional Information/Resources</b>	
<b>Proposed Bill</b>	For the text of the Act, see: <a href="https://www.ilga.gov/legislation/102/HB/10200HB4061.htm">https://www.ilga.gov/legislation/102/HB/10200HB4061.htm</a>

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(Updated February 28, 2022)

## Applying the Law



<b>U.S. Tariff Act, Section 307 United States</b>	
<b>Overview</b>	
<b>Law / Country</b>	<b>Section 307 of the US Tariff Act</b> (19 U.S.C. § 1307) (United States)
<b>Goal</b>	To ensure that goods being imported into the United States are not being produced using forced labor.
<b>Adoption / Status</b>	The US Tariff Act (the “ <b>Act</b> ”) came into force in 1930. However, an exception to Section 307, known as the “consumptive demand exception,” substantially curtailed the applicability of Section 307. The Trade Facilitation and Trade Enforcement Act of 2015 (“ <b>TFTEA</b> ”), which entered into force on March 10, 2016, eliminated the consumptive demand exception.
<b>Issues Addressed</b>	<ul style="list-style-type: none"> <li>• Prison labor</li> <li>• Forced labor</li> </ul>
<b>Covered Entities</b>	Importers of goods into the United States.
<b>How It Works</b>	
<b>Mandatory?</b>	Yes.
<b>Prohibited Imports</b>	<p>Goods, wares, articles and merchandise mined, produced or manufactured wholly or in part in a foreign country by convict, forced or indentured labor under penal sanctions are not entitled to entry into the United States and its importation is prohibited.</p> <p>Forced labor is any work or service exacted from a person under the threat of penalty and the person has not offered to perform the work voluntarily. Forced labor and indentured labor include forced or indentured child labor.</p>
<b>Enforcement</b>	<p>After Customs and Border Protection (“<b>CBP</b>”) receives a petition from customs officers or an interested party, CBP can begin an investigation into the goods in question. If CBP decides conclusively the goods were made with forced labor in another country, among other things, CBP may seize the goods and initiate forfeiture proceedings. If CPB decides the available information reasonably, but not conclusively, indicates that goods made with forced labor are being or will be imported, CPB may require the importing company to submit supplementary documentation. Violations of Section 307 can also result in fines.</p> <p>Since the repeal of the consumptive demand exception, CBP has issued withhold release orders covering the following goods:</p> <ul style="list-style-type: none"> <li>• Potassium, potassium hydroxide and potassium nitrate (March 2016, Tangshan Sunfar Silicon Industries, China)</li> <li>• Stevia and its derivatives (May 2016, Inner Mongolia Hengzheng Group Baoanzhao Agricultural and Trade LLC, China; October 2020, Inner Mongolia Hengzheng Group Baoanzhao Agriculture, Industry, and Trade Co., Ltd., China)</li> <li>• Peeled garlic (September 2016, Hongchange Fruits &amp; Vegetable Procuets Co., Ltd., China)</li> <li>• Toys (March 2018, Huizhou Mink Industrial CO.LTD., China)</li> </ul>

- 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)
- 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 (withhold release order 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)

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.

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.

<p><b>Reasonable Care Guidance</b></p>	<p>CPB’s Informed Compliance Publication on Reasonable Care includes guidance to help companies comply with Section 307 of the Act. Under the guidance, the following can be evidence of reasonable care:</p> <ul style="list-style-type: none"> <li>• Have you established reliable procedures to ensure you are not importing goods in violation of Section 307 of the Act?</li> <li>• Do you know how your goods are made, from raw materials to finished goods, by whom, where, and under what labor conditions?</li> <li>• Have you reviewed CBP’s "Forced Labor" webpage, which includes a list of active withhold release orders and findings, as well as forced labor fact sheets?</li> <li>• Have you reviewed the Department of Labor’s "List of Goods Produced by Child Labor or Forced Labor" to familiarize yourself with at-risk country and commodity combinations?</li> <li>• Have you obtained a "ruling" from CBP regarding the admissibility of your goods under Section 307 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?</li> <li>• Have you established a reliable procedure of conducting periodic internal audits to check for forced labor in your supply chain?</li> <li>• Have you established a reliable procedure of having a third-party auditor familiar with evaluating forced labor risks conduct periodic, unannounced audits of your supply chain for forced labor?</li> <li>• Have you reviewed the International Labour Organization’s “Indicators of Forced Labour” booklet?</li> <li>• Do you vet new suppliers/vendors for forced labor risks through questionnaires or some other means?</li> <li>• Do your contracts with suppliers include terms that prohibit the use of forced labor, a time frame by which to take corrective action if forced labor is identified, and the consequences if corrective action is not taken, such as the termination of the contractual relationship?</li> <li>• Do you have a comprehensive and transparent social compliance system in place? Have you reviewed the Department of Labor’s “Comply Chain” webpage?</li> <li>• Have you developed a reliable program or procedure to maintain and produce any required customs entry documentation and supporting information?</li> </ul>
<p><b>Xinjiang Supply Chain Advisory</b></p>	<p>In July 2020, the US Department of State, along with the US Department of the Treasury, the US Department of Commerce and the US Department of Homeland Security, issued a business advisory concerning forced labor risks associated with Xinjiang labor. The advisory notes that, where evidence indicates that goods from Xinjiang are produced with forced, indentured or convict labor, CBP will deny US entry to those goods, which could lead to the goods being seized and forfeited, or the issuance of civil penalties against the importer and other parties.</p> <p>The advisory notes the following potential indicators of Xinjiang forced labor or labor abuses:</p> <ul style="list-style-type: none"> <li>• <b>Lack of transparency.</b> Companies operating in Xinjiang using shell companies to hide the origin of their goods, writing contracts with opaque terms and conducting financial transactions in such a way that it is difficult to determine where the goods were produced, or by whom.</li> </ul>

	<ul style="list-style-type: none"> <li>• <b>Social insurance programs.</b> Companies operating in Xinjiang disclosing high revenue but having very few employees paying into the government’s social security insurance program.</li> <li>• <b>Terminology.</b> Any mention of internment terminology (such as Education Training Centers or Legal Education Centers) coupled with poverty alleviation efforts, ethnic minority graduates or involvement in reskilling.</li> <li>• <b>Government incentives.</b> Companies operating in Xinjiang receiving government development assistance as part of the government’s poverty alleviation efforts or vocational training programs and companies involved in the mutual pairing assistance program.</li> <li>• <b>Government recruiters.</b> Companies operating in Xinjiang implementing non-standard hiring practices and/or hiring workers through government recruiters.</li> <li>• <b>Factory location.</b> Companies operating in Xinjiang located within the confines of internment camps, near internment camps or within the confines of or adjacent to industrial parks involved in poverty alleviation efforts, or new factories built near internment camps.</li> </ul> <p>The advisory includes an illustrative, non-exhaustive list of industries in Xinjiang in which public reporting has indicated labor abuses may be taking place. The advisory indicates that businesses should consider the list as an additional risk factor for human rights due diligence. The following industries are on the list: (1) agriculture (including products such as hami melons, korla pears, tomato products and garlic); (2) cell phones; (3) cleaning supplies; (4) construction; (5) cotton yarn, cotton fabric, ginning, spinning mills and cotton products; (6) electronics assembly; (7) extractives (including coal, copper, hydrocarbons, oil, uranium and zinc); (8) fake hair and human hair wigs and hair accessories; (9) food processing factories; (10) hospitality services; (11) noodles; (12) printing products; (13) footwear; (14) stevia; (15) sugar; (16) textiles (including apparel, bedding, carpets and wool); and (17) toys.</p> <p>The advisory also includes a map of pairing program participants with counterparts and high-level information concerning the Xinjiang cotton supply chain.</p>
<p><b>CBP FAQs on the XUAR Cotton and Tomato WRO</b></p>	<p>In February 2021, CBP published FAQs relating to the January 2021 WRO pertaining to XUAR cotton and tomato products. Selected FAQs are summarized below.</p> <ul style="list-style-type: none"> <li>• Scope of the WRO <ul style="list-style-type: none"> <li>– 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.</li> </ul> </li> <li>• Proof of Admissibility <ul style="list-style-type: none"> <li>– Evidence submitted to establish admissibility must demonstrate the imported merchandise was not produced in whole or in part in the XUAR using forced labor.</li> <li>– 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)).</li> </ul> </li> </ul>

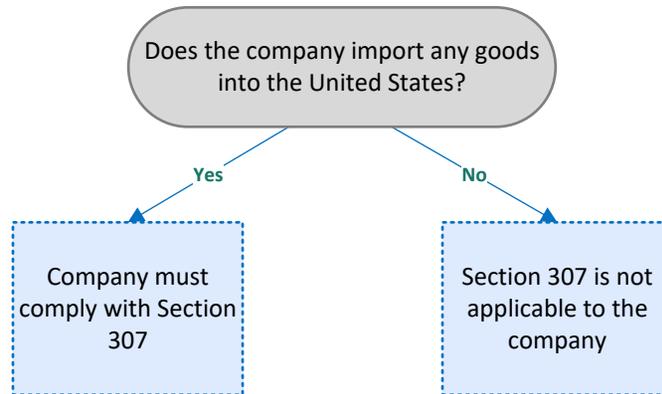
	<ul style="list-style-type: none"> <li>– Supporting documentation should trace the supply chain from point of origin of the cotton or tomatoes, to the production and processing of downstream products, to the merchandise imported into the United States.</li> <li>– Detention notices will request the following (additional documentation may be required): <ul style="list-style-type: none"> <li>▪ 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.</li> <li>▪ 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.</li> </ul> </li> </ul>
<b>Additional Information/Resources</b>	
<b>Law</b>	<p>For the text of Section 307 of the Act, see:  <a href="https://www.gpo.gov/fdsys/pkg/USCODE-2011-title19/pdf/USCODE-2011-title19-chap4-subtitleII-partI-sec1307.pdf">https://www.gpo.gov/fdsys/pkg/USCODE-2011-title19/pdf/USCODE-2011-title19-chap4-subtitleII-partI-sec1307.pdf</a></p> <p>For the text of The Trade Facilitation and Trade Enforcement Act of 2015, see:  <a href="https://www.congress.gov/114/plaws/publ125/PLAW-114publ125.pdf">https://www.congress.gov/114/plaws/publ125/PLAW-114publ125.pdf</a></p>
<b>CPB’s Reasonable Care Guidance</b>	<a href="https://www.cbp.gov/sites/default/files/assets/documents/2018-Mar/icprescare2017revision.pdf">https://www.cbp.gov/sites/default/files/assets/documents/2018-Mar/icprescare2017revision.pdf</a>
<b>Xinjiang Supply Chain Advisory</b>	<a href="https://www.state.gov/wp-content/uploads/2020/07/Xinjiang-Supply-Chain-Business-Advisory_FINAL_For-508-508.pdf">https://www.state.gov/wp-content/uploads/2020/07/Xinjiang-Supply-Chain-Business-Advisory_FINAL_For-508-508.pdf</a>
<b>CBP FAQs on the XUAR Cotton and Tomato WRO</b>	<a href="https://www.cbp.gov/trade/programs-administration/forced-labor/xinjiang-uyghur-autonomous-region-wro-frequently-asked-questions#">https://www.cbp.gov/trade/programs-administration/forced-labor/xinjiang-uyghur-autonomous-region-wro-frequently-asked-questions#</a>

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(Updated February 28, 2022)

**TARIFF ACT, SECTION 307 (US)**

**Applying the Law**



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

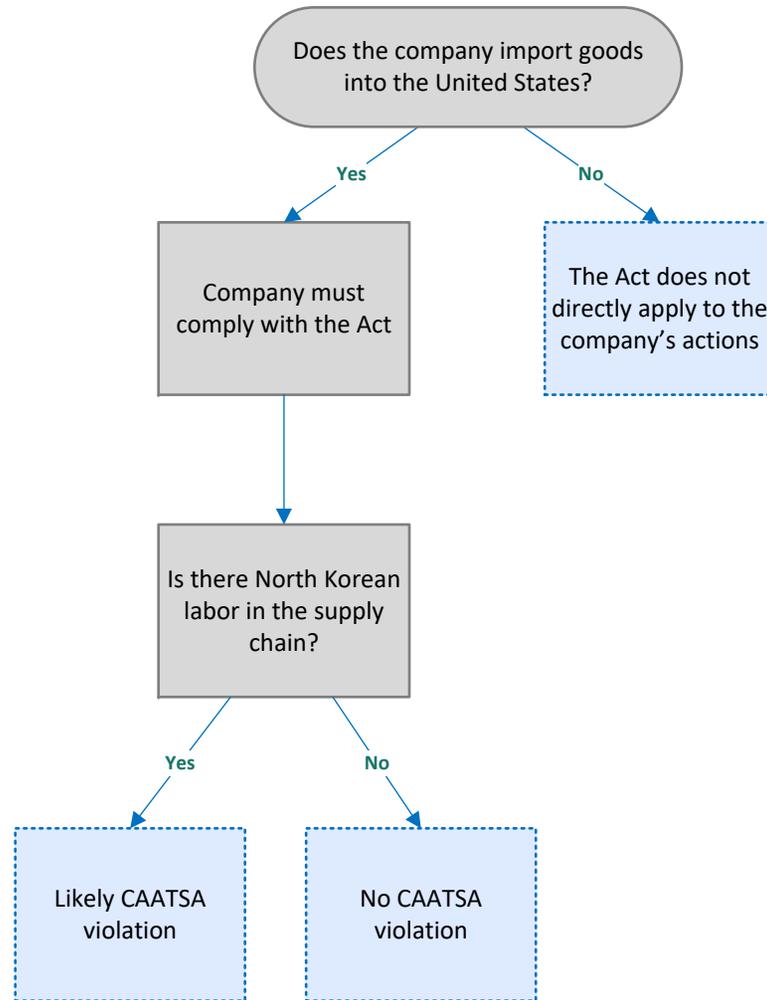
	<p>local business partners and members of civil society such as local communities, workers, trade unions, vulnerable groups and NGOs;</p> <ul style="list-style-type: none"> <li>• Integrating the foregoing commitments and assessments into internal control and oversight systems of company operations and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

	<ul style="list-style-type: none"> <li>• Long-term contracts that require a large upfront payment to the North Korean government;</li> <li>• Unsafe and unsanitary housing conditions provided by the employer and excessive costs for those accommodations; collective housing and isolation from laborers of other nationalities;</li> <li>• No access to/control over bank accounts; the employer retains passports and/or confiscates or destroys laborers’ personal documents; little to no time off and required to attend mandatory self-criticism sessions; and</li> <li>• Contract details are hidden and it is difficult to determine the ultimate beneficiary of financial transactions; laborers cannot be interviewed without a “minder” present.</li> </ul> <p>In addition, the guidance identifies 12 industries and 41 countries in which North Korean overseas labor was present in 2017-2018.</p>
<b>Additional Information/Resources</b>	
<b>Law</b>	For the text of the Act, see: <a href="https://www.treasury.gov/resource-center/sanctions/Programs/Documents/hr3364_pl115-44.pdf">https://www.treasury.gov/resource-center/sanctions/Programs/Documents/hr3364_pl115-44.pdf</a>
<b>Guidance</b>	<p>For the February 2021 DHS Guidance: <a href="https://www.dhs.gov/news/2021/02/11/countering-america-s-adversaries-through-sanctions-act-faqs">https://www.dhs.gov/news/2021/02/11/countering-america-s-adversaries-through-sanctions-act-faqs</a></p> <p>For the July 2018 DoS Guidance: <a href="https://www.treasury.gov/resource-center/sanctions/Programs/Documents/dprk_supplychain_advisory_07232018.pdf">https://www.treasury.gov/resource-center/sanctions/Programs/Documents/dprk_supplychain_advisory_07232018.pdf</a></p>

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(Updated February 28, 2022)

**Applying the Law**



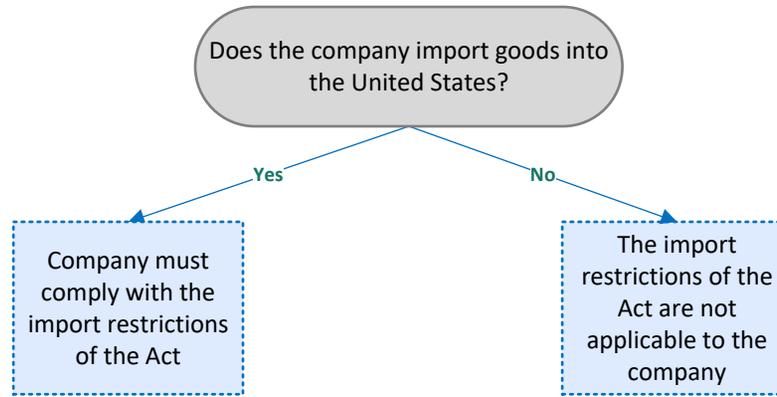
Uyghur Forced Labor Prevention Act United States	
<b>Overview</b>	
<b>Law / Country</b>	<b>Uyghur Forced Labor Prevention Act</b> (Public Law 117-78) (the “ <b>Act</b> ”) (United States)
<b>Goal</b>	To address Uyghur forced labor in supply chains.
<b>Adoption / Status</b>	The Act was signed into law by President Biden on December 23, 2021. The forced labor presumption takes effect on June 21, 2022.
<b>Issue Addressed</b>	Uyghur forced labor.
<b>Covered Entities</b>	Importers of goods into the United States. Additional reporting obligations also may apply to companies that are publicly traded in the United States.
<b>How It Works</b>	
<b>Mandatory?</b>	Yes.
<b>Prohibited Imports</b>	The Act establishes a rebuttable presumption that goods, wares, articles and merchandise mined, produced or manufactured wholly or in part (for brevity, “ <b>goods</b> ” that are “ <b>produced</b> ”) in the Xinjiang Uyghur Autonomous Region of China (“ <b>XUAR</b> ”), 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 Tariff Act.  The Act authorizes the Commissioner of U.S. Customs and Border Protection (the “ <b>Commissioner</b> ”) to amend any other regulations relating to withhold release orders in order to implement this portion of the Act.
<b>Exceptions to the Forced Labor Presumption</b>	The forced labor presumption established by the Act does not apply if the Commissioner determines that 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.  The forced labor prohibition does not apply if the Commissioner determines, by clear and convincing evidence, that any specific goods were not produced wholly or in part with forced labor.  If the Commissioner determines an exception to the forced labor presumption is appropriate, the determination will become a matter of public record. The Commissioner is required to submit to the appropriate congressional committees and make available to the public, within 30 days after the determination, a report identifying the goods and evidence considered.

	The Act expressly authorizes the Commissioner to prescribe regulations to implement the foregoing exceptions to the forced labor presumption.
<b>Enforcement</b>	The Act does not contain specific penalty provisions. Liability for violations would come under existing applicable provisions of the Tariff Act.  Note that, to date, CBP has issued several Withhold Release Orders involving XUAR goods, as described in our summary of Section 307 of the Tariff Act.
<b>Additional Information/Resources</b>	
<b>Law</b>	For the text of the Act, see: <a href="https://www.govinfo.gov/content/pkg/PLAW-117publ78/html/PLAW-117publ78.htm">https://www.govinfo.gov/content/pkg/PLAW-117publ78/html/PLAW-117publ78.htm</a>

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(Updated February 28, 2022)

**Applying the Law**

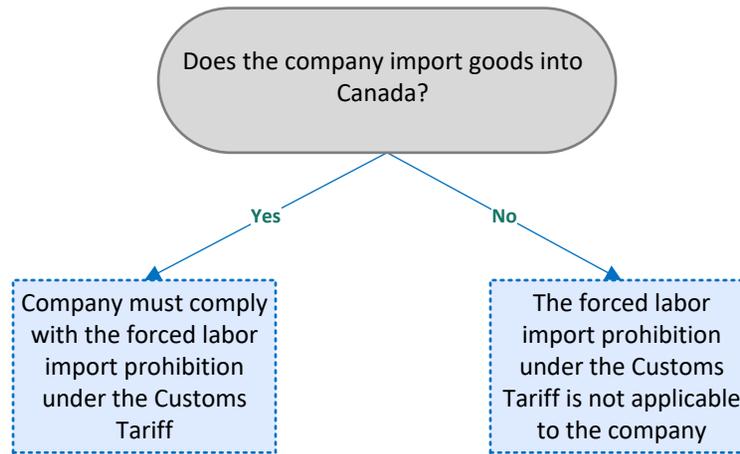


<b>Customs Tariff Canada</b>	
<b>Overview</b>	
<b>Law / State</b>	Customs Tariff, Tariff Item 9897.00 (Canada)
<b>Goal</b>	To prohibit importing goods produced or manufactured by forced labor.
<b>Adoption / Status</b>	As part of the U.S.-Mexico-Canada Agreement, which is the successor to NAFTA, the Canada-United 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.
<b>Issues Addressed</b>	Forced labor
<b>Covered Entities</b>	Importers of goods into Canada.
<b>How It Works</b>	
<b>Mandatory?</b>	Yes.
<b>Prohibited Imports</b>	Prohibits importing into Canada goods mined, manufactured or produced wholly or in part by forced labor.
<b>Enforcement</b>	The Canada Border Services Agency (“ <b>CBSA</b> ”) is responsible for enforcing prohibitions under the Customs Tariff.  The CBSA first enforced the import ban in the fall of 2021 when it seized a shipment of women’s and children’s clothing imported from China.
<b>Additional Information/Resources</b>	
<b>Law</b>	For the text of the Bill, see: <a href="https://laws-lois.justice.gc.ca/PDF/2020_1.pdf">https://laws-lois.justice.gc.ca/PDF/2020_1.pdf</a>

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(Updated February 28, 2022)

**Applying the Law**



## Customs Amendment (Banning Goods Produced By Forced Labour) Bill 2021 (Proposed) Australia

### Overview

<b>Law / Country</b>	<b>Customs Amendment (Banning Goods Produced By Forced Labour) Bill 2021</b> (the “Bill”) (Australia)
<b>Goal</b>	To prohibit importing goods produced or manufactured by forced labor.
<b>Adoption / Status</b>	On August 23, 2021, the Bill was passed by the Australian Senate. The Bill was introduced to the Australian House of Representatives on August 23, 2021. The Bill contemplates taking effect the day after it receives the Royal Assent.
<b>Issue Addressed</b>	Forced labor
<b>Covered Entities</b>	Importers of goods into Australia.

### How It Works

<b>Mandatory?</b>	Yes.
<b>Prohibited Imports</b>	<p>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.</p> <p>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.</p>
<b>Penalty</b>	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.

### Additional Information/Resources

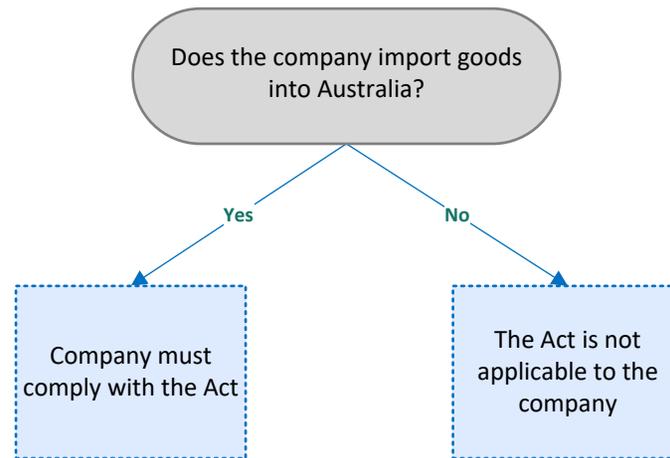
<b>Proposed Bill</b>	<p>For the text of the Bill, see: <a href="https://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/s1307_first-senate/toc_pdf/21S0720.pdf">https://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/s1307_first-senate/toc_pdf/21S0720.pdf</a></p> <p>For the Bill’s legislative status and explanatory memorandum, see: <a href="https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=s1307">https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=s1307</a></p>
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(Updated February 28, 2022)

## CUSTOMS AMENDMENT (BANNING GOODS PRODUCED BY FORCED LABOUR) (AUSTRALIA) (PROPOSED)

## Applying the Law

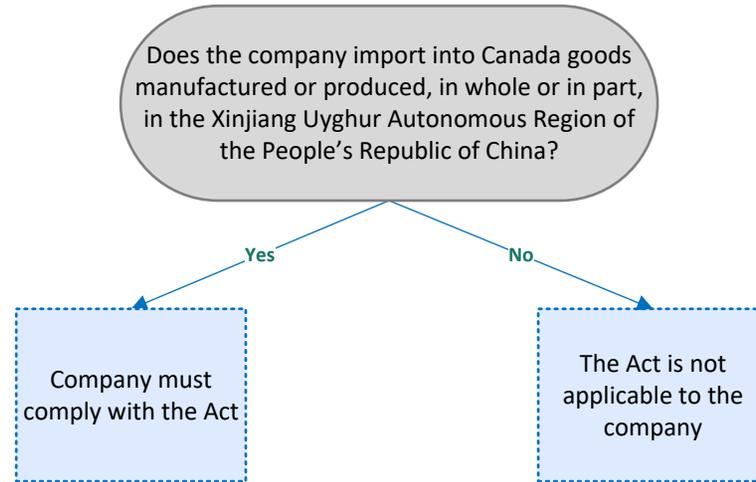


<b>Xinjiang Manufactured Goods Importation Prohibition Act (Proposed) Canada</b>	
<b>Overview</b>	
<b>Law / Country</b>	<b>Xinjiang Manufactured Goods Importation Prohibition Act (Bill S-204) (the “Act”) (Canada)</b>
<b>Goal</b>	To prohibit importing goods produced or manufactured in the Xinjiang Uyghur Autonomous Region of China.
<b>Adoption / Status</b>	The Act seeks to amend the Customs Tariff. On November 24, 2021, the Act was introduced to the Senate. The Act contemplates taking effect one year after it receives Royal Assent.
<b>Issue Addressed</b>	Forced labor in the Xinjiang Uyghur Autonomous Region
<b>Covered Entities</b>	Importers of goods into Canada.
<b>How It Works</b>	
<b>Mandatory?</b>	Yes.
<b>Prohibited Imports</b>	Importation into Canada of goods manufactured or produced, in whole or in part, in the Xinjiang Uyghur Autonomous Region of the People’s Republic of China would be prohibited.
<b>Enforcement</b>	The Canada Border Services Agency is responsible for enforcing prohibitions under the Customs Tariff. Penalties are not specified in the Act.
<b>Additional Information/Resources</b>	
<b>Proposed Act</b>	For the text of the Act, see: <a href="https://www.parl.ca/DocumentViewer/en/44-1/bill/S-204/first-reading">https://www.parl.ca/DocumentViewer/en/44-1/bill/S-204/first-reading</a>

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(Updated February 28, 2022)

**Applying the Law**



## Federal Acquisition Regulation Anti-Human Trafficking Rule United States

### Overview

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

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

<p><b>Recruitment Fees</b></p>	<p>On December 20, 2018, the Rule was amended to clarify the prohibition on charging employees recruitment fees. Recruitment fees include fees of any type, including charges, costs, assessments or other financial obligations, that are associated with the recruiting process, regardless of the time, manner or location of impositions or collection of the fee.</p> <p>The Rule applies, but is not limited to, fees (when associated with recruitment) for:</p> <ul style="list-style-type: none"> <li>• Soliciting, identifying, considering, interviewing, referring, retaining, transferring, selecting, training, providing orientation to, skills testing, recommending or placing employees or potential employees;</li> <li>• Obtaining permanent or temporary labor certification;</li> <li>• Processing applications and petitions; and</li> <li>• Acquiring visas.</li> </ul>
<p><b>OMB Guidance</b></p>	<p>In October 2019, the U.S. Office of Management and Budget issued a memorandum to support agency compliance with the Rule. The memorandum describes risk management best practices and mitigating factors for U.S. federal officials to take into account when working with contractors to address their obligations under the Rule. The stated purpose of the memorandum is to enhance the effectiveness of the Rule while helping federal government contractors manage and reduce the burden associated with meeting their compliance responsibilities. Although the memorandum is directed to personnel at U.S. executive departments and agencies, it provides helpful guidance for U.S. government contractors.</p> <p>The risk management best practices discussed in the memorandum include the following internal and external aspects of compliance by government contractors: (1) internal accountability; (2) the code of conduct and policies; (3) continuous improvement; (4) due diligence; (5) corrective action plans; and (6) subcontractor compliance. The memorandum notes that the risk management practices discussed are illustrative, not exhaustive, and that the memorandum is not intended to represent a compliance floor or to augment or otherwise change existing regulatory requirements.</p>
<p><b>Violations / Enforcement</b></p>	<p>The contractor is required to inform the contracting officer and the agency Inspector General of any credible information regarding an allegation that a contractor employee, subcontractor, subcontractor employee or their agent engaged in prohibited activities under the Rule.</p> <p>Remedies may include:</p> <ul style="list-style-type: none"> <li>• Requiring the contractor to remove an employee from the performance of the contract or terminate a subcontract;</li> <li>• Postponement of contract payments until the contractor has taken applicable remedial action;</li> <li>• Loss of award fees for the performance period during which the contractor was noncompliant;</li> <li>• Declining to implement available contract options;</li> <li>• Terminating the contract for default or cause based on the contract terms; or</li> <li>• Suspension or debarment.</li> </ul> <p>Failure to comply with the Rule may also result in criminal liability and liability under the False Claims Act.</p>

	In considering remedies, the contracting officer may consider whether the contractor had a compliance or awareness program at the time of the violation, was in compliance with the program at the time of the violation and has taken applicable remedial action.
<b>Additional Information/Resources</b>	
<b>Law</b>	For the text of the Rule as adopted, see: <a href="https://www.govinfo.gov/content/pkg/FR-2018-12-20/pdf/2018-27541.pdf">https://www.govinfo.gov/content/pkg/FR-2018-12-20/pdf/2018-27541.pdf</a> For the text of the recruitment fee amendment, see: <a href="https://www.govinfo.gov/content/pkg/FR-2018-12-20/pdf/2018-27544.pdf">https://www.govinfo.gov/content/pkg/FR-2018-12-20/pdf/2018-27544.pdf</a>
<b>OMB Guidance</b>	<a href="https://www.whitehouse.gov/wp-content/uploads/2019/10/M-20-01.pdf">https://www.whitehouse.gov/wp-content/uploads/2019/10/M-20-01.pdf</a>

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

	<p><b>“Abuse or threatened abuse of law or legal process”</b> means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.</p> <p><b>“Serious harm”</b> means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm.</p>
<p><b>Jurisdiction and Liability</b></p>	<p>Under the TVPRA, U.S. courts have extra-territorial jurisdiction over any offense (or any attempt or conspiracy to commit an offense) if (1) the alleged offender is a U.S. national or permanent resident or (2) the alleged offender is present in the United States, irrespective of the nationality of the alleged offender.</p> <p>Violations of the TVPRA can result in criminal or civil liability. Criminal penalties include both fines and imprisonment, depending upon the nature of the conduct. Selected recent civil suits alleging TVPRA violations are discussed below.</p> <p>As earlier noted, liability is not limited to labor exploitation that occurs in the United States.</p>
<p><b>Selected Litigation</b></p>	<p>Civil suits have recently been filed alleging violations of the TVPRA by well-known large companies. These suits allege violations of the “venture” prong of the TVPRA.</p> <p><i>Doe et al. v. Nestle USA, Inc. et al. (U.S., 2021)</i></p> <p>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 “John Doe” plaintiffs from Mali. The plaintiffs are alleging the defendants have been participating in a venture using child labor in violation of the TVPRA.</p> <p><i>Doe et al. v. Apple Inc. et al. (U.S., 2019)</i></p> <p>In December 2019, International Rights Advocates filed a class action lawsuit in the D.C. District Court against Apple, Google, Dell, Microsoft and Tesla on behalf of 14 “John Doe” child plaintiffs from the Democratic Republic of the Congo. The plaintiffs are alleging participation by the defendants in a venture with their supply chains that the defendants knew or should have known engaged in forced labor in violation of the TVPRA. 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.</p> <p><i>M.A. et al. v. Wyndham Hotels &amp; Resorts Inc. et al. (U.S., 2019)</i></p> <p>In March 2019, a sex trafficking survivor filed a lawsuit against hotel chains in Ohio. The plaintiff alleged that the defendants knowingly benefited from participating in a venture which they knew was engaged in illegal sex trafficking in violation of the TVPRA. The complaint noted that the defendants engaged in acts and omissions that were intended to support and facilitate the trafficking by ignoring multiple red flags. The complaint further alleged that the hotel chains failed to take appropriate measures to combat the trafficking while simultaneously accepting profits, thus making them directly complicit. The court dismissed the case, holding that establishing participation in a venture for purposes of the TVPRA requires demonstrating a</p>

	continuous business relationship between the trafficker and the hotels, such that it would appear that the trafficker and the hotels have established a pattern of conduct.
<b>Additional Information/Resources</b>	
<b>TVPA</b>	For the text of the TVPA, see: <a href="https://www.govinfo.gov/content/pkg/PLAW-106publ386/pdf/PLAW-106publ386.pdf">https://www.govinfo.gov/content/pkg/PLAW-106publ386/pdf/PLAW-106publ386.pdf</a> For the text of the TVPRA (2003), see: <a href="https://www.govinfo.gov/content/pkg/BILLS-108hr2620enr/pdf/BILLS-108hr2620enr.pdf">https://www.govinfo.gov/content/pkg/BILLS-108hr2620enr/pdf/BILLS-108hr2620enr.pdf</a> For all additional amendments to the TVPRA, see: <a href="https://www.state.gov/international-and-domestic-law/">https://www.state.gov/international-and-domestic-law/</a>

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

(Updated February 28, 2022)

## Non-financial Reporting Directive European Union

### Overview

<b>Law / Country</b>	<b>EU Non-financial Reporting Directive (2014/95/EU) (the “Directive”)</b> (European Union)
<b>Goal</b>	To drive improvements in social, human rights and environmental matters through enhanced disclosure.
<b>Adoption / Status</b>	<p>The EU Non-financial Reporting Directive was adopted on October 22, 2014. The Directive is effective for financial years beginning on or after January 1, 2017.</p> <p>The Directive has been subsequently transposed into national legislation in the EU member states.</p> <p>On April 21, 2021, the European Commission (the “EC”) adopted a Corporate Sustainability Reporting Directive (the “CSRD”) that would replace the Directive and expand its scope. The CSRD is further discussed below.</p>
<b>Issues Addressed</b>	<ul style="list-style-type: none"> <li>• Environment</li> <li>• Social and employee matters</li> <li>• Human rights</li> <li>• Corruption and bribery</li> <li>• Diversity</li> </ul>
<b>Covered Entities</b>	<p>EU-listed companies, banks, insurance companies and other companies designated by national authorities as public interest entities (“PIEs”) that meet the following criteria (note that the threshold for diversity disclosure is different):</p> <ul style="list-style-type: none"> <li>• balance sheet total of more than €20 million or a net turnover of more than €40 million; and</li> <li>• an average number of employees for the year of more than 500.</li> </ul> <p>For parent companies, the consolidated figures of the whole group are used to determine whether the company must comply with the Directive. If so, the parent company is required to disclose the required non-financial information (as described below) of the entire group. Subsidiaries are exempt from the reporting requirement if the parent organization reports, even if the subsidiary is independently subject to the Directive.</p>
<b>How It Works</b>	
<b>Mandatory?</b>	Yes.

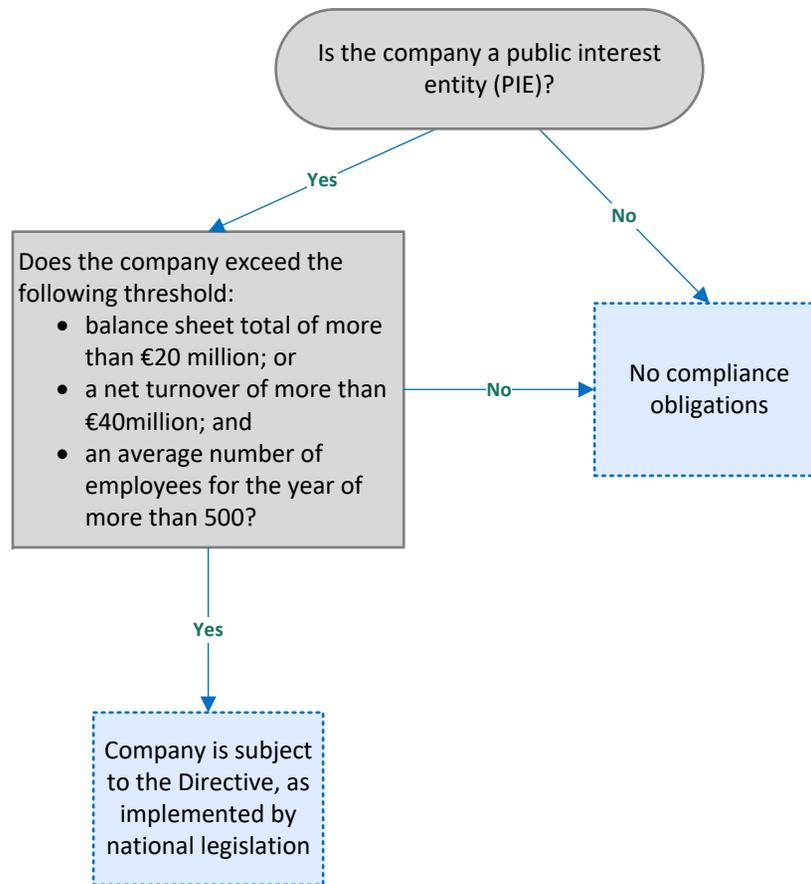
<p><b>Reporting</b></p>	<p>Covered companies must include in their management statement, or as a separate report, a non-financial statement containing information, to the extent necessary for an understanding of the company’s development, performance, position and impact of its activity, relating to, at a minimum:</p> <ul style="list-style-type: none"> <li>• environmental protection;</li> <li>• social responsibility and employee matters;</li> <li>• respect for human rights;</li> <li>• anti-corruption; and</li> <li>• bribery matters.</li> </ul> <p>The non-financial statement should include:</p> <ul style="list-style-type: none"> <li>• a brief description of the company’s business model;</li> <li>• a description of the policies pursued by the company in relation to non-financial aspects, including due diligence processes implemented;</li> <li>• the outcome of those policies;</li> <li>• the principal risks related to those matters linked to the company’s operations including, where relevant and proportionate, its business relationships, products or services which are likely to cause adverse impacts in those areas, and how the company manages those risks;</li> <li>• non-financial key performance indicators relevant to the particular business; and</li> <li>• a description of the diversity policy applied in relation to administrative, management and supervisory bodies with regard to aspects such as age, gender, or educational and professional backgrounds, the objectives of that diversity policy, how it has been implemented and the results in the reporting period.</li> </ul> <p>If the company does not pursue policies in relation to the above matters, the non-financial statement must provide a clear and reasoned explanation for not doing so. The non-financial statement must also, where appropriate, include references to, and additional explanations of, amounts reported in the annual financial statements.</p>
<p><b>Additional Guidelines</b></p>	<p>In June 2017, the EC published guidance on complying with the Directive, including suggested disclosure topics and key performance indicators. These pertain to the supply chain and conflict minerals, among other topics. The guidelines indicate that the reported non-financial information can be made fairer and more accurate through:</p> <ul style="list-style-type: none"> <li>• appropriate corporate governance arrangements (for instance, certain independent board members or a board committee entrusted with responsibility over sustainability and/or transparency matters);</li> <li>• robust and reliable evidence, internal control and reporting systems;</li> <li>• effective stakeholder engagement; and</li> <li>• independent external assurance.</li> </ul> <p>In June 2019, the European Commission published additional guidelines on climate-related reporting under the Directive. Among other things, the guidelines contain recommendations on how companies should report the impact of their operations on the climate as well as the impact of climate change on their business.</p>
<p><b>Enforcement</b></p>	<p>Enforced by the individual EU member states. Enforcement varies by member state.</p>

<b>Proposed Revisions to the Directive</b>	As earlier noted, on April 21, 2021, the EC adopted the CSRD, which would replace the Directive and expand its scope. The CSRD would apply to a large number of additional companies. Subject companies also would be required to, among other things, assess sustainability risks and impacts associated with their business model and strategy, sustainability opportunities and compatibility with the Paris Agreement. Companies would be required to provide qualitative and quantitative sustainability information. New sustainability reporting standards would be developed by the European Financial Reporting Advisory Group (the “ <b>EFRAG</b> ”). The proposed CSRD also would introduce an assurance obligation for reported sustainability information. Next steps are for the European Parliament and the European Council to negotiate a final legislative text. In parallel, the EFRAG has begun work on a first set of draft sustainability reporting standards, which it aims to have proposed by mid-2022.
<b>Additional Information/Resources</b>	
<b>Text of the Directive</b>	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0095">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0095</a>
<b>Official Guidelines</b>	For the June 2017 guidelines, see: <a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52017XC0705(01)">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52017XC0705(01)</a> For the June 2019 guidelines, see: <a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52019XC0620(01)">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52019XC0620(01)</a>
<b>Text of the Proposed CSRD</b>	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0189">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0189</a>

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

(Updated February 28, 2022)

**Applying the Law\***



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

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.
Adoption / Status	<p>On February 23, 2022, the European Commission (the “Commission”) released its proposed directive.</p> <p>The Directive adopted by the Commission does not yet have legal effect. The next step is for the Commission’s proposal to be presented to the European Parliament and the Council for their approval.</p> <p>Upon enactment, the Directive would be required to be transposed into EU Member State national law. The Directive does not directly contain obligations binding on companies.</p>
Issues Addressed	<ul style="list-style-type: none"> <li>• Human rights</li> <li>• Environmental impacts</li> </ul>
Covered Entities	<p>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.</p> <p>For EU companies:</p> <ul style="list-style-type: none"> <li>• <b>Group 1:</b> 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</li> <li>• <b>Group 2:</b> 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 was generated in one or more of the following sectors: <ul style="list-style-type: none"> <li>○ The manufacture of textiles, leather and related products (including footwear), and the wholesale trade of textiles, clothing and footwear;</li> <li>○ Agriculture, forestry, fisheries (including aquaculture), the manufacture of food products and the wholesale trade of agricultural raw materials, live animals, wood, food and beverages;</li> <li>○ 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</li> </ul> </li> </ul>

	<p>and intermediate mineral products (including metals and metal ores, construction materials, fuels, chemicals and other intermediate products).</p> <p>For non-EU companies:</p> <ul style="list-style-type: none"> <li>• <b>Group 1:</b> Generated net turnover of more than €150 million in the European Union in the fiscal year preceding the last fiscal year; or</li> <li>• <b>Group 2:</b> 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 was generated in one or more of the high-impact sectors listed above.</li> </ul> <p><b>“Company”</b> 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.</p> <p>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.</p> <p>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.</p>
<b>How It Works</b>	
<b>Mandatory?</b>	Yes.
<b>Selected Definitions</b>	<p><b>“Business relationship”</b> 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.</p> <p><b>“Established business relationship”</b> means 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.</p> <p><b>“Stakeholders”</b> means the company’s employees, the employees of its subsidiaries, 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 relationships.</p> <p><b>“Value chain”</b> means 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</p>

	<p>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.</p> <p>For a regulated financial undertaking, its value chain 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 of a regulated financial undertaking would not include a small or medium-sized enterprise (a “SME”) receiving a loan, credit, financing, insurance or reinsurance.</p> <p><b>“Adverse human rights impact”</b> means 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.</p> <p><b>“Adverse environmental impact”</b> means an adverse impact on the environment resulting from the violation of a prohibition or obligation pursuant to one of twelve specified international environmental conventions.</p> <p><b>“Severe adverse impact”</b> means 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.</p>
<p><b>Due Diligence</b></p>	<p><b>“Due diligence”</b> 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:</p> <ul style="list-style-type: none"> <li>• Integrating due diligence into policies;</li> <li>• Identifying actual or potential adverse impacts;</li> <li>• Preventing and mitigating potential adverse impacts;</li> <li>• Bringing actual adverse impacts to an end and minimizing their extent;</li> <li>• Establishing and maintaining a complaints procedure;</li> <li>• Monitoring the effectiveness of the due diligence policy and measures taken; and</li> <li>• Publicly communicating on due diligence.</li> </ul> <p><i>Due Diligence Policy</i></p> <p>Companies would be required to integrate due diligence into their corporate policies and have in place a due diligence policy.</p> <p>The due diligence policy would be required to contain the following elements:</p> <ul style="list-style-type: none"> <li>• A description of the company’s approach to due diligence, including in the long term;</li> <li>• A code of conduct describing rules and principles to be followed by the company’s employees and subsidiaries; and</li> </ul>

- 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.

The due diligence policy would be required to be updated annually.

*Identifying and Addressing Adverse Impacts*

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, from their established business relationships.

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.

*Preventing and Mitigating Adverse Impacts*

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 these impacts.

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, 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 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 (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, where compliance with the code of conduct or prevention action plan would jeopardize the viability of the SME.
- 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 relations 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.

Under the Directive, Member States would be required to provide for the availability of an option to terminate the business relationship in contracts governed by their laws.

#### *Addressing an Actual Adverse Impact*

Companies would be required to take appropriate measures to bring to an end actual adverse impacts that have been, or should have been, identified pursuant to the due diligence measures required to be taken. If the adverse impact cannot 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:

- 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.

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.

- Where necessary due to the fact that the adverse impact cannot immediately be brought to an end, develop and implement a corrective action plan with reasonable and clearly defined timelines for action and qualitative and quantitative indicators for measuring improvement.

	<p>Where relevant, the corrective action plan would be required to be developed in consultation with stakeholders.</p> <ul style="list-style-type: none"> <li>• Seek contractual assurances from a direct partner with whom the company has an established business relationship that the partner 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 (i.e., contractual cascading).</li> <li>• Make necessary investments, such as into management or production processes and infrastructures, to comply with the foregoing three items.</li> <li>• Provide targeted and proportionate support for an SME with which the company has an established business relationship, where compliance with the code of conduct or the corrective action plan would jeopardize the viability of the SME.</li> <li>• 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 would be suitable or effective.</li> </ul> <p>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 an indirect partner, with a view to achieving compliance with the company’s code of conduct or corrective action plan.</p> <p><i>Annual Evaluation of Due Diligence Strategy</i></p> <p>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 chains.</p> <p>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, or earlier if there are reasonable grounds to believe that significant new risks of the occurrence of the adverse impacts may arise.</p> <p>The due diligence policy would be required to be updated to take into account the outcome of the assessment.</p>
<b>Compliance Verification</b>	<p>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.</p> <p>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.</p>

	<p>An “<b>industry initiative</b>” would be defined as a combination of voluntary value chain due diligence procedures, tools and mechanisms, including independent third-party verifications, developed and overseen by governments, industry associations or groupings of interested organizations.</p> <p>Third-party verification could be provided by an auditor 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.</p>
<b>Complaints Mechanism</b>	<p>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, at their subsidiaries or in their value chains. 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.</p> <p>The company complaint mechanism would be required to enable the following to submit concerns:</p> <ul style="list-style-type: none"> <li>• Persons affected or who have reasonable grounds to believe they might be affected by an adverse impact;</li> <li>• Trade unions and other workers’ representatives representing individuals working in the value chain; and</li> <li>• Civil society organizations active in the areas related to the value chain.</li> </ul> <p>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.</p> <p>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.</p>
<b>Reporting</b>	<p>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.</p> <p>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).</p>
<b>Directors Duties</b>	<p>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.</p>

	<p>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.</p> <p>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.</p> <p>A “<b>director</b>” would include the following:</p> <ul style="list-style-type: none"> <li>• Any member of the administrative, management or supervisory body of a company;</li> <li>• 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</li> <li>• Other persons who perform functions similar to the foregoing.</li> </ul> <p>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.</p>
<b>Climate Change</b>	<p>Group 1 companies would be required to adopt a plan 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.</p> <p>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.</p> <p>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.</p> <p>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.</p>
<b>Additional Guidance and Guidelines</b>	<p>The Commission 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.</p> <p>The Commission would be expressly empowered to issue guidelines to provide support to companies or Member State authorities on how companies should fulfill their due diligence obligations. Among other things, guidelines could be issued for specific sectors or specific adverse impacts. However, the Commission would not be required to issue guidelines.</p> <p>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.</p>

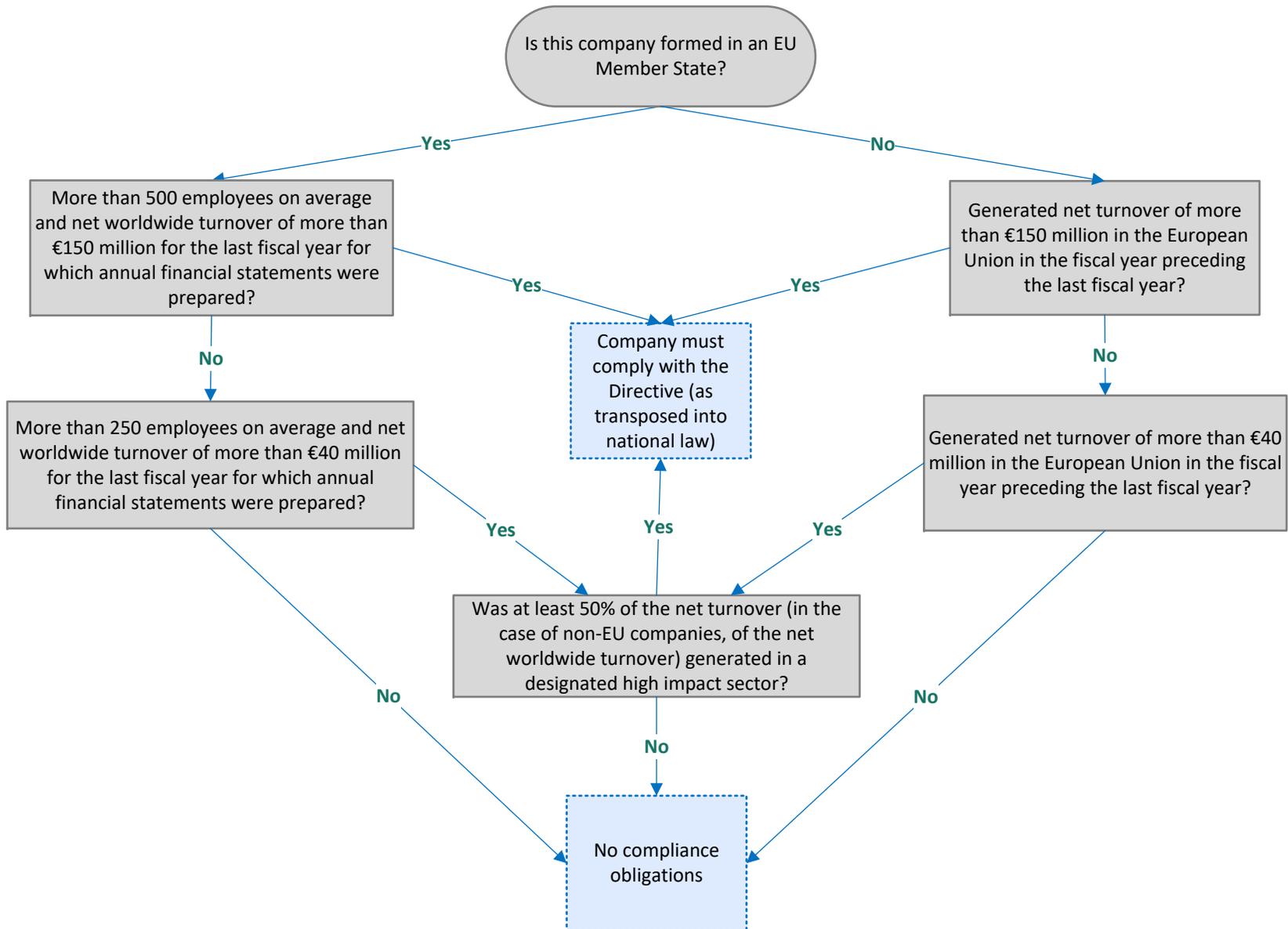
<b>Enforcement</b>	<p>Each Member State would be required to designate one or more supervisory authorities to supervise compliance with the due diligence and climate change-related obligations adopted under national law pursuant to the Directive.</p> <p>The Member State supervisory authorities would be required to be given adequate powers and resources to carry out their tasks, including the power to request information and carry out investigations.</p> <p>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.</p> <p>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.</p>
<b>Sanctions</b>	<p>The Directive does not specify particular sanctions. Instead, it provides a framework for determining sanctions. Under the Directive, Member States would be required to establish rules on sanctions in the event of a violation of national provisions adopted pursuant to the Directive.</p> <p>Sanctions would be required to be effective, proportionate and dissuasive. In deciding whether to impose sanctions 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.</p> <p>If pecuniary sanctions are imposed, they would be required to be based on the company's turnover.</p> <p>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 or civil liability if there are damages.</p>
<b>Civil Liability</b>	<p>Victims would be required to be able to bring a civil liability claim in appropriate Member State courts.</p> <p>Member States would be required to ensure that companies could be held liable for damages if:</p> <ul style="list-style-type: none"> <li>• they failed to comply with their obligations to prevent potential adverse impacts and bring actual adverse impacts to an end; and</li> <li>• 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.</li> </ul>

	<p>However, 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.</p>
<b>Effective Date</b>	<p>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.</p>
<b>Relationship to Other Existing Requirements</b>	<p>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.</p> <p>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.</p>
<b>Additional Information/Resources</b>	
<b>Proposed Directive</b>	<p>For the text of the proposed Directive, see: <a href="https://ec.europa.eu/info/sites/default/files/1_1_183885_prop_dir_susta_en.pdf">https://ec.europa.eu/info/sites/default/files/1_1_183885_prop_dir_susta_en.pdf</a></p>

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

(Updated February 28, 2022)

## Applying the Law



<b>Corporate Duty of Vigilance Law France</b>	
<b>Overview</b>	
<b>Law / Country</b>	<b>Corporate Duty of Vigilance Law</b> (No. 2017-399) (the “ <b>Law</b> ”) (France)
<b>Goal</b>	To prevent severe human rights violations and violations of the health and safety of people or the environment, including those associated with subsidiaries, subcontractors and supply chain members.
<b>Adoption / Status</b>	<p>The Law was adopted on February 21, 2017 by the French National Assembly and became effective on March 27, 2017.</p> <p>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.</p> <p>On October 21, 2021, French members of Parliament and senators met in a joint committee and decided to confer jurisdiction over the Law to the Paris Civil Court.</p>
<b>Issues Addressed</b>	<ul style="list-style-type: none"> <li>• Serious violations of human rights and fundamental freedoms, identical to the full spectrum of human rights outlined in the UN Guiding Principles on Business and Human Rights (the “<b>UN Guiding Principles</b>”) (link below);</li> <li>• The health and safety of people; and</li> <li>• The environment.</li> </ul>
<b>Covered Entities</b>	<p>Any company with its registered office in France that employs, for a period of two consecutive financial years:</p> <ul style="list-style-type: none"> <li>• at least 5,000 employees itself and in its direct or indirect subsidiaries with registered offices in France; or</li> <li>• at least 10,000 employees itself and in its direct or indirect subsidiaries with registered offices located within French territory or abroad.</li> </ul> <p>A company is considered to be a subsidiary if another company owns more than 50% of its capital.</p> <p>Up-the-chain affiliates and sister companies are not subject to the Law unless they independently meet its requirements. A controlled company independently required to comply with the Law is exempt if it comes under the vigilance plan of a parent entity.</p>
<b>How It Works</b>	
<b>Mandatory?</b>	Yes.
<b>Vigilance Plan Requirements</b>	<p>Subject companies must establish a reasonable vigilance plan to allow for risk identification and prevention of severe violations of human rights, health and safety or environmental damage resulting from the operations of the company, its subsidiaries and subcontractors and suppliers with which the company has an established relationship.</p> <p>The vigilance plan must include:</p>

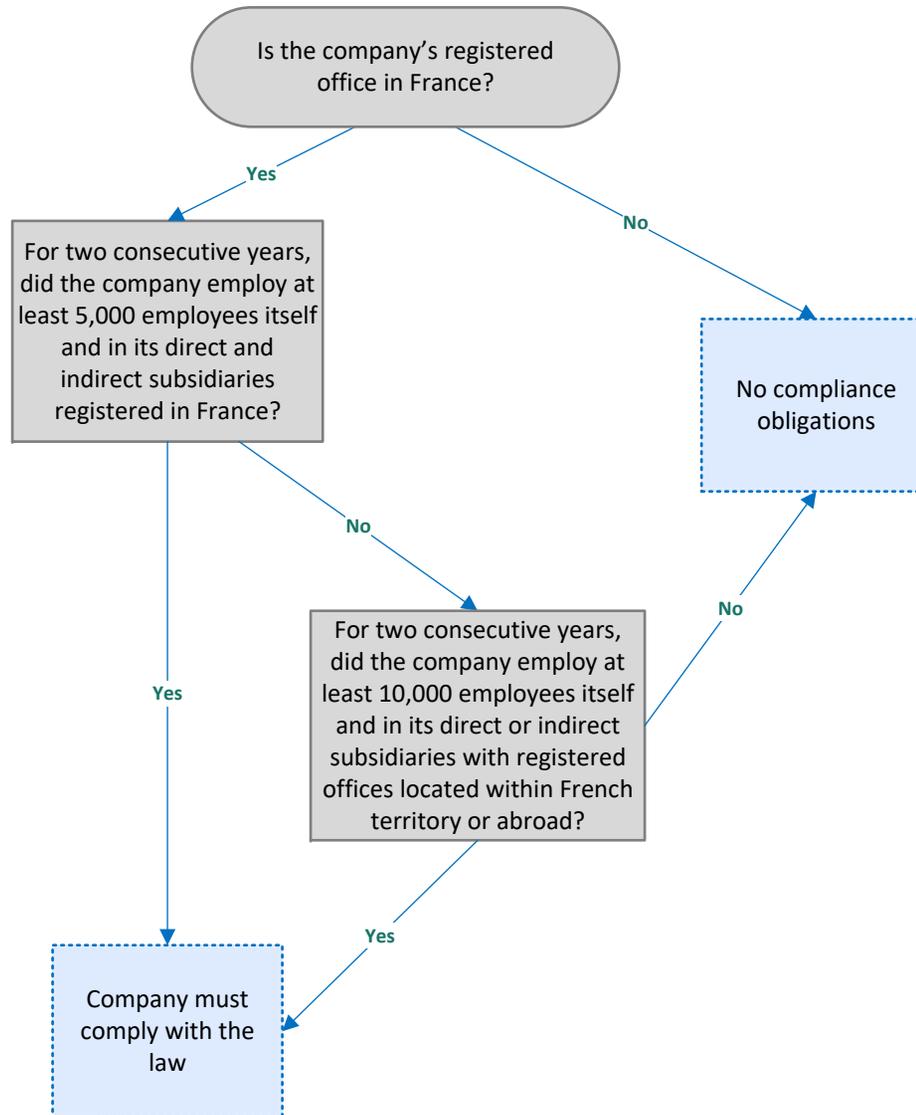
	<ul style="list-style-type: none"> <li>• procedures to identify and analyze the risks of human rights violations or environmental harms in connection with the company’s operations;</li> <li>• procedures to regularly assess risks associated with subsidiaries, subcontractors and suppliers with which the company has a commercial relationship;</li> <li>• actions to mitigate identified risks or prevent the most serious violations;</li> <li>• mechanisms to alert the company to risks and collect signals of potential or actual risk; and</li> <li>• mechanisms to assess measures that have been implemented as part of the company’s plan and their effectiveness.</li> </ul> <p>The plan must be drafted in association with the company stakeholders involved and, where appropriate, within multi-party initiatives that exist in the subsidiaries or at the territorial level. The alert mechanism must be developed in partnership with the company’s trade union representative.</p>
<b>Reporting</b>	<p>Companies must make public their vigilance plan and a regular report on the implementation of the plan. Companies must include their vigilance plan and report on implementation in their annual management report.</p>
<b>Enforcement</b>	<p>If a subject company fails to create, implement or publish a vigilance plan, an interested person may send a formal notice to the company detailing its non-compliance. After receiving a formal notice of non-compliance, the company has three months to meet its obligations.</p> <p>If the company fails to meet its obligations after the three-month period, any person with a demonstrable interest (i.e., the claimant has suffered harm and there is loss causation) may demand a court take action to enforce the law, at which point a judge may issue an injunction requiring compliance. The judge may also rule on whether a vigilance plan is complete and appropriately fulfills the obligations described in the Law.</p> <p>Companies may also be subject to civil liability. If an individual is harmed by a company’s non-compliance, the individual can seek damages for corporate negligence.</p> <p>As earlier noted, on October 21, 2021, jurisdiction over the Law was conferred upon the Paris Civil Court.</p> <p>Selected Enforcement Activity:</p> <p>Civil society organizations have been seeking to compel compliance by companies they believe are not meeting their obligations under the Law.</p> <p>In 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.</p>

	<p>In October 2020, Mexican and international human rights organizations brought suit against a French energy company, alleging that the company has not consulted nor obtained informed consent from the indigenous community affected by the company's planned wind farm project in Mexico. The groups initially issued a notice of non-compliance to the French company in October 2019. 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.</p> <p>In January 2020, 14 French local authorities and several NGOs filed a lawsuit under the Law against 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. This case is pending.</p> <p>In October 2019, French and Ugandan environmental groups sued the same 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. This case is pending.</p> <p>In October 2019, a notice of non-compliance was submitted to the French subsidiary of a U.S.-based company. Several unions alleged the company was not meeting the minimum requirements of the Law, particularly with respect to workers' rights.</p>
<b>Additional Information/Resources</b>	
<b>Law</b>	For the text of the Law, see: <a href="http://www.assemblee-nationale.fr/14/pdf/ta/ta0924.pdf">http://www.assemblee-nationale.fr/14/pdf/ta/ta0924.pdf</a>
<b>Constitutional Council Decision</b>	<a href="https://www.conseil-constitutionnel.fr/decision/2017/2017750DC.htm">https://www.conseil-constitutionnel.fr/decision/2017/2017750DC.htm</a>
<b>UN Guiding Principles</b>	For the UN Guiding Principles in multiple languages, see: <a href="https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf">https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf</a>

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(Updated February 28, 2022)

**Applying the Law**



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 will apply for the first time for fiscal year 2023.
Issues Addressed	<ul style="list-style-type: none"> <li>• Conflict minerals and metals</li> <li>• Child labor</li> </ul> <p>“<b>Conflict minerals and metals</b>” applies to tin, tantalum, tungsten and gold (“<b>3TG</b>”) 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.</p> <p>“<b>Conflict-affected and high-risk areas</b>” 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.</p> <p>“<b>Child labor</b>” includes the following, whether carried out within or outside of an employment relationship:</p> <ul style="list-style-type: none"> <li>• Work performed by persons under 18 that comes under the International Labour Organization’s (the “<b>ILO</b>”) Worst Forms of Child Labour Convention (“<b>Convention No. 182</b>”);</li> <li>• If a jurisdiction has ratified the ILO’s Minimum Age Convention (“<b>Convention No. 138</b>”), child labor prohibited by that jurisdiction’s laws in conformity with Convention No. 138;</li> <li>• 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</li> </ul>

	<ul style="list-style-type: none"> <li>• 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.</li> </ul> <p>The amendment to the Code of Obligations also requires 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.</p>
<b>Covered Entities</b>	<p>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.</p>
<b>Due Diligence and Reporting Exceptions</b>	<p>Child Labor:</p> <p>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.</p> <p><i>Small or medium-sized enterprise.</i> 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:</p> <ul style="list-style-type: none"> <li>• Total assets of SFr20 million;</li> <li>• Sales of SFr40 million; and</li> <li>• An annual average of 250 full-time employees.</li> </ul> <p><i>Low risk of child labor.</i> 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.</p> <p><i>Lack of reasonable suspicion.</i> 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.</p> <p>Conflict Minerals and Metals:</p>

	<p><i>De minimis 3TG usage.</i> 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.</p> <p><i>3TG not from a conflict-affected or high-risk area.</i> The Provisions do not identify specific areas by name as conflict-affected and high-risk. The Federal Council’s guidance refers to the European Union’s 2018 recommendations for determining whether areas are conflict-affected and high-risk for purposes of the EU Conflict Minerals Regulation and the list of conflict-affected and high-risk areas periodically published by Rand International. According to the Federal Council’s guidance, this assessment must be done on a regular basis since conflict-affected and high-risk areas are not static. If the enterprise concludes its 3TG is not from a conflict-affected or high-risk area, it must document its finding. The finding is not required to be published or filed with a regulator.</p> <p>Compliance with an Equivalent Regulation or Instrument:</p> <p>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 “<b>Specified Instruments</b>”). The current Specified Instruments for child labor and conflict minerals and metals are:</p> <ul style="list-style-type: none"> <li>• Child labor <ul style="list-style-type: none"> <li>◦ Convention No. 182, Convention No. 138 and the ILO-IOE Child Labour Guidance Tool for Business; and</li> <li>◦ The OECD Due Diligence Guidance for Responsible Business Conduct.</li> </ul> </li> <li>• Conflict minerals and metals <ul style="list-style-type: none"> <li>◦ The OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas; or</li> <li>◦ The EU Conflict Minerals Regulation.</li> </ul> </li> </ul> <p>To utilize this exception, the enterprise must prepare a report that identifies the Specified Instrument and comply with its requirements in their entirety.</p>
<b>How It Works</b>	
<b>Mandatory?</b>	Yes.
<b>Due Diligence</b>	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;
- 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.

Traceability System:

Enterprises must establish a supply chain traceability system for child labor and/or conflict minerals and metals, as applicable. The requirements differ for each of these subject areas.

- *Child labor.* The traceability system must contain and document the following information where there is a reasonable suspicion of child labor:
  - The description of the product or service and, if any, trade name; and
  - The name and address of the supplier and the production sites or the service provider to the enterprise.
- *Conflict minerals and metals.* The traceability system must contain and document the following information for 3TG originating from a conflict-affected and high-risk area:
  - The description of the mineral or metal, including its trade name;
  - The name and address of the supplier;
  - The country of origin of the mineral;
  - For metals, the name and address of the smelters and refiners in the supply chain;
  - For minerals, to the extent available, the volume or weight and the date mined;
  - For minerals originating from conflict-affected and high-risk areas or for which the enterprise has identified other supply chain risks specified in the conflict minerals-related Specified Instruments, additional information in accordance with the supply chain recommendations in those instruments, such as mine of origin, where the mineral is combined with other minerals, traded or processed and the taxes, duties and fees paid; and
  - For metals, (1) where available, assessments of smelters and refiners carried out by third parties, (2) where these assessments are not available, the country of origin of the mineral and the location of the smelter or refiner and (3) for metals originating from conflict-affected and high-risk areas or if other supply chain risks specified in the previously listed conflict minerals-related Specified Instruments have been identified, additional information relating to downstream undertakings in accordance with the recommendations in those Specified Instruments.

By-products are required to be traced back only to the point at which they were first separated from their primary mineral or metal.

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.

	<p><b>Risk Mitigation:</b></p> <p>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.</p> <p><b>Audit Requirements Relating to 3TG:</b></p> <p>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.</p>
<b>Partial Due Diligence Exception</b>	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.
<b>Reporting</b>	<p>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.</p> <p>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.</p>
<b>Reporting Exceptions</b>	<p>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.</p> <p>Enterprises that offer products or services from enterprises that already have published a report are exempted from the duty to publish a report.</p>
<b>Enforcement</b>	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.
<b>Additional Information/Resources</b>	
<b>Law</b>	<p>For the Code of Obligations (in German), see: <a href="https://www.fedlex.admin.ch/eli/oc/2021/846/de">https://www.fedlex.admin.ch/eli/oc/2021/846/de</a></p> <p>For the text of the Ordinance (unofficial translation here), see: <a href="https://www.fedlex.admin.ch/eli/cc/2021/847/en">https://www.fedlex.admin.ch/eli/cc/2021/847/en</a></p>
<b>Specified Instruments</b>	<p>For Convention No. 138, see: <a href="https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138">https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138</a></p> <p>For Convention No. 182, see: <a href="https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182">https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182</a></p>

For the ILO-IOE Child Labour Guidance Tool for Business, see:

[https://www.ilo.org/ipecc/Informationresources/WCMS\\_IPEC\\_PUB\\_27555/lang--en/index.htm](https://www.ilo.org/ipecc/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>

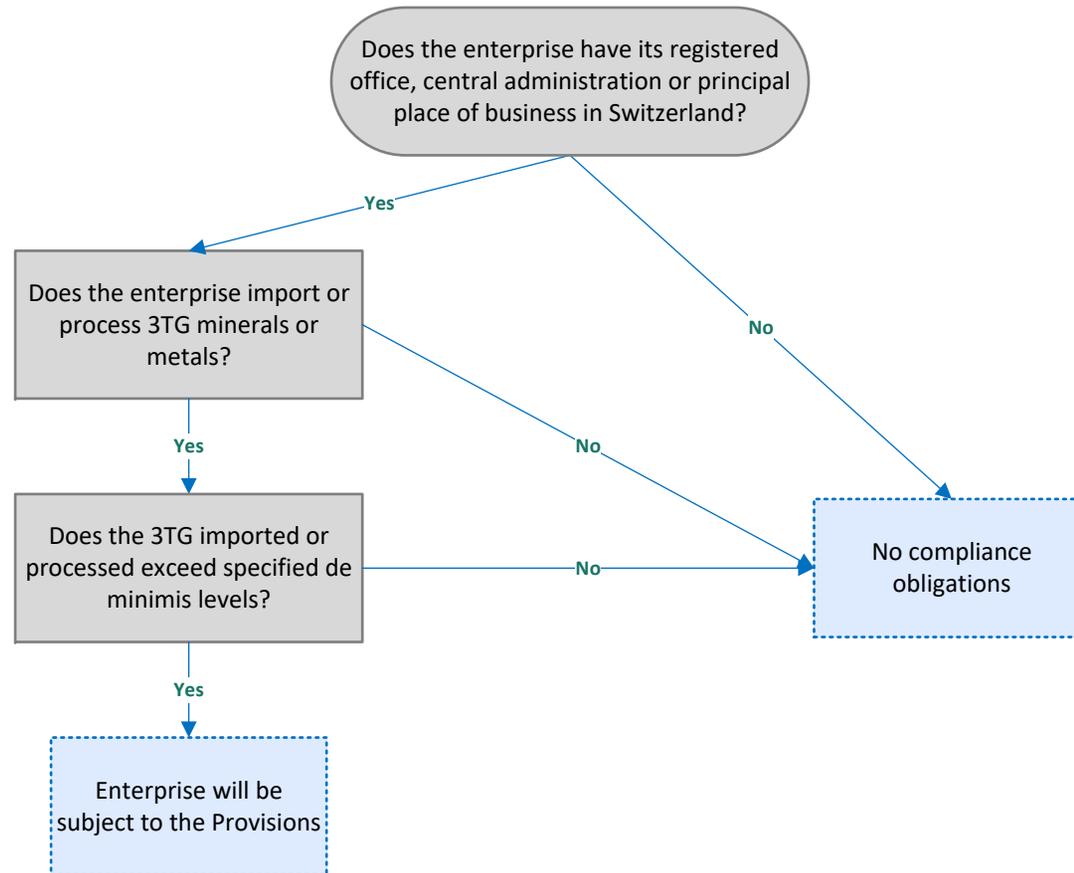
For Organisation for Economic Co-operation and Development Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, see: <https://www.oecd.org/corporate/mne/mining.htm>

For the EU Conflict Minerals Regulation, see: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32017R0821>

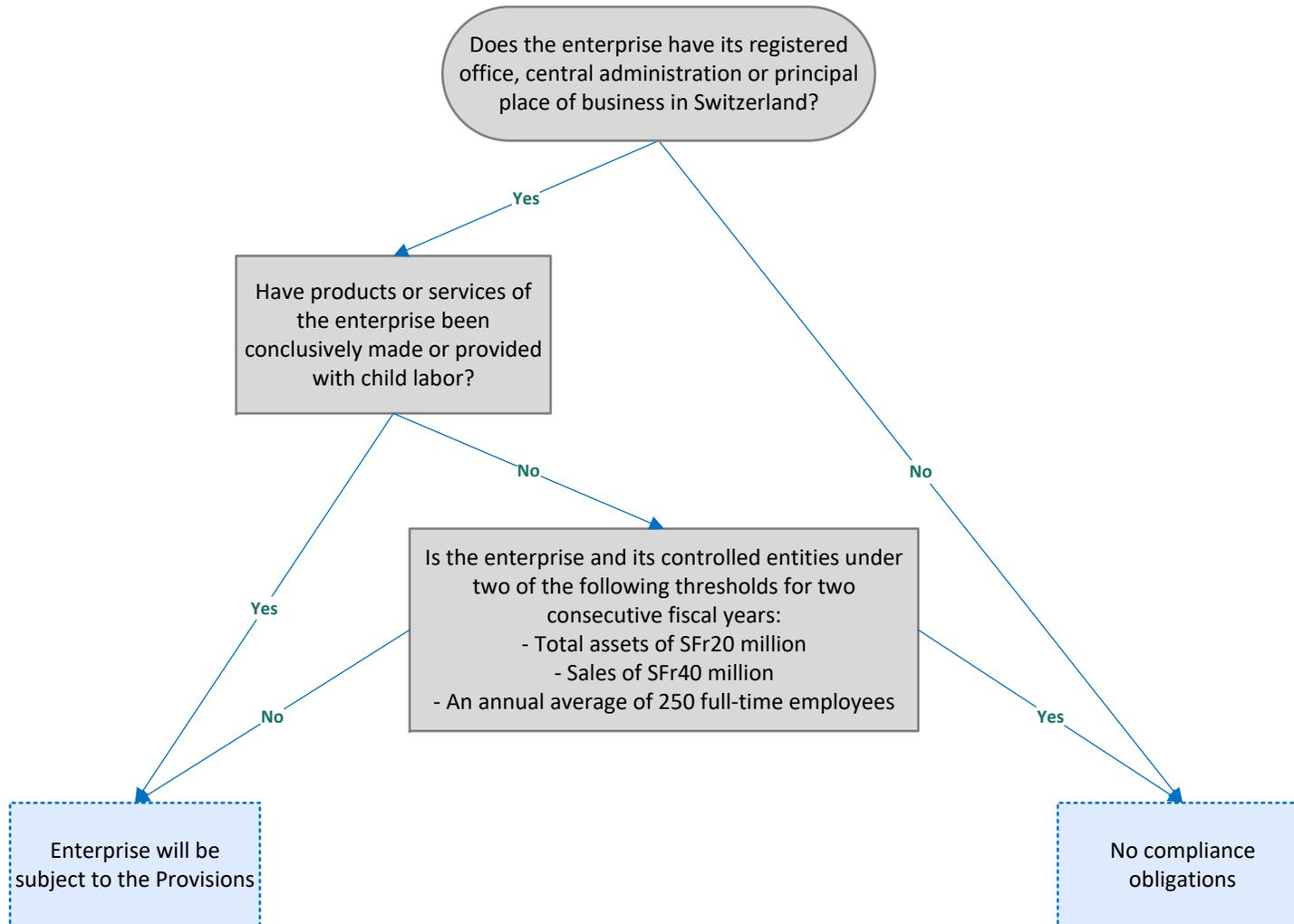
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(Updated February 28, 2022)

## Applying the Law



## Applying the Law



<b>Due Diligence in the Supply Chain Act Germany</b>	
<b>Overview</b>	
<b>Law / Country</b>	<b>Due Diligence in the Supply Chain Act (the “Act”) (Germany)</b>
<b>Goal</b>	Mitigate human rights and specified environmental-related risks that can lead to human rights violations.
<b>Adoption / Status</b>	The Act was approved by the German Parliament on June 11, 2021. The Act will take effect on January 1, 2023.
<b>Issues Addressed</b>	<p>A broad range of human rights risks, including (but not limited to):</p> <ul style="list-style-type: none"> <li>• Child labor;</li> <li>• Forced labor;</li> <li>• Slavery;</li> <li>• Disregard of occupational health and safety;</li> <li>• Disregard of freedom of association;</li> <li>• Unequal treatment in employment;</li> <li>• Withholding adequate living wage;</li> <li>• Environmental damage or excessive consumption;</li> <li>• Unlawful eviction or taking of lands/water; and</li> <li>• Improper use of security forces.</li> </ul> <p>A broad range of environmental risks, including (but not limited to):</p> <ul style="list-style-type: none"> <li>• Manufacture of mercury-added products;</li> <li>• Use of mercury and mercury compounds in manufacturing;</li> <li>• Illegal treatment of mercury waste;</li> <li>• Illegal production and use of chemicals;</li> <li>• Improper storage, handling, collection and disposal of waste; and</li> <li>• Illegal export or import of hazardous waste.</li> </ul>
<b>Covered Entities</b>	<p>A company will be subject to the Act if it meets two threshold requirements:</p> <ul style="list-style-type: none"> <li>• The company has its head office, principal place of business, administrative headquarters, registered office or branch office in Germany.</li> <li>• The company exceeds a specified employee count. Starting in 2023, the Act will apply to companies with 3,000 or more employees. In 2024, this threshold will drop to 1,000 or more employees. Employees at subsidiary companies are included. Temporary workers also are included if their assignments last more than six months.</li> </ul>

How It Works	
Mandatory?	Yes.
Due Diligence Obligations	<p>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.</p> <p>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.</p> <p>Risk Management System:</p> <p>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 or contributed to the risks or violation in its supply chain. A <b>“supply chain”</b> 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.</p> <p>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:</p> <ul style="list-style-type: none"> <li>• Designating a responsible person (e.g., appointing a human rights officer);</li> <li>• 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</li> <li>• Incorporation of preventative measures and remedial measures.</li> </ul> <p>Complaint Mechanism:</p> <p>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.</p> <p>The complaint mechanism must enable reporting of risks and violations that have arisen due to the economic actions of indirect suppliers.</p> <p>Risk Analysis:</p> <p>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</p>

the company expects a significant change or significant expansion of the risk situation in its supply chain. The results of the analysis must be communicated internally to relevant decision-makers (e.g., the Board or the purchasing department).

A “**direct supplier**” is a partner to a contract for the supply of goods or services whose supplies are necessary for the production of the subject company’s products or the provision and use of the relevant services.

**Preventative Measures:**

Subject companies must engage in preventive measures to prevent potentially negative human rights and environmental impacts in the subject company’s own business and at its direct suppliers. At the subject company level, these measures will be required to 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 will be required to include (a) the consideration of human rights and environmental expectations in supplier selection, (b) contractual representations from direct suppliers to comply with human rights obligations and enforce them in the supply chain, (c) training to manage risks and (d) risk-based control measures to verify compliance. The subject company must evaluate the effectiveness of the preventative measures at least annually.

**Remedial Action:**

If a violation has occurred or is imminent at the business or a direct supplier, the subject company must take remedial action to prevent, end or minimize the violation. If the violation occurs at a direct supplier and the subject company cannot end the violation in the foreseeable future, it must (1) implement a plan to end/minimize the violation, including a concrete timeline, (2) consider working with the direct supplier to develop and implement the plan to end/minimize the violation, and (3) consider temporary suspension of the direct supplier. Termination of a direct supplier is only required if (a) the violation is very serious, (b) the remediation plan does not remedy the situation, and (c) the subject company has no less severe means at its disposal and increasing the ability to exert influence has no prospect of success. The subject company must evaluate the effectiveness of the remedial measures at least annually.

**Indirect Suppliers:**

There is a lower duty of care for indirect suppliers. For indirect suppliers, due diligence obligations only will 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.

**Policy Statement:**

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

	<p>communicated), preventative measure at the business and its direct suppliers, remedial action, the complaint process, risks identified and expectations on employees and suppliers.</p> <p>Documentation and Records Maintenance:</p> <p>Subject companies will be required to document their due diligence. Records will be required to be maintained for at least seven years.</p>
<b>Reporting</b>	<p>Subject companies will be required to annually report on their diligence. The report will be required to discuss:</p> <ul style="list-style-type: none"> <li>• the human rights and environmental risks identified;</li> <li>• the measures taken to fulfill the duties of care, including arising out of complaints received through the complaint procedure;</li> <li>• how the subject company assesses the impact and effectiveness of the measures taken; and</li> <li>• the conclusions drawn from the assessment for future measures.</li> </ul> <p>The report will be 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 will be required to be submitted to the Federal Office for Economic Affairs and Export Control.</p>
<b>Enforcement</b>	<p>The Federal Office for Economic Affairs and Export Control will be charged with reviewing whether a subject company has complied with the Act. Among other things, it could require the subject company to address reporting deficiencies within a reasonable time period. It also will be 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.</p> <p>Subject companies that fail to comply with the requirements of the Act, either intentionally or negligently, also will be 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.</p> <p>In addition, non-governmental organizations and trade unions will be 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.</p>
<b>Further Regulation and Guidance</b>	<p>The Federal Ministry of Labor and Social Affairs, in agreement with the Federal Ministry for Economic Affairs and Energy, is authorized to issue ordinances that further flesh out the Act’s due diligence requirements.</p> <p>The explanatory materials accompanying the draft Act also contemplate the publication by the Federal Office for Economic Affairs and Export Control of cross-sector and sector-specific information, assistance and recommendations for compliance.</p>

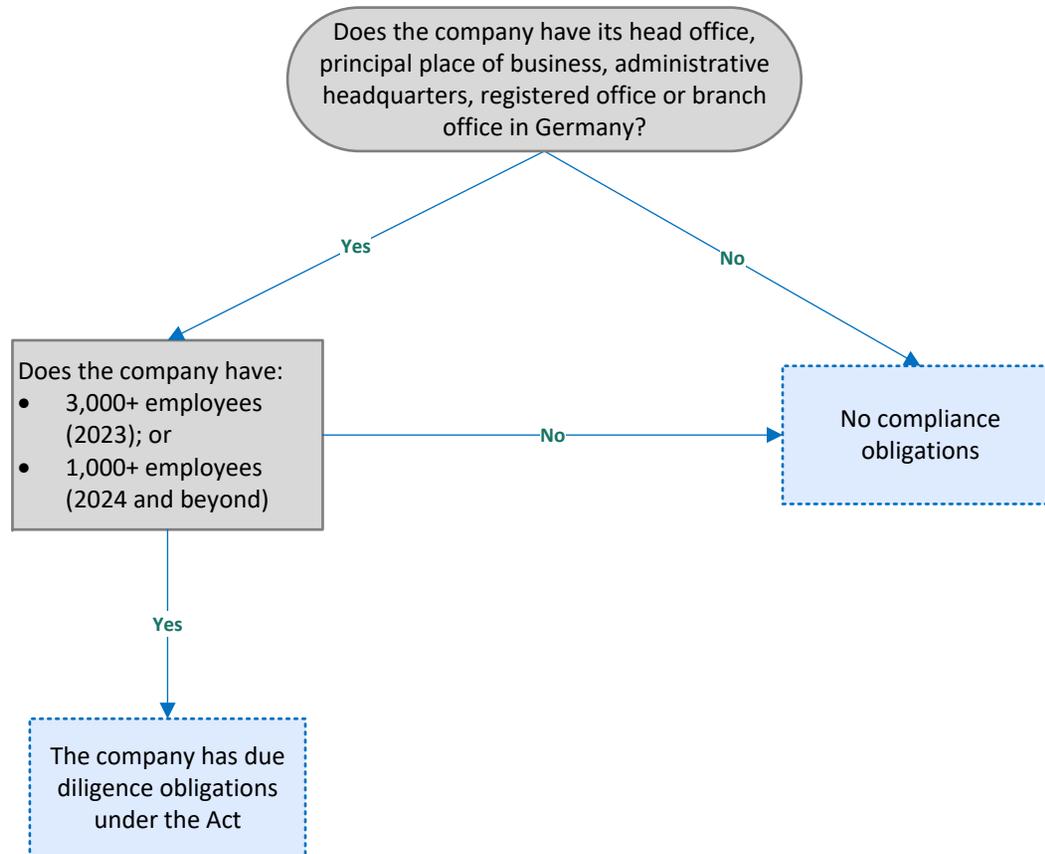
#### Additional Information/Resources

<b>Act</b>	For an unofficial English translation of the Act, see: <a href="https://www.bmas.de/SharedDocs/Downloads/DE/Internationales/act-corporate-due-diligence-obligations-supply-chains.pdf;jsessionid=F5574650379974E1FE95D5E85518871E.delivery2-master?__blob=publicationFile&amp;v=3">https://www.bmas.de/SharedDocs/Downloads/DE/Internationales/act-corporate-due-diligence-obligations-supply-chains.pdf;jsessionid=F5574650379974E1FE95D5E85518871E.delivery2-master?__blob=publicationFile&amp;v=3</a>
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(Updated February 28, 2022)

## Applying the Law



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 will take effect on July 1, 2022 and the first public report must be published by June 30, 2023.
Issue Addressed	<ul style="list-style-type: none"> <li>• Fundamental human rights</li> <li>• Decent working conditions</li> </ul> <p>“<b>Fundamental human rights</b>” 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. “<b>Decent working conditions</b>” are work that safeguards fundamental human rights in accordance with the foregoing instruments and health, safety and the environment and provides a living wage.</p>
Covered Entities	<p>The following enterprises are subject to the Act:</p> <ul style="list-style-type: none"> <li>• Large enterprises domiciled in Norway, irrespective of where they provide goods and services.</li> <li>• Large foreign enterprises that offer goods and services in Norway that are taxable in Norway.</li> </ul> <p>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:</p> <ul style="list-style-type: none"> <li>• Sales of NOK 70 million.</li> <li>• Balance sheet amount of NOK 35 million.</li> <li>• Average number of employees during the fiscal year of 50.</li> </ul> <p>Under Section 1-5 of the Norwegian Accounting Act, large enterprises include:</p> <ul style="list-style-type: none"> <li>• Public limited companies;</li> <li>• 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</li> <li>• Other reporting entities if stipulated in regulations laid down by the Ministry of Finance</li> </ul> <p>Subsidiaries are taken into account for determining whether a parent company is a large enterprise.</p>

	The Ministry of Children and Family Affairs is authorized to exempt large enterprises from compliance with the Act.
<b>How It Works</b>	
<b>Mandatory?</b>	Yes.
<b>Due Diligence Requirement</b>	<p>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:</p> <ul style="list-style-type: none"> <li>• embedding accountability in the enterprise’s policies;</li> <li>• 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;</li> <li>• implementing appropriate measures to cease, prevent or limit adverse impacts based on the enterprise’s mapping and risk assessment;</li> <li>• tracking the measures implemented and their results;</li> <li>• communicating with affected stakeholders regarding how adverse impacts are addressed; and</li> <li>• cooperating with remediation where required.</li> </ul> <p>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.</p>
<b>Disclosure Requirement</b>	<p>Content:</p> <p>Subject enterprises must publish a statement containing at least the following:</p> <ul style="list-style-type: none"> <li>• 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;</li> <li>• adverse impacts and significant risks of adverse impacts uncovered through due diligence; and</li> <li>• 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.</li> </ul> <p>Timing:</p> <p>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.</p> <p>Publication:</p> <p>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.</p>

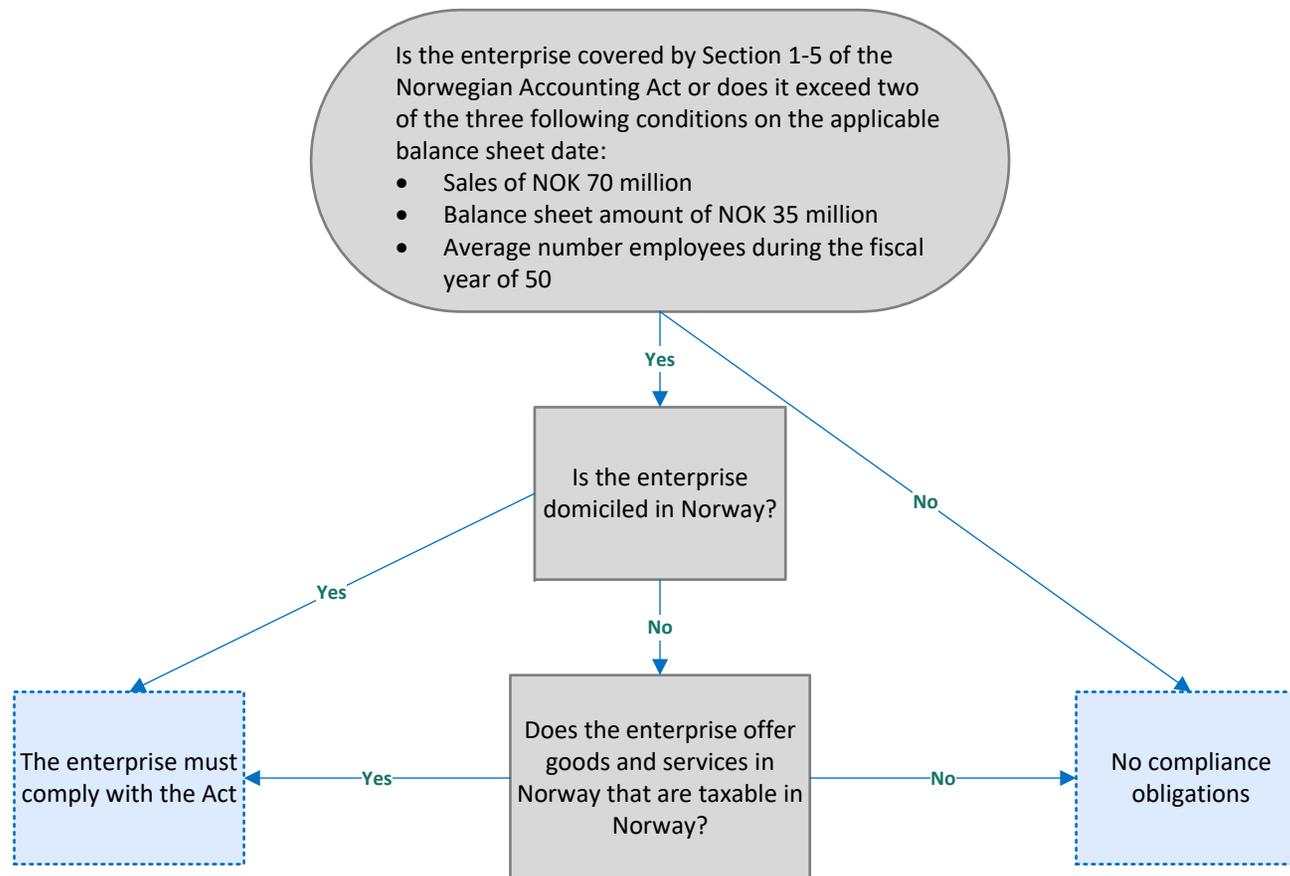
	<p>Signature:</p> <p>The statement must be signed in accordance with Section 3-5 of the Norwegian Accounting Act.</p>
<b>Third-party Information Rights</b>	<p>Upon written request, third parties are entitled to information from the enterprise concerning how it addresses identified actual and potential adverse impacts. A request for information may be denied if:</p> <ul style="list-style-type: none"> <li>• the request does not contain sufficient information to identify what the request applies to;</li> <li>• 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;</li> <li>• the request is for personal information; or</li> <li>• the requested information involves facilities and procedures or other operational or business matters that are competitively sensitive.</li> </ul> <p>Timing:</p> <p>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.</p> <p>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.</p>
<b>Further Regulation</b>	<p>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.</p>
<b>Enforcement</b>	<p>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.</p>

<b>Additional Information/Resources</b>	
<b>Law</b>	For the text of the Act, see: <a href="https://stortinget.no/globalassets/pdf/lovvedtak/2020-2021/vedtak-202021-176.pdf">https://stortinget.no/globalassets/pdf/lovvedtak/2020-2021/vedtak-202021-176.pdf</a> .
<b>OECD Guidance for Multinational Enterprises</b>	<a href="https://www.oecd.org/daf/inv/mne/48004323.pdf">https://www.oecd.org/daf/inv/mne/48004323.pdf</a> .

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(Updated February 28, 2022)

## Applying the Law



<b>Duty of Vigilance Law (Proposed) Belgium</b>	
<b>Overview</b>	
<b>Law / Country</b>	<b>Duty of Vigilance Law</b> (Doc 55 1903/001) (the “Act”) (Belgium)
<b>Goal</b>	To require companies to monitor the corporate social responsibility of their value chains, and to provide additional legal claims for adverse impacts.
<b>Adoption / Status</b>	The draft Act was approved by the Belgian Chamber of Representatives on April 22, 2021. The Act is now being considered by 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 <i>Moniteur Belge</i> .
<b>Issue Addressed</b>	Human, labor and environmental rights.
<b>Covered Entities</b>	<p>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.</p> <p>“<b>Large enterprises</b>” 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.</p> <p>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.</p>
<b>How It Works</b>	
<b>Mandatory?</b>	Yes.
<b>Duty of Vigilance</b>	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.

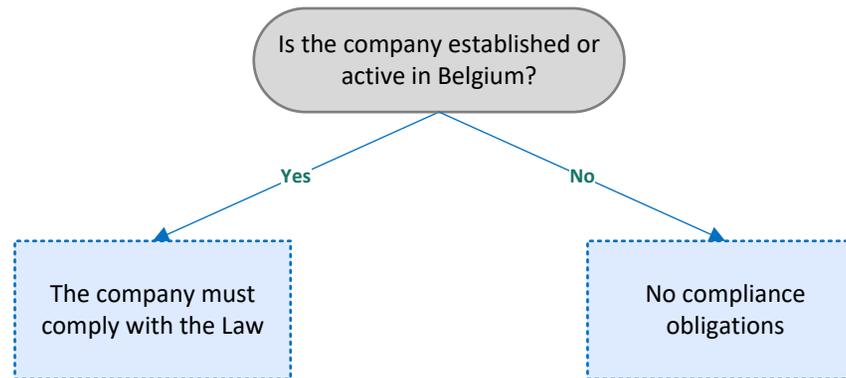
	<p>A subject enterprise's "<b>value chain</b>" would include all entities with whom the enterprise has a commercial relationship because the entities (1) provide goods or services, including financial services, that are involved in the development of the subject enterprise's products or business services or (2) receive products or services, including financial services, from the subject enterprise.</p> <p>"<b>Human rights</b>" would be those rights encompassed by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. "<b>Labor rights</b>" 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).</p>
<b>Vigilance Plan</b>	<p>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:</p> <ul style="list-style-type: none"> <li>• a description of the value chain;</li> <li>• risk mapping for identifying, analyzing and prioritizing risks;</li> <li>• procedures for regularly assessing identified risks at subsidiaries and entities in the value chain;</li> <li>• measures to mitigate risk and prevent serious injury;</li> <li>• a grievance mechanism that provides for whistleblower protection;</li> <li>• an effective complaint and redress mechanism; and</li> <li>• a mechanism for monitoring the measures taken and evaluating their effectiveness.</li> </ul> <p>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.</p> <p>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.</p>
<b>Reporting</b>	<p>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.</p> <p>For small and medium enterprises that are not active in high-risk sectors or regions, the King may establish reporting requirements.</p>
<b>Further Requirements and Guidance</b>	<p>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.</p>

	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.
<b>Liability and Enforcement</b>	<p>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.</p> <p>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.</p> <p>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).</p>
<b>Additional Information/Resources</b>	
<b>Law</b>	For the text of the proposed Act, see: <a href="https://www.lachambre.be/FLWB/PDF/55/1903/55K1903001.pdf">https://www.lachambre.be/FLWB/PDF/55/1903/55K1903001.pdf</a> .

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(Updated February 28, 2022)

## Applying the Law



<b>Responsible and Sustainable International Business Conduct Act (Proposed) Netherlands</b>	
<b>Overview</b>	
<b>Law / Country</b>	<b>Responsible and Sustainable International Business Conduct Act (the “Act”)</b> (Netherlands)
<b>Goal</b>	Mitigate human rights risks, including environmental risks that can lead to human rights violations, in global supply chains.
<b>Adoption / Status</b>	<p>The Act was submitted to the Dutch Parliament in March 2021.</p> <p>If passed as proposed, the Act would enter into force with effect from January 1, 2023, with certain exceptions concerning the provisions related to penalties, which would go into effect either June 1, 2023 or January 1, 2024.</p> <p>If adopted, the Act would repeal the Child Labor Due Diligence Act approved by the Dutch Senate on May 14, 2019.</p>
<b>Issues Addressed</b>	A broad range of human rights risks, with an emphasis on child labor, labor rights and environmental harm.
<b>Covered Entities</b>	<p>A company would be subject to the Act if it:</p> <ul style="list-style-type: none"> <li>• (1) Is an enterprise within the meaning of Section 5 of the Commercial Register Act 2007 (Handelsregisterwet 2007) or is any entity engaged in an economic activity, regardless of the legal status of the entity and the way in which it is financed, including any subsidiaries and (2) engages in activities outside of the Netherlands; or</li> <li>• Is a foreign enterprise engaging in activities or marketing products in the Netherlands;</li> </ul> <p>And</p> <ul style="list-style-type: none"> <li>• Exceeds at least two of the following on the balance sheet date: <ul style="list-style-type: none"> <li>◦ A balance sheet of €20 million;</li> <li>◦ Net revenue of €40 million; and</li> <li>◦ An average of 250 employees during the financial year.</li> </ul> </li> </ul> <p>The Act also applies to enterprises with their registered offices in Bonaire, St. Eustatius and Saba.</p>
<b>How It Works</b>	
<b>Mandatory?</b>	Yes.
<b>Duty of Care</b>	<p>Subject enterprises that know or can reasonably suspect their activities could have negative impacts on human rights, labor rights or the environment in countries outside of the Netherlands would be required to:</p> <ul style="list-style-type: none"> <li>• Take all measures reasonably required to prevent such negative impacts;</li> <li>• To the extent that the negative impacts cannot be prevented, mitigate or reverse all such impacts to the extent possible and, where necessary, to enable remediation;</li> </ul>

	<ul style="list-style-type: none"> <li>• To the extent that such impacts cannot be sufficiently limited, refrain from the harmful activity to the extent that may reasonably be expected from the enterprise.</li> </ul> <p>Human rights, labor rights or the environment would be negatively affected if the value chain involves, for example:</p> <ul style="list-style-type: none"> <li>• Restriction of freedom of association and collective bargaining;</li> <li>• Discrimination;</li> <li>• Forced labor;</li> <li>• Child labor;</li> <li>• Unsafe working conditions;</li> <li>• Slavery;</li> <li>• Exploitation; or</li> <li>• Environmental damage.</li> </ul>
<p><b>Due Diligence Obligations</b></p>	<p>Policy Requirement:</p> <p>Subject enterprises would be required to publish a policy in which they commit to due diligence in the value chain. The policy would be required to include the enterprise’s due diligence plan relating to the entity’s activities and business relationships. The Act would require that the policy be implemented in the enterprise’s management system and be part of its regular business process.</p> <ul style="list-style-type: none"> <li>• <b>“Due diligence”</b> would be defined as the continuous process whereby enterprises identify, prevent and mitigate the actual and potential negative impacts of their activities on human rights, labor rights and the environment in countries outside the Netherlands, which the enterprises can use to account for the way they address 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.</li> <li>• <b>“Value chain”</b> would be defined as the entirety of an enterprise’s activities, products, production lines, supply chain and business relationships.</li> <li>• <b>“Business relationships”</b> would be defined as an enterprise’s business partners and other entities in its value chain, including state entities linked to the enterprise’s activities.</li> </ul> <p>The requirement to adopt a policy and incorporate the policy into the management system and regular business processes would be required to be met within six months of the entry into force of the Act.</p> <p>Risk Analysis and Action Plans:</p> <p>Subject enterprises would be required to identify and analyze the potential and actual risks of negative impacts of their activities and those of their business relationships. Subject enterprises would also be required to create an action plan to prevent and mitigate any detected potential and actual negative impacts of their activities and those of their business relationships. If a negative impact were found, the action plan would be required to be carried out, and the enterprise would</p>

be required to ensure it adequately addresses the negative impact. If an enterprise is unable to address all potential and actual negative impacts in timely manner, the subject enterprise would be required to prioritize the negative impacts according to their severity and likelihood. Subject enterprises would be required to cease their own activities causing or contributing to negative impacts or human rights, labor rights or the environment.

The requirement to perform a risk assessment and to prepare an action plan would be required to be met within nine months of the entry into force of the Act.

**Monitoring:**

The Act would require subject enterprises to monitor the application and effectiveness of their due diligence measures and implement the conclusions drawn from such monitoring in their action plan, management system and business processes.

The monitoring obligations of the Act would need to be met within one year of the entry into force of the Act.

**Remediation Mechanism:**

Subject enterprises would need to have a remediation mechanism in place that allows stakeholders to file and submit complaints to the enterprise. A “**stakeholder**” would be defined as a person or group of persons whose rights or interests are directly affected. If parties differ as to whether an enterprise has caused or contributed to the negative impacts, or they differ regarding the nature and scope of the remediation, they would need to be able to submit their dispute to a dispute resolution committee or court of law.

If a subject enterprise caused or contributed to a negative impact, the enterprise would be required to remediate, or contribute to the remediation of, the negative impact. Depending on the nature of the entity’s involvement in the negative impact, the enterprise would be required to take the following steps:

- If the enterprise caused the negative impact, terminate the activity causing the negative impact and remediate the actual impact.
- If the enterprise contributed to the negative impact:
  - Cease or prevent the contribution and contribute to remediating the actual impact and
  - Use its leverage to prevent and mitigate the remaining impacts to the extent possible.
- If there is a direct link between a negative impact and the activities of an enterprise’s business relationship:
  - Use its leverage to prevent and mitigate the impact to the extent possible or
  - Terminate its business relationship after having made a sufficient effort to prevent or mitigate the negative impact.
- If an actual negative impact occurs in a business relationship, terminate that relationship after having made a sufficient effort to prevent or mitigate the negative impact.

A subject enterprise will have breached its due diligence obligation if its activity causing or contributing to a negative impact has not been terminated or the stakeholder has not received remediation.

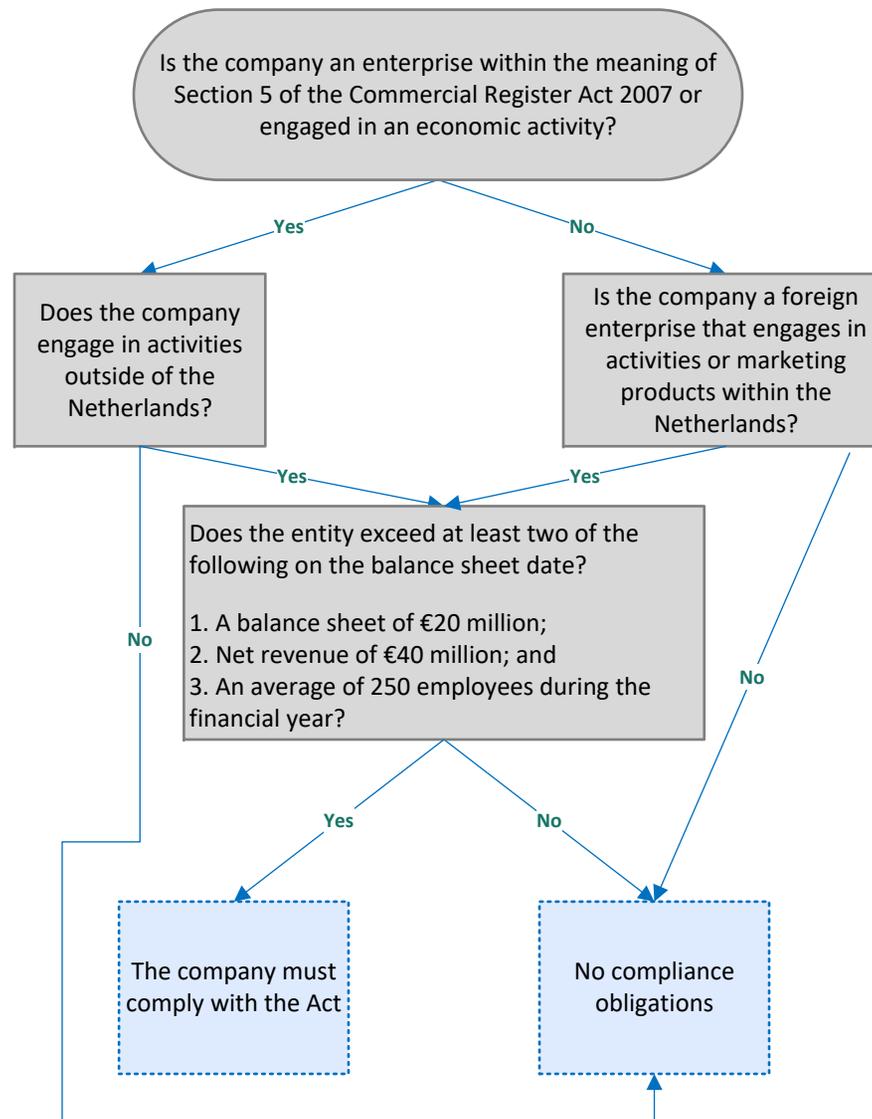
	<p>The obligation to have a remediation mechanism would need to be met within one year of the entry into force of the Act.</p> <p>The Minister for Foreign Trade and Development Cooperation (the “<b>Minister</b>”) would be permitted to establish further rules regarding each of the above topics. In addition, the designated regulator (see Enforcement below) would be able to provide guidance on the due diligence obligations.</p>
<b>Reporting</b>	<p>Subject enterprises would be required to annually report on their due diligence policy and measures. Such reports would be required to discuss any findings from the enterprise’s monitoring and results of any measures taken. In their reports, subject enterprises would need to disclose data on the measures taken to prevent and mitigate negative impacts. The report would need to be publicly accessible.</p> <p>The Minister would be empowered to adopt further rules regarding reporting.</p> <p>The obligation to prepare a report would need to be met within one year of the entry into force of the Act.</p>
<b>Enforcement and Penalties</b>	<p>The Act provides for the designation of a regulator by order in council, who would be charged with supervising compliance with the Act.</p> <p>The regulator would be empowered to issue orders to enforce certain due diligence obligations of the Act, subject to subsequent penalties for noncompliance. The regulator would be required to publish orders once the compliance period has expired or a penalty has been incurred.</p> <p>The regulator would also be able to impose administrative penalties if certain due diligence and report obligations were breached. The regulator may first issue binding instructions to comply with the obligations, which may be subject to a time limit within which compliance must occur. The administrative penalty amount would be:</p> <ul style="list-style-type: none"> <li>• A maximum fine of the fourth category of Article 23(4) of the Dutch Criminal Code (approximately €19,500) for: (1) not publishing a policy and/or not including the required topics; (2) not creating an action plan; and (3) not meeting the annual reporting requirements.</li> <li>• A maximum fine of the fifth category of Article 23(4) of the Dutch Criminal Code (approximately €78,000) if an enterprise: (1) does not cease its activities if they cause or contribute to negative impacts on human rights, labor rights or the environment; and (2) causes or contributes to a negative impact and such activity has not been ceased/terminated or if the stakeholder has not received remediation.</li> </ul> <p>A penalty would not take effect until the period for objecting or appealing has expired or, if an objection has been filed or an appeal has been lodged, a decision has been taken on the objection or appeal.</p> <p>Further, the Act would make it a criminal offense, under the Dutch Economic Offenses Act, to violate the provisions of the Act at least twice in five years.</p>

<b>Additional Information/Resources</b>	
<b>The Act</b>	For an unofficial English translation of the Act, see: <a href="https://www.mvoplatform.nl/en/wp-content/uploads/sites/6/2021/03/Bill-for-Responsible-and-Sustainable-International-Business-Conduct-unofficial-translation-MVO-Platform.pdf">https://www.mvoplatform.nl/en/wp-content/uploads/sites/6/2021/03/Bill-for-Responsible-and-Sustainable-International-Business-Conduct-unofficial-translation-MVO-Platform.pdf</a>
<b>Dutch Criminal Code</b>	For an unofficial English translation of the Dutch Criminal Code, see: <a href="https://www.legislationline.org/download/id/6415/file/Netherlands_CC_am2012_en.pdf">https://www.legislationline.org/download/id/6415/file/Netherlands_CC_am2012_en.pdf</a>

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(Updated February 28, 2022)

### Applying the Law



## Companies Act, section 135 India

### Overview

<b>Law / Country</b>	<b>section 135 of the Companies Act</b> (The Companies Act, 2013, amended 2015, 2017, 2019 and 2021) (the “Law”) (India)
<b>Goal</b>	To further corporate social responsibility in India by requiring investment in CSR initiatives.
<b>Adoption / Status</b>	On August 29, 2013, 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.
<b>Covered Entities</b>	The Law applies to Indian companies and foreign companies doing business in India that, during the immediately preceding financial year: <ul style="list-style-type: none"> <li>• have a net worth of rupees five hundred crore or more;</li> <li>• turnover of rupees one thousand crore or more; or</li> <li>• a net profit of rupees five crore or more.</li> </ul>

### How It Works

<b>Mandatory?</b>	Yes.
<b>CSR Activities</b>	<p>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:</p> <ul style="list-style-type: none"> <li>• eradicating extreme hunger and poverty;</li> <li>• promotion of education, gender equality and empowering women;</li> <li>• reducing child mortality and improving maternal health;</li> <li>• protection of national heritage and culture;</li> <li>• measures for the benefit of military veterans;</li> <li>• training to promote sports;</li> <li>• ensuring environmental sustainability;</li> <li>• employment enhancing vocational skills and social business projects;</li> <li>• rural development and slum area development; and</li> <li>• disaster management, including relief, rehabilitation and reconstruction.</li> </ul> <p>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.</p> <p>The following do not qualify as permissible CSR activities:</p> <ul style="list-style-type: none"> <li>• normal course of business activities generally;</li> <li>• activities outside of India generally;</li> <li>• contributions to political parties;</li> <li>• activities that significantly benefit employees;</li> </ul>

	<ul style="list-style-type: none"> <li>• sponsorships for deriving marketing benefits for products or services; and</li> <li>• activities carried out to fulfill other Indian statutory obligations.</li> </ul> <p>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.</p>
<b>CSR Committee</b>	<p>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 <b>“Board”</b>) an annual action plan pursuant to the CSR Policy (the <b>“CSR Policy”</b>).</p>
<b>CSR Policy</b>	<p>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:</p> <ul style="list-style-type: none"> <li>• the list of CSR projects and programs approved to be undertaken;</li> <li>• the manner of execution of the projects or programs;</li> <li>• the manner of utilization of funds and implementation schedules for projects or programs;</li> <li>• monitoring and reporting mechanisms for projects or programs; and</li> <li>• details of need and impact assessment, if any, for the projects and programs undertaken.</li> </ul>
<b>Implementation of the CSR Policy</b>	<p>A covered entity must spend at least 2% of its average net profits made during the three immediately preceding fiscal years (the <b>“Minimum CSR Amount”</b>) 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.</p> <p>Only the following classes of companies/entities can undertake CSR activities on behalf of a company:</p> <ul style="list-style-type: none"> <li>• a company established under Section 8 of the Companies Act (a <b>“Not-For-Profit Company”</b>), a registered public trust or a registered society established by the company, either singly or along with another company;</li> <li>• a Not-For-Profit Company, a registered trust or a registered society established by the Central Government or a State Government;</li> <li>• an entity established under an act of Parliament or a State legislature; or</li> <li>• 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.</li> </ul> <p>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 <b>“International Organisation”</b> is an organization notified by the Central Government as an international organisation under Section 3 of the United Nations (Privileges and Immunities) Act, 1947.</p> <p>The Board is required to monitor the implementation of ongoing projects and make modifications, if any, for the smooth implementation of the project within the permissible time period. The Board is responsible for ensuring funds are being utilized for approved purposes. The chief financial officer or the person responsible for financial management of the covered entity is required to certify that funds are being used for approved purposes.</p>

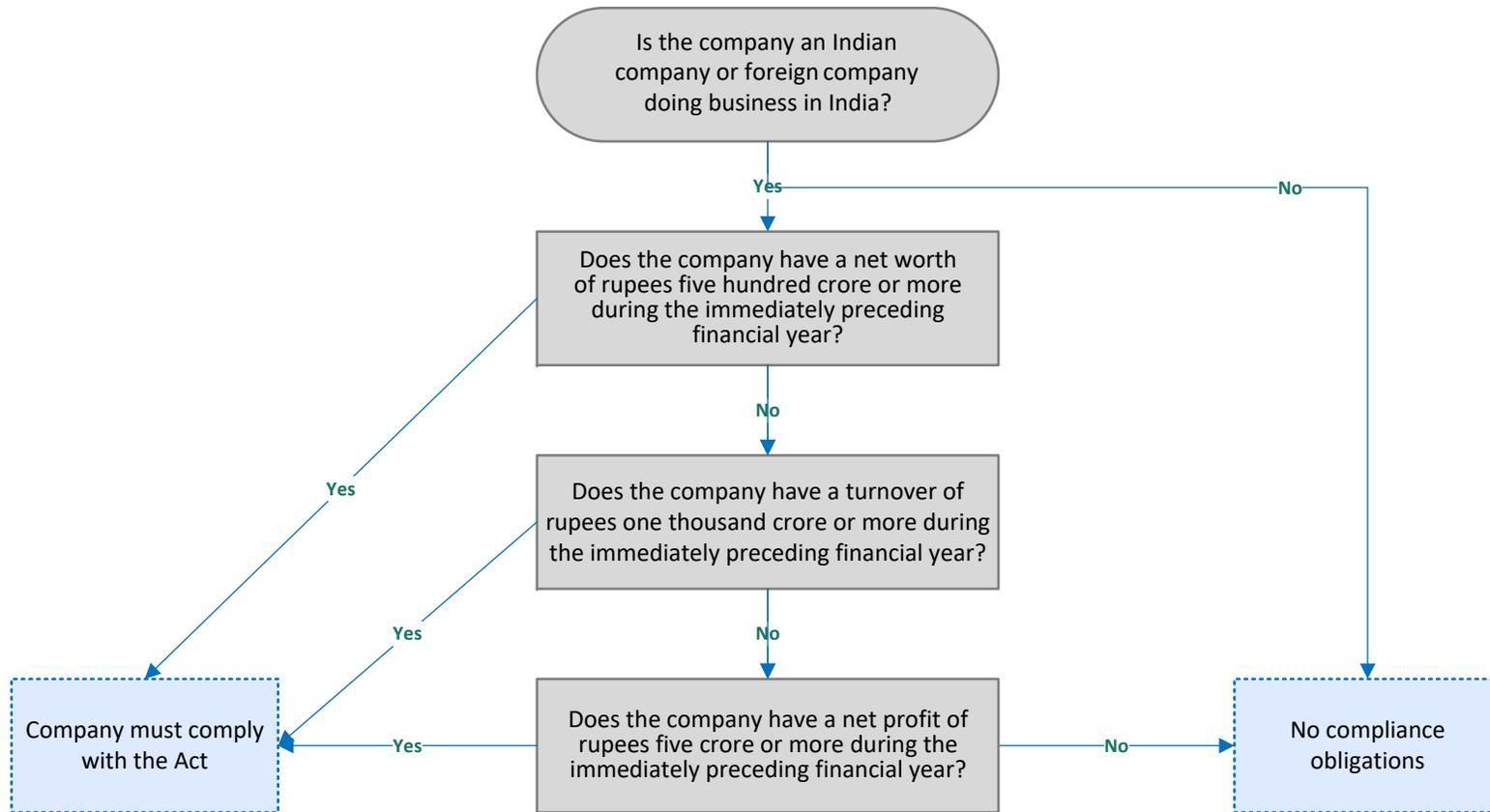
	<p>If a covered entity has an average CSR obligation of rupees 10 crore or more in the three immediately preceding fiscal years, it must undertake an impact assessment of its CSR projects with outlays of one crore rupees or more that have been completed at least one year before undertaking the impact study. The impact study must be conducted by an independent third party.</p>
<b>Unspent Funds</b>	<p>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 (“<b>Unspent CSR Account</b>”) maintained by the company. An “<b>Ongoing Project</b>” 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.</p> <p>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 (“<b>Government CSR Fund</b>”), within 30 days after the end of the third fiscal year.</p> <p>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.</p> <p>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.</p>
<b>Reporting</b>	<p>An annual report on CSR activities must be included in the Board’s report for fiscal years commencing on or after April 1, 2020. The report must be in a prescribed format. If an impact assessment is conducted, the report relating to the impact assessment is required to be annexed to the annual report.</p> <p>Covered entities also must disclose on their website their CSR Policy, the composition of the CSR committee and CSR projects approved by the Board.</p> <p>An entity that intends to undertake a CSR activity is required to register with the Central Government by filing e-Form CSR-1 electronically with the Registrar of Companies. The requirement for filing e-Form CSR-1 does not apply to entities undertaking CSR projects or programs approved prior to April 1, 2021.</p>
<b>Enforcement</b>	<p>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.</p> <p>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.</p> <p>Under Section 206 of the Companies Act, the Government has powers to call for information and inspect the books of a company.</p>
<b>Additional Information/Resources</b>	
<b>Text of Section 135</b>	<p>For the text of the Law, see: <a href="http://www.mca.gov.in/SearchableActs/Section135.htm">http://www.mca.gov.in/SearchableActs/Section135.htm</a></p> <p>For the 2017 Amendments, see: <a href="http://www.mca.gov.in/Ministry/pdf/CAAct2017_05012018.pdf">http://www.mca.gov.in/Ministry/pdf/CAAct2017_05012018.pdf</a></p> <p>For the 2019 Amendments, see: <a href="http://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf">http://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf</a></p>

	For the 2021 Amendments, see: <a href="https://www.mca.gov.in/Ministry/pdf/CSRAmendmentRules_23012021.pdf">https://www.mca.gov.in/Ministry/pdf/CSRAmendmentRules_23012021.pdf</a>
<b>Indian Companies Act</b>	For the full text of the 2013 Companies Act, see: <a href="http://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf">http://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf</a>

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(Updated February 28, 2022)

**Applying the Law**



<b>Child Labor Due Diligence Act (Pending) Netherlands</b>	
<b>Overview</b>	
<b>Law / Country</b>	<b>Child Labor Due Diligence Act (No. 34 506) (the “Act”) (Netherlands)</b>
<b>Goal</b>	To reduce child labor in the supply chain.
<b>Adoption / Status</b>	<p>The Dutch Parliament adopted the Act on February 7, 2017. The Dutch Senate approved the Act on May 14, 2019.</p> <p>The Act will enter into force on a date to be determined by Royal Decree, but not prior to January 1, 2020. However, the initiating Parliament members indicated that the Act will likely become effective sometime in 2022. Many of the specifics will be codified in a General Administrative Order (the “GAO”), which has yet to be published.</p> <p>To the extent adopted, the Responsible and Sustainable International Business Conduct Bill proposed in 2021 would supersede the Act. However, the prevailing view at present is the law is unlikely to be adopted.</p>
<b>Issue Addressed</b>	Child labor
<b>Covered Entities</b>	<p>Companies covered include:</p> <ul style="list-style-type: none"> <li>• Companies established in the Netherlands that sell or provide goods or services to end-users based in the Netherlands.</li> <li>• Companies established outside the Netherlands that sell or provide goods or services to end-users based in the Netherlands.</li> </ul> <p>For purposes of the Act, an end-user is the natural person or legal entity using or consuming the goods or purchasing the service</p> <p>The Act does not specifically exempt any types of companies, but exemptions may be provided for in a subsequent GAO.</p> <p>The Act contains a transitional provision, which provides that it will not apply to goods or services to the extent the obligation to supply the goods or services was entered into prior to the publication of the Act. The transitional exemption will sunset not later than five years after the effective date of the Act.</p> <p>The Act provides that a company that transports goods is not considered a supplier of those goods. Although the Act is silent on the point, the transportation of the goods will presumably be a covered service under the Act.</p>
<b>Definition of Child Labor</b>	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:

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

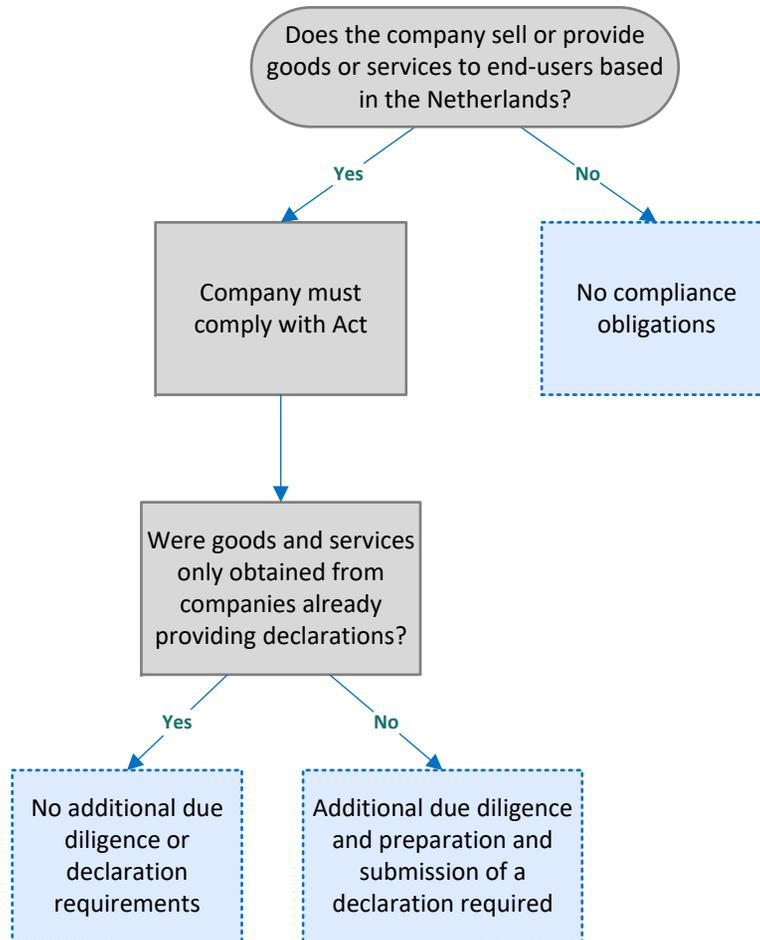
	<p>developed by or among one or more social organizations, employees’ organizations or employers’ organizations and approved by the Minister for Foreign Trade and Development Cooperation will satisfy this requirement.</p> <p>Further requirements pertaining to due diligence and the plan of action will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

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

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## Applying the Law



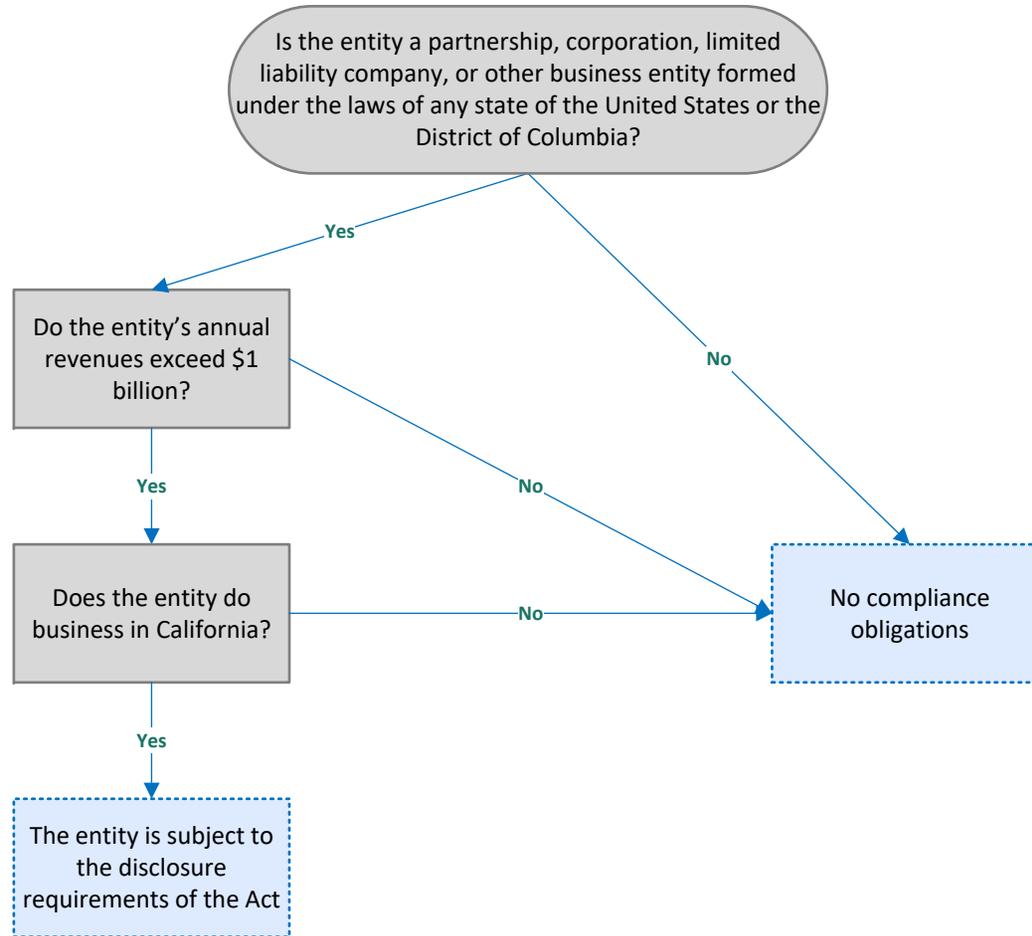
<b>Climate Corporate Accountability Act (Proposed) California</b>	
<b>Overview</b>	
<b>Law / State</b>	<b>California Climate Corporate Accountability Act (SB-260)</b> (the <b>“Bill”</b> ) (California, United States)
<b>Goal</b>	Reduce greenhouse gas ( <b>“GHG”</b> ) emissions.
<b>Adoption / Status</b>	Active Bill in House Assembly; passed California Senate January 26, 2022; last amended January 3, 2022.
<b>Issue Addressed</b>	Greenhouse gas emissions.
<b>Covered Entities</b>	United States-based partnerships, corporations, limited liability companies, and other business entities with total annual revenues in excess of \$1 billion and that do business in California (the <b>“Reporting Entities”</b> ).
<b>How It Works</b>	
<b>Mandatory?</b>	Yes.
<b>Reporting Requirements</b>	<p>On or before January 1, 2024, the State Air Resources Board (the <b>“State Board”</b>) would be required to adopt regulations requiring a Reporting Entity to annually publicly disclose to the Secretary of State the Reporting Entity’s scope 1, 2, and 3 emissions for the prior calendar year, in a manner that is easily understandable and accessible to residents of the state.</p> <p>The disclosures would be required to use the Greenhouse Gas Protocol standards and guidance developed by the World Resources Institute and the World Business Council for Sustainable Development, including guidance for Scope 3 emissions calculations that detail acceptable modeling and statistical analysis when Scope 3 emissions data from nonreporting entities is unavailable or not feasible.</p> <p>Compliance would begin in 2025 on a date to be determined by the State Board.</p>
<b>Third Party Assurance</b>	<p>The Reporting Entity’s disclosure would be required to be independently verified by a third-party auditor, approved by the State Board, with expertise in GHG emissions accounting.</p> <p>A copy of the complete, audited GHG emissions inventory, including the name of the third-party auditor, would be required to be provided in connection with the Reporting Entity’s public disclosure.</p>
<b>Definitions</b>	<p><b>“Scope 1 emissions”</b> 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.</p> <p><b>“Scope 2 emissions”</b> would mean indirect GHG emissions from electricity, purchased and used by a Reporting Entity, regardless of location.</p> <p><b>“Scope 3 emissions”</b> 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</p>

	to, emissions associated with the reporting entity’s supply chain, business travel, employee commutes, procurement, waste, and water usage, regardless of location.
<b>Reporting Platform</b>	<p>The Secretary of State would be required to create a publicly accessible digital platform to house the disclosures submitted by the Reporting Entities.</p> <p>The digital platform would be required to be capable of featuring individual reporting entity reports, as well as aggregated data, in a manner that is easily understandable and accessible to residents of the state.</p>
<b>Implementing Regulations; Expert Consultation</b>	<p>The State Board would be required to develop and adopt regulations required pursuant to the Bill (as earlier described).</p> <p>In developing regulations, the State Board would be required to consult with the following entities:</p> <ul style="list-style-type: none"> <li>• the California Secretary of State;</li> <li>• other government stakeholders;</li> <li>• stakeholders representing consumer and environmental justice interests; and</li> <li>• reporting entities that have demonstrated leadership in collecting information and reporting on and setting targets for the reduction of their own carbon footprint.</li> </ul> <p>The State Board may adopt or update any other regulations that it deems necessary and appropriate to implement the Bill.</p>
<b>Enforcement</b>	The Secretary of State would be required to adopt regulations relating to the enforcement of the requirements of the Act, including the imposition of civil penalties for violations of its requirements, which would be able to be assessed and recovered in a civil action brought by the Attorney General in the name of the people of the State of California.
<b>State Board Report</b>	On or before July 1, 2026, the State Board would be required to prepare a report on the public disclosures made by Reporting Entities to the Secretary of State that includes, among other information and analyses, a best reasonable estimate of the required annual segregated GHG levels of Reporting Entities that would be necessary to maintain global temperatures within 1.5 degrees Celsius of preindustrial levels (the “ <b>State Board Report</b> ”).
<b>Additional Information/Resources</b>	
<b>Law</b>	For the text of the Bill, see: <a href="https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB260">https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB260</a>

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**Applying the Law**



## Environment Act – Use of Forest Risk Commodities in Commercial Activity (Pending) United Kingdom

### Overview

<b>Law / Country</b>	<b>Environment Act 2021 – Schedule 17, Use of Forest Risk Commodities in Commercial Activity</b> (the “Act”) (United Kingdom)
<b>Goal</b>	Protect forests.
<b>Adoption / Status</b>	The Act was adopted on November 9, 2021; a Second Consultation began on December 3, 2021 and closes March 11, 2022. This consultation will result in secondary legislation detailing due diligence and reporting obligations, as well as enforcement, civil sanctions, and criminal offences for breach.
<b>Issue Addressed</b>	Deforestation.
<b>Definition of “Forest Risk Commodity”</b>	<p>A “<b>forest risk commodity</b>” 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.</p> <p>During the consultation, the U.K. Department for Environment, Food &amp; Rural Affairs (“<b>Defra</b>”) is seeking 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 is contemplating 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.</p>
<b>Definition of “Forest”</b>	A “ <b>forest</b> ” 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.
<b>Covered Entities</b>	<p>Any “<b>regulated person,</b>” which is a person (other than an individual) who:</p> <ul style="list-style-type: none"> <li>• carries on commercial activities in the United Kingdom; and</li> <li>• meets an annual turnover threshold to be determined by the Secretary of State; or</li> <li>• is a subsidiary of another enterprise that meets such conditions.</li> </ul> <p>“<b>Commercial activities</b>” 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).</p>

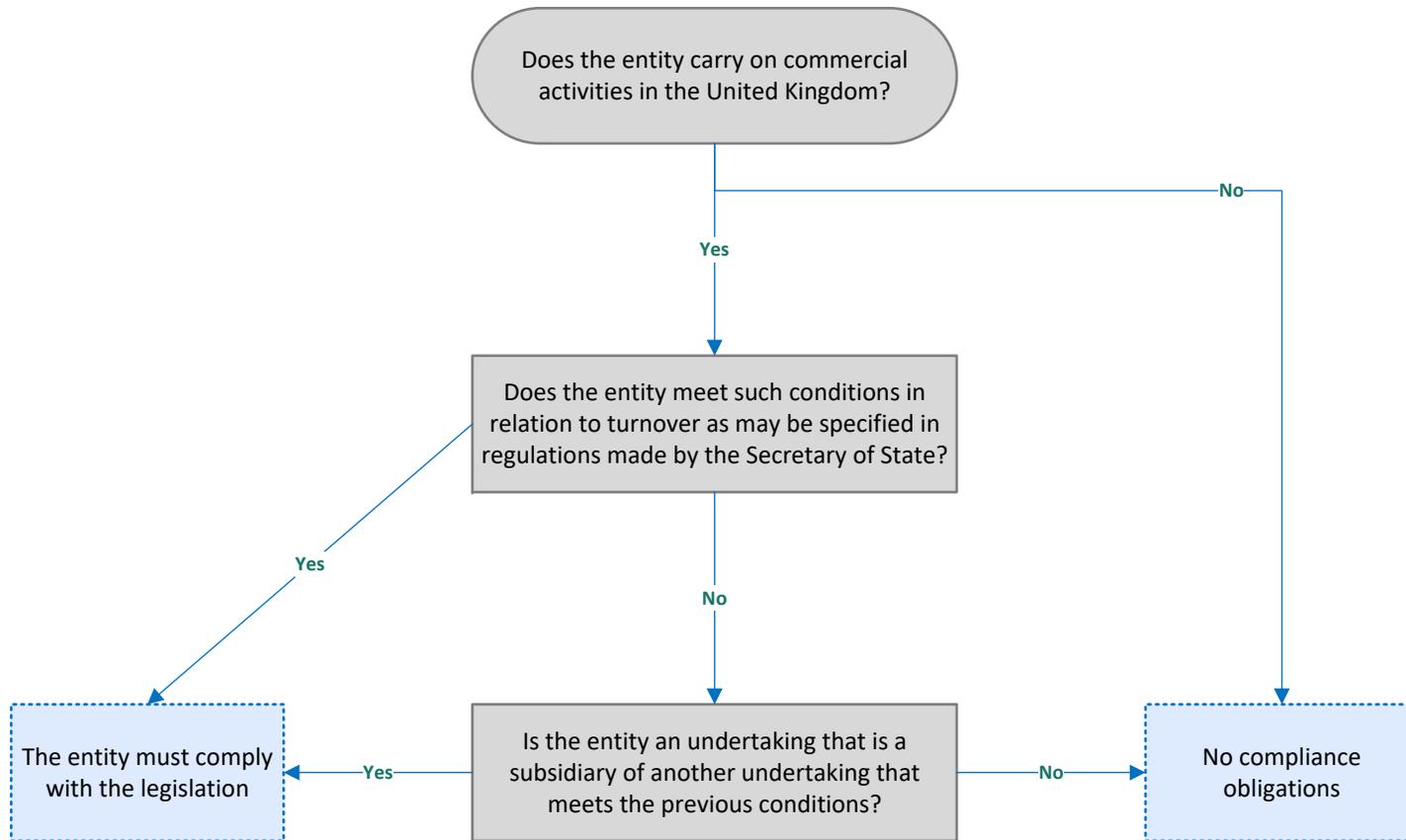
	<p>The consultation is focusing on larger businesses with greater influence on forest risk commodity supply chains in order to have the greatest impact on addressing illegal deforestation while minimizing the regulatory burden on smaller businesses. To align with these goals, Defra has asked for feedback on three turnover thresholds - £50, £100 and £200 million.</p> <p>In the consultation, Defra also seeks 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.</p>
<b>How It Works</b>	
<b>Mandatory?</b>	Yes.
<b>Use of Forest Risk Commodities</b>	<p>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. <b>“Relevant local law”</b> 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.</p> <p>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.</p>
<b>Due Diligence Requirements</b>	<p>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.</p> <p>A <b>“due diligence system”</b> 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.</p> <p>The Defra consultation is seeking input on the Act’s due diligence provisions.</p>
<b>Reporting</b>	<p>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.</p> <p>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.</p>

<b>Exemptions from Due Diligence and Reporting</b>	<p>A regulated person is exempt from providing an annual due diligence report if two conditions are met:</p> <ul style="list-style-type: none"> <li>• 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</li> <li>• The amount of the commodity used in the person’s U.K. commercial activities during the period does not exceed the prescribed threshold.</li> </ul> <p>The consultation asks for input on four specific thresholds for each of the enumerated priority commodities – one, 10, 100 and 1,000 tons. The consultation also asks 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 asks 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.</p>
<b>Enforcement</b>	<p>The Secretary of State may make provisions about the monitoring and enforcement of requirements imposed on regulated persons through secondary regulations. The consultation notes 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.</p> <p>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.</p> <p>In the consultation, Defra seeks feedback on a proposed maximum penalty of £250,000.</p>
<b>Additional Information/Resources</b>	
<b>Act</b>	For the text of the Act, see: <a href="https://www.legislation.gov.uk/ukpga/2021/30">https://www.legislation.gov.uk/ukpga/2021/30</a>

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(Updated February 28, 2022)

### Applying the Law



<b>Deforestation-Free Procurement Act New York</b>	
<b>Overview</b>	
<b>Law / Country</b>	<b>Deforestation-Free Procurement Act (the “Act”)</b> (New York)
<b>Goal</b>	Protect forests.
<b>Adoption / Status</b>	Introduced in the New York Senate and Assembly on March 23, 2021; currently sitting with the Procurement and Contracts Committee in the New York State Senate.
<b>Issue Addressed</b>	Deforestation and forest degradation.
<b>Covered Entities</b>	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 <b>“contractor”</b> 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.
<b>Covered Commodities</b>	A <b>“forest-risk commodity”</b> would mean any commodity, excluding tropical hardwood (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 intact forest degradation or deforestation occurred. 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 <b>“OGS Commissioner”</b> ).  <b>“Tropical or boreal intact forest degradation or deforestation”</b> would mean direct human-induced conversion of tropical or boreal forest to agriculture, a tree plantation, or other non-forest land use, or 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.
<b>How It Works</b>	
<b>Mandatory?</b>	Yes.
<b>Contractor Certification Requirements</b>	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 from, grown, derived, harvested, reared, or produced on land where tropical or boreal intact forest degradation or deforestation 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).

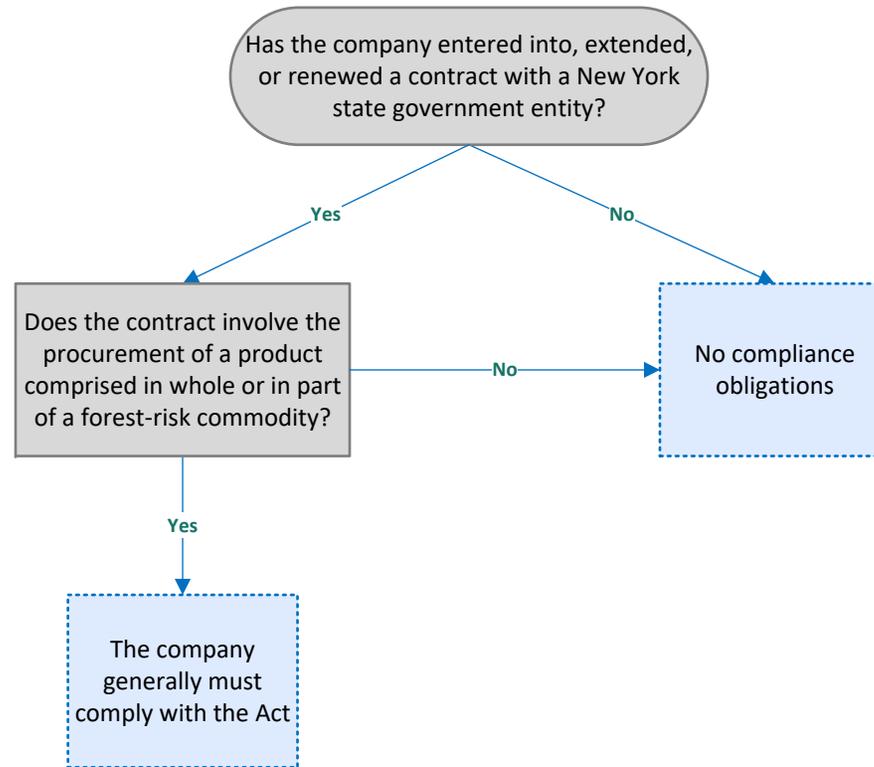
	The contractual certification requirements would not apply to a credit card purchase of goods of \$2,500 or less, so long as the total amount of goods exempted does not exceed \$7,500 per year for each contractor from which a state agency or authority is purchasing goods by credit card.
<b>Due Diligence Requirements</b>	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.
<b>Additional Certification and Reporting Requirements for “Large Contractors” – NPDE Policy</b>	<p>Any contractor whose annual revenue, or that of their parent company, is greater than or equal to \$1 billion (a “<b>Large Contractor</b>”) would be required to certify that they have adopted a no deforestation, no peat, no exploitation (“<b>NPDE</b>”) policy that complies with regulations issued by the OGS Commissioner pursuant to the Act.</p> <p>The NPDE Policy and all corresponding data would be required to be made publicly available and to contain, at a minimum:</p> <ul style="list-style-type: none"> <li>• 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;</li> <li>• 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;</li> <li>• Measures taken to ensure the product does not contribute to tropical or boreal intact forest degradation or deforestation;</li> <li>• Measures taken to ensure the free, prior, and informed consent of directly affected indigenous peoples and local communities;</li> <li>• Measures taken to protect biodiversity and prevent the poaching of endangered species in all operations and adjacent areas;</li> <li>• Measures taken to ensure compliance with the laws of countries where forest-risk commodities in a company’s supply chain were produced; and</li> <li>• Measures to deter violence, threats, and harassment against environmental human rights defenders (“<b>EHRDs</b>”), 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.</li> </ul>
<b>Implementation; Deforestation-Free Code of Conduct</b>	<p>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, 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:</p> <ul style="list-style-type: none"> <li>• A list of forest-risk commodities subject to the requirements of the Act (to be reviewed and updated every three years);</li> </ul>

	<ul style="list-style-type: none"> <li>• A list of products derived wholly or in part from forest-risk commodities;</li> <li>• 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;</li> <li>• A set of responsible sourcing guidelines and policies derived from best practices in supply chain transparency to the point-of-origin;</li> <li>• 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 intact forest degradation or deforestation;</li> <li>• The full set of requirements for a contractor’s NPDE Policy; and</li> <li>• The process through which contractors certify to the Office of General Services that they are in compliance the Act.</li> </ul>
<b>Other Contractor Requirements</b>	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, or the Department of Environmental Conservation to determine the contractor’s compliance with the sourcing requirements of the Act.
<b>Exceptions</b>	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 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.
<b>Enforcement and Penalties</b>	<p>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:</p> <ul style="list-style-type: none"> <li>• The corresponding contract would be voidable at the option of the state agency or authority to which the commodity was furnished.</li> <li>• 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.</li> </ul> <p>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.</p>
<b>Additional Information/Resources</b>	
<b>Bill</b>	For the text of the Bill, see: <a href="https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB260">https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB260</a>

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(Updated February 28, 2022)

**Applying the Law**



<b>Fostering Overseas Rule of law and Environmentally Sound Trade Act (FOREST Act) (Proposed) United States</b>	
<b>Overview</b>	
<b>Law / Country</b>	<b>Fostering Overseas Rule of law and Environmentally Sound Trade Act (the “Act”)</b> (United States) (Proposed)
<b>Goal</b>	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.
<b>Adoption / Status</b>	The Act was introduced in the United States Senate on October 6, 2021 and the United States House of Representatives on October 8, 2021.
<b>Issue Addressed</b>	Illegal deforestation.
<b>Covered Entities</b>	Importers of goods into the United States.
<b>How It Works</b>	
<b>Mandatory?</b>	Yes.
<b>Covered Commodities and Covered Products</b>	<p>The following commodities would initially come within the scope of the Act:</p> <ul style="list-style-type: none"> <li>• Palm oil;</li> <li>• Soybeans;</li> <li>• Cocoa;</li> <li>• Cattle;</li> <li>• Rubber; and</li> <li>• Wood pulp.</li> </ul> <p>Specified products derived from these commodities, according to Harmonized Tariff Schedule headings and subheadings, also would be in scope.</p> <p>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.</p>
<b>Prohibited Imports</b>	<p>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.</p> <p><b>“Deforestation”</b> 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.</p>

	<p>A “<b>natural forest</b>” 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.</p> <p>The term “<b>illegal deforestation</b>” 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.</p> <p>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.</p>
<p><b>Import Declaration Requirements Generally</b></p>	<p>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 “<b>produce</b>” would include growing, harvesting, rearing, collecting, extracting or otherwise producing a commodity, other than refining or manufacturing.</p> <p>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.</p> <p>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.</p>
<p><b>Countries Covered by an Action Plan; Related Due Diligence</b></p>	<p>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.</p> <p>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:</p> <ul style="list-style-type: none"> <li>• 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</li> </ul> <p>The “<b>supply chain of a covered commodity</b>” 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.</p>

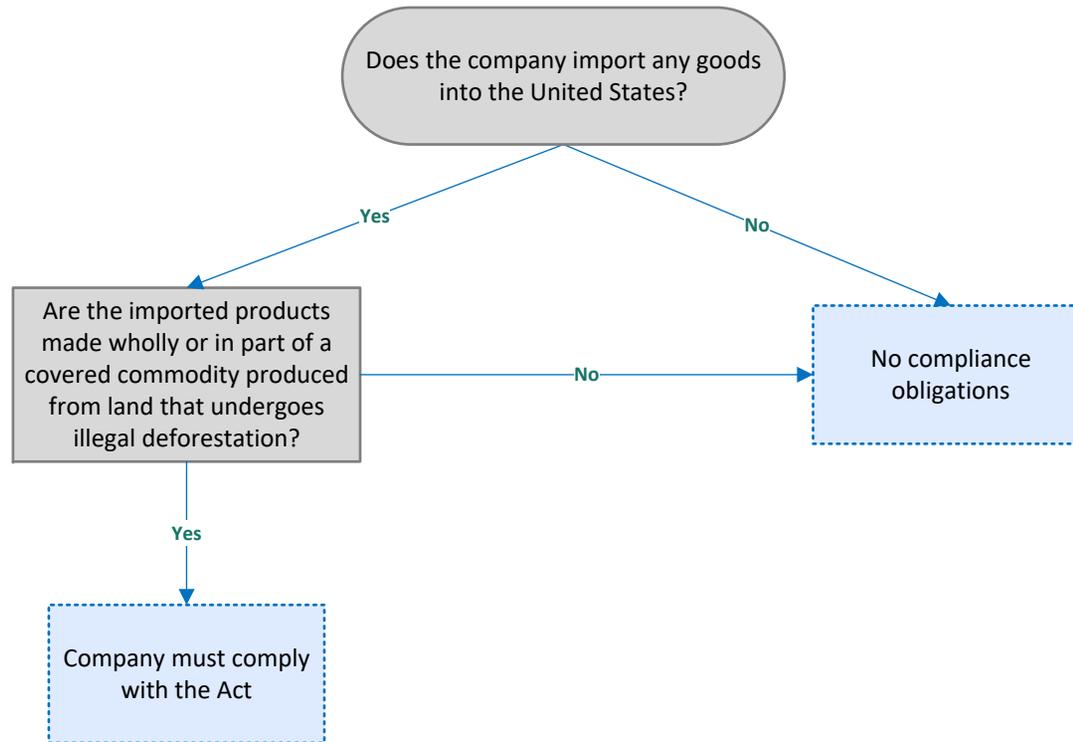
	<p>The “<i>point of origin of a covered commodity</i>” would be the geographical location, identified by the smallest administrative unit of land possible (such as a concession, farm, ranch, property or other type of public or private land allocation), where the covered commodity was produced. For livestock, the point of origin would include all geographic locations where that animal existed from birth to slaughter.</p> <ul style="list-style-type: none"> <li>• 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.</li> </ul> <p>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.</p> <p>CBP also may issue guidance about the potential role of third-party certifications assisting importers with meeting the requirements of the Act.</p> <p>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).</p>
<p><b>Preferential Treatment in U.S. Government Procurement; Deforestation Policy</b></p>	<p>The Act would provide preferential treatment to contractors that have a policy to address deforestation and are taking other related steps.</p> <p>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.</p> <p>At a minimum, the policy would be required to include the following:</p> <ul style="list-style-type: none"> <li>• Measures to identify the point of origin of forest-risk commodities and ensure compliance with the policy when supply chain risks are present;</li> <li>• 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;</li> <li>• Measures taken to ensure that each applicable commodity does not contribute to deforestation;</li> <li>• 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;</li> </ul>

	<ul style="list-style-type: none"> <li>• 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</li> <li>• Measures taken to ensure compliance with the laws of countries where forest-risk commodities in the supply chain of the contractor are produced.</li> </ul>
<b>Third-party Reporting Mechanism</b>	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.
<b>Additional Regulations</b>	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.
<b>Additional Information/Resources</b>	
<b>Law</b>	For the text of the Act, see S.2950 at <a href="https://www.govinfo.gov/content/pkg/BILLS-117s2950is/pdf/BILLS-117s2950is.pdf">https://www.govinfo.gov/content/pkg/BILLS-117s2950is/pdf/BILLS-117s2950is.pdf</a> and H.R.5508 at <a href="https://www.govinfo.gov/content/pkg/BILLS-117hr5508ih/pdf/BILLS-117hr5508ih.pdf">https://www.govinfo.gov/content/pkg/BILLS-117hr5508ih/pdf/BILLS-117hr5508ih.pdf</a>

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(Updated February 28, 2022)

**Applying the Law**



Deforestation Regulation European Union	
<b>Overview</b>	
<b>Law / Country</b>	<b>Deforestation Regulation (the “Regulation”)</b> (European Union)
<b>Goal</b>	Protect forests and reduce greenhouse gas emissions and global biodiversity loss.
<b>Adoption / Status</b>	Proposed by the EU Commission on November 17, 2021.
<b>Issue Addressed</b>	Deforestation and forest degradation.
<b>Covered Entities</b>	<p><b>“Operators,”</b> 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.</p> <p><b>“Traders,”</b> 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.</p> <p><u>Note:</u> Traders that are not small and medium-sized enterprises (<b>“SMEs”</b>) 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.</p>
<b>Covered Commodities and Products</b>	<p><b>“Relevant commodities”</b> would be defined as cattle, cocoa, coffee, oil palm, soya and wood that were produced on or after the twentieth day following the Regulation’s publication in the Official Journal of the European Union.</p> <p><b>“Relevant products”</b> would be those that contain, have been fed with or have been made using relevant commodities (to be listed on an Annex to the Regulation).</p> <p>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 will 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.</p>
<b>How It Works</b>	
<b>Mandatory?</b>	Yes.

<p><b>Due Diligence Requirements; Due Diligence Statement</b></p>	<p>Prior to placing relevant commodities on the EU market or exporting them, operators 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, and (3) are covered by a due diligence statement.</p> <p><b>“Deforestation-free”</b> 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.</p> <p>This due diligence process would include (1) the collection of information and documents, (2) risk assessment measures, and (3) risk mitigation measures.</p> <p>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.</p>
<p><b>Information and Document Collection</b></p>	<p>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:</p> <ul style="list-style-type: none"> <li>• 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;</li> <li>• The quantity (expressed in net mass and volume, or number of units) of the relevant commodities and products;</li> <li>• The country of production;</li> <li>• The geo-localization coordinates (<i>i.e.</i>, latitude and longitude) of all plots of land where the relevant commodities and products were produced and the date or time range of production;</li> <li>• The name, email and address of any business or person from whom they have been supplied with the relevant commodities or products;</li> <li>• The name, email and address of any business or person to whom the relevant commodities or products have been supplied;</li> <li>• Adequate and verifiable information that the relevant commodities and products are deforestation-free; and</li> <li>• 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.</li> </ul> <p>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.</p>

	<p>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.</p>
<p><b>Risk Assessment Measures</b></p>	<p>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:</p> <ul style="list-style-type: none"> <li>• The assignment of risk to the relevant country in accordance with a country benchmarking system;</li> <li>• The presence of forests in the country and area of production of the relevant commodity or product;</li> <li>• Prevalence of deforestation or forest degradation in the country, region and area of production of the relevant commodity or product;</li> <li>• The source, reliability, validity and links to other available documentation of the information required to be collected, as noted earlier in this Summary;</li> <li>• 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;</li> <li>• 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;</li> <li>• The risk of mixing with products of unknown origin or produced in areas where deforestation or forest degradation has occurred or is occurring;</li> <li>• The conclusions of the European Commission expert group meetings published in the European Commission’s expert group register;</li> <li>• Substantiated concerns submitted by third parties; and</li> <li>• Complementary information on compliance, which may include information supplied by certification or other third-party-verified schemes.</li> </ul>
<p><b>Risk Mitigation Measures</b></p>	<p>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:</p> <ul style="list-style-type: none"> <li>• 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</li> <li>• An independent audit function to check the internal policies, controls and procedures referred to in the preceding item for all operators that are not SMEs.</li> </ul>

<p><b>Simplified Due Diligence; Low Risk Countries</b></p>	<p>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.</p> <p>The Regulation would establish a three-tier system for assessing geographic risk. 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-free.</p>
<p><b>Public Reporting</b></p>	<p>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 on an annual basis.</p> <p>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.</p>
<p><b>Enforcement; Customs Procedures</b></p>	<p>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.</p> <p>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:</p> <ul style="list-style-type: none"> <li>• Examination of the due diligence system, including risk assessment and risk mitigation procedures;</li> <li>• Examination of documentation and records that demonstrate the proper functioning of the due diligence system;</li> <li>• 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</li> <li>• Examination of due diligence statements.</li> </ul> <p>In addition, where appropriate, the checks would be required to include:</p> <ul style="list-style-type: none"> <li>• On the ground examination of relevant commodities and products with a view to ascertaining their conformity to the documentation used for exercising due diligence;</li> </ul>

	<ul style="list-style-type: none"> <li>• Any technical and scientific means adequate to determine the exact place where the relevant commodity or product was produced, including isotope testing;</li> <li>• 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</li> <li>• Spot checks, including field audits, including where appropriate in third countries through cooperation with the administrative authorities of those countries.</li> </ul> <p>If the relevant commodities or products were produced in a country or part thereof listed as high risk, or there is a risk of relevant commodities or products produced in high risk countries or their component parts entering the relevant supply chain, each member state would be required to ensure that the annual checks cover at least 15% of the operators placing, making available on or exporting from the EU market each of the relevant commodities on their market, as well as 15% of the quantity of each of the relevant commodities placed or made available on or exported from their market from high risk countries or parts of those countries.</p> <p>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.</p>
<b>Remedial Action and Penalties</b>	<p>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:</p> <ul style="list-style-type: none"> <li>• Rectifying the non-compliance;</li> <li>• Preventing the relevant commodity or product from being placed, made available on or exported from the EU market;</li> <li>• Withdrawing or recalling the relevant commodity or product immediately; and/or</li> <li>• Destroying the relevant commodity or product or donating it to charitable or public interest purposes.</li> </ul> <p>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:</p> <ul style="list-style-type: none"> <li>• 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;</li> <li>• Confiscation of the relevant commodities and products;</li> <li>• Confiscation of the operator’s and/or trader’s revenues from a transaction with the relevant commodities and products; and</li> <li>• Temporary exclusion from public procurement processes.</li> </ul>

### 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](https://ec.europa.eu/environment/publications/proposal-regulation-deforestation-free-products_en)

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

(Updated February 28, 2022)

## Applying the Law

