Fighting Against Forced Labour And Child Labour In Supply Chains Act: Further Updated Guidance From The Minister

On November 15, 2024, Public Safety Canada (PSC) updated its guidance (the Guidance) on the *Fighting Against Forced Labour and Child Labour in Supply Chains Act* (the Act). The Guidance clarifies aspects of "entities" obligated to report under the Act and the reporting requirements.

After the passage of the Act in 2023, PSC first released guidance in December 2023 to assist entities in interpreting the application of the Act. Since then, there have been significant revisions to the Guidance, including in March 2024, which we discuss in a previous bulletin.

The Guidance follows PSC consultations after the first reporting year under the Act.

What you need to know

- The latest updates reinforce PSC's position that the Act's reporting obligation is not intended to apply to entities with activities limited to "selling" and "distributing", a change that was first introduced in the March guidance.
- The meaning of "control" under the Act has been the subject of significant discussion. The updated Guidance references the framework provided by the Office of the Superintendent of Financial Institutions (OSFI) as criteria that may be considered to assess whether an entity controls another entity, in addition to the accounting standards previously referenced.
- The Guidance expressly excludes certain items from the meaning of "goods" and applies a *de minimis* test relative to the size of an organization to interpret "very minor dealings".
- Entities are not required to disclose personal information or any kind of information that will expose them to liability.

Determining reporting obligations under the Act

The Guidance has clarified which entities hold reporting obligations. Under the Act, an entity has an obligation to report if it is:

1. producing, selling, or distributing goods in Canada or elsewhere;
2. importing goods into Canada; or

3. controlling another entity that does (a) or (b).

Notwithstanding the language of the Act, the previous guidance made no reference to entities engaged in only “selling” and “distributing” (and not “producing” or “importing”). The updated Guidance has further reinforced that the government will not pursue enforcement action in connection with a failure to report in respect of sales and distribution activities.

Only entities that produce goods anywhere, import goods into Canada, or control entities that do these activities are obligated to report pursuant to the Guidance.

When determining questions of “control,” PSC’s earlier guidance suggested that accounting standards, such as the Generally Accepted Accounting Principles (GAAP), could be useful in determining control between entities. The new Guidance also references OSFI’s control framework as criteria that may be considered to assess whether one entity controls another for the purpose of the Act.

Determining business presence and assets in Canada

The Guidance provides additional clarification regarding entities with a business presence in Canada. Under the Act, the term “entity” is defined as meaning:

1. a corporation or a trust, partnership or other unincorporated organization that:
    1. is listed on the stock exchange of Canada;
    2. 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:
        1. it has at least $20 million in assets,
        2. it has generated at least $40 million in revenue, and
        3. it employs an average of at least 250 employees; or
    3. is prescribed by regulations.

The Guidance indicates that though having a place of business in Canada may trigger a reporting obligation, when considering whether a company “does business in Canada”, a place of business in Canada is not necessary. In other words, it is possible to do business in Canada without having a place of business in Canada. The Guidance refers to the Canada Revenue Agency’s Guidance on “carrying on a business in Canada”, which provides nuanced criteria to determine when a business does business in Canada for GST/HST purposes. This builds on the original guidance and should help organizations navigate this determination by allowing them to rely on existing GST/HST analyses they may have conducted.

Regarding the asset and revenue thresholds, the Guidance includes “tangible property” in this analysis and clarifies that “an organization should not include intangibles such as intellectual property, security and goodwill”.

Determining whether an entity imports goods into Canada

In respect of entities that import goods into Canada, the Guidance states that the entity should be a “true importer” and “directly engaged in the importation of goods or controlling an entity engaged in these activities”. Previously, the Guidance indicated that importing under the Act was limited to those that accounted for goods under the *Customs Act.* The Guidance is now updated to apply to the “true importer that caused the goods to be brought into Canada and pays its duties”. It expressly excludes “custom brokers, express couriers, trade consultants and other third parties authorized to transact on behalf of the importer”.

Meaning of “goods”

The interpretation of “goods” is also clarified. Real property, electricity, software services and insurance plans are now expressly excluded from the definition of “goods”.

Application of “very minor dealings” exemption

Previous guidance provided that “very minor dealings” need not be considered but did not speak to how that exemption should be applied in practice. The updated Guidance indicates that “very minor dealings” should be understood in line with “generally accepted principles of *de minimis* within the context of each entity’s business”. Importantly, the Guidance clarifies that the test is relative to an entity’s size, which means that what constitutes”very minor dealings” may be greater for larger entities.

Risk of liability and privacy concerns

Many businesses shared concerns with potential liability flowing from the Act’s reporting obligations. The Guidance clarifies that there is no obligation to provide “personal information” or information of any kind that would “create a legal risk or compromise the privacy of any person”. The Act also does not oblige an entity to report on any specific allegations they may be facing in relation to forced labour or child labour. Entities are encouraged to use anonymized case studies when describing their responses to instances of forced labour and child labour.

Providing the report to shareholders

Under the Act, federally incorporated companies must provide their reports to the company’s shareholders, along with its annual financial statements. The Guidance clarifies how these reports may be delivered, (i.e., by using a standard means of delivery of the entity). We understand this to mean that companies can deliver the report to shareholders in the same fashion as they deliver their annual financial statements, including electronically for those shareholders that receive statements in that fashion.

What’s next

The Guidance clarifies entities that may have a reporting obligation under the Act. Entities who may have reported in the first year of the regime may no longer be required to do so and vice versa. Entities will want to consider the extent of any ongoing reporting obligations in 2025.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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