Private equity and venture capital sponsors: Are supply chain/modern slavery reporting requirements on your radar?

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Sponsors of private equity and venture capital funds (Sponsors) should consider the applicability of the reporting requirements, 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 Jan. 1.

Generally, the *Modern Slavery Act* is intended to support Canada's commitment to address forced and child labour 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.*

As Sponsors, requirements with respect to goods may not immediately register as being impactful from a compliance perspective. The reporting obligations under the Act, however, may well be relevant, and they are part of the wider spotlight being shone on environmental, social, and governance-related matters. There are legal, operational, and potentially significant reputational risks to non-compliance. These risks include fines against affected businesses, and their directors and officers, of up to $250,000.

Sponsors may trigger reporting obligations under the Act by virtue of controlling an entity that produces, sells, distributes or imports goods in Canada and/or by virtue of selling, importing, or distributing goods into Canada – such as office equipment. The thresholds for both the concept of control and the quantum of goods sold, produced, distributed, or imported are not clearly delineated in the Act, so we encourage each Sponsor to assess their own situation well in advance of the latest reporting deadline of May 31.

Threshold applicability

There are two stages of assessing applicability of the Act. First, entities that have a business presence in Canada (or that are listed on a Canadian stock exchange), 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, which is a reporting applicability (see next section):

- 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

There are two ways that a Sponsor, general partner or manager might attract reporting obligations under the Act:

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

Guidance issued in Dec. 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. In the case of private equity or venture capital funds, taking a controlling interest in a portfolio company, and/or participating actively in the management and direction of a portfolio company, would trigger the Sponsor's reporting obligations under the Act, in respect of each such portfolio company. The Act was not necessarily drafted with Sponsors and the relationship they have with portfolio companies in mind. The nature of the Sponsor's relationship to portfolio companies that trigger a report under the Act requires a fact-specific analysis of how the Sponsor can gather and assess the required information needed to submit the report. This exercise will differ from the process that would be undertaken by a parent company with respect to a subsidiary.

Additionally, even if a Sponsor determines that a fund does not control another entity, the Sponsor will need to assess whether the fund, general partner and/or the manager is an importer of goods into Canada. There is no *de minimis* amount of imported goods that 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 Sponsors may wish to catalogue include computer equipment, office supplies and branded merchandise.

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

Reports required to be made under the Act must be published on a reporting entity's website, filed with the Minister and, for federally incorporated issuers, provided to shareholders; see our previous article on how to prepare a "Modern Slavery Report" in Canada.

Sponsors that are subject to the Act will have to file publicly available reports detailing their actions taken in the previous fiscal year to prevent and reduce the risk of forced or child labour being used in the production of goods. The public nature of these reports

will heighten transparency and, potentially, legal and reputational risk, for firms not otherwise accustomed to making public disclosure about such matters.

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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