How to prepare a “Modern Slavery Report” in Canada – Guidance now available!

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Highly anticipated guidance (Guidance) with respect to Canada’s *Fighting Against Forced Labour and Child Labour in Supply Chains Act* (the Act), formerly known as Bill S-211, has been published by the Ministry of Public Safety Canada, providing businesses operating in Canada with better insight into how to satisfy their reporting obligations in 2024.

Takeaways

- Entities subject to the reporting obligation under the Act will be required to complete an **online questionnaire** that includes a series of open and closed-ended questions addressing the requirements of the Act (a Questionnaire). The Questionnaire is required **in addition** to the preparation and submission of a report addressing the information required under the Act (a Report).
- Reports must not exceed **10 pages in length**, or 20 pages if prepared in both English and French, and must be submitted to the Ministry in a **PDF file** that does not exceed 100MB in size. It is recommended that Reports be submitted in both English and French.
- The Guidance addresses key questions with respect to the **interpretation of the Act**, including what it means to have a **place of business** or do business in Canada, how to calculate the financial thresholds in the Act, and the meaning of **producing, selling, distributing and importing goods**.

An entity must complete a questionnaire

As we have previously discussed, the Act imposes a new annual reporting obligation on corporations, trusts, partnerships and other unincorporated organizations that are determined to be “entities” (as defined in the Act) and who partake in the production, sale, distribution or import of goods in or into Canada. The Act is clear that such entities must, on or before May 31 of each year, submit a Report to the Minister of Public Safety addressing, among other things, the steps the entity has taken during its previous financial year to prevent and reduce the risk that forced labour or child labour 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.

Interestingly, while not specifically required in the Act, the Guidance indicates that in addition to the submission of a Report, entities must complete an online questionnaire that includes a series of open and closed-ended questions that address each of the requirements under the Act (a Questionnaire). The Questionnaire is designed to collect information necessary to satisfy the requirements of the Act. An entity's Report may include additional and supplementary information, for example charts or graphs.

The Guidance indicates that the Questionnaire will include both mandatory and optional questions aimed at identifying the entity (legal name, financial reporting year, location, etc.), assessing compliance with the Act, and providing entities with the ability to elaborate on closed-ended questions. The Questionnaire will also confirm that the affiliated Report has received the requisite approvals and includes a signed attestation.

Reports should follow a specific format

Up until now, our best indicator of what a Report would look like were similar documents filed under modern slavery legislation in other jurisdictions, for example the United Kingdom's *Modern Slavery Act 2015* or Australia's *Modern Slavery Act 2018*. However, while many of the reporting requirements of the Act overlap with those of foreign legislation, there are nuanced differences. The Guidance is instructive with respect to the format and contents of a Report for Canadian purposes:

- **Format:** To comply with the Act, a Report must address each of the legal requirements set out in subsections 11(1) and 11(3) of the Act, receive the requisite approvals, include a signed attestation, be equal to or less than 10 pages long (or 20 pages if submitted in English and French), and be a PDF file not exceeding 100MB in size.
- **Language:** While Reports must be completed in one of Canada's two official languages, entities are encouraged to submit Reports in both English and French. Requests for translated copies of Reports may be directed by the Ministry to the applicable Entity.
- **Approval and attestation:** Reports must be approved and attested to by the entity's governing body (e.g., a board of directors). An attestation must include a signature of a member of the governing body and a statement that the Report has been approved thereby. The Guidance provides precise language for the attestation.
- **Joint reports:** While joint Reports are permitted for entities within a corporate group, such Reports should only be used where the information included therein generally applies to all covered entities. If entities within a corporate group have different risk profiles or have taken different actions with respect to forced and child labour, separate Reports may be warranted.
- **Responsive information:** The Guidance provides a discussion of the Ministry's expectations with respect to how entities should address each of the eight requirements included in section 11 of the Act that must be addressed in the Report. The Questionnaire will also provide examples of actions that entities may have taken for some requirements.
- **Level of detail:** There is no prescribed level of detail required in a Report or Questionnaire. However, the page limit of the Report will provide some guidance in this regard. Entities must also consider the appropriate level of detail proportionate to their size and risk profile. Links to publicly available documents

and websites may also be included to supplement the information in the Report. Clear, simple and widely understandable language should be used.

Questions of interpretation have been answered

Since its first publication as a Bill, the Act has raised many interpretive questions among businesses in Canada that are now addressed in the Guidance:

- **What does it mean to "Do business in Canada"?** Entities should look to tax- and employment-related matters in considering whether they have a place of business, do business or have assets in Canada, taking into account the ordinary sense of the words as well as the location of goods, employees, deliveries, assets, inventories and bank accounts, among other things. Notably, doing business in Canada does not require having a place of business, like premises, facilities or installations, in Canada.
- **How should entities calculate financial thresholds?** The financial thresholds included in the definition of an "entity" (assets, revenue and employees) are to be calculated on a global, consolidated basis that includes controlled entities (subsidiaries). However, the inverse is not required – an entity's revenue, assets and employees will not include same of its parent company.
- **When is an entity importing goods?** An entity will be "importing goods" into Canada where the entity is responsible for accounting for those goods under the *Customs Act* (Canada). Importing does not include the purchase of goods from a third party considered to be the importer for the purposes of the *Customs Act*. The Guidance further provides that while there is no de minimis threshold under the Act for the value of goods being imported, the Act should be read to exclude "very minor dealings".
- **What does it mean to "control" an entity?** The Guidance provides that the term "control" should be applied broadly in a manner consistent with the purposes of the Act. While not determinative, it may be helpful to look to applicable accounting standards in determining control. Substance should take precedence over form.

Next steps

If not already considered, publicly listed companies in Canada and other businesses in Canada that meet the applicable financial thresholds of the Act should turn their attention to determining whether they have a reporting obligation under the Act. Entities subject to the reporting requirement should begin preparing their Reports in advance of the May 31, 2024 deadline, taking into consideration the instructions set out in the Guidelines.

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