Do Canada's modern slavery reporting requirements impact investment managers?

February 09, 2024

You may have seen recent headlines about a reporting requirement due on May 31, 2024, under the *Fighting Against Forced Labour and Child Labour in Supply Chains Act* (the Act**,** sometimes referred to as the *Modern Slavery Act*) which came into force on January 1. A number of our clients are asking whether these reporting requirements could apply to them as investment managers - read on for some considerations that will help you assess the potential impact on your business.

Generally, the Modern Slavery Act is intended to address Canada's commitments to contribute to the fight against modern slavery in our supply chains, and, as such, is targeted at the production, sale or distribution of *goods* in Canada or elsewhere, or the importation of goods into Canada. The Act also imposes reporting requirements on certain businesses that control an entity that produces, sells, distributes or imports goods in Canada.

Despite the Act being focused on goods, as opposed to services such as those offered by investment managers, this does not mean you can immediately rule out being impacted.

Threshold applicability

There are two stages of assessing applicability of the Act, the first of which is likely to catch the vast majority of our investment management clients. Entities that are listed on a Canadian stock exchange or that have a business presence in Canada and that meet at least two of the following conditions in their two most recent financial years are required to report *if* they also meet the second part of the test (below):

- Entities with at least $20 million in assets
- Entities that have generated at least $40 million in revenue
- Entities that employ at least 250 employees

Reporting applicability

As mentioned at the start, there are two ways that an entity can attract reporting obligations under the Act:

- selling, producing, distributing or importing goods into Canada; and/or
- having control over an entity that sells, produces, distributes or imports goods into Canada.

Practically speaking, it is unlikely that many managers will have control over an entity, though hedge fund managers might. Guidance issued in December 2023 from the Minister of Public Safety Canada (the Minister) explains that control under the Act includes "direct and indirect control and extends down the organizational chain". The term control is undefined under the Act, though the Minister's guidance says that the concept should be applied broadly, in a manner consistent with the Act. Accounting standards may be helpful, though not determinative in making this assessment.

Additionally, even if they do not control another entity, investment managers need to assess whether they themselves are importers of goods into Canada. There is no *de minimis* amount of imported goods which would be exempt from the reporting requirement, though the Minister recently clarified that the Act is not meant to capture "very minor dealings". Common examples of imported goods our clients may wish to catalogue include computer equipment, office supplies and branded merchandise.

Reports required to be made under the Act must be published on an entity's website, filed with the Minister and, for federally incorporated issuers, provided to shareholders. See here for How to prepare a "Modern Slavery Report" in Canada.

Publicly available reports under the Act are a source of information and risk

Even if your firm is not subject to the Act, entities you hold in your investment portfolio may be and, as a result, will be publishing these public reports. In certain cases, the information contained in the reports could increase transparency into the investment's child and forced labour-related practices – a critical component of many environmental social and governance considerations – as well as increase the potential reputational risk for non-reporting issuers that would not otherwise have had any public disclosure obligations, particularly with respect to modern slavery.

More information on the latest guidance and insight on reporting obligations under the Act can be found at BLG's Bill S-211 Modern Slavery Resource Centre.

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