

# Second Update On Guidance For The Fighting Against Forced Labour And Child Labour In Supply Chains Act: Deadline Approaching



## Recap

In a series of prior publications, which you can find [here](#) and [here](#), we set out Canada's modern slavery reporting obligations under the *Fighting Against Forced Labour and Child Labour in Supply Chains Act (Act)*, which came into force on January 1, 2024. The Act aims to prevent forced and child labour in supply chains by having businesses submit an annual report regarding the measures they have taken to combat these issues.

## Updated guidance

Since the Act came into force, Public Safety Canada released guidance on the reporting requirements. The first guidance was published on December 20, 2023, and focused on the reporting requirements beyond the reading of the Act, including prescribing a mandatory questionnaire that can be used as an entity's report or in addition to it, and providing further guidance on the key threshold issues for determining if an entity must report. For more details on this initial guidance, please visit our blog post [here](#).

On March 7, 2024, Public Safety Canada [updated](#) its December 20, 2023 guidance, changing the sections regarding which entities must file a report and the prescribed format of the report.

### *Determining whether an entity must report*

Under section 9 of the Act, the reporting obligation applies to any entity:

1. Producing, selling or distributing goods in Canada or elsewhere;
2. Importing into Canada goods produced outside Canada; or
3. Controlling an entity engaged in any activity described in paragraph (a) or (b).

Previously, the guidance referred to this entire list of activities but the reference to "selling or distributing" goods has now been removed from the section of the guidance on "Determining whether an entity is a reporting entity." The terms "selling or distributing," however, remain in [Section 9\(a\)](#) of the Act. The inconsistency

between the guidance and the Act creates ambiguity. However, the Act has not been amended. Therefore, the changes to the guidance do not change any legal requirements that were previously established. Sales and distribution remain criteria to determine if an entity must report.

#### *Entity size threshold*

The new guidance also clarifies that when determining if they must file a report, subsidiary companies should assess whether they meet the revenue, asset, and size thresholds of the Act<sup>1</sup> independently of their parent company. Relatedly, the update explains that a business's employment and tax records may be used to determine if it meets the requirement of "doing business in Canada" or having assets in Canada.

#### *Municipal governmental institutions*

The updated guidance further clarifies that provincial and municipal governmental institutions are not subject to the reporting requirements under the definition of "government institutions" in the Act, however, some provincial Crown corporations, may fall under the definition of "entity."

#### *Page limit/language of report*

Regarding the form of the report, the updated guidance clarifies that its 10-page limit is merely a recommendation. Accordingly, reports longer than 10 pages are acceptable and reports may be filed in only one (or both) of the official languages. We note that this was always the case, and the clarification is helpful in noting that guidance will not amend the regulatory or legal requirements.

### **Conclusion**

The update to the guidelines provides some helpful clarifications for reporting entities but has also created new ambiguity for some entities. As a reminder, reports under the Act are due by May 31, 2024.<sup>2</sup> If you have any questions on whether your entity falls under the Act and how these reports should be prepared and filed, please feel free to reach out to [Paul Lalonde](#), [Sean Stephenson](#) or [Daniela Acevedo](#) with any inquiries.

*The authors would like to thank articling student Stefan Rus for his contributions in preparing this article.*

### **Footnotes**

1. Under section two of the Act, the size threshold is met if the entity meets at least two of the following three criteria: CA\$20 million in assets, has generated at least CA\$40 million in revenue, and employs an average of at least 250 employees.

2. Under S.13(2) of the Act, *CBCA* corporations must provide their report to shareholders alongside their annual financial statements, which can result in an earlier deadline.

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*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. Specific Questions relating to this article should be addressed directly to the author.*

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