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UPCOMING DEADLINE: FIGHTING AGAINST FORCED LABOUR & CHILD LABOUR IN SUPPLY CHAINS ACT

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The *Fighting Against Forced Labour and Child Labour in Supply Chains* (the “**Act**”) came into force on January 1, 2024 and requires each “entity” and “government institution” (each as defined in the Act) that meets the requisite criteria to report on its activities undertaken during its previous financial year. The first report is due by May 31, 2024.

Background / Purpose

Canada is addressing deficiencies in the enforcement of existing laws against forced labour and child labour. This commitment comes in response to similar actions taken by Canada’s allies and major trading partners to combat human rights violations within the supply chain of companies.

Parliament, as part of its mandate in fighting modern slavery, has imposed reporting obligations on:

1. government institutions involved in producing, purchasing or distributing goods in Canada or elsewhere; and
2. entities involved in:
 - a. manufacturing, producing, growing, extracting or processing goods in Canada or elsewhere;
 - or
 - b. importing goods manufactured, produced, grown, extracted or processed outside of Canada.

Who Needs to Report?

A **government institution** means:

- a. any department or ministry of state of the Government of Canada, or any body or office, listed in Schedule I of the *Access to Information Act*, and
- b. any parent Crown corporation, and any wholly-owned subsidiary of such a corporation, within the meaning of section 83 of the *Financial Administration Act*.

The Act applies to any government institution producing, purchasing or distributing goods in Canada or





elsewhere.

An **entity** is defined as a corporation or a trust, partnership or other unincorporated organization that:

- a. is listed on a stock exchange in Canada; or
- b. has a place of business in Canada, does business in Canada or has assets in Canada and that, 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:**
 - i. it has at least CAD \$20 million in assets;
 - ii. it has generated at least CAD \$40 million in revenue; and
 - iii. it employs an average of at least 250 employees; or
- c. is prescribed by regulations.

The Act **only** applies to any entity:

- a. producing, selling or distributing goods in Canada or elsewhere;
- b. importing into Canada goods produced outside Canada; or
- c. controlling an “entity” engaged in any activity described in paragraph (a) or (b).

If a foreign corporation, trust, partnership, or other unincorporated organization meets both the definition of an “entity” and the reporting criteria, it may be subject to the reporting requirements.

The Act has defined “control” broadly, as direct or indirect control in any manner.

Scope

“Goods” is not a defined term in the Act. However, Public Safety Canada (“PSC”) states that for the purposes of the reporting criteria above, “goods” can be any goods that are the subject of trade and commerce, understood in the ordinary sense of the word.

Under the PSC guidelines, purchasing goods that are produced outside of Canada from a third party, where the third party is considered to be the importer for the purposes of the Customs Act, is not considered importing goods.

The terms “producing” and “importing” are not intended to capture services that solely support the production or importation of goods. For example, services such as marketing, administrative services, financial services, and software services are not captured.

Reporting Requirements





If the government institution or an entity meets the requirements under the Act, then it must file an annual report (the “**Annual Report**”) with the Minister of Public Safety and Emergency Preparedness (the “**Minister**”). PSC has provided reporting guidance on the application of the Act, including a step-by-step overview on the process to complete the Annual Report: <https://www.publicsafety.gc.ca/cnt/cntrng-crm/frcd-lbr-cndn-sply-chns/index-en.aspx>

Each “government institution” must report the steps that they have taken during their 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 produced, purchased or distributed.

Each “entity” must report the steps that they have taken during their 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.

The Annual Report must also include the following supplementary information about the entity:

- a. its structure, activities and supply chains;
- b. its policies and due diligence processes in relation to forced labour and child labour;
- c. the parts of its activities/business and supply chains that carry a risk of forced labour or child labour being used and the steps it has taken to assess and manage that risk;
- d. any measures taken to remediate any forced labour or child labour;
- e. any measures taken to remediate the loss of income to the most vulnerable families that results any measure taken to eliminate the use of forced labour or child labour in its activities and supply chains;
- f. the training provided to employees on forced labour and child labour; and
- g. how the entity or government institution assesses its effectiveness in ensuring that forced labour and child labour are not being used in its business and supply chains.

Child labour is defined as labour or services provided or offered to be provided by persons under the age of 18 years and that:

- a. are provided or offered to be provided in Canada under circumstances that are contrary to the laws applicable in Canada;
- b. are provided or offered to be provided under circumstances that are mentally, physically, socially or morally dangerous to them;
- c. 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





- d. constitute the worst forms of child labour as defined in article 3 of the Worst Forms of Child Labour Convention, 1999, adopted at Geneva on June 17, 1999.

Forced labour is defined as labour or service provided or offered to be provided by a person under circumstances that:

- a. 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 labour or service; or
- b. constitute forced or compulsory labour as defined in article 2 of the Forced Labour Convention, 1930, adopted in Geneva on June 28, 1930.

Once the Annual Report is complete, it must receive approval and attestation from the appropriate governing body. The approved Annual Report must receive attestation through the following:

- a statement that sets out whether it was approved by the appropriate governing body or bodies; and
- the signature of one or more members of the governing body of each entity that approved the report, accompanied by the name and title of the approving member, the date of signature and a statement confirming that the approving member has the legal authority to bind the entity.

Questionnaire

In addition to the Annual Report, each entity and government institution must complete an online questionnaire consisting of mandatory and optional questions, with which they must upload their completed Annual Report, including the signed attestation. The questionnaire includes a series of questions that address each of the requirements under the Act.

PSC states that entities and government institutions must ensure that the information provided in the questionnaire is consistent with the information they provide in their Annual Report.

How to Report

The entity can file a single Annual Report or, if there are more than one “entities” within the same business that are required to file, a joint Annual Report may be prepared and submitted for all such entities.

The Annual Report must be submitted to a public registry established by the Minister and must also be published on the entity’s website in a “prominent” place. It is noted that the Annual Report must be visible and readily accessible to the public.





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An entity incorporated under the *Canada Business Corporations Act* or “any other Act of Parliament” is also required to send the Annual Report to the entity’s shareholders with its annual financial statements.

Additional Guidance

The Business Law Group at RBS would be happy to offer guidance and address any additional inquiries you may have concerning compliance with this Act.



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